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Workers' Compensation - Following a Spouse to a New Locality: Mississippi's Benefit Disqualification Statute - Warren v. Board of Review of Mississippi Employment Security Commission

E. Scott Lowicki

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WORKERS' COMPENSATION – Following A Spouse to a New Locality: Mississippi's Benefit Disqualification Statute – *Warren v. Board of Review of Mississippi Employment Security Commission*, 463 So. 2d 1076 (Miss. 1985)

I. FACTS

On July 31, 1983, Phoebe Warren moved to the state of Florida to join her husband, who had been recently transferred by the United States Army. Although Warren had signed an employment contract for the following school year, she resigned from this position, and when her previous twelve-month contract ended in August, she filed a claim for unemployment compensation benefits. This general claim of entitlement was disallowed by the Mississippi Employment Security Commission both initially and by the Appeals Referee. Warren subsequently appealed to the Commission's Board of Review, claiming that her husband's transfer pursuant to military orders rendered her resignation involuntary, thereby meeting the requirement of good cause. Mississippi Code Annotated § 71-5-513(A)(1)(a) (1972 & Supp. 1986) provides that, "marital, filial, and domestic circumstances and obligations shall not be deemed good cause [for termination of employment]." After the Board of Review affirmed the decision of the Appeals Referee, appeal was made to the circuit court, which, without hearing, affirmed the decision of the Board of Review. In appealing to the Supreme Court of Mississippi, Mrs. Warren argued that the statute establishes a class of claimants who are prevented from demonstrating that marital, filial and domestic circumstances could constitute good cause.[1] By contrast, claimants quitting work for other reasons can argue good cause.[2] Thus the statute establishes a classification which bears no rational relationship to a legitimate legislative purpose, thereby violating the equal protection and due process clauses of the United States Constitution.[3]

The Mississippi Employment Security Commission responded by noting that the "irrebuttable presumption"[4] doctrine had, since

1. Appellant's Opening Brief at 2, 8, Warren v. Board of Review of Mississippi Employment Sec. Comm'n, 463 So. 2d 1076 (1985).

2. *See supra* note 1, at 2, 8.

3. *See supra* note 1, at 2-3, 8.

4. An "irrebuttable presumption" is a statutory provision which operates in such a manner as to classify people for the imposition of a burden or benefit without an initial determination of the merits of individual claims. J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW 553 (2nd ed. 1983). Such presumptions violate due process because they either deprive one of a benefit or establish a burden without fair process of law. *Id.* By arguing that the statute establishes a class of claimants who are prevented from demonstrating that marital, filial and domestic circumstances can constitute good cause for termination, Mrs. Warren maintained that she was irrebuttably presumed to have terminated employment without good cause, in violation of her right to due process of law.

1975, been abandoned by the United States Supreme Court except in cases where "fundamental interests" were involved.[5] Appellee also estimated that $1.8 million was saved by the statute annually, thus preserving the integrity of the state's Unemployment Trust Fund.[6] In conclusion, appellee argued that the law in question was adopted by the legislature for a good and reasonable purpose, that it infringed upon no claimant's constitutional rights, and that its plain language was correctly applied to the facts of the present case.[7]

Writing for the court, Justice Hawkins found that the legislature was the policymaker in determining whether or not it would deny benefits to persons choosing to accompany their spouses to another locality.[8] While hardships might occasionally arise, the Mississippi marital disqualification statute did not offend any constitutional guarantee under the equal protection or due process provisions of the state and federal constitutions.[9]

II. HISTORY AND BACKGROUND

A. The Problem

Some states have statutes which specifically disqualify a claimant from receiving unemployment compensation benefits where resignation stems from following a spouse to a new locality.[10] When challenged, four modes of analysis have been consistently utilized regarding such statutes.[11] One view holds that if the disqualification bears some rational relationship to the legitimate legislative purpose of providing benefits to the involuntarily unemployed, then it will not offend the equal protection clause.[12]

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5. Appellee's Reply Brief at 6, Warren v. Board of Review of Mississippi Employment Sec. Comm'n, 463 So. 2d 1076 (1985).

6. *See supra* note 5, at 11.

7. *See supra* note 5, at 12.

8. Warren v. Board of Review of Mississippi Employment Sec. Comm'n, 463 So. 2d 1076, 1077 (1985).

9. *Id.*

10. *See, e.g.*, IDAHO CODE § 72-1366 (Supp. 1986); MISS. CODE ANN. § 71-5-513(A)(1)(a) (Supp. 1986); UTAH CODE ANN. § 35-4-5(a) (Supp. 1986).

11. *See infra* notes 12-17 and accompanying text.

12. Kistler v. Indus. Comm'n, 556 P.2d 895, 897-98 (Colo. 1976); Pyeatt v. Idaho State University, 98 Idaho 424, 426, 565 P.2d 1381, 1383 (1977); Illinois Bell Tel. Co. v. Board of Review of Dep't of Labor, 413 Ill. 37, 43, 107 N.E. 2d 832, 835 (1952); Shelton v. Phalen, 214 Kan. 54, 59, 519 P.2d 754, 758-59 (1974); Petterssen v. Comm'n of Employment Serv., 306 Minn. 542, 544, 236 N.W.2d 168, 169 (1975); Kantor v. Honeywell, Inc., 286 Minn. 29, 32, 175 N.W.2d 188, 190-91 (1970); Warren v. Board of Review of Miss. Employment Sec. Comm'n, 463 So. 2d 1076, 1077 (Miss. 1985); Wallace v. Commonwealth Unemployment Compensation Bd. of Review, 38 Pa. Commw. 342, 347-51, 393 A.2d 43, 46-47 (1978); Guinn v. Commonwealth Unemployment Compensation Bd. of Review, 33 Pa. Commw. 596, 599-600, 382 A.2d 503, 504-05 (1978); Gilman v. Unemployment Compensation Bd. of Review, 28 Pa. Commw. 630, 634-36, 369 A.2d 895, 897-99 (1977); Chandler v. Department of Employment Sec., 678 P.2d 315, 317-18 (Utah 1984); Thomas v. Rutledge, 280 S.E.2d 123, 127-30 (W. Va. 1981).

The more rigorous species of equal protection analysis holds that the statute's disparate impact upon females renders it vulnerable to strict judicial scrutiny, which generates a higher probability of invalidity.[13] Similarly, freedom of personal choice in matters of marriage and family life has been considered a fundamental liberty, the denial of which may also trigger strict scrutiny.[14] By penalizing an employed woman's decision to marry and to follow her husband to another locality, the disqualification statute infringes upon this fundamental right.[15] A final method of analysis is based on the statute's conclusive presumption that one who terminates employment for marital, filial or domestic reasons has withdrawn from the labor market permanently.[16] Denying claimants an individualized determination of their entitlement to a government benefit creates an irrebuttable presumption which violates due process.[17]

B. Traditional Supreme Court Analysis

Although laws limiting fundamental rights are subjected to strict judicial scrutiny, the normal standard of review is minimum rationality.[18] Under this analysis, as long as a statutory classification bears some rational relationship to a legitimate legislative goal, it will pass muster under the equal protection and due process clauses.[19] The most striking application of the minimum rationality standard occurred in *Dandridge v. Williams*,[20] where the Court upheld, on equal protection grounds, a Maryland welfare statute which limited the number of children for which any family could receive subsistence payments.[21]

13. Boren v. California Dep't of Employment Dev., 59 Cal. App. 3d 250, 257-61, 130 Cal. Rptr. 683, 687-89 (Cal. Ct. App. 1976).

14. *Id.* at 259-61, 130 Cal. Rptr. at 688-90.

15. *Id.* at 259, 130 Cal. Rptr. at 689.

16. Shelton v. Phalen, 214 Kan. 54, 58-59, 519 P.2d 754, 758 (1974); Thomas v. Rutledge, 280 S.E.2d 123, 128-29 (W. Va. 1981).

17. J. NOWAK, R. ROTUNDA AND J. YOUNG, CONSTITUTIONAL LAW 553 (2d ed. 1983).

18. *Id.* at 821-22.

19. *Id.*

20. 397 U.S. 471 (1970).

