regard to a "fundamental" interest, the traditional standard of equal protection review is abandoned, and the Court exercises a "strict scrutiny." Under this standard government must demonstrate a high degree of need, and usually little or no presumption favoring the classification is to be expected. After much initial controversy within the Court, it has now created a third category, finding several classifications to be worthy of a degree of "intermediate" scrutiny requiring a showing of important governmental purposes and a close fit between the classification and the purposes.

Paradigmatic of "suspect" categories is classification by race. First in the line of cases dealing with this issue is *Korematsu v. United States*,[1404] concerning the wartime evacuation of Japanese-Americans from the West Coast, in which the Court said that because only a single ethnic-racial group was involved the measure was "immediately suspect" and subject to "rigid scrutiny." The school segregation cases[1405] purported to enunciate no *per se* rule, however, although subsequent summary treatment of a host of segregation measures may have implicitly done so, until in striking down state laws prohibiting interracial marriage or cohabitation the Court declared that racial classifications "bear a far heavier burden of justification" than other classifications and were invalid because no "overriding statutory purpose"[1406] was shown and they were not necessary to some "legitimate overriding purpose."[1407] "A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification."[1408] Remedial racial classifications, that is, the development of "affirmative action" or similar programs that classify on the basis of race for the purpose of ameliorating conditions resulting from past discrimination, are subject to more than traditional review scrutiny, but whether the highest or some intermediate standard is the applicable test is uncertain.[1409] A measure that does not draw a distinction explicitly on race but that does draw a line between those who seek to use the law to do away with or modify racial discrimination and those

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[1404] 323 U.S. 214, 216 (1944). In applying "rigid scrutiny," however, the Court was deferential to the judgment of military authorities, and to congressional judgment in exercising its war powers.

[1405] Brown v. Board of Education, 347 U.S. 483 (1954).

[1406] McLaughlin v. Florida, 379 U.S. 184, 192, 194 (1964).

[1407] Loving v. Virginia, 388 U.S. 1, 11 (1967). In Lee v. Washington, 390 U.S. 333 (1968), it was indicated that preservation of discipline and order in a jail might justify racial segregation there if shown to be necessary.

[1408] Personnel Administrator v. Feeney, 442 U.S. 256, 272 (1979), *quoted in* Washington v. Seattle School Dist., 458 U.S. 457, 485 (1982).

[1409] Regents of the Univ. of California v. Bakke, 438 U.S. 265, 287–20 (1978) (Justice Powell announcing judgment of Court) (suspect), and id. at 355–79 (Justices Brennan, White, Marshall, and Blackmun concurring in part and dissenting in part) (intermediate scrutiny); Fullilove v. Klutznick, 448 U.S. 448, 491–92 (1980) (Chief