

A state law provides that a person who has been divorced may not marry again unless he or she is current on all child-support payments. A woman who was refused a marriage license pursuant to this law sued the appropriate state officials.

What standard should the court apply in reviewing the constitutionality of this law?

- A. The state must show that the law is necessary to serve a compelling government interest.
- B. The state must show that the law is substantially related to an important government interest.
- C. The woman must show that the law serves no important public purpose.
- D. The woman must show that the legislature did not have a rational basis for enacting the law.

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

A government action that treats similarly situated individuals differently can be challenged under the **equal protection clause**. The standard under which a court will review this challenge depends on the alleged **discrimination**. A law that discriminates against a **suspect class** or substantially impacts a **fundamental right** (eg, marriage) will be subject to **strict scrutiny**.

Here, a state law discriminates against divorced persons by requiring them to be current on all child-support payments before remarriage—thereby substantially impacting the

fundamental right to marry. As a result, the court will review that law under the strict scrutiny standard and will only uphold it if the state proves that the law is necessary to serve a compelling government interest.

(Choices B & C) Only laws that impact a quasi-suspect class (ie, sex/gender, nonmarital birth) require the court to apply intermediate scrutiny. Under this standard of review, the *government* must show that the law is substantially related to an important government interest (eg, an important public purpose).

(Choice D) The woman would have had to show that the legislature did not have a rational basis for enacting the law (ie, rational basis review) if the law had *not* impacted a fundamental right, suspect class, or quasi-suspect class.

Educational objective:

Discriminatory laws that impact a fundamental right (eg, marriage) or suspect class must satisfy the strict scrutiny test—ie, the government must show that the law is necessary to serve a compelling government interest.

References

- U.S. Const. amend. XIV (equal protection clause).
- *Zablocki v. Redhail*, 434 U.S. 374, 387–88 (1978) (holding that strict scrutiny applies when state action impacts the fundamental right of marriage).

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