**Chapter 11 Equal Protection and Component III of Madisonian Democracy**

**Chapter Objectives**

While studying this chapter, the student will learn to:

1. Distinguish between due process and equal protection.

2. Identify and apply the various tests used in equal protection analysis.

3. Identify the role of equal protection in analyzing affirmative action cases.

4. Assess equal protection and racial gerrymandering.

**Constitutional Connector**

The previous chapters have discussed the process the Supreme Court uses to analyze state and federal statutes that are challenged as an infringement of a person’s rights that are guaranteed un-der the Due Process Clause of the Fourteenth and Fifth Amendments. The Equal Protection Clause of the Fourteenth Amendment states in part that a state shall not “deny to any person within its ju-risdiction the equal protection of the laws.” This chapter explains how the Court analyzes a statute to decide if that statute violates the Equal Protection Clause.

**CHAPTER OUTLINE**

Due Process versus Equal Protection

Classifications under Equal Protection

Origins of Equal Protection—Race

Equal Protection—Race, Strict Scrutiny

Equal Protection—Fundamental Rights, Strict Scrutiny

Equal Protection—Gender, Middle-Level Scrutiny

Equal Protection—Illegitimacy, Middle-Level Scrutiny

Equal Protection—Economic and Social Classifications, Rational Basis

Equal Protection—Alienage, Strict Scrutiny and Rational Basis

Equal Protection—Other Classifications, Rational Basis

Affirmative Action

Gerrymandering and Equal Protection

Racial Gerrymandering

Supreme Court Opinions

Brown v. Board of Education

Railway Express Agency, Inc. v. New York

**STUDY TIPS**

1. Read the first page of the chapter carefully to find out when to analyze a law under due process as opposed to equal protection. Then study the Equal Protection Clause and learn the classifications and the corresponding tests that the Supreme Court has developed. See Exhibits 11-1 and 11-2 for the classifications and the tests used to analyze these laws.

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2. Note that the Equal Protection Clause comes into play when a law classifies individuals. Most classifications are legal, but when a law classifies on the basis of a protected class such as race or gender, a higher level of scrutiny is used to make sure the law does not violate the Equal Protection Clause.

3. When a state law classifies, the Equal Protection Clause of the Fourteenth Amendment is implicated. When the federal government classifies, the Fifth Amendment is implicated. Note that the Fifth Amendment does not contain an Equal Protection Clause, but the Supreme Court ruled that the federal government must also afford equal protection through the Due Process Clause of the Fifth Amendment.

4. As you read about affirmative action, note that the Equal Protection Clause comes into play when affirmative action plans use race or gender as a tool to remedy discrimination. See Exhibit 11-3 for an overview of affirmative action in education.

5. The Equal Protection Clause is also implicated in racial gerrymandering. See Exhibit 11-4.

6. Review Exhibit 11-5 for an overview of the efforts to stop discrimination.

**EXERCISES**

Match the classification with the constitutional test. (A choice can be used more than once or not at all.)

1. gender a. rational basis

2. race b. middle level

3. economic and social class c. strict scrutiny

4. illegitimates d. rational scrutiny

**INTERNET EXERCISES**

1. Go to: http://supreme.lp.findlaw.com/. Scroll down and click on “Supreme Court Opinions.” Under “Citation Search” put in “515 U.S. 200.”

a. What is the name of the case?

b. When was the case decided?

c. This case overruled two prior Supreme Court cases. State the names of these two cases.

**QUIZ**

**TRUE OR FALSE**

1. Equal protection concerns laws that classify individuals into groups.

2. When race is used to classify individuals the strict scrutiny test is used.

3. A state university that excluded women would be in violation of the Fourteenth Amendment.

4. A federal university that excluded women would violate the Fifth Amendment.

5. The rational basis test is used to judge laws that classify on the basis of gender.

6. Most laws are evaluated by the Supreme Court under the rational basis test and are thus upheld as unconstitutional.

7. The principle of separate but equal was overruled in the case of Brown v. Board of Education.

8. Racial diversity on a college campus is a compelling interest that can justify the use of race in affirmative action plans.

9. A congressional district that uses race as the predominant factor is racially gerrymandered and violates the Equal Protection Clause.

10. Even when a compelling interest is found, an affirmative action plan must still be narrowly tailored.

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**ANSWER KEY**

1. True

2. True

3. True

4. True

5. False

6. True

7. True

8. True

9. True

10. True