21. While the Court had previously reserved this minimum rationality standard for cases involving the state regulation of business or industry, it found no reason for withholding the analysis here because "the administration of public welfare assistance involves the most basic economic needs of impoverished human beings." Dandridge v. Williams, 397 U.S. 471, 486 (1970).

Writing for the majority, Justice Stewart stated that a sufficient foundation for the regulation existed in the state's legitimate interest in encouraging employment and in avoiding discrimination between welfare families and the families of the working poor. *Id.* at 486. Although he conceded that these objectives would occasionally not be met, Justice Stewart cited Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911), for the proposition that the equal protection clause did not command a state to choose between attacking every aspect of a problem or not attacking the problem at all. Rather, it was sufficient that the state's action be rationally based and free from invidious discrimination. *Dandridge*, 397 U.S. at 486-87.

Historically, sex-based classifications were treated exactly as were general economic regulations.[22] However, after the repudiation of substantive due process, all economic and social welfare legislation was awarded great deference.[23] Independent judicial review was triggered only by the presence of a fundamental right or suspect class.[24] However, in the 1971 case of *Reed v. Reed,*[25] the court independently reviewed a sexually discriminatory statute without declaring sex to be a suspect classification.[26] Five years later, the Court, in *Craig v. Boren,*[27] formally defined an intermediate level of review known as the "substantial relationship to an important state interest" standard.[28]

Standing in stark contrast to the usual rational basis standard is a line of cases in which the Supreme Court adopted an irrebuttable presumption analysis. *Vlandis v. Kline,*[29] the first in this series of cases, involved a Connecticut statute[30] which permanently barred a non-resident student from becoming an in-state resident in order to receive lower tuition rates within the state university system. Speaking for the majority, Justice Stewart stated that irrebuttable presumptions were forbidden by the due process clause when "not necessarily or universally true in fact."[31] Instead, the state must allow an opportunity to present evidence showing bona fide residency.[32]

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22. J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW 714 (2d ed. 1983).

23. *Id.*

24. *Id.*

25. 404 U.S. 71 (1971).

26. *Id.* at 74-77. Although sex-based classifications were no longer shown the deference granted economic regulations, neither were they subject to the strict scrutiny focused upon truly suspect classifications such as those based upon race. J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW 714 (2d ed. 1983)

27. 429 U.S. 190 (1976).

28. Under this analysis, "[t]o withstand constitutional challenge, classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives." Craig v. Boren, 429 U.S. 190, 197 (1976).

29. 412 U.S. 441 (1973).

30. CONN. GEN. STAT. REV. § 10-329b (Supp. 1969) (as amended by Public Act. No. 5 § 126) (June Sess. 1971).

31. 412 U.S. at 452.

32. *Id.* Citing the difficulty of the determination and the expense of the administrative burden, the state had contended that without a conclusive presumption, the prevention of fraudulent residence claims would be impossible. 412 U.S. at 451. Rejecting this argument, the Court cited Stanley v. Illinois, 405 U.S. 645 (1972), for the proposition that the state's interest in administrative ease and certainty could not, by itself, justify a conclusive presumption under the due process clause where other reasonable and practical means were available to achieve the state's objective. 412 U.S. at 451.

Two weeks after the Supreme Court reached its decision in *Vlandis*, it was again faced with an irrebuttable presumption in United States Department of Agriculture v. Murry, 413 U.S. 508 (1973), a case in which a federal food stamp provision disqualified a large class of households without an individualized determination of need. The appellees had been denied food stamp eligibility because their households contained persons 18 years or older who had been claimed as "dependents" for federal income tax purposes by taxpayers ineligible for food stamp relief. *Id.* at 511. Writing for the majority, Justice Douglas noted that during the two-year

period of ineligibility, the statute created a conclusive presumption that the "tax dependent's" household was not needy and had access to nutritional adequacy. *Id.* Citing Stanley v. Illinois, 405 U.S. 645 (1972), the Court stated that although a simple tax dependeny test may promote administrative ease, the Bill of Rights and the due process clause "were designed to protect the fragile values of vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize . . . government officials." 413 U.S. at 513-14. The Court also found it incredulous that members of the household where the child resided were denied food stamps regardless of their number, destitute circumstances, or lack of relation to the deducting parent. *Id.* at 514. In its conclusion the majority stated that:

> the deduction taken for the benefit of the parent in the prior year is not a rational measure of the need of a different household with which the child of a tax-deducting parent lives and rests on an irrebuttable presumption often contrary to fact. It therefore lacks critical ingredients of due process . . . .

Id.

As Nowak Rotunda and Young have observed, Justice White's concurrence in *Vlandis* noted that a process would not have saved the requirement under an equal protection analysis because such a procedure would only have determined whether an individual fell within the arbitrary residence classification. J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW 553 (2d ed. 1983) *citing* Vlandis v. Kline, 412 U.S. 441, 457-58 (1973). For him, it was sufficient that the interest involved was higher education, that the difference between in-state and out-of-state tuition was substantial, and that, in the name of administrative convenience, a burden was imposed without the posibility of an administrative hearing. *Id.* at 457-59.

In his dissent joined by Justice Rehnquist, Chief Justice Burger stated that the majority had "accomplish[ed] a transferrence [sic] of the elusive and arbitrary 'compelling state interest' concept into the orbit of the Due Process Clause . . . [thereby making] an uncharted drift toward complications . . . comparable in scope and seriousness with those we are encountering in the equal protection area." *Id.* at 460-62. Chief Justice Burger concluded by stating that "[although] the urge to cure every disadvantage human beings can experience exerts an inexorable pressure to expand judicial doctrine . . . , that urge should not move the Court to erect standards that are unrealistic and indeed unexplained for evaluating the constitutionality of state statutes." *Id.* at 463.

Apparently agreeing with Chief Justice Burger's dissenting opinion in *Vlandis*, Justice Rehnquist, dissenting in United States Department of Agriculture v. Murry, quoted Lindsley v. Natural Carbonic Gas Co., 220 U.S. 6 (1911), for the proposition that, "[i]n the area of economics and social welfare . . . [i]f the classification has some 'reasonable basis,' it does not offend the [equal protection clause] . . . simply because [it] 'is not made with mathematical nicety or because in practice it results in some inequality.' " 413 U.S. at 523-24. Distinguishing the present statute as "a duly enacted prophylactic limitation on the dispensation of funds," Justice Rehnquist maintained that the government had not employed a conclusive presumption so much as it had erected a substantive limitation designed to rectify abuses of the program. Therefore, Justice Rehnquist, with whom Chief Justice Burger and Justice Powell concurred, would have upheld the statute as consistent with the due process clause. *Id.* at 524-27.

One year later, in Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974), the Supreme Court invalidated the mandatory maternity leave rules of two state school boards which required pregnant teachers to quit their jobs without pay several months before giving birth. Writing for the majority, Justice Stewart observed that by penalizing the pregnant teacher for deciding to bear a child, the restrictive provisions heavily burdened the exercise of freedom of choice in matters of marriage and family life, one of the fundamental liberties protected by the due process clause. *Id.* at 639-40. While the Court conceded that continuity of instruction was a significant and legitimate state interest, it found that the arbitrary cutoff dates bore no rational relationship to this goal. *Id.* at 642-44. The state also contended that the mandatory leave was necessary to eliminate physically incapable teachers from the classroom. *Id.* at 643. Although the Court acknowledged the legitimacy of this objective and assumed *arguendo* that some teachers did become physically unfit to teach during the latter stages of pregnancy, it found that the mandatory leave provisions amounted to a conclusive presumption of incapacity once the point was reached. Because there was no individualized medical determination of the teacher's fitness to continue at her job, the Court held that the rules contained an irrebuttable presumption of physical incompetency *Id.* at 644, which was wholly arbitrary and an irrational violation of the due process clause *Id.* at 650.

