CHAPTER 11

EQUAL PROTECTION

A. GENERAL PRINCIPLES

[K1] The Fourteenth Amendment to the Constitution says: “Nor shall any state . . .
deny to any person within its jurisdiction the equal protection of the laws.” Although
the Fifth Amendment, unlike the Fourteenth, does not contain an equal protection
clause, “the Due Process Clause of the Fifth Amendment contains an equal protection
component prohibiting the United States from invidiously discriminating between indi-
viduals.”1 Although both Amendments require the same type of analysis, . . . the two
protections are not always coextensive. Not only does the language of the two
Amendments differ, but more importantly, there may be overriding national interests
which justify selective federal legislation that would be unacceptable for an individual
State. On the other hand, when a federal rule is applicable to only a limited territory,
such as the District of Columbia, or an insular possession, and when there is no special
national interest involved, the Due Process Clause has the same significance as the Equal
Protection Clause.”2

[K2] The equal protection guarantee “creates no substantive rights. . . . Instead, it
embodies a general rule that [government] must treat like cases alike but may treat
unlike cases accordingly.”3 The equal protection guarantee “does not prohibit legisla-
tion merely because it is special, or limited in its application to a particular geographi-
cal or political subdivision of the state.”4 If a legislative classification neither burdens a
fundamental right, such as the right to travel, nor is drawn upon inherently suspect dis-
tinctions,5 such as race or religion, it is accorded a strong presumption of validity, and

(1954). “[T]he Fifth and Fourteenth Amendments to the Constitution protect persons, not
5 In San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 28 (1973), the Court
identified the “traditional indicia of suspectness”: whether a group has been “saddled with such dis-
abilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of
political powerlessness as to command extraordinary protection from the majoritarian political process.”
(Emphasis added.)

In Plyler v. Doe, 457 U.S. 202, 216, n.14 (1982), the Court stated: “Several formulations might
explain our treatment of certain classifications as suspect. Some classifications are more likely
than others to reflect deep-seated prejudice, rather than legislative rationality in pursuit of some
legitimate objective. Legislation predicated on such prejudice is easily recognized as incom-
patible with the constitutional understanding that each person is to be judged individually and
the Court will uphold it so long as it bears a rational relation to some legitimate end.\(^6\) 

“By requiring that the classification bear a rational relationship to an independent and legitimate legislative end, [the Court] ensure[s] that classifications are not drawn for the purpose of disadvantaging the group burdened by the law.”\(^7\) That rational basis review in equal protection analysis is not a license for courts to judge the wisdom, desirability, or fairness of legislative choices.\(^8\) Further, a legislature need not “actually articulate at any time the purpose or rationale supporting its classification.”\(^9\) Instead, a classification “must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification;”\(^10\) it is “constitutionally irrelevant [what] reasoning in fact underlay the legislative decision.”\(^11\) Thus, “the burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it,”\(^12\) and “to convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker.”\(^13\) In this context, the defender of the classification “has no obligation to produce evidence to sustain the

is entitled to equal justice under the law. Classifications treated as suspect tend to be irrelevant to any proper legislative goal. Finally, certain groups, indeed largely the same groups, have historically been relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” (Emphasis added.) Further the Court noted: “We reject the claim that ‘illegal aliens’ are a ‘suspect class.’ . . . Unlike most of the classifications that we have recognized as suspect, entry into this class, by virtue of entry into this country, is the product of voluntary action. Indeed, entry into the class is itself a crime. In addition, it could hardly be suggested that undocumented status is a ‘constitutional irrelevancy.’” \(^{14}\) See also Cleburne v. Cleburne Living Ctr., Inc. 473 U.S. 432, 440 (1985): “These factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy.” (Emphasis added.)

In New York City Transit Authority v. Beazer, 440 U.S. 568 (1979), the Transit Authority had a policy against employing persons using narcotic drugs, including those receiving methadone maintenance treatment for curing heroin addiction. The Court noted that the challenged discriminatory line “is not one which is directed ‘against’ any individual or category of persons, but rather it represents a policy choice . . . . Because it does not circumscribe a class of persons characterized by some unpopular trait or affiliation, it does not create or reflect any special likelihood of bias on the part of the ruling majority. Id. at 592–93 (emphasis added).

In Lyng v. Castillo, 477 U.S. 635, 638 (1986), the Court said: “Close relatives are not a suspect or quasi-suspect class. As a historical matter, they have not been subjected to discrimination; they do not exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group; and they are not a minority or politically powerless.”


\(^{13}\) Nordlinger v. Hahn, 505 U.S. 1, 11 (1992).


