

Equal Protection

The Fourteenth Amendment of the United States Constitution¹ provides that “[n]o state shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

- The application of this clause constitutes a control on how various classifications (not only those based on race, but also those based on other attributes) can be legitimately used by the government.
- Like due process protection, the “equal protection” applies to governmental action, but generally not to action taken by private individuals.
- The issue of equal protection may arise when the government allows people in one classification to do a thing, but denies this right to people in another classification where there is no legitimate and applicable distinction between the classifications.
- Generally speaking, equal protection is intended to have the government treat people in comparable circumstances similarly. One of its purposes is to prevent discrimination.
- Depending on the circumstances, violations of equal protection are analyzed under one of three standards of review:
 - (1) In those cases in which an ordinance or its application utilizes a classification that does not involve either “suspect classification” (e.g., race or national origin) or a “quasi-suspect” category (e.g., gender), and in those cases in which an ordinance or its application utilizes a classification that does not impair a “fundamental right” (e.g., First Amendment rights), then the “mere rationality” test is used. All that is required is that the classification used by the government must conceivably bear some rational relationship to a legitimate governmental purpose sought to be achieved.
 - (2) When an ordinance or its application involves a “suspect” classification or utilizes a classification that impairs a “fundamental right,” it will be strictly scrutinized and will be upheld only if there is a compelling interest to be achieved, and the classification is necessary to further that interest. This “strict scrutiny” test is the same as that for substantive due process when a “fundamental right” (e.g., the right to privacy) is involved.
 - (3) Under some limited classifications (e.g., gender and illegitimacy), an intermediary test is applied. This test has a higher standard than the “mere rationality” test but not one as demanding as the “strict scrutiny” test. Under this middle level test, the classification used must be “substantially related” to an “important” governmental objective.

¹ The Pennsylvania Constitution builds on the Fourteenth Amendment through Article I, Sections 26 and 28; Article III, Section 32; and Article VIII, Section 1. These provisions have been interpreted to provide an equivalent or greater level of equality than the minimum guaranteed by the United States Constitution.

Illustration: Equal protection issues can arise in the area of local taxation, because courts apply both the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, as well as the Pennsylvania requirement that all taxes shall be uniform upon the same class of subjects. In fact, in the context of taxation, the principles of “equal protection” are similar to those applied under “uniformity” in that classifications must be reasonable, and the tax should be consistent within each class. For example, in *Tredyffrin-Easttown School District v. Valley Forge Music Fair, Inc.*,² a music fair producer asserted that a systematic, unequal enforcement of an amusement tax violated the Equal Protection Clause of the United States Constitution and the Uniformity Clause of the Pennsylvania Constitution. Not only were enforcement actions not commenced against other amusements that refused to pay the tax for months or years, but the district also systematically accepted tax payments from other amusements based on unaudited figures or records while auditing the Music Fair producer's books and records. Furthermore, the district secretly settled claims for liabilities with other amusements while denying this compromise option to the Music Fair producer. In that case the court, in effect, found that there was no rational basis for different treatment of various, similarly situated taxpayers, specifically finding that there was selective enforcement of an amusement tax by a school district, which violated the music fair producer's equal protection rights.³

² 156 Pa. Cmwlt. 178, 627 A.2d 814 (1993), *appeal denied*, 538 Pa. 638, 647 A.2d 513 (1993).

³ For an additional discussion of the rational basis standard in taxing classifications, see *Beattie v. Allegheny County*, 847 A.2d 185 (Pa. Cmwlt. 2004); *aff'd*, 907 A.2d 519 (Pa. 2006); *Clifton v. Allegheny County*, 969 A.2d 1197 (Pa. 2009); *Valley Forge Towers Apartments N, LP v. Upper Merion Area School District*, 163 A.3d 962 (Pa.2017); *Kennett Consolidated School District v. Chester County Board of Assessment Appeals*, 228A.3d_29, (Pa.Cmwlt. 2020).