In his concurring opinion, Justice Powell expressed dissatisfaction with the majority's return to the irrebuttable presumption analysis, stating that "the concept at root often will be . . . [the equal protection clause] masquerading as a due process doctrine." *Id.* at 652. Preferring the application of the rational-basis standard of equal protection review, Justice Powell would have invalidated the regulations as creating irrational classifications which addressed the school board's objectives in an excessively attenuated manner. *Id. at 654-56.* He also noted that it was "difficult to see the terminus of the road upon which the Court [had] embarked," as stringent

The irrebuttable presumption doctrine was virtually abandoned in *Weinberger v. Salfi*,[33] a case which upheld eligibility classifications of surviving spouses and stepchildren under the Social Security Act based on the duration of their relationship to a deceased wage earner.[34] The *Weinberger* court found that the proper test was whether Congress could have rationally concluded that a particular limitation would guard against a possible abuse, and that the expense and difficulty of individualized determinations justified the inherent imprecision of a prophylactic rule.[35] Applying this analysis, the Court held that the duration-of-relationship requirement represented a substantive policy determination that benefits should be awarded solely to genuine marital relationships and that limited resources would be foolishly spent in making individual determinations.[36]

III. THE VARIOUS STATES' TREATMENTS OF THE MARITAL DISQUALIFICATION

A. Introduction to the Various Statutes

Although all marital disqualification statutes share the common purpose of denying benefits to those who quit work for marital,

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insistence upon individualized treatment could prove impractical in large school districts with thousands of teachers. *Id.* at 652.

Justice Rehnquist's dissent, joined by Chief Justice Burger, blasted Justice Stewart for "enlist[ing] the Court in another quixotic engagement in his apparently unending war on irrebuttable presumptions, *Id.* at 657, and found his myopic preference for individualized determinations "nothing less than an attack upon the very notion of lawmaking itself" *Id.* at 660.

One year later, in Turner v. Department of Unemployment, 423 U.S. 44 (1975), the Court was faced with a Utah statute, UTAH CODE ANN. § 35-4-5(h)(1) (1953), which declared a pregnant woman ineligible for employment benefits from twelve weeks before the expected birth until six weeks after. In a per curiam opinion, the Court stated that "[t]he fourteenth amendment requires that unemployment compensation boards no less than school boards must achieve legitimate state ends through more individualized means when basic human liberties are at stake." 423 U.S. at 46.

33. 422 U.S. 749 (1975).

34. *Id.* at 781-85. Writing for the majority, Justice Rehnquist stated that:

> the District Court's extension of the holdings of *Stanley*, *Vlandis*, and *La Fleur* to the eligibility requirement in issue here would turn the doctrine of those cases into a virtual engine of destruction for countless legislative judgments which have heretofore been thought wholly consistent with the Fifth and Fourteenth Amendments to the Constitution . . . . This would represent a degree of judicial involvement in the legislative function which we have eschewed except in the most unusual circumstances . . . .

422 U.S. at 772-73.

35. *Id.* at 777. Because the nine-month duration of relationship requirement obviated the necessity for large numbers of individualized determinations and sheltered those satisfying the criterion from the interminable vagueries of administrative inquiry into their marriages, the majority held that Congress could have rationally charted such a course. *Id.* at 781-82. In addition, the Court feared that sham arrangements might escape detection since neither marital intent, life expectancy, or knowledge of terminal illness are reliably demonstrable. *Id.* at 782-83. The Court also noted that the mere possibility of prevailing at a hearing, could, in itself, encourage collusive marriages. *Id.* at 783.

36. *Id.* at 784.

filial or domestic reasons,[37] they vary in the degree to which they accomplish this end[38] and in the length of time the disqualification remains in effect.[39] Most statutes under constitutional challenge were couched in sexually neutral terms,[40] thus purporting to disqualify both men and women with equal ease. However, some statutes carved out an exception which drew a distinction between persons providing primary and secondary family support.[41] While the primary breadwinner was immune from the statutory bar to benefit eligibility, the secondary breadwinner remained vulnerable to it.[42]

Benefit ineligibility under these challenged statutes has been stated in several ways, including a specific disqualification for termination due to marital, filial or domestic circumstances,[43] leaving work voluntarily and without good cause,[44] a conclusive presumption of unavailability,[45] an irrebuttable presumption of withdrawal from the work force[46] and an irrebuttable presumption that cause for termination was not of a necessitous and compelling nature.[47] Regardless of how he or she is disqualified, once a person is declared ineligible, most statutes require the claimant to demonstrate that he or she has rejoined the labor market before becom-

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37. For an overview of such statutes, see 76 AM. JUR. 2D *Unemployment Compensation* § 63 (1975). Annotation, *Eligibility for Unemployment Compensation as Affected by Voluntary Resignation Because of Change of Location of Residence*, 21 A.L.R. 4TH 317 (1983).

38. *See infra* notes 41-42 and accompanying text.

39. *See infra* notes 50-53 and accompanying text.

40. Boren v. California Dep't of Employment Dev., 59 Cal. App. 3d 250, 253-54, 130 Cal. Rptr. 683, 684-85 (Cal. Ct. App. 1976); Kistler v. Indus. Comm'n, 556 P.2d 895, 896-97 (Colo. 1976); Pyeatt v. Idaho State Univ., 98 Idaho 424, 425-26, 565 P.2d 1381, 1382-83 (1977); Illinois Bell Tel. Co. v. Board of Review of Dep't of Labor, 413 Ill. 37, 39-40, 107 N.E.2d 832, 833-34 (1952); Shelton v. Phalen, 214 Kan. 54, 56, 57, 519 P.2d 754, 756-57 (1974); Petterssen v. Comm'r of Employment Serv., 306 Minn. 542, 543, 236 N.W.2d 168, 169 (1975); Warren v. Board of Review of Mississippi Employment Sec. Comm'n, 463 So. 2d 1076, 1077 (Miss. 1985); Wallace v. Commonwealth Unemployment Compensation Bd. of Review, 38 Pa. Commw. 342, 345, 393 A.2d 43,44-45 (1978); Guinn v. Commonwealth Unemployment Compensation Bd. of Review, 33 Pa. Commw. 596, 597-98, 382 A.2d 503, 503-04 (1978); Gilman v. Unemployment Compensation Bd. of Review, 28 Pa. Commw. 630, 632-33, 369 A.2d 895, 896 (1977); Chandler v. Department of Employment Sec., 678 P.2d 315, 316-17 (Utah 1984); Thomas v. Rutledge, 280 S.E.2d 123, 127 (W. Va. 1981). By contrast, the statute in Kantor v. Honeywell, Inc., 286 Minn. 29, 31, 175 N.W. 188, 190 (1970), expressly targeted the female sex.

41. *Boren*, 59 Cal. App. 2d at 253-54, 130 Cal. Rptr. at 684-85; *Pyeatt*, 98 Idaho at 425, 565 P.2d at 1382; *Guinn*, 33 Pa. Commw. at 587-98, 382 A.2d at 503-04; *Gilman*, 28 Pa. Commw. at 632-33, 369 A.2d at 896.

42. *Boren*, 59 Cal. App. 3d at 256, 130 Cal Rptr. at 687.

43. *Petterssen*, 306 Minn. at 543, 236 N.W.2d at 168; *Kantor*, 286 Minn. at 31, 175 N.W. at 190.

44. *Boren*, 59 Cal. App. 3d at 254, 130 Cal. Rptr. at 685; *Pyeatt*, 98 Idaho at 425-26, 565 P.2d at 1382-83, *Warren*, 463 So. 2d at 1077; *Guinn*, 33 Pa. Commw. at 597-98, 382 A.2d at 504; *Gilman*, 28 Pa. Commw. at 632-33, 369 A.2d at 896-97; *Chandler*, 687 P.2d at 316-17.

45. *Illinois Bell Tel. Co.*, 413 Ill. at 42, 107 N.E.2d at 834-35.

46. *Shelton*, 214 Kan. at 57-60, 519 P.2d at 757-59, *Thomas*, 280 S.E.2d at 127-28.

