

Due Process and Equal Protection –Background

Clause (14th Amendment, section one):

“...nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

- Applies to the states through this Amendment
- Applies to the federal government through the Fifth Amendment (“nor be deprived of life, liberty, or property, without due process of law”)
- Does not apply to private citizens through either Amendment

Due Process and Equal Protection –Background

Due Process Clause:

- **Procedural Due Process:** A person is entitled to a fair hearing before a fair court before being deprived of a right
- **Substantive Due Process:** the government must show an adequate justification before it can take away a person's right,

Equal Protection Clause:

- The government cannot discriminate in any law or action against a particular group of people or give preferential treatment to a particular group of people unless it has an adequate justification for doing so.

Levels of Scrutiny

Applicable for both due process and equal protection

Rational Basis Review (usually a green light):

- the law or action must be *rationaly related*
- to a *legitimate* government interest

Medium Scrutiny:

- the law or action must be *substantially related*
- to an *important* government interest

Strict Scrutiny (usually a death knell):

- the law or action must be *narrowly tailored* (necessary)
- to achieve a *compelling* government interest

The image features a white background with a pattern of light blue, semi-transparent circles of various sizes scattered across it. The top and bottom edges of the image are framed by a solid dark blue border.

QUIZ TIME!

Fundamental vs. Non-Fundamental Rights

Rule:

For a government regulation of a fundamental right to stand, it must pass strict scrutiny

For a government regulation of a non-fundamental right to stand, it must only pass rational basis review



Fundamental vs. Non-Fundamental Rights

Fundamental Rights	Non-Fundamental Rights
<ul style="list-style-type: none">○ Privacy; which includes:<ul style="list-style-type: none">- right to marry- right to use birth control- right to raise one's children- right to procreate- right to refuse medical treatment○ Travel between states○ Vote / equal representation○ Freedom of speech○ Freedom of religion○ Freedom of association	<ul style="list-style-type: none">○ Economic rights; including:<ul style="list-style-type: none">- right to a certain salary- right to trade in commerce- right to run your own business as you see fit- right to practice a specialty (e.g. doctor or lawyer)○ Right to public education○ All rights not on the "fundamental" list