

ing upon the generalization that a woman would stay home and take care of the children while a man would not. Because the Court perceived the purpose of the provision to be to enable the surviving parent to choose to remain at home to care for minor children, the sex classification ill-fitted the end and was invidiously discriminatory.

But, when, in *Califano v. Goldfarb*,¹⁸³⁴ the Court was confronted with a Social Security provision structured much as the benefit sections struck down in *Frontiero* and *Wiesenfeld*, even in the light of an express heightened scrutiny, no majority of the Court could be obtained for the reason for striking down the statute. The section provided that a widow was entitled to receive survivors' benefits based on the earnings of her deceased husband, regardless of dependency, but payments were to go to the widower of a deceased wife only upon proof that he had been receiving at least half of his support from her. The plurality opinion treated the discrimination as consisting of disparate treatment of women wage-earners whose tax payments did not earn the same family protection as male wage earners' taxes. Looking to the purpose of the benefits provision, the plurality perceived it to be protection of the familial unit rather than of the individual widow or widower and to be keyed to dependency rather than need. The sex classification was thus found to be based on an assumption of female dependency that ill-served the purpose of the statute and was an ill-chosen proxy for the underlying qualification. Administrative convenience could not justify use of such a questionable proxy.¹⁸³⁵ Justice Stevens, concurring, accepted most of the analysis of the dissent but nonetheless came to the conclusion of invalidity. His argument was essentially that while either administrative convenience or a desire to remedy discrimination

¹⁸³⁴ 430 U.S. 199 (1977). The dissent argued that whatever the classification used, social insurance programs should not automatically be subjected to heightened scrutiny but rather only to traditional rationality review. *Id.* at 224 (Justice Rehnquist with Chief Justice Burger and Justices Stewart and Blackmun). In *Wengler v. Drugists Mutual Ins. Co.*, 446 U.S. 142 (1980), voiding a state workers' compensation provision identical to that voided in *Goldfarb*, only Justice Rehnquist continued to adhere to this view, although the others may have yielded only to precedent.

¹⁸³⁵ 430 U.S. at 204–09, 212–17 (Justices Brennan, White, Marshall, and Powell). Congress responded by eliminating the dependency requirement but by adding a pension offset provision reducing spousal benefits by the amount of various other pensions received. Continuation in this context of the *Goldfarb* gender-based dependency classification for a five-year "grace period" was upheld in *Heckler v. Mathews*, 465 U.S. 728 (1984), as directly and substantially related to the important governmental interest in protecting against the effects of the pension offset the retirement plans of individuals who had based their plans on unreduced pre-*Goldfarb* payment levels.