

A city zoning ordinance requires that anyone who proposes to operate a group home obtain a special-use permit from the city zoning board. The zoning ordinance defines a group home as a residence in which four or more unrelated adults reside.

An individual applied for a special-use permit to operate a group home for convicted felons during their transition from serving prison sentences to their release on parole. Although the proposed group home met all of the requirements for the special-use permit, the zoning board denied the individual's application because of the nature of the proposed use.

The individual sued the zoning board seeking declaratory and injunctive relief on constitutional grounds.

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

- A. Because housing is a fundamental right, the zoning board must demonstrate that denial of the permit is necessary to serve a compelling government interest.
- B. Because the zoning board's action has the effect of discriminating against a quasi-suspect class in regard to a basic subsistence right, the zoning board must demonstrate that the denial of the permit is substantially related to an important government interest.
- C. Because the zoning board's action invidiously discriminates against a suspect class, the zoning board must demonstrate that denial of the permit is necessary to serve a compelling government interest.
- D. Because the zoning board's action is in the nature of an economic or social welfare regulation, the individual seeking the permit must demonstrate that the denial of the permit is not rationally related to a legitimate government interest.

Explanation:

State and municipal (eg, city) government actions that treat similarly situated persons differently (ie, discriminate) can be challenged under the Fourteenth Amendment **equal protection clause**. To comply with this clause, the challenged action must satisfy the appropriate level of scrutiny:

- **rational basis** scrutiny (default test) – the **challenger** has the burden to prove that the government action is **not rationally related** to a **legitimate government interest**
- **intermediate** scrutiny (quasi-suspect class) – the **government** has the burden to prove that its action is **substantially related** to an **important government interest** *or*
- **strict** scrutiny (fundamental right or suspect class) – the **government** has the burden to prove that its action is **necessary** to serve a **compelling government interest**.

Here, the zoning board denied the individual's application for a permit to operate a group home for convicted felons—even though the proposal met all the permit requirements. The denial was discriminatory because it was based solely on the nature of the individual's proposed use. But housing is not a fundamental right (**Choice A**), and convicted felons are not a quasi-suspect or suspect class (**Choices B & C**). As a result, the individual must show that this economic or social welfare regulation does not satisfy rational basis scrutiny.

Educational objective:

Equal protection challenges that do not involve a fundamental right, quasi-suspect class, or suspect class are reviewed under rational basis scrutiny. This level of scrutiny requires the challenger to show that the government action is not rationally related to a legitimate government interest.

References

- City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439–41 (1985) (explaining that discriminatory economic and social regulations are analyzed under rational basis scrutiny).

Copyright © 2014 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