47. *Wallace*, 38 Pa. Commw. at 345-46, 393 A.2d at 44-45.

ing eligible for benefits.[48] This demonstration is accomplished by the performance of certain requirements which vary in severity.[49]

The most common way in which marital disqualification statutes assess willingness to work and availability for employment is by requiring re-employment for a specified period before eligibility status is renewed.[50] By contrast, in the benefit-multiple provision, the individuals are disqualified from eligibility until they again become employed and earn wages totaling a certain multiple of the weekly benefit amount.[51] Lower still on the spectrum of severity is the method which prolongs the disqualification until the claimant regains bona fide employment.[52] The most lenient of all methods is that which holds that the presumption of vocational unavailability shall not apply whenever the marital, filial or domestic circumstance ceases to exist.[53] Underlying most unemployment benefit statutes is the requirement that one be actively seeking and available for work.[54]

B. Modes of Analysis

Most state courts have upheld marital disqualification statutes as bearing a reasonable and substantial relation to the legitimate state end of providing benefits for the involuntarily unemployed.[55] However, the court in *Boren v. California Department of Employment Development*[56] applied a strict scrutiny analysis to invalidate such a statute.[57] After a treatment of the cases which have utilized a minimum rationality standard,[58] the present discussion will shift to *Boren*.

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48. *See infra* notes 50-54 and accompanying text.

49. *Id.*

50. *Kistler*, 556 P.2d at 896 (work thirteen weeks in new employment); *Petterssen*, 306 Minn. at 543, 236 N.W.2d at 168-69; *Kantor*, 286 Minn at 31, 175 N.W. at 190 (work six weeks in new employment); *Thomas*, 280 S.E.2d at 127 (work thirty days in new employment). These cases illustrate that the probationary period method is also the most restrictive in that the temporal interval may not be varied or accelerated.

51. *Shelton*, 214 Kan. at 57, 519 P.2d at 757; *Warren*, 463 So. 2d 1076 (Miss. 1985), *construing* MISS. CODE ANN. § 71-5-513(A)(1)(a) (1972 and Supp. 1985) which required wages of at least eight times their weekly benefit amount. The benefit-multiple method allows acceleration of the temporal interval if wages under resumed employment exceed those earned initially. Hence, the individual receiving a higher wage will attain eligibility status sooner than a poorly paid worker.

52. *Boren*, 59 Cal. App. 3d at 253-54, 257, 260, 130 Cal. Rptr. at 684-85, 687, 689.

53. *Illinois Bell Tel. Co.*, 413 Ill. at 39-40, 107 N.E.2d at 834. This method is not so much an assessment device as it is a condition subsequent which triggers the removal of the disqualification provision.

54. Annotation, *Eligibility for Unemployment Compensation as Affected by Voluntary Resignation Because of Change of Location of Residence*, 21 A.L.R. 4TH 317, 324 (1983). This criterion is designed to prevent those lacking conscientious intent from abusing the unemployment compensation system.

55. *See supra* note 12 and accompanying text.

56. 59 Cal. App. 3d 250, 130 Cal. Rptr. 683 (Cal. Ct. App. 1976).

57. *Id.* at 257, 259-60, 130 Cal. Rptr. at 687-89.

58. *See supra* notes 12, 55 and accompanying text.

1. *Minimum Rationality*

The only decision finding a marital disqualification statute to lack a rational basis is that of *Kistler v. Industrial Commission.*[59] In that case, the Colorado statute[60] provided that a worker who terminated employment for marital, parental, filial or domestic reasons would not be entitled to benefits received until, subsequent to the separation, they had worked for 13 weeks in full-time employment within the benefit year.[61] By contrast, a 1971 amendment[62] provided that an individual quitting for no reason at all was only penalized by a 13-25 week delay in payment.[63] Because the statute offered benefits to those quitting for no reason but denied benefits to those quitting because of family circumstances until they became re-employed, the court held it an irrational and impermissible classification in violation of the equal protection clause.[64]

Some state courts have found that their legislatures could reasonably have determined that a woman so situated had voluntarily removed herself from the labor market and was therefore not entitled to state funds.[65] In *Kantor v. Honeywell Inc.*,[66] a Minnesota statute[67] expressly disqualified a woman who "discontinu[ed] her employment to assume the duties of a housewife," yet the court upheld it as meeting the requirements of equal protection.[68] Five years later, in *Petterssen v. Commissioner of Employment Services*,[69] the same statute in amended form[70] was upheld on the additional ground that the provision was now sexually neutral.[71] Both

59. 556 P.2d 895 (Colo. 1976).

60. COLO. REV. STAT. § 8-73-108(8)(a) (1973 and Supp. 1985) (repealed by L. 84, § 6, effective July 1, 1984).

61. 556 P.2d at 896.

62. COLO. REV. STAT. § 8-73-108(2)(b)(I) (repealed and reenacted by L. 76, §§ 20, 12, 2) (1973 and Supp. 1985).

63. 556 P.2d at 897. While the court conceded the state's legitimate interest in limiting unemployment benefits to conscientious individuals, it found such an interest adequately preserved by the statutory requirement that one be actively seeking and available for employment in order to receive benefits. *Id.* at 898. Although the state could deny benefits to those who voluntarily separated from employment, the court found that once the state had chosen to provide some benefits under such circumstances, the scheme by which the benefits were determined must have a rational basis. 556 P.2d at 897.

64. 556 P.2d at 898. In view of the case's disposition on these grounds, the claimant's due process objections were not considered. *Id.*

65. *Pyeatt*, 98 Idaho at 426, 565 P.2d at 1383; *Petterssen*, 306 Minn. at 544, 236 N.W.2d at 169; *Kantor*, 286 Minn. at 32, 175 N.W.2d at 190-91; *Guinn*, 33 Pa. Commw. at 599-600, 382 A.2d at 504; *Gilman*, 28 Pa. Commw. at 635-36, 369 A.2d at 897-98.

66. 268 Minn. 29, 175 N.W.2d 188 (1970).

67. MINN. STAT. ANN. § 268.09 subd. 1(2) (West SUPP. 1985).

68. 286 Minn. at 32, 175 N.W.2d at 190-91.

69. 306 Minn. 542, 236 N.W.2d 168 (1975).

70. MINN. STAT. ANN. § 268.09, subd. 1(2) (West Supp. 1985).

71. 306 Minn. at 544, 236 N.W.2d at 169.

Kantor[72] and *Petterssen*[73] dismissed the contention that the classification was arbitrary because subsequent employment for a six-week probationary period provided a reasonable means of removing the disqualification.

In *Pyeatt v. Idaho State University*,[74] the statute[75] contained both neutral language[76] and a primary provider exception.[77] Although the court conceded that legislative discretion was narrowed when classifications were based upon suspect criteria, the provision was found to be non-discriminatory since it employed the neutral term "spouse."[78] Upholding the statute, the Idaho court held the discouragement of voluntary termination without good cause a rational means of encouraging employment stability.[79]

In *Gilman v. Unemployment Compensation Board of Review*,[80] the primary provider exception[81] of the Pennsylvania statute[82] was attacked as discriminatory because husbands outnumbered wives as sole or major family wage earners by a ratio of four to one.[83] Although the court conceded that men greatly outnumbered women in the favored class, it found that numerical disparity alone was insufficient to warrant characterizing the classification as sex-based.[84] Because the statutorily created classification was economic rather than sexual,[85] no suspect basis was found which warranted strict judicial scrutiny.[86] The court went on to find that the different treatment accorded major and secondary family wage earners was justified by the fact that the family as a whole suffered relatively more severe economic disruption from the unemployment of the major family wage earner.[87] Because the distinction involved no invidious discrimination, the statute passed muster

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72. 268 Minn. at 32, 175 N.W.2d at 191.

73. 306 Minn. at 544, 236 N.W.2d at 169.

74. 98 Idaho 424, 565 P.2d 1381 (1977).

75. IDAHO CODE § 72-1366 (1973 and Supp. 1985).

76. *See supra* note 40 and accompanying text.

77. *See supra* notes 41-42 and accompanying text.

78. 98 Idaho at 425-26, 565 P.2d at 1382-83.

79. 98 Idaho at 426, 565 P.2d at 1383. Because no claim attacked the primary provider exception, it remained unaddressed.

80. 28 Pa. Commw. 630, 369 A.2d 895 (1977).

81. *See supra* notes 41-42 and accompanying text.

82. PA. STAT. ANN. tit. 43, § 802 (Purdon 1964) (amended 1974 by P.L. 769, No. 261, § 2).

83. 28 Pa. Commw. at 633, 369 A.2d at 896-97.

