"When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests."—Justice MARSHALL

"The Equal Protection Clause deals not with substantive rights or freedoms but with invidiously discriminatory classifications."—Justice STEWART

"[T]here is a right of marital and familial privacy which places some substantive limits on the regulatory power of government. But the Court has yet to hold that all regulation touching upon marriage implicates a 'fundamental right' triggering the most exacting judicial scrutiny."—Justice POWELL

"I think that under the Equal Protection Clause the statute need pass only the 'rational basis test,' and that under the Due Process Clause it need only be shown that it bears a rational relation to a constitutionally permissible objective."—Justice REHNQUIST

Zablocki v. Redhail

434 U.S. 374, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978)

Wisconsin Statutes, §§ 245.10(1), (4), (5) (1973), provided that no one "having minor issue not in his custody and which he is under obligation to support by any court order or judgment" could remarry without obtaining the permission of a court, which could not grant permission unless the petitioner showed that he had met his obligations to support the offspring covered by the order and that such children were not likely to become "public charges." Invoking these provisions, Thomas Zablocki, a county clerk, denied Roger Redhail a marriage license. Redhail then filed suit in a U.S. district court, which held that the law denied equal protection, and Wisconsin appealed to the U.S. Supreme Court.

■ MR. JUSTICE **MARSHALL** delivered the opinion of the Court. . . .

II

In evaluating §§ 245.10(1), (4), (5) under the Equal Protection Clause, "we must first determine what burden of justification the classification created thereby must meet, by looking to the nature of the classification and the individual interests affected." Memorial Hospital v. Maricopa County (1974). Since our past decisions make clear that the right to marry is of fundamental importance, and since the classification at issue here significantly interferes with the exercise of that right, we believe that "critical examination" of the state interests advanced in support of the classification is required. Massachusetts Board of Retirement v. Murgia (1976).

The leading decision of this Court on the right to marry is Loving v. Virginia (1967). . . . :

> The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men. . . .

Although *Loving* arose in the context of racial discrimination, prior and subsequent decisions of this Court confirm that the right to marry is of fundamental importance for all individuals. . . . In Meyer v. Nebraska (1923), the Court recognized that the right "to marry, establish a home and bring up children" is a central part of the liberty protected by the Due Process Clause, and in Skinner v. Oklahoma (1942), marriage was described as "fundamental to the very existence and survival of the race." More recent decisions have established that the right to marry is part of the fundamental "right of privacy" implicit in the Fourteenth Amendment's Due Process Clause. . . . [Griswold v. Connecticut (1965).]

Cases subsequent to *Griswold* and *Loving* have routinely categorized the decision to marry as among the personal decisions protected by the right of privacy. See generally Whalen v. Roe (1977). For example . . . in Carey v. Population Services International (1977), we declared:

> While the outer limits of [the right of personal privacy] have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage, *Loving*; procreation, *Skinner*; contraception, Eisenstadt v. Baird [1972] (White, J., concurring in result); family relationships, Prince v. Massachusetts (1944); and child rearing and education, Pierce v. Society of Sisters (1925); *Meyer*. . . .

It is not surprising that the decision to marry has been placed on the same level of importance as decisions relating to procreation, childbirth, child rearing, and family relationships. As the facts of this case illustrate, it would make little sense to recognize a right of privacy with respect to other matters of family life and not with respect to the decision to enter the relationship that is the foundation of the family in our society. The woman whom appellee desired to marry had a fundamental right to seek an abortion of their expected child, see Roe v. Wade (1973), or to bring the child into life to suffer the myriad social, if not economic, disabilities that the status of illegitimacy brings. Surely, a decision to marry and raise the child in a traditional family setting must receive equivalent protection. And, if appellee's right to procreate means anything at all, it must imply some right to enter the only relationship in which the State of Wisconsin allows sexual relations legally to take place.

By reaffirming the fundamental character of the right to marry, we do not mean to suggest that every state regulation which relates in any way to the incidents of or prerequisites for marriage must be subjected to rigorous scrutiny. To the contrary, reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed. The statutory classification at issue here, however, clearly does interfere directly and substantially with the right to marry.

Under the challenged statute, no Wisconsin resident in the affected class may marry in Wisconsin or elsewhere without a court order, and marriages contracted in violation of the statute are both void and punishable as criminal offenses. Some of those in the affected class, like appellee, will never be able to obtain the necessary court order, because they either lack the financial means to meet their support obligations or cannot prove that their children will not become public charges. These persons are absolutely prevented from getting married. Many others, able in theory to satisfy the statute's requirements, will be sufficiently burdened by having to do so that they will in effect be coerced into forgoing their right to marry. And even those who can be persuaded to meet the statute's requirements suffer a serious intrusion into their freedom of choice in an area in which we have held such freedom to be fundamental.

