

sion.²⁰⁰⁷ For example, in *Califano v. Jobst*,²⁰⁰⁸ a unanimous Court sustained a Social Security provision that revoked disabled dependents' benefits of any person who married, except when the person married someone who was also entitled to receive disabled dependents' benefits. Plaintiff, a recipient of such benefits, married someone who was also disabled but not qualified for the benefits, and his benefits were terminated. He sued, alleging that distinguishing between classes of persons who married eligible persons and who married ineligible persons infringed upon his right to marry. The Court rejected the argument, finding that benefit entitlement was not based upon need but rather upon actual dependency upon the insured wage earner; marriage, Congress could have assumed, generally terminates the dependency upon a parent-wage earner. Therefore, it was permissible as an administrative convenience to make marriage the terminating point but to make an exception when both marriage partners were receiving benefits, as a means of lessening hardship and recognizing that dependency was likely to continue. The marriage rule was therefore not to be strictly scrutinized or invalidated "simply because some persons who might otherwise have married were deterred by the rule or because some who did marry were burdened thereby."²⁰⁰⁹

It seems obvious, therefore, that the determination of marriage and familial relationships as fundamental will be a fruitful beginning of litigation in the equal protection area.²⁰¹⁰

Sexual Orientation

In *Romer v. Evans*,²⁰¹¹ the Supreme Court struck down a state constitutional amendment that both overturned local ordinances pro-

²⁰⁰⁷ 434 U.S. at 386–87. Chief Justice Burger thought the interference here was "intentional and substantial," whereas the provision in *Jobst* was neither. *Id.* at 391 (concurring).

²⁰⁰⁸ 434 U.S. 47 (1977).

²⁰⁰⁹ 434 U.S. at 54. *See also* *Mathews v. De Castro*, 429 U.S. 181 (1976) (provision giving benefits to a married woman under 62 with dependent children in her care whose husband retires or becomes disabled but denying them to a divorced woman under 62 with dependents represents a rational judgment by Congress with respect to likely dependency of married but not divorced women and does not deny equal protection); *Califano v. Boles*, 443 U.S. 282 (1979) (limitation of certain Social Security benefits to widows and divorced wives of wage earners does not deprive mother of illegitimate child who was never married to wage earner of equal protection).

²⁰¹⁰ *See, e.g., Quilloin v. Walcott*, 434 U.S. 246 (1978) (state's giving to father of legitimate child who is divorced or separated from mother while denying to father of illegitimate child a veto over the adoption of the child by another does not under the circumstances deny equal protection. The circumstances were that the father never exercised custody over the child or shouldered responsibility for his supervision, education, protection, or care, although he had made some support payments and given him presents). *Accord, Lehr v. Robertson*, 463 U.S. 248 (1983).

²⁰¹¹ 517 U.S. 620 (1996).