

To improve the quality of rental housing within its boundaries, a city proposed an ordinance requiring all new and existing rental-housing units to provide at least one full bathroom for each bedroom, plumbing and electrical hookups for a washer and dryer, and a covered parking space.

A majority of the owners of existing rental housing in the city opposed the ordinance. They argued that it would dramatically decrease the number of low-income rental-housing units because owners would be unable to raise rents enough to recoup the investment required to comply. Without denying these contentions, the city enacted the ordinance. A plaintiff who owns low-income rental housing has sued the city, claiming only that the ordinance is unconstitutional on its face.

Which of the following best states the burden of persuasion in this action?

- A. The city must demonstrate that the ordinance is necessary to serve a compelling state interest, because it adversely affects the fundamental right of rental-housing owners to use their property in the manner they deem most economically efficient.
- B. The city must demonstrate that the ordinance is necessary to serve a compelling state interest, because it will have a substantial and disproportionate negative impact on low-income persons.
- C. The plaintiff must demonstrate that the ordinance is not substantially related to an important state interest, because it requires some owners of rental housing to invest money that they will not be able to recoup from increased rents.
- D. The plaintiff must demonstrate that there is no rational relationship between the ordinance and any legitimate state interest, because the ordinance regulates economic activity of a type normally presumed to be within state regulatory authority.

## Explanation:

All state and local laws must comply with the **Fourteenth Amendment**, including the **substantive due process** and **equal protection** clauses. The substantive due process clause applies when a law impacts *all* persons, while the equal protection clause applies when a law impacts a *particular class* of persons. And under either clause, the challenged law must survive the appropriate level of scrutiny:

- **rational basis** scrutiny (default test) – requires the **challenger** to show that the law is **not rationally related** to any **legitimate state interest**
- **intermediate** scrutiny (quasi-suspect class) – requires the **state** to show that the law is **substantially related** to an **important state interest** *or*
- **strict** scrutiny (suspect class or fundamental right) – requires the **state** to show that the law is **necessary** to serve a **compelling state interest**.

Here, the city ordinance requires all rental-housing units to include certain amenities. Although this may have a substantial and disproportionate negative impact on low-income persons, wealth-based classifications are not a suspect or quasi-suspect class **(Choice B)**. And rental-housing owners do not have a fundamental right to use their property in any manner **(Choice A)**. Instead, the ordinance regulates the type of economic activity normally presumed to be within a state's authority. Therefore, the plaintiff has the burden to satisfy rational basis scrutiny.

**(Choice C)** The *city* would have to show that the ordinance *is* substantially related to an important government interest had the ordinance substantially impacted a quasi-suspect class.

## Educational objective:

Under the Fourteenth Amendment due process and equal protection clauses, most state and local laws are subject to rational basis review. This standard requires the challenger to demonstrate that the law has no rational relation to any legitimate state interest.

## References

- *Pennell v. San Jose*, 485 U.S. 1, 13–14 (1988) (applying rational basis scrutiny to a price-control ordinance since it does not impact a protected class or a fundamental right).

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