tions are neither suspect nor entitled to intermediate scrutiny.[1421] Although the Court resists the creation of new suspect or "quasi-suspect" classifications, it may still, on occasion, apply the *Royster Guano* rather than the *Lindsley* standard of rationality.[1422]

The other phase of active review of classifications holds that when certain fundamental liberties and interests are involved, government classifications which adversely affect them must be justified by a showing of a compelling interest necessitating the classification and by a showing that the distinctions are required to further the governmental purpose. The effect of applying the test, as in the other branch of active review, is to deny to legislative judgments the deference usually accorded them and to dispense with the general presumption of constitutionality usually given state classifications.[1423]

It is thought [1424] that the "fundamental right" theory had its origins in *Skinner v. Oklahoma ex rel. Williamson*,[1425] in which the Court subjected to "strict scrutiny" a state statute providing for compulsory sterilization of habitual criminals, such scrutiny being thought necessary because the law affected "one of the basic civil rights." In the apportionment decisions, Chief Justice Warren observed that, "since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." [1426] A stiffening of the traditional test could be noted in the opinion of the Court striking down certain restrictions on voting eligibility [1427] and the phrase "compelling state interest" was used several times in Justice Brennan's opinion in *Shapiro v. Thompson*.[1428] Thereafter, the phrase was used in

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[1421] Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307 (1976) (upholding mandatory retirement at age 50 for state police); Vance v. Bradley, 440 U.S. 93 (1979) (mandatory retirement at age 60 for foreign service officers); Gregory v. Ashcroft, 501 U.S. 452 (1991) (mandatory retirement at age 70 for state judges). *See also* City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 442 (1985) (holding that a lower court "erred in holding mental retardation a quasi-suspect classification calling for a more exacting standard of judicial review than is normally accorded economic and social legislation").

[1422] City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985); *see* discussion, *supra*.

[1423] Kramer v. Union Free School Dist., 395 U.S. 621, 627 (1969); Shapiro v. Thompson, 394 U.S. 618, 638 (1969).

[1424] Shapiro v. Thompson, 394 U.S. at 660 (Justice Harlan dissenting).

[1425] 316 U.S. 535, 541 (1942).

[1426] Reynolds v. Sims, 377 U.S. 533, 562 (1964).

[1427] Carrington v. Rash, 380 U.S. 89 (1965); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); Williams v. Rhodes, 393 U.S. 23 (1968).

[1428] 394 U.S. 618, 627, 634, 638 (1969).