

State Constitutional Law 08 - Equality

Review

Federal Constitutional Backdrop

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State ... deny to any person within its jurisdiction the equal protection of the laws.”

U.S. Constitution, Fourteenth Amendment.

Tiers of Scrutiny

/- Rational basis

/- Intermediate scrutiny

/- Strict scrutiny

Sheff v. O'Neill

678 A.2d 1267 (Conn. 1996)

Malabed v. North Slope Borough

70 P.3d 416 (Alaska 2003)

Commonwealth v. Penn. Interscholastic Athletic Ass'n

334 A.2d 839 (Pa. Commw. Ct. 1975)

State v. Rivera

612 P.2d 526 (Haw. 1980)

Conceptions of Equality

Equal treatment → Non-discrimination from the state

Equal opportunity → Minimum state obligation to address existing inequality

Equal outcome → State guarantee to fix existing inequality

**Why put equality in a state
constitution?**

What's the point?

Driscoll v. Corbett

69 A.3d 197 (Pa. 2013)

“Justices, judges and justices of the peace shall be retired upon attaining the age of seventy years.”

Article V, Pennsylvania Const.

“All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.”

Article I, §1 Pennsylvania Const.

Arneson v. State

864 P.2d 1245 (Mont. 1993)

Can receive increase

IF retired AND (retiree or beneficiary) is 55 or older

IF not retired AND receiving disability or survivorship benefits

“The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws.”

Art II. § IV Montana Const.

Gartner v. Iowa Dep't of Public Health

830 N.W.2s 335 (Iowa 2013)

“All men and women are, by nature, free and equal.”

Iowa Const. Art 1. § 1

“All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.”

Iowa Const. Art 1. § 6

Three Justifications

1. Accuracy

2. Efficiency

3. Paternity

AFSCME Iowa Council 61 v. State

928 N.W.2d 21 (Iowa 2019)

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Justifications

1. Labor peace
2. Health and safety
3. Justification for 30% line: Need to draw it somewhere