III

When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests. See, *e.g.*, *Carey; Memorial Hospital;* San Antonio v. Rodriguez (1973); Bullock v. Carter (1972). Appellant asserts that two interests are served by the challenged statute: . . . opportunity to counsel the applicant as to the necessity of fulfilling his prior support obligations [is created]; and the welfare of the out-of-custody children is protected. We may accept for present purposes that these are legitimate and substantial interests. . . . The statute . . . , however, does not expressly require or provide for any counseling whatsoever. . . . Even assuming that counseling does take place—a fact as to which there is no evidence in the record—this interest obviously cannot support the withholding of court permission to marry once counseling is completed.

With regard to safeguarding the welfare of the out-of-custody children, appellant's brief does not make clear the connection between the State's interest and the statute's requirements. At [oral] argument, appellant's counsel suggested that . . . the statute provides incentive for the applicant to make support payments to his children. This "collection device" rationale cannot justify the statute's broad infringement on the right to marry.

First, with respect to individuals who are unable to meet the statutory requirements, the statute merely prevents the applicant from getting married, without delivering any money at all into the hands of the applicant's prior children. More importantly, . . . the State already has numerous other means for exacting compliance with support obligations, means that are at least as effective as the instant statute's and yet do not impinge upon the right to marry. . . .

There is also some suggestion that § 245.10 protects the ability of marriage applicants to meet support obligations to prior children by preventing the applicants from incurring new support obligations. But the challenged provisions of § 245.10 are grossly underinclusive with respect to this purpose, since they do not limit in any way new financial commitments by the applicant other than those arising out of the contemplated marriage. The statutory classification is substantially overinclusive as well [, given] the possibility that the new spouse will actually better the applicant's financial situation, by contributing income from a job or otherwise. . . . And, although it is true that the applicant will incur support obligations to any children born during the contemplated marriage, preventing the marriage may only result in the children being born out of wedlock, as in fact occurred in appellee's case. Since the support obligation is the same whether the child is born in or out of wedlock, the net result of preventing the marriage is simply more illegitimate children. . . .

Affirmed.

■ MR. CHIEF JUSTICE **BURGER**, concurring. . . .

■ MR. JUSTICE **STEWART**, concurring in the judgment.

. . . The Equal Protection Clause deals not with substantive rights or freedoms but with invidiously discriminatory classifications. *San Antonio* (concurring opinion). The paradigm of its violation is, of course, classification by race.

Like almost any law, the Wisconsin statute now before us affects some people and does not affect others. But to say that it thereby creates "classifications" in the equal protection sense strikes me as little short of fantasy. The problem in this case is not one of discriminatory classifications, but of unwarranted encroachment upon a constitutionally protected freedom. I think that the Wisconsin statute is unconstitutional because it exceeds the bounds of permissible state regulation of marriage, and invades the sphere of liberty protected by the Due Process Clause of the Fourteenth Amendment. . . .

In an opinion of the Court half a century ago, Mr. Justice Holmes described an equal protection claim as "the usual last resort of constitutional arguments." Buck v. Bell [1927]. Today equal protection doctrine has become the Court's chief instrument for invalidating state laws. Yet, in a case like this one, the doctrine is no more than substantive due process by another name.

Although the Court purports to examine the bases for legislative classifications and to compare the treatment of legislatively defined groups, it actually erects substantive limitations on what States may do. Thus, the effect of the Court's decision in this case is not to require Wisconsin to draw its legislative classifications with greater precision or to afford similar treatment to similarly situated persons. Rather, the message of the Court's opinion is that Wisconsin may not use its control over marriage to achieve the objectives of the state statute. Such restrictions on basic governmental power are at the heart of substantive due process.

The Court is understandably reluctant to rely on substantive due process. But to embrace the essence of that doctrine under the guise of equal protection serves no purpose but obfuscation. . . . To conceal this appropriate inquiry invites mechanical or thoughtless application of misfocused doctrine. To bring it into the open forces a healthy and responsible recognition of the nature and purpose of the extreme power we wield when, in invalidating a state law in the name of the Constitution, we invalidate *pro tanto* the process of representative democracy in one of the sovereign States of the Union.

■ MR. JUSTICE **POWELL**, concurring in the judgment. . . .

