

State Action Doctrine

The constitution applies only to the government. Private doesn't apply unless entanglement or public function.

Public Function: private entity performing task **traditionally and exclusively** done by government.

Entanglement: If the gov. **affirmatively authorizes, encourages, or facilitates** unconst. conduct.

The Justices

Conserv Sotomayor; Kagan; Jackson

Liberal Roberts; Kavanaugh; Barrett; Alito; Gorsuch; Thomas

Equal Protection

Methods of Attack: as applied: impact and purpose; on its face

On its Face: creates a class on its face, discriminates

As Applied: facially neutral but impact disc. circum evidence; history; obvious; invidious; -- **if same action anyways with other purpose its fine**

Race: Strict - dont like quota or set aside unless proven past disc; only long enough until remedied; morality not compelling interest;

Affirmative Action: Strict - compelling purpose: remedy past disc or promote diversity; narrow tailor; can be considered but not sole basis; quota only to remedy and end once fixed;

Fundamental rights: marry; procreate; custody; family together; control upbringing; contraceptive; sex; abortion: **UNDUE BURDEN** no right to abortion; right to refuse treatment; guns; travel/vote; education not fundamental; access to courts

Abortion: rational basis

Procedural Due Process

Two Types of Process: Notice and Hearing

Three Question Framework: (1) Deprivation? (2) Liberty/Property? (3) What Procedures are Required?

Deprivation: Intentional or reckless not negligence; if state provides tort relief then no deprivation for post-deprivation remedy; relinquishing right cannot be condition of receiving a privilege

Liberty: sig. government restraint; harm to rep alone not enough needs some other loss; prisoners rarely have liberty interest; apply to combatants; parent custody; deportation

Property: Traditional notions or legitimate entitlement: reasonable expectation of continued receipt; apply to: welfare; employment K (not at will); public education; license;

Procedure: Depends on nature of right; three factors: **importance of interest:** higher = more procedure; **risk of error and value of additional:** if additional leads to more accurate, reduce risk, then allowed; balance risk of error with value of proposed procedure; **gov burden:** costly; more burdensome = less likely to require

Forfeiture: Req. Notice and hearing: forfeiture, parental custody; welfare; not req hearing: disability

Levels of Scrutiny

Strict Scrutiny: (1) necessary to achieve (2) Compelling interest; (3) narrowly tailored - least restrictive

Applies to: race, national origin, alienage, - Gov burden of proof usually lose

Rational Basis: (1) rationally related (2) legitimate gov. interest

Applies to: Alienage related to self gov/democratic; age; disability; wealth; social; economic; all other; gov almost always win; challenger has burden

Levels of Scrutiny (cont)

Intermediate Scrutiny: (1) substantially related; (2) important gov. purpose

Gender; illegitimacy;; gov burde of proof; actual purpose; narrowly tailored not best way

Rational with teeth: sex disability - need to show stereotype invidious