84. *Id.* at 634, 369 A.2d at 897.

85. *Id.*

86. *Id.* at 634-35, 369 A.2d at 897.

87. *Id.* at 635-36, 369 A.2d at 898. The fact that the classification might occasionally result in compensation for the 51% breadwinner, but not for the one earning 49%, was not viewed as rendering the court's action irrational or unrelated to its legitimate interest of protecting the unemployed from financial hardship. *Id.*

under the equal protection clause.[88]

As if to test the mettle of this holding, the subsequent Pennsylvania case of *Guinn v. Commonwealth Unemployment Compensation Board of Review*[89] presented a female claimant who had earned only $200 less than her husband's yearly income of $8,226.54,[90] but was denied benefits under the statute[91] because she was not the "sole or major support" of her family.[92] While the claimant argued that the term "major support" should be interpreted to mean an important or significant portion of the family income,[93] the court adhered to the *Gilman* standard by interpreting "major support of the family" to mean a simple majority of the family's combined earnings.[94]

2. *Strict Scrutiny Triggered by Sex-Based Classifications*

Another challenge to the constitutionality of marital disqualification statutes is that they operate almost exclusively upon females, in violation of equal protection.[95] While this line of attack has usually failed, a lone triumph occurred in *Boren v. California Department of Employment Development.*[96] There, a female claimant terminating employment for child-care purposes successfully challenged a California statute.[97] The statute distinguished between a claimant who left work voluntarily for domestic reasons and one who left work voluntarily but for good cause of another kind.[98] This statute also contained a primary provider exception[99] and a provision extending the disqualification of those quitting for domestic reasons until they became re-employed.[100]

In its examination of these three classifications, the court stated that it would focus on the statute's practical impact rather than

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88. 28 Pa. Commw. at 636, 369 A.2d at 898.

89. 33 Pa. Commw. 596, 382 A.2d 503 (1978).

90. 33 Pa. Commw. at 598, 382 A.2d at 504.

91. PA. STAT. ANN. tit. 43, § 803 (Purdon 1964) (amended 1974 by P.L. 769, No. 261, § 2).

92. 33 Pa. Commw. at 598, 382 A.2d at 504.

93. *Id.* at 598-599, 382 A.2d at 504.

94. *Id.* at 599, 382 A.2d at 504.

95. Boren v. California Dep't of Employment Dev., 59 Cal. App. 3d 250, 253, 255, 130 Cal. Rptr. 683, 685-86 (1976); Pyeatt v. Idaho State Univ., 98 Idaho 424, 425-26, 565 P.2d 1381, 1382-83 (1977); Petterssen v. Comm'r of Employment Serv., 306 Minn. 542, 544, 236 N.W.2d 168, 169 (1975); Kantor v. Honeywell, Inc., 286 Minn. 29, 32, 175 N.W.2d 188, 190 (1970); Guinn v. Commonwealth Unemployment Compensation Bd. of Review 33 Pa. Commw. 596, 598-99, 382 A.2d 503, 504 (1978); Gilman v. Unemployment Compensation Bd. of Review, 28 Pa. Commw. 630, 633, 369 A.2d 895, 896-97 (1977).

96. 59 Cal. App. 3d 250, 130 Cal. Rptr. 683 (Cal. Ct. App. 1976).

97. CAL. UNEMP. INS. CODE § 1264 (West 1972).

98. 59 Cal. App. 3d at 256, 130 Cal. Rptr. at 687.

99. *Id.* at 253-54, 256, 258, 130 Cal. Rptr. at 684-85, 687-88.

100. *Id.* at 253-54, 257, 260, 130 Cal. Rtpr. at 684-85, 687, 689.

its neutral language.[101] Discrimination could be shown by statistics depicting the statute's actual operation.[102] Accordingly, the petitioner presented data demonstrating that in 1971, 99% of the claimants declared ineligible under the statute had been women.[103] It was also contended that due to cultural role patterns and a past history of discrimination, American women bore a disproportionate share of domestic duties, thus rendering them significantly less able to contribute to family support than men.[104] Although the state argued that social and cultural patterns forced women to leave work for the sake of domestic needs,[105] the court stated that it was the statute which centered its adverse effect upon the female claimant.[106] Because the sex-based disqualification rested upon three suspect classifications,[107] and because no compelling state interest was found, the statute was struck down as a denial of equal protection.[108]

3. *Strict Scrutiny Triggered by Marriage as a Fundamental Right*

A third challenge to the constitutionality of marital disqualification statutes is founded on the premise that freedom of choice in matters of marriage and family life is one of the fundamental liberties protected by the due process clause.[109] This was an additional reason that the California statute[110] was vulnerable to strict scrutiny in *Boren*.[111] Because the claimant's job termination had been motivated by familial circumstances, the statute imposed a harsher penalty than that borne by claimants who quit for other kinds of good cause or who were not "able and available" for other reasons.[112] Hence, the court found that "[a]n employed woman's decision to marry, to follow her husband to another locality or to leave work for childbirth or child care, falls within the ambit of fourteenth amendment liberties."[113] By contrast, the Colorado court in *Kistler v. Industrial Commission*[114] refused to view a mar-

101. *Id.* at 256, 130 Cal. Rptr. at 686.
102. *Id.*
103. *Id.* at 256, 130 Cal. Rptr. at 686.
104. *Id.* at 255-56, 130 Cal. Rptr. at 685-86.
105. *Id.* at 257, 130 Cal. Rptr. at 686.
106. *Id.* at 259, 130 Cal. Rptr. at 688.
107. *Id.* at 257-58, 130 Cal. Rptr. at 686-87.
108. *Id.* at 262, 130 Cal. Rptr. at 690.
109. *Id.* at 259, 130 Cal. Rptr. at 688.
110. CAL. UNEMP. INS. CODE § 1264 (West 1972).
111. 59 Cal. App. 3d at 259, 130 Cal. Rptr. at 688.
112. *Id.* at 260-61, 130 Cal. Rptr. at 689.
113. *Id.* at 259, 130 Cal. Rptr. at 689.
114. 192 Colo. 172, 174, 556 P.2d 895, 897 (1976).

ital obligation as a fundamental right, stating that "no court had so extended the law."[115]

4. *Irrebuttable Presumption*

A final challenge to the constitutionality of marital disqualification statutes was based on their tendency to presume conclusively that one who terminates employment for marital, filial, or domestic reasons is ineligible for employment benefits.[116] By denying such claimants an individualized determination of their entitlement to a significant property right where the administrative inconvenience of providing such a determination was negligible, the irrebuttable presumption is said to violate due process.[117]

The *Boren* court utilized this analysis in its discussion of the differential impact exerted by the probationary period requirement, which is designed to assess the degree to which the claimant actually intends to rejoin the labor force.[118] While the disqualification of the domestic claimant in *Boren* was perpetuated until she had found a new job, those quitting for other kinds of good cause regained eligibility by merely remaining in the labor market or returning to it.[119] Although the state contended that this aided the unemployment compensation system's focus on economically-caused unemployment, the court noted that the system did not bar other claimants whose unemployment stemmed from non-economic causes.[120] Citing to several United States Supreme Court decisions striking down irrebuttable presumptions,[121] the *Boren* court noted that "the conclusive presumption unduly penalizes the exercise of a basic liberty [marriage] and

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115. *Id.*

116. Boren v. California Dep't of Employment Dev. 59 Cal. App. 3d 250, 254, 130 Cal. Rptr. 683, 686 (Cal. Ct. App. 1976); Illinois Bell Tel. Co. v. Board of Review of Department of Labor, 413 Ill. 37, 41-42, 107 N.E.2d 832, 834-35 (1952); Shelton v. Phalen, 214 Kan. 54, 58-59, 519 P.2d 754, 758 (1974); Wallace v. Commonwealth Unemployment Compensation Bd. of Review, 38 Pa. Commw. 342, 345-46, 393 A.2d 43, 45 (1978); Chandler v. Department of Employment Sec., 678 P.2d 315, 317 (Utah 1984); Thomas v. Rutledge, 280 S.E.2d 123, 127, 129 (W. Va. 1981).