On several occasions, the Court has acknowledged the importance of the marriage relationship to the maintenance of values essential to organized society. Our decisions indicate that the guarantee of personal privacy or autonomy secured against unjustifiable governmental interference by the Due Process Clause "has some extension to activities relating to marriage," *Loving*. . . . Thus, it is fair to say that there is a right of marital and familial privacy which places some substantive limits on the regulatory power of government. But the Court has yet to hold that all regulation touching upon marriage implicates a "fundamental right" triggering the most exacting judicial scrutiny. . . .

In my view, analysis must start from the recognition of domestic relations as "an area that has long been regarded as a virtually exclusive province of the States." Sosna v. Iowa (1975). . . . A "compelling state purpose" inquiry would cast doubt on the network of restrictions that the States have fashioned to govern marriage and divorce.

State power over domestic relations is not without constitutional limits. The Due Process Clause requires a showing of justification "when the government intrudes on choices concerning family living arrangements" in a manner which is contrary to deeply rooted traditions. Moore v. East Cleveland (1977) (plurality opinion). Due process constraints also limit the extent to which the State may monopolize the process of ordering certain human relationships while excluding the truly indigent from that process. Boddie v. Connecticut (1971). Furthermore, under the Equal Protection Clause the means chosen by the State in this case must bear " 'a fair and substantial relation' " to the object of the legislation. Reed v. Reed (1971); Craig v. Boren (1976) (Powell, J., concurring).

The Wisconsin measure in this case does not pass muster under either due process or equal protection standards. . . .

■ MR. JUSTICE **STEVENS**, concurring in the judgment. . . .

■ MR. JUSTICE **REHNQUIST**, dissenting.

I substantially agree with my Brother Powell's reasons for rejecting the Court's conclusion that marriage is the sort of "fundamental right" which must invariably trigger the strictest judicial scrutiny. I disagree with his imposition of an "intermediate" standard of review. . . . I would view this legislative judgment in the light of the traditional presumption of validity. I think that under the Equal Protection Clause the statute need pass only the "rational basis test," Dandridge v. Williams (1970), and that under the Due Process Clause it need only be shown that it bears a rational relation to a constitutionally permissible objective. Williamson v. Lee Optical Co. (1955); Ferguson v. Skrupa (1963) (Harlan, J., concurring). The statute so viewed is a permissible exercise of the State's power to regulate family life and to assure the support of minor children, despite its possible imprecision in . . . extreme cases. . . .

. . . "The broad legislative classification must be judged by reference to characteristics typical of the affected classes rather than by focusing on selected, atypical examples." [Califano v. Jobst (1977).] . . . I conclude that the statute, despite its imperfections, is sufficiently rational to satisfy the demands of the Fourteenth Amendment. . . .

EDITORS' NOTES

(1) **Query:** With the possible exception of Rehnquist, all of the justices who wrote in this case agreed that the Constitution protects a fundamental right to marry. What different approaches to constitutional interpretation led the justices to derive such a right? To what extent were the reasons various justices offered convincing?

(2) **Query:** To what degree was Stewart's criticism of the Court's use of the Equal Protection Clause to protect fundamental rights valid? Did the justices in *Zablocki* and in earlier rulings such as Skinner v. Oklahoma (1942; reprinted above, p. **Error! Bookmark not defined.**) and Shapiro v. Thompson (1969; reprinted above, p. **Error! Bookmark not defined.**) decide the cases because of denials of equal protection or because of violations of substantive rights protected by the Due Process Clause? What is the relationship between these two clauses? Does the meaning of these clauses overlap? See Obergefell v. Hodges and accompanying Editors' Notes (2015; reprinted below,__)

(3) **Query:** Did Marshall subject the statute to strict scrutiny, to intermediate scrutiny, or to some scrutiny along the lines of the spectrum of standards that he articulated in dissent in *Dandridge* (p. **Error! Bookmark not defined.**) and *San Antonio* (p. **Error! Bookmark not defined.**)? Did Powell, the author of the majority opinion in *San Antonio*, implicitly adopt, at least with respect to a supposed fundamental right to marry, Marshall's argument about continua as expressed in those earlier cases? Or was Powell proposing intermediate scrutiny as in Craig v. Boren (1976; reprinted above, p. **Error! Bookmark not defined.**)?

(4) In Turner v. Safley (1987), the Court followed *Zablocki* and unanimously invalidated a prison regulation that restricted inmates' right to marry to those circumstances in which the superintendent found compelling reasons to grant permission.