

Week 7

EQUAL PROTECTION AND GENDER CLASSIFICATION

Section B

(Feb 20, 2008)

DEVELOPMENT OF EQUAL PROTECTION JURISPRUDENCE

- Equal Protection means among others, if there is no classification, there will be no violation of equal protection.
- Public policy often classifies people on the basis of:
 - Race
 - Gender
 - Age, Residence, Wealth

CONSTITUTIONAL ANALYSIS

- **Racial classification and strict scrutiny.**
 - Strict scrutiny: compelling interest and narrowly-tailored
 - The burden of proof falling on the government
- **Gender classification and intermediate scrutiny.**
 - Intermediate scrutiny: important governmental purpose and the substantial rational relationship
 - The burden of proof falling on the government

- **All other classifications and the rational-basis test.**
- The rational basis test: legitimate government purpose and rational relationship (empirical or theoretical).
- The burden of proof falling on whoever challenges the government.
- **If a classification interferes with a fundamental right, it will receive strict scrutiny.**

CRAIG V. BOREN

429 U.S. 190 (1976)

- **Facts**

- Oklahoma prohibited the sale of “nonintoxicating” 3.3% beer to males under the age of 21 and to females under the age of 18.
- Craig, a male between 18 and 21, and Whitener, a vendor, challenged the law on the ground of the Equal Protection Clause.

- **Question before the Court**

- Whether a gender-based discrimination constitutes a denial to males of 18-20 of the equal protection of the laws

- **Opinion of the Court**

- Justice Brennan announced the 7-2 majority opinion, concluding that Oklahoma's statute failed to pass constitutional muster.

- **Dissent**

- Justices Rehnquist and Burger argued that the statute passed constitutional muster.

ARGUMENT/COUNTERARGUMENT

- **BRENNAN**

- **Intermediate scrutiny analysis**

- Assuming that the enhancement of traffic safety is an important purpose
- The arrest statistics (.18% of females and 2% males) does not establish a substantial rational relationship (weak statistical “fit”).

- **REHNQUIST**

- Rejects intermediate scrutiny (out of “thin air”)
- **Applies the rational basis test (RBT)**
- Assuming the objective is legitimate
- The RBT does not require a “statistical fit.”
- The statistics of drunken driving among young men is sufficiently greater than among young women is good enough (theoretical).

DISCUSSION

- Michael M. v. Sonoma County (1981)
- Group 1 argues for the Rehnquist position in light of his dissent in Craig v. Boren.
- Group 2 argues for the Brennan position in light of his holding in Craig v. Boren

Reading for Next Class

- Castle Rock v. Gonzales (2005)