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Equality: A Test on Equal Protection

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Equality: A test on Equal Protection

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This is the 11th year that Delaware Law School and The News Journal have teamed up to provide you with a collection of essays to celebrate Constitution Day, September 17, the national observance marking the date in 1787 when the Framers signed the Constitution in Philadelphia.

This year's collection is a series of quizzes to test your knowledge of constitutional law. Of course, we realize that most of you are not judges or lawyers so don't feel badly if you get stumped by some or all of the questions. But we do hope you welcome this opportunity to expand your knowledge of constitutional law. After all, lawyers and judges did not "ordain and establish" the Constitution; "We the People" did. If our nation is to continue becoming an ever "more perfect Union," it needs citizens who are educated and engaged, and who are eager to participate in the democratic process with their voices and votes. That's why Justice Louis Brandeis said "the greatest menace to freedom is an inert people" and "public discussion is a political duty."

1. The Equal Protection Clause of the Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The Supreme Court has said that the values embodied in this clause apply to all levels of government. So federal, state, and local governments cannot deny people equal protection.

But what does this mean? It certainly can't mean that the government can never treat people unequally. After all, the government treats people unequally all the time. For example, the government treats people differently based on their accomplishments (only applicants with good grades get into a state's premier public university) and their status (veterans get benefits that non-veterans don't).

Rather than saying that all unequal treatment is unconstitutional, the Supreme Court has said that only certain types of discrimination are "suspect" and likely to be found unconstitutional. The Court is especially leery of laws that treat people differently based on an immutable or unchangeable characteristic (like the color of one's skin), particularly if the characteristic has nothing to do with a person's ability to contribute to society. The Court is also leery of laws that discriminate against people who have



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historically been targets of societal discrimination. And the Court is concerned about discrimination against groups who are unlikely to be able to get protection through the political process (by getting legislators to enact anti-discrimination laws).

Based on these criteria, which types of discrimination do you think are "suspect"? The list below includes three types of discrimination which the Supreme Court considers suspect and is likely to find unconstitutional. The list also includes one type of discrimination that the Court does not consider suspect and is likely to uphold. Which one is the non-suspect classification that gets only light judicial scrutiny?

a. Discrimination based on a person's national origin (Italian-American, Irish-American)

b. Race discrimination

c. Age discrimination

d. Gender discrimination

2. This is tricky so be careful! Which of the following is NOT likely to be a constitutional violation?

1 A federal prosecutor who uses her

right to challenge jurors to remove all Asian Americans from a jury

2 A state law that prohibits African-Americans from serving as police officers

3 A state law that forbids immigrants legally living in the state from working as janitors in public libraries

4 A large corporate employer that refuses to promote women into management positions

3. Although the Supreme Court almost always strikes down government discrimination based on race, the Court has permitted public universities to consider race in university admissions.

Which of the following is FALSE about the Court's affirmative action decisions?

1 The Court permits universities to use race in admissions to punish white people for past societal discrimination

2 The Court permits universities to use race to create diverse student bodies to help break down racial stereotypes

3 The Court does not permit universities to use rigid quotas (i.e., 10 spots

for Hispanic-Americans) but does allow universities to consider race as a "plus" factor in an otherwise holistic look at each applicant

4 The Court has been influenced by business and military leaders who believe affirmative action is vital for creating future leaders who know how to relate to people with diverse backgrounds and cultures

4. The Equal Protection Clause is only a restraint on government discrimination (that was the trick in question #2!). It is not a restraint on private actors like private employers, hotels, restaurant, or landlords. While discrimination by these private parties does not ordinarily violate the Constitution, it can violate which of the following?

1 Federal antidiscrimination laws

2 State antidiscrimination laws

3 Municipal antidiscrimination laws

4 All of the above

ANSWERS

1 The answer is C. The Court has not found age to be a suspect classification. The justices were probably reluctant to make age a suspect class because they realized that age is often a legitimate basis for government regulation (such as when a person can drive, drink, vote or qualify for Social Security). And while age discrimination has certainly been a problem, the justices may have felt that the elderly have the power to protect themselves through the political process. Indeed, both Congress and state legislatures have enacted laws that prohibit some forms of age discrimination.

2 The answer is D. The Equal Protection Clause only restrains government actors, not private actors. The federal government has broad power to regulate lawful resident aliens but states are generally not allowed to discriminate against them except for activities that are properly reserved for citizens like voting or serving on juries.

3 The answer is A. The Supreme Court has said that universities have a compelling interest in creating diverse student bodies. It has not said that universities have a compelling interest in punishing white people for past societal discrimination.

4 The answer is D. Although private discrimination does not ordinarily implicate the Constitution, there are many federal, state, and local laws that do prohibit discrimination by private actors.

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