land Board of Education v. LaFleur,[1851] which was decided upon due process grounds, two school systems requiring pregnant school teachers to leave work four and five months respectively before the expected childbirths were found to have acted arbitrarily and irrationally in establishing rules not supported by anything more weighty than administrative convenience buttressed with some possible embarrassment of the school boards in the face of pregnancy. On the other hand, the exclusion of pregnancy from a state financed program of payments to persons disabled from employment was upheld against equal protection attack as supportable by legitimate state interests in the maintenance of a self-sustaining program with rates low enough to permit the participation of low-income workers at affordable levels.[1852] The absence of supportable reasons in one case and their presence in the other may well have made the significant difference.

Illegitimacy

After wrestling in a number of cases with the question of the permissibility of governmental classifications disadvantaging illegitimates and the standard for determining which classifications are sustainable, the Court arrived at a standard difficult to state and even more difficult to apply.[1853] Although "illegitimacy is analogous in many respects to the personal characteristics that have been held to be suspect when used as the basis of statutory differentiations," the analogy is "not sufficient to require 'our most exacting scrutiny.'" The scrutiny to which it is entitled is intermediate, "not a toothless [scrutiny]," but somewhere between that accorded race and that accorded ordinary economic classifications. Basically, the standard requires a determination of a legitimate legislative aim

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[1851] 414 U.S. 632 (1974). Justice Powell concurred on equal protection grounds. Id. at 651. *See also* Turner v. Department of Employment Security, 423 U.S. 44 (1975).

[1852] Geduldig v. Aiello, 417 U.S. 484 (1974). The Court denied that the classification was based upon "gender as such." Classification was on the basis of pregnancy, and while only women can become pregnant, that fact alone was not determinative. "The program divides potential recipients into two groups—pregnant woman and nonpregnant persons. While the first group is exclusively female, the second includes members of both sexes." Id. at 496 n.20. For a rejection of a similar attempted distinction, *see* Nyquist v. Mauclet, 432 U.S. 1, 9 (1977); and Trimble v. Gordon, 430 U.S. 762, 774 (1977). *See also* Phillips v. Martin-Marietta Corp., 400 U.S. 542 (1971). The Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k), now extends protection to pregnant women.

[1853] The first cases set the stage for the lack of consistency. *Compare* Levy v. Louisiana, 391 U.S. 68 (1968), *and* Glona v. American Guar. & Liab. Ins. Co., 391 U.S. 73 (1968), invalidating laws that precluded wrongful death actions in cases involving the child or the mother when the child was illegitimate, in which scrutiny was strict, *with* Labine v. Vincent, 401 U.S. 532 (1971), involving intestate succession, in which scrutiny was rational basis, *and* Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972), involving a workers' compensation statute distinguishing between legitimates and illegitimates, in which scrutiny was intermediate.