

The Equal Protection Clause

14th Amendment: “nor deny to any person within its jurisdiction the equal protection of the laws”

- 1. Applies equally to states and federal government, and**
- 2. The government can't discriminate against a particular group of people or favor a group of people unless it has adequate justification for so doing.**

The Supreme Court has ruled that different classifications get different treatment based on what the classification seeks to accomplish.

➤ **This was originated by footnote 4 in the Carolene Products case:**

“Nor need we enquire whether similar considerations enter into the review of statutes directed at particular religious...or national...or racial minorities; [or] whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry...”

The Equal Protection Clause

3 levels of classifications:

- 1) Non-suspect classification (rational basis scrutiny only)
- 1) Quasi-suspect classification (medium scrutiny)
- 1) Suspect classification (strict scrutiny)

Keep in mind: This applies only to the government, not to private citizens; private citizens are free to discriminate except where prohibited by law!

Equal Protection Analysis - Rational Basis Review

Rational Basis Review applies when a government regulation discriminates in a manner that is considered “non-suspect”

Classifications that are “non-suspect”: rules that distinguish based on:

- dependency on narcotics
- age
- wealth
- status as an illegal alien
- anything not established by the courts to be a suspect or quasi-suspect classification!

Equal Protection Analysis - Rational Basis Review

The law will pass, unless the person challenging the statute can prove that the law is not rationally related to a legitimate government purpose.

- Burden of proof is on the person challenging the law
- The law need not set forth the “least restrictive” manner in taking care of the state interest being protected.

Historically, laws have almost always passed the rational basis test.

Examples of laws that flunked the rational basis test:

- Cleburn v. Cleburn Living Center: Court struck down an ordinance denying a permit to a group of mentally retarded people who simply wanted to live in one house
- Colorado state constitutional amendment specifically prohibited towns from enacting ordinances to prevent discrimination on the basis of sexual orientation - the amendment was struck down as an equal protection violation

Equal Protection Analysis - Medium Scrutiny

Quasi- Suspect classifications:

- classifications based on *Gender*
- classifications based on *status as a non-marital child*
- Sexual Orientation (Windsor v. United States)

To defend the law, the government must prove that the rule is substantially related to an important state interest.

In United States v. Virginia, the Supreme Court added the qualification that the government must show an “exceedingly persuasive justification” for the law to stand.

Statutes struck down on the basis of medium scrutiny:

- keeping state military school (VMI) for men only
- allowing husband to unilaterally dispose of jointly held property
- statute giving men preference in administering estate
- refusal to admit males into state university nursing program
- law that provides that only women are eligible for alimony
- law excluding “illegitimate” children from inheriting from their father
- Parts of DOMA struck down in 2013

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QUIZ TIME!

Equal Protection Analysis - Medium Scrutiny

Statutes that have **survived** intermediate scrutiny:

- laws that punish only males for statutory rape
 - military draft for males only
 - automatically allowing citizenship to non-marital children of American mothers abroad, but requiring proof for non-marital fathers
 - requiring non-marital children to prove paternity before father's death to inherit from father
 - state law that excluded pregnancy from the definition of disability (not counted as a gender classification)
 - hiring preference towards veterans (also, not considered a gender classification)
 - social security and tax exemptions to women to make up for past discrimination
 - Navy rule giving tenure preference to women
- ✚ What effect would the proposed "Equal Rights Amendment" have?

Obergefell v. Hodges

In 2015, the US Supreme Court struck down all state and federal bans on same sex marriage, elevating same sex marriage to the same legal status of heterosexual marriage.

The Court ruled that this could be done under the Equal Protection or Due Process clauses, but the opinion focused mainly on Due Process, focusing on the rights of gay people to the benefits of marriage.

Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.

Interestingly, the opinion does not formally announce the level of scrutiny sexual orientation-based classifications are subject to, implying that bans on same sex marriage would flunk any level of scrutiny, even rational basis review.