

A city school board issued a rule authorizing public school principals to punish, after a hearing, students who violate the board's student behavior code. According to the rule, violators of the behavior code may be punished in a variety of ways, including being required to sit in designated school-confinement rooms during all school hours, with their hands clasped in front of them, for a period of up to 15 school days.

A fifth-grade student in a city elementary school was charged with placing chewed bubble gum on a classmate's chair, a violation of the student behavior code. He had never violated the code before and was otherwise an attentive and well-behaved student. After a hearing on the charges, the student's principal determined that the student had violated the behavior code in the manner charged and ordered the student to spend the next 15 school days in the school-confinement room with his hands clasped in front of him.

The student's parents file suit in federal court challenging, solely on constitutional grounds, the principal's action in ordering the student to spend the next 15 school days in the school-confinement room with his hands clasped in front of him.

Which of the following arguments would be most helpful to the student's parents in this suit?

- A. Because application of the school board rule in this case denies the student freedom of movement and subjects him to bodily restraint in a manner grossly disproportionate to his offense and circumstances, it violates the due process clause of the Fourteenth Amendment.
- B. Because the school board rule is enforced initially by administrative rather than judicial proceedings, it constitutes a prohibited bill of attainder.
- C. Because the school board rule is substantially overbroad in relation to any legitimate purpose, it constitutes a facial violation of the equal protection clause of the Fourteenth Amendment.
- D. Because the school board rule limits the freedom of movement of students and subjects them to bodily restraint, it denies them a privilege and immunity of citizenship guaranteed them by Article IV, Section 2.

## Explanation:

### Fourteenth Amendment protections

Clause	Applicability
<b>Equal protection</b>	Discriminatory treatment of similarly situated people
<b>Due process</b>	Substantive – deprivation of life, liberty, or property without adequate <i>justification</i>  Procedural – deprivation of life, liberty, or property without adequate <i>process</i>
<b>Privileges or immunities*</b>	Interference with rights of national citizenship

\*Rarely a correct answer.

**Substantive due process** prohibits the government from depriving persons of **life, liberty, or property** (eg, freedom of movement) without adequate justification. At a minimum, due process requires that any such **government action** be **rationally related** to a **legitimate government interest** (ie, rational basis review). A government action that is **grossly disproportionate** to a person's offense or circumstances **cannot satisfy** this standard of review.

Here, the principal applied a school board rule and ordered the student to spend 15 days in confinement after he placed gum on a classmate's chair. But the student had never violated the behavior code before and was otherwise attentive and well-behaved. As a result, the parents' best argument is that the application of the school board rule violates due process because it subjects the student to bodily restraint in a manner *grossly* disproportionate to his offense and circumstances.

**(Choice B)** State and federal governments are prohibited from passing bills of attainder—ie, legislative acts that punish a specific person or group without a judicial trial. But since this school board rule allows punishment of any student who violates the behavior code—not just a specific student or group—it is not a bill of attainder.

**(Choice C)** A rule is facially invalid (eg, substantially **overbroad**) if no application of the rule is constitutional. But the school board rule is not a facial violation of the **equal protection clause** since it applies equally to *all* students.

**(Choice D)** The Article IV privileges and immunities clause prohibits states from discriminating against out-of-state residents by denying them a right of **state citizenship**. This clause does not apply here since the student is a resident of the school district—not an out-of-state resident.

**Educational objective:**

Substantive due process prohibits government deprivations of life, liberty, or property that are not rationally related to a legitimate government interest—eg, grossly disproportionate punishments.

**References**

- Cooper Indus. v. Leatherman Tool Grp., 532 U.S. 424, 433–35 (2001) (explaining that the due process clause prohibits government punishments that are "grossly disproportional" to the offense).

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