

Constitutional Equal Protection Analysis

“No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” – U.S. CONST. amend. XIV § 1



OBLIGATION

Equal protection obligations apply to the federal government through the Fifth Amendment.



RESTRICTION

Equal protection restricts the ways the government can classify similarly situated individuals.



JUSTIFICATION

The justification required (called the *level of scrutiny*) depends on the type of classification.

Is a statute, regulation, or other government action **singling someone out** for a burden or a benefit?

YES

What is the basis for the different treatment?

NO

KIND OF CLASSIFICATION

Race, Color, National Origin, Alienage, or Ancestry*

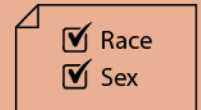
▶ National origin, alienage, and ancestry are only sometimes included in this group.

Sex, Gender, Nonmarital Children

▶ The Supreme Court has yet to decide whether this category includes sexual orientation or gender identity.

Other Reasons

▶ Examples include classifications based on income, disability, or veteran status.



The government can make some distinctions, for example reporting race and sex in census data, without equal protection review.

LEVEL OF SCRUTINY

Strict Scrutiny

- ✓ Narrowly tailored to serve
- ✓ A compelling government interest

(Often, the claimed government interest is to remedy past discrimination)

▶ This level of review is stringent and very difficult for the government to satisfy.

Intermediate Scrutiny

- ✓ Substantially related to
- ✓ An important government objective

▶ This level of review is easier for the government to meet than strict scrutiny but requires more careful assessment than rational basis review.

Rational Basis Review

- ✓ Reasonably related to
- ✓ A legitimate government interest

▶ This standard is relatively easy to satisfy.

Activities Violating Equal Protection

EXAMPLES

Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 81 (2023)

Holding, among other things, that university racial admissions preferences were not narrowly tailored to serve an interest in promoting diversity.

Craig v. Boren, 429 U.S. 190 (1976)

State’s sex-based age limits for beer sales were not substantially related to a government interest in traffic safety.

City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432 (1985)

City’s ban on group homes for people with disabilities failed rational basis review because it was based on prejudice against disability.

* The Court has been more deferential to federal (as opposed to state) classifications based on alienage, typically reviewing challenges under a less stringent, rational basis standard. *Fiallo v. Bell*, 430 U.S. 787, 792 (1977). Using ancestry sometimes, but not always, triggers strict scrutiny. Native American identity is a race or ancestry category subject to strict scrutiny, but tribal membership can be a political category subject to rational basis review. *Morton v. Mancari*, 417 U.S. 535, 552 (1974).

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