117. *Wallace*, 38 Pa. Commw. at 351, 393 A.2d at 47.

118. *Boren*, 59 Cal. App. 3d at 259-60, 130 Cal. Rptr. at 689. *See supra* notes 39 and 50 and accompanying text.

119. *Id.* at 259-60, 130 Cal. Rptr. at 689.

120. *Id.* at 260, 130 Cal. Rptr. at 689. *Citing Shapiro v. Thompson*, 394 U.S. 618, 633 (1969), the court stated that, "[a] state may not preserve the fiscal integrity of its programs by invidious distinctions between classes of citizens. When a statutory classification is subject to strict scrutiny, the state must do more than show that the exclusion saves money." *Id.* at 261, 130 Cal. Rptr. at 689-90. (Strict scrutiny triggered by the fundamental right of marriage is similar to an irrebuttable presumption analysis as the latter is merely a form of strict scrutiny applied only in cases involving a fundamental right.).

121. Turner v. Department of Employment Sec., 423 U.S. 44, 46 (1975), Cleveland Bd. of Educ. v. La Fleur, 414 U.S. 632, 644, 646 (1974).

denies due process."[122] For this reason, the California court declared the statute a nullity.[123]

In *Chandler v. Department of Employment Security*,[124] the Supreme Court of Utah was faced with the consolidated appeal of six claimants denied benefits under a statute[125] providing that one who left work voluntarily to accompany, follow or join his or her spouse to or in a new locality did so without good cause.[126] Relying on the United States Supreme Court's holding in *Vlandis v. Kline*,[127] the claimants contended that the statute created an irrebuttable presumption prohibited by the due process and equal protection clauses.[128] In reply, however, the court noted that *Weinberger v. Salfi*,[129] had rejected such an analysis as an acceptable approach in scrutinizing legislative classification in matters of social welfare.[130] While referring to an earlier case in which a claimant quit work to follow a spouse to school,[131] the court relied on the same rationale[132] to find that the present classification bore a rational relationship to the legitimate legislative goal of limiting unemployment compensation to the involuntarily unemployed.[133] In spite of its unfortunate effects on many families, the classification was held to offend neither the state nor federal constitution.[134]

Although a similar claim arose in *Illinois Bell Telephone Company v. Board of Review*,[135] the Supreme Court of Illinois rejected the appellee's contention that a conclusive presumption of unavailability violated the due process clause.[136] Stating that the provision involved[137] was a rule of substantive law laid down by the legislature, the court found that the only factual question was whether the employee voluntarily left employment for reasons

122. 59 Cal. App. 3d at 260, 130 Cal. Rptr. at 689.

123. 59 Cal. App. 3d at 261, 130 Cal. Rptr. at 690.

124. 678 P.2d 315 (1984).

125. UTAH CODE ANN. § 35-4-5(a) (Supp. 1986).

126. 678 P.2d at 317.

127. 412 U.S. 441 (1973).

128. 678 P.2d at 317.

129. 422 U.S. 749 (1975).

130. 678 P.2d at 317.

131. Child v. Board of Review of Indus. Comm'n, 657 P.2d 1375 (Utah 1983).

132. 678 P.2d at 318. The legislature could have reasonably determined that the state need not underwrite the financial risks attendant on such a personal and voluntary choice. *Id.*

133. 687 P.2d at 318. Hence, claimants who left their jobs to follow spouses to a new location were denied unemployment benefits regardless of necesessitious and compelling circumstances. *Id.*

134. *Id.*

135. 413 Ill. 37, 107 N.E.2d 832 (1952).

136. 413 Ill. at 42, 107 N.E.2d at 835.

137. ILL. REV. STAT. ch. 48, § 6(c)(5)(B) (1949).

related to her marital status.[138] The court also rejected the Board's contention that the statute violated the equal protection clause, stating that "[a] statutory classification resting upon substantial differences in kind, situation, or circumstance which are reasonably related to the legislative purpose does not offend constitutional prohibitions against special legislation or violate the equal protection clause."[139] Considering that the intent of the statute was to relieve the economic distress caused by involuntary unemployment, the court held that a classification based upon the motive which caused one voluntarily to leave work was reasonable and did not offend equal protection.[140]

In *Shelton v. Phalen*,[141] the Kansas disqualification statute[142] under siege conclusively presumed that employees leaving work due to domestic or family responsibilities had withdrawn from the labor market.[143] In addition, the statute contained a provision which established two classes of individuals. The first class, consisting of those who terminated employment voluntarily, without good cause, and for no particular reason, was disqualified from receiving benefits for six consecutive weeks.[144] The second class, consisting of those quitting for specified reasons, including domestic or family responsibilities, was denied benefits until they regained employment and earned eight times their weekly benefit amount.[145] The state's rationale for the distinction between the two groups was that those quitting for specific reasons had done so demonstrating that they had withdrawn from the labor market, and that requiring them to get a job and accrue minimum earnings was a valid criterion for testing the *bona fides* of this re-entry into the ranks of wage earners.[146] In its reply, however, the court stated that any irrebuttable presumption of unavailability would be unconstitutional.[147] But rather than strike the statute outright, the court interpreted it as containing a procedure for the determina-

138. 413 Ill. at 42, 107 N.E.2d at 835. The court noted that such a rule of substantive law was to be distinguished from an evidentiary presumption where due process required a logical relationship between the fact inferred and the fact proven. *Id.*

139. 413 Ill. at 43, 107 N.E.2d at 835.

140. *Id.* Although the statute at issue voided the disqualification upon the cessation of the marital circumstance (413 Ill. at 39-40, 107 N.E.2d at 834) no attack was made upon this provision.

141. 214 Kan. 54, 519 P.2d 754 (1974).

142. KAN. STAT. ANN. § 44-706(a) (1981).

143. 214 Kan. at 59, 519 P.2d at 758.

144. *Id.* at 57, 519 P.2d at 757.

145. *Id.*

146. *Id.* at 58, 519 P.2d at 758.

147. *Id.* at 59, 519 P.2d at 758.

tion of vocational withdrawal.[148]

While the West Virginia statute[149] in *Thomas v. Rutledge*[150] was rendered rebuttable on identical grounds, the provision in that case rendered the marital claimant ineligible until he or she returned to covered employment for a period of thirty working days.[151] By contrast, those quitting for no reason at all could receive benefits after a seven-week period regardless of re-employment.[152] Requiring those quitting for domestic reasons to show their availability for work in the same manner as others who had quit voluntarily was found to provide no greater opportunity for fraudulent claims and imposed no significant burden on existing hearing and appeals procedures.[153] Because the need for individualized determinations of entitlement outweighed the slight administrative convenience inherent in the conclusive presumption of ineligibility, the failure to provide such determinations violated equal protection and due process.[154]

5. *Summary*

Although many of the modes of analysis and rationales adopted by the state courts have followed logically from the type of statute at issue, there has also been surprising variability. While *Kistler*[155] invalidated a disqualification statute[156] because the scheme by which the benefits were determined lacked a rational basis,[157] *Kantor*[158] and *Petterssen*[159] held that a six-week period of probationary employment provided a reasonable means of removing the disqualification. *Pyeatt*[160] found that neutral wording alone rendered the disqualification non-discriminatory[161] and held the dis-

148. *Id.* at 59-60, 519 P.2d at 758-59. Before a claimant could be disqualified on marital grounds, the court required a determination as to whether the domestic or family responsibilities causing the termination, or her subsequent conduct, were such that she must be deemed to have withdrawn. *Id.* at 60, 519 P.2d at 759. Because no such opportunity to rebut the presumption was granted below, the court reversed the denial of benefits and remanded for this determination. *Id.* at 61, 519 P.2d at 759.

149. W. VA. CODE § 21A-6-3(6) (1985).

150. 280 S.E.2d. 123 (W. Va. 1981)

151. *Id.* at 127.

152. *Id.*

153. *Id.* at 130.

