

Constitutional Law: Principles and Practice

Equal Protection

Chapter 8

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Classification vs. Invidious Discrimination

- Not all laws creating classifications are unconstitutional.
- Today, invidious discrimination refers to discrimination or classification:
 - Based on ill will or prejudice
 - Because of characteristics such as race, color, religion, sex, age, etc.

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Application of the Equal Protection Clause to State and Federal Government

- State employees
- Federal government
- Private discrimination and state action

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How the Supreme Court Reviews Laws for Equal Protection Violations

- Not all laws based on classifications:
 - Should be evaluated the same way
 - Violate equal protection rules
- Three tests to determine if state laws violate the Equal Protection Clause:
 - Does the law target a suspect class?
 - Does the law affect a fundamental right?
 - Is there purposeful discrimination?

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Additional Supreme Court Tests

- When a law doesn't target a suspect or affect a fundamental right, the Court applies the rational basis test.
- Whenever a law targets a suspect class or burdens a fundamental right, the Court reviews the law with strict scrutiny.
- Heightened scrutiny = standard between strict scrutiny and rational basis

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Violations of Equal Protection: Applying the Tests

- Race, ethnicity, and national origin (strict scrutiny)
- Gender (intermediate scrutiny)
- Alien status (strict or intermediate scrutiny)
- Other classifications

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Equal Protection and Voting Rights

- Voter qualifications
- Access to ballot
- One person, one vote: apportionment and districting
- Uncounted votes

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Remedies for Violations of Equal Protection

- Desegregation and schools
- Affirmative action
- Nonlegislative remedies