

EQUAL PROTECTION

Equal Protection

Equal Protection Clause of 14th Am.:

- “No State shall ... deny to any person within its jurisdiction the equal protection of the laws.”
- Applies to states and state sub-divisions, directly
- Applies to federal government, via the 5th Amendment’s due process clause

Equal Protection – Classifications

- Applies only where what is being done by government is the making of a “classification”
- Does not apply where government decides which of two pre-defined classes a situation or person fits into

Equal Prot.: 3 Categories of Classes

Suspect Classes (strict scrutiny):

- Race;
- National origin;
- Alienage/citizenship (sometimes)

Semi-Suspect Classes (intermediate scrutiny):

- Gender;
- Illegitimacy

“Regular” Classes (social-welfare or economic regulation) – Rational basis test

Suspect Classes

- Strict scrutiny for all suspect classifications: Classification scheme must be “necessary” to achieve a “compelling” governmental objective
- “Necessary” = “there are no less discriminatory objectives that will accomplish objective as well or almost as well”
- Burden of proof on gov’t

Semi-Suspect Classes

Get intermediate scrutiny: Gov't must show that its "important" objectives are "substantially furthered" by the law.

- "Important" is more than "legitimate" but less than "compelling."
- "Substantially furthering" is more than "rationally related" but less than "necessary."
- Burden of proof on gov't

TV Equality

Federal gov't requires all TV stations to begin broadcasting in digital signals only. Smaller stations that lack the expensive equipment to do so are particularly hurt. An overwhelming majority of such small stations broadcast in Spanish to Latino listeners. Latino individuals and groups complain of E.P. violation. What standard of review?

“Disparate Impact” Gets “Minimum-rationality” Review

Answer to Hypo: Only minimum-rationality review will apply.

Although the law falls harder on some racial groups than others, it is race-neutral on its face and will be upheld unless plaintiff (attacker) can show the law was motivated by a desire to hurt the racial minority.