

A city had a severe traffic problem on its streets. As a result, it enacted an ordinance prohibiting all sales to the public of food or other items by persons selling directly from trucks, cars, or other vehicles located on city streets. The ordinance included an inseverable grandfather provision exempting from its prohibition vendors who, for 20 years or more, have continuously sold food or other items from such vehicles located on the city's streets.

An ice cream truck is the only food vendor that qualifies for this exemption. A frozen yogurt vendor is similar to the ice cream truck, but the yogurt vendor has only been selling to the public directly from trucks located on the city's streets for the past ten years.

The yogurt vendor has filed suit in an appropriate federal district court to enjoin enforcement of this ordinance on the ground that it denies the yogurt vendor equal protection of the laws.

How is the court likely to rule?

- A. The ordinance is constitutional, because it is narrowly tailored to implement the city's compelling interest in reducing traffic congestion and, therefore, satisfies strict scrutiny.
- B. The ordinance is constitutional, because its validity is governed by the rational basis test, and courts consistently defer to the objectives embodied in such legislation if they are even plausibly justifiable.
- C. The ordinance is unconstitutional, because economic benefits or burdens imposed by legislatures through grandfather provisions have consistently been declared invalid by courts as per se equal protection violations.
- D. The ordinance is unconstitutional, because the nexus between the legitimate purpose of the ordinance and the conduct it prohibits is so tenuous and the ordinance is so underinclusive that it fails to satisfy the substantial relationship test.

Explanation:

Equal protection

(standards of review)

Standard	Applicability	Test
Rational basis	Default test	<i>Challenger</i> must show <ul style="list-style-type: none">• action is not rationally related to legitimate government interest
Intermediate scrutiny	Discriminates against quasi-suspect class: <ul style="list-style-type: none">• Sex/gender• Legitimacy	<i>Government</i> must show <ul style="list-style-type: none">• action is substantially related to important government interest
Strict scrutiny	Discriminates against suspect class: <ul style="list-style-type: none">• Ethnicity• Citizenship (state law only)• Race• Nationality Impacts fundamental right (First VIP): <ul style="list-style-type: none">• First Amendment rights• Voting• Interstate travel• Privacy: family, marriage, parental rights, sexual acts, contraceptives	<i>Government</i> must show <ul style="list-style-type: none">• action is necessary (ie, least restrictive means)• to achieve compelling government interest

Equal protection challenges to discriminatory laws are generally reviewed under the **rational basis** test. This test requires the challenger to show that the law has no rational relationship to any legitimate government interest. Most laws subject to rational basis review are upheld because the court will give **extreme deference** to a **legislature's right to define** the law's objectives. And if those objectives are unclear, the law will still be upheld if the court can conceive of **any plausible justification** for the law. As a result, the court will likely rule that the ordinance is constitutional.

(Choice A) Laws are only subject to strict scrutiny if they substantially impact a fundamental right or suspect class. Since the ordinance discriminates based on a vendor's years of operation, this heightened level of scrutiny does not apply. But if it did, the ordinance would fail strict scrutiny since the city's interest in reducing traffic can be achieved by narrower or less restrictive means (eg, limiting vendors' hours of operation).

(Choice C) There are no per se (ie, automatic) equal protection violations. Instead, all equal protection challenges must undergo the appropriate review—strict scrutiny, intermediate scrutiny, or rational basis.

(Choice D) The substantial relationship test (ie, intermediate scrutiny) does not apply here since the ordinance does not substantially impact a quasi-suspect class. But if this test did apply, it would require a substantial nexus between the ordinance and an important (not merely legitimate) government interest.

Educational objective:

When reviewing an equal protection challenge under the rational basis test, the court will give extreme deference to a legislature's right to define a law's objectives. And if those objectives are unclear, the law will be upheld if the court can conceive of *any* plausible justification for the law.

References

- New Orleans v. Dukes, 427 U.S. 297, 305 (1976) (upholding a city ordinance containing a grandfather clause that discriminates against vendors that have been in operation for less than eight years).

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