

Congress enacted a statute authorizing the denial of all federal funding to public school districts in which a specified percentage of the students enrolled in the public schools fail to pass a national achievement test. According to the terms of the federal statute, the first national achievement test was scheduled for administration five years from the effective date of the statute.

After reviewing then-current levels of public school student performance, the officials of a state became concerned that several of its public school districts would lose their federal funding after the administration of the first national achievement test. Then-current levels of private school student performance were substantially higher.

In order to improve the chances of those school districts retaining their federal funding, the state recently enacted a law that requires all children of elementary and secondary school age to attend the schools operated by their respective local public school districts. The law is to take effect at the beginning of the next school year.

Parents of children enrolled in private schools within the state have filed suit to challenge the constitutionality of this state law.

Should the court uphold the law?

- A. No, because it is not necessary to further a compelling state interest.
- B. No, because it is not rationally related to a legitimate state interest.
- C. Yes, because it is necessary to further a compelling state interest.
- D. Yes, because it is rationally related to a legitimate state interest.

Explanation:

Fourteenth Amendment **substantive due process** principles prevent states from depriving individuals of life, liberty, or property without adequate justification. State laws that substantially impair a **fundamental right**—eg, the **right to privacy**, which encompasses parents' right to control their children's upbringing and education*—must undergo **strict scrutiny**. This difficult test requires the **state** to show that its **law is necessary** to achieve a **compelling state interest**.

Here, the state law substantially impairs parents' fundamental right to control their children's upbringing and education by requiring all children to attend public school. And though the state may have a compelling interest in raising test scores to retain federal funding, the law is *not necessary* to further that interest. This is because the state can do so with less restrictive measures—eg, improving teaching and test preparation in public schools (**Choice C**). Therefore, the law should not be upheld under strict scrutiny.

*The right to education is an ordinary right that is subject to rational basis review. But this right has not been impaired by the state law because each child is still receiving an education through the public school system.

(Choices B & D) The law *is* rationally related to the state's legitimate interest in raising test scores to retain federal funding. But the easy-to-pass rational basis test does not apply here since the law substantially impairs a fundamental right.

Educational objective:

Laws that substantially impair a fundamental right—eg, parents' right to control their children's upbringing and education—can be challenged on substantive due process grounds. Such laws are reviewed under strict scrutiny and rarely survive.

References

- *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925) (holding that a law eliminating private schools violates the fundamental right of parents to direct the upbringing and education of their children).

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Substantive due process