154. *Id. Accord, Wallace v. Commonwealth Unemployment Compensation Board of Review*, 38 Pa. Commw. 342, 393 A.2d 43 (1978). However, the presumption in *Wallace* was rendered rebuttable by striking it entirely. *Id.* at 351, 393 A.2d at 47. *Wallace* also involved a resignation forced after a change in workshift, when no caretaker could be found to care for her two young sons. *Id.* at 344-45, 393 A.2d at 44.

155. 192 Colo. 172, 556 P.2d 895 (1976); *see supra* notes 59-64, 114-15 and accompanying text.

156. COLO. REV. STAT. § 8-73-108(8)(a) (1973 and Supp. 1985) (repealed by L. 84, § 6, effective July 1, 1984).

157. 192 Colo. at 175, 556 P.2d at 897.

158. 286 Minn. 29, 32, 175 N.W.2d 188, 191; *see supra* notes 66-68, 72 and accompanying text.

159. 306 Minn. 542, 544, 236 N.W.2d 168, 169; *see supra* notes 69-71, 73 and accompanying text.

160. 98 Idaho 424, 565 P.2d 1381 (1977); *see supra* notes 74-79 and accompanying text.

161. 98 Idaho at 425-26, 565 P.2d at 1382-83.

couragement of voluntary termination without good cause to rationally promote employment stability.[162] *Gilman*[163] and *Guinn*[164] found that the greater economic disruption resulting from the unemployment of the major family wage earner justified the differential impact exerted by the primary provider exception. Hence, the resultant classification was not rendered sex-based by mere numerical disparity in the work force.[165]

Unlike *Pyeatt*, *Boren*[166] focused on the statute's[167] practical impact rather than its neutral language.[168] Because the three suspect classifications[169] were found not to serve a compelling state interest, strict scrutiny was applied to invalidate them as a denial of equal protection.[170]

While *Kistler* refused to consider the marital obligation a fundamental right,[171] *Boren* adopted this as an additional reason for applying a strict scrutiny analysis.[172] Consequently, the harsher penalty imposed upon claimants quitting their jobs because of family obligations was held to restrict freedom of choice in matters of marriage and family life, thus encroaching upon fundamental liberties protected by due process.[173]

The probationary period requirement in *Boren* also focused its punitive effect exclusively upon claimants quitting for domestic reasons.[174] Because the termination of such claimants was irrebuttably presumed to be without good cause, the court found a denial of due process which rendered the statute invalid.[175] Rather than striking their disqualification statutes outright, *Shelton*[176] and *Thomas*[177] preferred to render their presumptions rebuttable at an administrative hearing. By contrast, *Chandler*[178] found that its

162. 98 Idaho at 426, 565 P.2d at 1383.

163. 28 Pa. Commw. 630, 635-36, 369 A.2d 895, 898; *see supra* notes 80-88 and accompanying text.

164. 33 Pa. Commw. 596, 599, 382 A.2d 503, 504; *see supra* notes 89-94 and accompanying text.

165. *Gilman*, 28 Pa. Commw. at 634, 369 A.2d at 897; *see also Guinn*, 33 Pa. Commw. at 600-01, 382 A.2d at 505.

166. 59 Cal. App. 3d 250, 130 Cal. Rptr. 683 (Cal. Ct. App. 1976); *see supra* notes 56-57, 96-113, 118-23, and *infra* notes 206-10 and accompanying text.

167. CAL. UNEMP. INS. CODE. § 1264 (West 1972).

168. 59 Cal. App. 3d at 258, 130 Cal. Rptr. at 687.

169. 59 Cal. App. 3d at 257-58, 130 Cal. Rptr. at 686-87.

170. *Id.* at 262, 130 Cal. Rptr. at 690.

171. 192 Colo. at 174, 556 P.2d at 897.

172. 59 Cal. App. 3d at 259, 130 Cal. Rptr. at 688.

173. 59 Cal. App. 3d at 260-61, 130 Cal. Rptr. at 689.

174. 59 Cal. App. 3d at 258-60, 130 Cal Rptr. at 688-89.

175. 59 Cal. App. 3d at 259, 130 Cal. Rptr. at 689.

176. 214 Kan. 54, 60, 519 P.2d 754, 759 (1974), *construing* KAN. STAT. ANN. § 44-706(a) (1981); *see supra* notes 141-48 and accompanying text.

177. 280 S.E.2d 123, 130 (1981), *construing* W. VA. CODE § 21A-6-3(6) (1985); *see supra* notes 150-54 and accompanying text.

178. 678 P.2d 315 (1984), *construing* UTAH CODE ANN. § 35-4-5(a) (Supp. 1983); *see supra* notes 124-34 and accompanying text.

presumption was a rational means of limiting unemployment benefits to the involuntarily unemployed.[179] Finally, *Illinois Bell*[180] upheld this statute[181] by finding the conclusive presumption to be a substantive rule of law not governed by the requirements of due process.[182]

179. *Id.* at 318.

180. 413 Ill. 37, 107 N.E.2d 832 (1952); *see supra* notes 135-40 and accompanying text.

181. ILL. REV. STAT. ch. 48, § 6(c)(5)(B) (1949).

182. 413 Ill. at 42, 107 N.E.2d at 835.

		Warren (Miss.)	Chandler (Utah)	Ill. Bell (Ill.)	Kantor (Minn.)	Petterssen (Minn.)	Pyeatt (Idaho)	Gilman (Penn.)	Guinn (Penn.)	Boren (Cal.)	Kistler (Colo.)	Shelton (Kan.)	Thomas (W. Va.)	Wallace (Penn.)
Husband's Motive:	Other Employment			X	X						X	X	X	
	Promotion/Transfer						X	X						
	Military	X												
	Education								X					
Wife's Motive:	Marital	X	X	X	X	X	X	X	X		X	X	X	
	Parental									X				X
	Vocational				X								X	
Const. Violation:	Equal Protection	X	X	X	X	?	X	X	X	X	X	X	X	X
	Sexual Discrimination				X	X	X	X	X	X				
	Due Process/ Irrebuttable Presump.	X	X	X		?				X		X	X	X
	Due Process/Marriage					?				X				
Statutory Analysis:	Neutral Language	he	X	he	her	X	X	X	X	X	X	he	X	X
	Primary Provider Exception Present						X	X	X	X				
	Penalty for Employees Quitting w/o Reason				no	no					13 wk	6 wk	7 wk	
Re-entry Req:	Probationary Period (in weeks)				6	6					13	6	4	
	Benefit Multiple (earn x times benefit amt.)	8										8		
	Resume Employment									X				
	Cessation of the Marital Circumstance			X										
	Actively Seeking and Available			X						X	X		X	
Standard of Review:	Minimum Rationality	X	X	X	X	X	X	X	X		X	X	X	X
	Strict Scrutiny									X				
	Irrebuttable Presum.											X	X	X
Court's Action:	Upheld the Irrebuttable Presum.	X	X	X	X	X	X	X	X			X	X	
	Upheld but Rendered Presum. Rebuttable											X	X	X
	Struck Statute Down									X	X			X
Court's Rationale	Legitimate Allocation of Funds	X	X		X	X	X							
	Encourage Stability of Workforce						X							
	Classification Not Sexual but Economic							X	X					
	Court Utilized Statistical Evidence of Discrimination							X		X				
	Administrative Mech. Already Existed												X	X
	Wouldn't Encourage Fraudulent Claims												X	X

IV. INSTANT CASE AND ANALYSIS

The task facing the Mississippi Supreme Court in *Warren* was to evaluate a marked division of authority so as to determine the constitutionality of the Mississippi marital disqualification statute.[183] This statute prohibits the payment of unemployment benefits to a wife who leaves the state to accompany her husband by providing that, "marital, filial, and domestic circumstances and obligations shall not be deemed good cause [for termination of employment]."[184] The statute also contains a re-entry provision which denies benefits to such claimants until they regain employment and earn eight times their weekly benefit amount.[185]

Under this statute, married claimants are prevented from demonstrating that marital, filial, and domestic circumstances can constitute good cause for termination.[186] By contrast, claimants quitting work for other reasons can argue good cause.[187] Warren claimed that this differential treatment gives rise to a classification scheme which bears no rational relationship to the legitimate state interest of aiding "persons unemployed through no fault of their own."[188] Because marital, filial, and domestic circumstances can never be considered good cause for termination, she argued that an irrebuttable presumption arises which violates the equal protection and due process clauses.[189] Warren then sought to demonstrate the vitality of the irrebuttable presumption doctrine by discussing various decisions which had relied upon it to invalidate similar state statutes.[190] Because existing administrative procedures evaluated whether other types of voluntary terminations had been for good cause, Warren maintained that extending this privilege to those quitting for marital reasons would impose no additional burden on the Mississippi Employment Security Commission.[191] She also emphasized the tendency of the statute to operate almost exclusively upon females and requested that the court note the percentage of females disqualified by the Mississippi statute's application.[192]

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183. MISS. CODE ANN. § 71-5-513(A)(1)(a) (1972 and Supp. 1985).

