the state action even when the governing legislation appears neutral on its face," but this is a rare case.[1450] In the absence of such a stark pattern, a court will look to such factors as the "historical background of the decision," especially if there is a series of official discriminatory actions. The specific sequence of events may shed light on purpose, as would departures from normal procedural sequences or from substantive considerations usually relied on in the past to guide official actions. Contemporary statements of decisionmakers may be examined, and "[i]n some extraordinary instances the members might be called to the stand at trial to testify concerning the purpose of the official action, although even then such testimony frequently will be barred by privilege."[1451] In most circumstances, a court is to look to the totality of the circumstances to ascertain intent.

Strengthening of the intent standard was evidenced in a decision sustaining against a sex discrimination challenge a state law giving an absolute preference in civil service hiring to veterans. Veterans who obtain at least a passing grade on the relevant examination may exercise the preference at any time and as many times as they wish and are ranked ahead of all non-veterans, no matter what their score. The lower court observed that the statutory and administrative exclusion of women from the armed forces until the recent past meant that virtually all women were excluded from state civil service positions and held that results so clearly foreseen could not be said to be unintended. Reversing, the Supreme Court found that the veterans preference law was not overtly or covertly gender-based; too many men are non-veterans to permit such a conclusion, and some women are veterans. That the preference implicitly incorporated past official discrimination against women was held not to detract from the fact that rewarding veterans for their service to their country was a legitimate public purpose. Acknowledging that the consequences of the preference were foreseeable, the Court pronounced this fact insufficient to make the requisite showing of intent. "'Discriminatory purpose' . . . implies more than intent as volition or intent as awareness of consequences. . . . It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group."[1452]

[1450] *Arlington Heights*, 429 U.S. at 266.

[1451] 429 U.S. 267–68.

[1452] Massachusetts Personnel Adm'r v. Feeney, 442 U.S. 256, 279 (1979). This case clearly established the application of *Davis* and *Arlington Heights* to all nonracial classifications attacked under the Equal Protection Clause. *But compare* Columbus Bd. of Educ. v. Penick, 443 U.S. 449 (1979), *and* Dayton Bd. of Educ. v. Brink-