

A city passed an ordinance requiring individuals to obtain a license in order to care for children under the age of 12 for pay. City officials who promoted the ordinance said that the licensing process would ensure that child-care workers were adequately regulated for the health and safety of the city's children. To receive a license, the ordinance requires an individual to complete 10 hours of instruction in child care, undergo a background check, and pay a \$100 fee. The ordinance affects women disproportionately to men, because female child-care workers far outnumber male child-care workers in the city.

Is the ordinance constitutional?

- A. No, because it has a disparate impact on women without a showing that the ordinance is necessary to serve a compelling government interest.
- B. No, because it infringes on the freedom of contract without a compelling government interest.
- C. Yes, because any burden it imposes is clearly outweighed by an important government objective.
- D. Yes, because it is rationally related to a legitimate government objective.

Explanation:

Discriminatory laws challenged under the **equal protection clause** are generally subject to rational basis scrutiny, which requires that a law be **rationally related** to a **legitimate government objective**. But heightened scrutiny is used when a law (1) substantially impacts a **fundamental right** or (2) **intentionally discriminates** against a suspect or **quasi-suspect class**. Intentional discrimination can be seen on a law's:

- **face** – the language of the law distinguishes between different classes (intent *presumed*)
- **application** – a facially neutral law is *purposefully* applied differently to different classes *or*
- **motive** – an otherwise neutral law was *enacted* to disproportionately impact a protected class.

Here, although the ordinance disproportionately affects women (quasi-suspect class), it is not subject to heightened scrutiny since there is no evidence that this discrimination was *intentional*. That is because the ordinance:

- requires that *all* child-care workers obtain a license (no facial discrimination)
- is applied *equally* to men and women (no discriminatory application) *and*
- was not enacted to target women (no discriminatory motive).

And since the ordinance is rationally related to the government's legitimate interest in the health and safety of children, it is constitutional.

(Choice A) The city would have had to prove that the ordinance was necessary to serve a compelling government interest (ie, strict scrutiny) had it substantially impacted a fundamental right or intentionally discriminated against a suspect class. Since the ordinance does neither, it need only survive rational basis review.

(Choice B) The freedom of contract is protected by the **contracts clause**, which restricts state and local legislatures from impairing *existing* contracts. Since the ordinance affects the ability to enter into *future* contracts for child-care services, it does not violate this clause.

(Choice C) Had the ordinance intentionally discriminated against women, the city would have had to prove that the ordinance is substantially related to an important government objective (ie, intermediate scrutiny)—not that this objective clearly outweighs any burden the ordinance imposes.

Educational objective:

Heightened equal protection review is appropriate when a law intentionally discriminates—on its face, in its application, or in its motive—against a quasi-suspect or suspect class.

References

- U.S. Const. amend. XIV (equal protection clause).

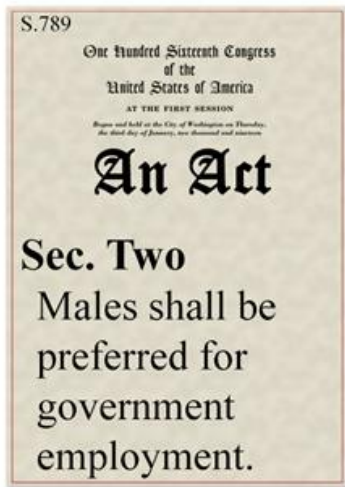
- Pers. Adm'r of Mass. v. Feeney, 442 U.S. 256, 274 (1979) (explaining that a neutral law's disparate impact on a quasi-suspect or suspect class, standing alone, is insufficient to require heightened scrutiny).

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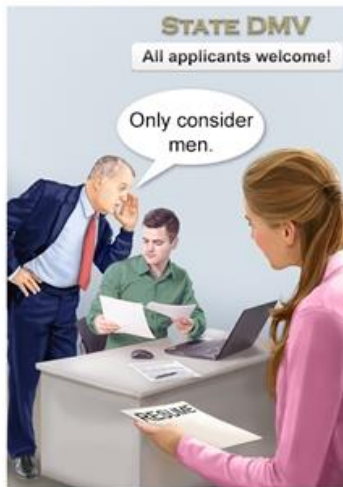
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Intentional discrimination

Facial discrimination



Discriminatory application



Discriminatory impact

