

Congress enacted a statute that requires all males between the ages of 18 and 30 to register with the Selective Service Agency, which is responsible for drafting individuals to serve in the armed forces in the event of war. Males who fail to register are not eligible to receive federal student aid for college.

An 18-year-old male refused to register and was denied federal student aid pursuant to the statute. The student challenged the federal statute in federal court, arguing that the statute discriminated on the basis of sex and age.

Is the statute constitutional?

- A. No, because the statute violates the due process clause of the Fifth Amendment.
- B. No, because the statute violates the equal protection clause of the Fourteenth Amendment.
- C. Yes, because Congress has broad power to raise and regulate the armed forces.
- D. Yes, because federal student aid for college is a privilege, not a right.

## Explanation:

The necessary and proper clause allows Congress to take actions that are reasonably necessary to carry out its enumerated [Article I powers](#). As a result, Congress may establish and require citizens to register for a military draft to carry out its enumerated power to **raise and regulate the U.S. armed forces**.<sup>\*</sup> However, Congress must still **comply with other constitutional provisions** when exercising this broad power, including the **equal protection component** of the **Fifth Amendment** due process clause.

This component applies when the federal government discriminates against similarly situated persons. **Sex-based discrimination** is subject to **intermediate scrutiny**, which requires the government to show that its action is substantially related to an important government interest. This standard is met here because the U.S. Supreme Court held in *Rostker v. Goldberg* that a male-only requirement for military draft registration is substantially related to the government's important interest in national defense.

**Age-based discrimination** is subject to mere **rational basis scrutiny**, under which the challenger need only show that the challenged government action is not related to a legitimate government interest. Since the government will be able to overcome the higher hurdle of intermediate scrutiny to justify its sex-based discrimination, the student's age discrimination claim will also fail. Therefore, the statute complies with the Fifth Amendment due process clause and is constitutional **(Choice A)**.

<sup>\*</sup>Congress also has the power to declare war and authorize the President to call state National Guard units into action without the approval of the state governor to execute federal laws, suppress insurrections, and repel invasions.

**(Choice B)** The Fourteenth Amendment equal protection clause applies to discrimination by *state* governments, not the *federal* government.

**(Choice D)** Due process protections historically extended to rights—not privileges. But this distinction has been abandoned, so it is irrelevant whether federal student aid for college is a privilege or a right.

## Educational objective:

Congress has broad power to raise and regulate the U.S. armed forces, including establishing and requiring citizens to register for a military draft. When exercising this power, Congress does not violate the equal protection component of the Fifth Amendment by restricting registration to males in a specified age range.

## References

- U.S. Const. art. I, § 8 (power to raise and regulate armed forces).
- *Rostker v. Goldberg*, 453 U.S. 57, 83 (1981) (holding that Congress can use its broad authority to raise and regulate the armed forces to require only males in a certain age range to register for a military draft).

### Fifth Amendment due process challenge (equal protection principles)

