

A public high school has had a very high rate of pregnancy among its students. In order to assist students who keep their babies to complete high school, the school has established an infant day-care center for children of its students, and also offers classes in child care. Because the child-care classes are always overcrowded, the school limits admission to those classes solely to students who are the mothers of babies in the infant day-care center.

A male student at the high school has legal custody of his infant son. The school provides care for his son in its infant day-care center, but will not allow the student to enroll in the child-care classes. He brings suit against the school challenging, on constitutional grounds, his exclusion from the child-care classes.

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

- A. The male student must demonstrate that the admission requirement is not as narrowly drawn as possible to achieve a substantial governmental interest.
- B. The male student must demonstrate that the admission requirement is not rationally related to a legitimate governmental interest.
- C. The school must demonstrate that the admission policy is substantially related to an important governmental interest.
- D. The school must demonstrate that the admission policy is the least restrictive means by which to achieve a compelling governmental interest.

Explanation:

A government action that treats similarly situated persons differently may be challenged under the **equal protection clause**. The action will only be deemed constitutional if there is adequate justification for the alleged **discrimination**. A law that discriminates based on **gender or nonmarital birth** (ie, quasi-suspect classes) is presumptively invalid unless it survives **intermediate scrutiny**—ie, the **government** demonstrates that the law is **substantially related** to an **important government interest**.

Here, a public high school offers child-care classes to students with children (government action). But enrollment is limited to female students with children in the school's infant day-care center (gender discrimination). And since the male student was excluded from these classes, the admission policy will only be found constitutional if the school meets its burden of persuasion under intermediate scrutiny.

(Choice A) The male student would have had the burden to prove that there was no adequate justification for the admission policy if rational basis review applied. And there is no burden of persuasion that requires proof that a government action be as narrowly drawn as possible to achieve a *substantial* government interest.

(Choice B) Generally, a challenger must prove that the government action does not rationally relate to a legitimate government interest (ie, rational basis review). But this burden of persuasion does not apply when the government action impacts a fundamental right, suspect class, or quasi-suspect class (as seen here).

(Choice D) The school would have had to demonstrate that the admission policy is the least restrictive means to achieve a compelling government interest (ie, strict scrutiny) had the policy impacted a fundamental right or suspect class. But here, the policy affected a *quasi-suspect* class (gender).

Educational objective:

A government action challenged under the equal protection clause is subject to intermediate scrutiny if it discriminates against a quasi-suspect class (ie, sex/gender, nonmarital children). Intermediate scrutiny requires the government to prove that its action is substantially related to an important government interest.

References

- U.S. Const. amend. XIV (equal protection clause).
- *Craig v. Boren*, 429 U.S. 190, 197 (1976) (holding that state discrimination based on sex/gender places the burden on the state to show that its action is substantially related to an important government interest).

Copyright © 1997 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Equal protection analysis