184. *Id.*

185. *Id.*

186. Appellant's Opening Brief at 2, 8, Warren v. Board of Review of Mississippi Employment Sec. Comm'n, 463 So. 2d 1076 (1985).

187. *See supra* note 186, at 2, 8.

188. *See supra* note 186, at 2, 8.

189. *See supra* note 186, at 2-3, 8.

190. *See supra* note 186, at 3-7.

191. *See supra* note 186, at 3.

192. Appellant's Rebuttal Brief at 9, Warren v. Board of Review of Mississippi Employment Sec. Comm'n, 463 So. 2d 1076 (1985).

The Mississippi Employment Security Commission contended, first, that the decision of the Board of Review properly applied the law to the facts[193] and second, that the provisions of the marital disqualification statute were a valid expression of state legislative policy.[194] Arguing that an economic benefits statute such as an unemployment compensation act did not involve a fundamental right, the Commission contended that the presence of some rational justification in the act's legislative purpose protected the conclusive presumption from effective constitutional attack.[195] The Commission also traced the evolution of the irrebuttable presumption doctrine and noted its apparent extinction except in cases involving independent reasons for heightened scrutiny, as when fundamental interests are involved.[196] Because the state's Unemployment Trust Fund would sustain significant losses if the provision at issue were invalidated, the Commission argued that the legislature was well within its constitutional prerogative in establishing the social and economic bounds of this statutory scheme.[197] Several cases were also discussed wherein similar statutes were upheld in other jurisdictions.[198]

Deferring to the legislative will from the outset, Justice Hawkins quoted *Albritton v. City of Winona*[199] for the proposition that, "the courts are without the right to substitute their judgment for that of the Legislature as to . . . wisdom and policy . . . unless it appears beyond all reasonable doubt to violate the Constitution."[200] Accordingly, the Mississippi Supreme Court held that the legislature was the policymaker in determining whether or not it would deny benefits to those choosing to accompany their spouses to another locality.[201] Acknowledging that the statute might occasionally cause hardship, a unanimous court held that such was not offensive to either the equal protection or due process provisions of the state and federal constitutions.[202]

Because of its brevity, the opinion of the Mississippi Supreme Court is perhaps best understood by examining those roads not taken. Although the *Kistler*[203] court found the state's legitimate

193. Appellee's Reply Brief at 2, Warren v. Board of Review of Mississippi Employment Sec. Comm'n, 463 So. 2d 1076 (1985).

194. *See supra* note 193, at 3.

195. *See supra* note 193, at 3.

196. *See supra* note 193, at 6.

197. *See supra* note 193, at 11.

198. *See supra* note 193, at 4-5, 12.

199. 181 Miss. 75, 178 So. 799 (1938).

200. 463 So. 2d 1076, 1077 (1985).

201. *Id.* at 1077.

202. *Id.* at 1077.

203. 192 Colo. 172, 556 P.2d 895 (1976).

interest in benefitting conscientious individuals adequately preserved by the requirement that one be actively seeking and available for employment,[204] the Mississippi Supreme Court appeared unwilling to stake treasury dollars on this assumption. By adopting the lenient and deferential minimum rationality standard, the unity of the marital relation was denied the status of a fundamental liberty and relegated to consideration as a mere personal and voluntary choice.[205]

Although the factual circumstances are distinguishable from those of the instant case in that paternal obligations conflicted with a proposed change of workshift,[206] the ruling of the California Court of Appeals in *Boren*[207] presented the ideological antithesis of the case at bar.[208] Because the California statute[209] disqualified women as a class and extended their disqualification beyond that of claimants quitting for good cause, that court applied strict scrutiny to invalidate the classification as a denial of equal protection.[210]

Unlike the court in *Boren,* the Mississippi Supreme Court appeared unwilling to consider statistical evidence of sexual discrimination, despite the claimant's emphatic request.[211] Instead, the court complacently deferred to the legislative will, accepting whatever flaws it contained in order to preserve the integrity of the state fisc.[212] If the Mississippi statistics are similar to those judicially noticed in *Boren,* the Mississippi Supreme Court will have disqualified a majority of female citizens from benefit eligibility. While the cannibalization of social needs to promote economic stability is an ancient governmental process whereby limited resources are expended in such a manner as to best benefit as many citizens as possible, this blind indifference to the needs of a substantial class of individuals implies a counter-majoritarian conception of popular sovereignty. In addition, the deliberate avoidance of social reality is a surprising posture to be assumed by an institution committed to careful logical analysis.

Another major aspect of the Mississippi statute is its conclusive presumption that termination of employment for marital, filial, and domestic reasons can never constitute good cause entitling the claimant to unemployment benefits.[213] By contrast, claimants

204. 192 Colo. at 175, 556 P.2d at 898.

205. 463 So. 2d at 1077.

206. 59 Cal. App. 3d at 254, 130 Cal. Rptr. at 685.

207. 59 Cal. App. 3d 250, 130 Cal. Rptr. 683 (Cal. Ct. App. 1976).

208. *See supra* notes 95-108 and accompanying text.

209. CAL. UNEMP. INS. CODE. § 1264 (West 1972).

210. 59 Cal. App. 3d at 262, 130 Cal. Rptr. at 690.

211. *See supra* note 192, at 9.

212. 463 So. 2d at 1077.

213. MISS. CODE ANN. § 71-5-513(A)(1)(a) (1972 and Supp. 1985).

who terminate employment for other reasons are provided an opportunity to demonstrate good cause.[214] By upholding this irrebuttable presumption, the Mississippi Supreme Court found the legislature to be justifiably focusing finite state resources on those who became unemployed through no fault of their own.[215] Although the courts in *Shelton*,[216] *Thomas*[217] and *Wallace*[218] salvaged their statutes by rendering their presumptions rebuttable at an administrative hearing, the Mississippi Supreme Court appeared to be in no mood for such a compromise. Declining to mandate that an individual determination be made as to whether a claimant had actually withdrawn from the labor market due to domestic or family responsibilities, the court held that the state need not underwrite the financial uncertainties of voluntary unemployment, whatever its under-lying cause.[219]

V. CONCLUSION

In the present opinion, the Mississippi Supreme Court rebuffed allegations of sexual discrimination and rejected the irrebuttable presumption doctrine as a means of invalidating the Mississippi marital disqualification statute. Adopting the view of the more conservative jurisdictions, the court also refused to view the marital obligation as a fundamental liberty, render the presumption of unavailability rebuttable, or even consider statistical evidence of the statute's operation. By judicially endorsing the conclusive and irrebuttable presumption that all who terminate employment voluntarily do so without good cause, the Mississippi Supreme Court has sealed the state treasury from those said to willingly cast themselves upon the unemployment rolls. The resulting injustice to a substantial class of individuals is viewed as a necessary evil rationally related to the economic survival of those becoming unemployed through no fault of their own.

E. Scott Lowicki

215. 463 So. 2d at 1077.

216. 214 Kan. 54, 60, 519 P.2d 754, 759 (1974); *see supra* notes 141-48 and accompanying text.

217. 280 S.E.2d 123, 130 (1981); *see supra* notes 149-54 and accompanying text.

218. 38 Pa. Commw. 342, 351, 393 A.2d 43, 47 (1978); *see supra* note 47, 116-17, 154 and accompanying text.

219. Warren v. Board of Review of Mississippi Employment Sec. Comm'n, 463 So. 2d at 1077.