

*Essay Exam Question Grading Key*  
Prof. McDonald

**Issue**

I1 = Correct issue statement  
I2 = Incomplete issue statement  
I3 = Incorrect issue statement

**Rule**

R1 = Correct statement of governing legal principles  
R2 = Incomplete statement of same  
R3 = Incorrect statement of same

**Analysis**

A1 = Correct factual analysis  
A2 = Incomplete factual analysis  
A3 = Incorrect factual analysis

**Conclusion**

C1 = Correct conclusion  
C2 = Incomplete conclusion  
C3 = Incorrect conclusion

**Other Notations**

D = Did not follow directions or instructions provided on front of exam or as part of question.  
G = Good point or analysis.  
ORG = Need better IRAC organization and analysis (e.g., fully complete each issue before moving on to the next issue; do not “front load” rules—discuss them only where appropriate to each IRAC of a specific issue).  
Y = "Yes!" (as in "righto!").

2)

Was the 1995 building of the schools on the far north and far south ends of town a violation of equal protection?

The equal protection amendment of the const protects against the government making illegitimate classifications, and unfairly treating one group of people differently than another group.

Since the gov must make classifications of people into various groupings all the time, the courts apply RAtional basis to most groups, and heightened scrutiny only to classifications based on certain 'suspect classes'. Race and national origin are suspect classes, and gov actions which use classifications based on race/nat origin are treated to Strict Scrutiny.

Here the gov acted by building schools. There was a discriminatory impact in the gov action, bc white kids were predominantly attending the good schools, and hispanic kids predominantly attended the bad ones. However, in order to have an equal protection violation, the gov must have discriminatory Intent, not just impact. Here there is evidence that the gov acted w/ discriminatory Intent b/c all 5 of the school board members expressed concerns that the hispanics were "overwhelming the way of life of the community and our

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kids". That indicates that the board decided to build the schools where they did with an intent to discriminatorily impact the white and hispanic kids. However, that is not the end: if the gov acted w/ discriminatory intent, the gov can still avoid an equal protection violation upon a showing by the gov that it would have acted the way it did even without bad intent. Here, the neutral, nongovernment engineering firm, which had no knowledge of the racial mix of the community (presumably), looked only at legitimate factors: ground conditions, water supplies, bussing logistics, traffic and noise conditions -- and told the city that there were only 2 places to build schools. This means that even if there was no bad intent, the gov had no choice but to build the schools where they were. Thus, for the decision to build the schools on the north and south ends of town, there was no equal protection violation.

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*C. J. A.?*

*I 2* was the 2000 decision by the school board to look at the 3 factor-application when deciding whether a student could go to a school outside his 'quadrant' constitutional?

*A 2* The 3 factors were race/ethnicity, economic background, and location. Here the gov was classifying kids based on location and economic background and location, which are NOT suspect classes, and the ct will only give RB review to those decisions. Ends: for the economic classification the gov was trying to allow poor kids to go to a better school; for the location class the gov was trying to minimize school-travel in the district. Those are both legit gov ends.

Means: the gov was deciding where to place kids in schools by looking at their characteristics, which is a way to minimize travel and help poor kids -- this easily passes RB.

However, the gov also looked at RACE/ethnicity. When scrutinizing whether a gov decision that creates a classification based on race/ethnicity, the ct will apply SS. See Grutter, Gratz. That means that the gov ends must be compelling, and the means must be narrowly tailored.

Ends: the school wanted to diversify its schools. This can be a legit gov end, but as the ct noted in Seattle School District, it is not as compelling an end for younger kids as it is for college

kids b/c in college there is more constructive dialogue regarding cultures and past experiences than there is in elementary school. Here, the schools are High Schools, and kids in high school probably do discuss culture and backgrounds, so the gov probably does have a compelling state interest in providing students with a diverse educational system. However, the school also said that it wanted a 25/75% ratio in school population. The ct has held that ratios based on race/nat origin are NOT a proxy for diversity, and achieving a certain ratio is NOT a legit gov end. So this end is not compelling, and there is an equal protection violation. ) CS

Means: the means here are to look at a student's race/ethnicity, and use that as a factor in determining where to send the kid to school. The schools look at each individual applicant, which is important under Gratz, which held that there must be individualized attention to each student, and not a formulaic matrix which gives one race a standard benefit over anyone else. Here, there is no formula, rather it appears that the schools were using a Grutter kind of 'amorphous plus factor' to a candidate of minority, so that if the candidate can bring diversity to the school, then the candidate has a better chance of being admitted -- based on that individual's diversity. The gov's means are suff narrowly tailored to pass SS.

Conclusion: because the gov proposed an illegit end when it said it wanted to achieve a certain racial %, there is an illegit end; if the gov was only concerned w/ the goal of 'promoting a diverse educational environment for the benefit of all the student,' then it would have a legit end. But, w/ an illegit end, the gov actions fail SS.

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Is the regulation demanding that NCPOs admit other genders unconstitutional?

Under equal protection, gender is a somewhat suspect class, and classifications based on gender are given intermediate scrutiny in an ends/means review.

Ends: promote the treatment of all people as individuals in all areas of Sun City public life.' The ends must be important to pass intermediate scrutiny. Here, the ends are important b/c it

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is good for a healthy society to people to be treated as individuals. Under intermediate scrutiny, the ct will look to whether it really believes the stated ends are the real ends. I can hardly understand what it means for people to be treated as individuals. I guess it means that women must be treated with respect due to every person, and not treated discriminatorily as a second-class citizen b/c they are women. This is a legit end. HOWEVER, there is the fact that the council memver was heard to say 'it will server Boys right for sturring up so much trouble w/ their school lawsuit.'" Since this is intermediate scrutiny, teh ct will look to see if the stated purposes are real. Although only one of 7 was heard making this statement, there is evidence taht the only target of the gov's action was Boys b/c Boys was teh only organization that fell under teh Def of a NCPO. Additionally, there seems to be no other reason for making such a rule, b/c the boys home was doing good things, and it is reasonable that they don't admit women to an orphan's home, b/c of teh 'undesireable sexual conduct' reason (esp for young boys)--- why would the gov feel compelled to pass a statute directed at an orphanage unless it was trying to harrass it? Altogether, i think a judge would believe that the real purpose of the lawsuit was to harrass Boys for thier lawsuit agaisnt the schoolborad. As such, it is an illegit end, b/c the Boys had a right to bring their concerns to the courts. Thus, an equal protection violation.

AZ  
CB ( Means: here the means are the forced inclusion of women into male-dominated groups. Yes, this is a closely tailored way to achieve that purpose--when women are allowed to enter groups that are male dominated then there is less gender-inequality.

Can the Boys claim a freedom of expression thru assotion violation?

IS teh Boys home an expressive group? is it expressing a message? Under Boyscouts, the ct asks teh private group whether they are expressing a message, adn what the

message is, and defers to the group's answer. Here, the Boys teach self esteem, reliance and hard work. These are messages, so the Boys express a message, b/c if a person associates w/ Boys, the person will be associating herself with that message.

Will the association of women hinder the expression of the message? Here, there is no indication by the Boys that women will hinder that message, b/c a woman can express 'self esteem reliance and hard work' as well as a man. But the Boys don't want women b/c it will create undesirable sexual conduct. That could arguably be seen as a speech issue, bc the Boys desire to express their views on what sexual conduct is 'desireable' and what is not. By including women, the Boys might not be able to properly tell the boys the message. This, too, is unlikely, and the Boys did not claim this, so the ct will probably hold that there is not an impairment of the expressive activity of Boys.

No 1st am violation.

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