

A state law requires that anyone convicted for the second time of a sex offense serve a specified minimum prison sentence and be sterilized. Statistics show that 50% of those convicted of sex offenses in the state over the past five years are members of racial minority groups, whereas the members of those groups account for only 15% of the state's general population. A significant majority of convicted sex offenders are male.

Which of the following would be the strongest argument in challenging the constitutionality of the law under the equal protection clause of the Fourteenth Amendment?

- A. The requirement of sterilization deprives a select group of persons of a fundamental right, and it is not necessary to serve a compelling governmental interest. (68%)
- B. The requirement of sterilization has a disproportionate impact on men, and it is not substantially related to an important governmental interest. (5%)
- C. The requirement of sterilization has a disproportionate impact on racial minorities, and it is not necessary to serve a compelling governmental interest. (14%)
- D. The requirement of sterilization is not rationally related to a legitimate governmental interest. (10%)

Incorrect

Correct answer A

68% Answered correctly

04 mins, 11 secs Time Spent

2023 Version

### Explanation:

A state law that discriminates against similarly situated persons can be challenged under the Fourteenth Amendment **equal protection clause**. The standard under which a court will review this challenge depends on the alleged discrimination. A **discriminatory law** that **substantially impacts a fundamental right**—eg, the right to privacy, which includes the **right to procreate**—must satisfy **strict scrutiny**. This imposes a difficult burden on the state to prove that the law is **necessary** (ie, the least restrictive means) to achieve a **compelling state interest**.

Here, the state law discriminates against twice-convicted sex offenders by requiring them to be sterilized. The requirement of sterilization deprives this select group of persons of their fundamental right to procreate, so the law is subject to strict scrutiny. And since it is unlikely that the state can meet the difficult task of proving that the law is necessary to serve a compelling governmental interest, this is the strongest argument to challenge the law under the Fourteenth Amendment equal protection clause.

**(Choice B)** Laws that intentionally discriminate against a **quasi-suspect class** (eg, sex/gender) are subject to intermediate scrutiny. But disparate impact alone does not equate to **intentional discrimination**. Therefore, the fact that the law disparately impacts men because they constitute a significant majority of convicted sex offenders does not trigger intermediate scrutiny.

**(Choice C)** The law has a disproportionate impact on racial minorities since they constitute 50% of convicted sex offenders but only 15% of the general population. However, the law is not subject to strict scrutiny on this basis because there is no indication that it was enacted to *intentionally* target this **suspect class**.

**(Choice D)** The challenger must show that the government action is not rationally related to a legitimate governmental interest when the action does *not* affect a fundamental right, suspect class, or quasi-suspect class (not seen here).

### Educational objective:

Under the equal protection clause, a discriminatory law that substantially impacts a fundamental right—eg, the right to privacy, which includes the right to procreate—is unconstitutional unless the government shows that the law is necessary to achieve a compelling government interest.

### References

*Skinner v. State of Okla. ex. rel. Williamson*, 316 U.S. 535, 541 (1942) (holding that a state law requiring forced sterilization of criminals violated the Fourteenth Amendment equal protection clause).

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## Levels of scrutiny under equal protection clause

