

The United States Constitution and the Equal Protection Clause

For young students (k -4th grade)

Part I. Introduction [2-3 minutes]

A. The Presenter

The presenter introduces himself/herself and explains very briefly what he/she does as an attorney.

B. The Topic

The presenter explains that today's discussion will be about the United States Constitution and the Bill of Rights, with an emphasis on the Equal Protection Clause.

Part II. Topic Overview

I. The Constitution [3-5 minutes]

- The goal should be to get students participating early so they remain focused. The presenter should try to ask questions throughout the overview.
- A. Begin by asking the class if anyone can explain what the United States Constitution is.
- B. Discuss the basics of the Constitution:
1. The Constitution is a document that contains a set of laws that govern our country. It is known as the "law of the land" [handout 1 – picture of constitution]
 2. The Constitution was drafted in 1787 and is now over 200 years old.
 3. The men who wrote the Constitution are called "The Framers." [handouts 2 and 3– picture of George Washington and the Framers] Ask who is in the

picture? George Washington was a “Framer” along with other famous people, including Benjamin Franklin and John Adams [see ALIES 2011 brochure].

4. The Constitution was created in order to construct America’s own government. [a blueprint of how our country’s government is supposed to operate]
5. The Constitution is what created the Congress, the Supreme Court, and the President [ask who the current president is?].
6. The Constitution has been changed from time to time. These changes are called “Amendments.”

II. The Bill of Rights [3-5 minutes]

- A. Some Amendments are called “The Bill of Rights,” which is a list of rights that belong to each one of us.
- B. [Can anyone name one of the Bill of Rights?] [If a student can name a right, ask the student to explain what he/she thinks it means]
- C. The more well-known rights in the Bill of Rights are:
 1. The Freedom of Speech – this gives us the freedom to say what we want without the fear of being penalized.
 2. The Freedom of Religion – this gives us the freedom to believe what we want to believe and prevents the government from supporting any specific religion.
- D. Another very important right that was included in the Constitution was the right to Equal Protection. [Has anyone ever heard that term before?]

III. The Equal Protection Clause [3-5 minutes]

- A. The Equal Protection Clause was included in the Constitution in 1868 [three years after our country Amended the Constitution to end slavery]

B. This Clause is the 14th Amendment to the Constitution and says:

No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

C. What this means is that a state must treat people fairly and cannot treat some people better than other people. Discrimination occurs when some people are treated differently than others because of their membership in a group, based on, for example, race, age, gender, or religion.

1. There have been many cases over the years about whether a particular governmental action violated the Equal Protection Clause. The most famous equal protection case is Brown v. Board of Education where the United States Supreme Court said that it was a violation of the Equal Protection Clause when the State of Kansas required black students and white students to attend separate schools.

D. There are times when it is alright for the government to treat people differently. Here are a couple examples.

1. Requiring out-of-state students to pay a different tuition amount than in-state students for a public college.
2. Treating professions (attorneys, doctors, accountants, etc.) differently for purposes of licensing and disciplinary proceedings.

IV. Classroom Exercises [reference sheet 1] [20-25 minutes]

Reference Sheet 1

Equal Protection Exercises:

Objectives

- To explore whether it is fair to treat everybody exactly alike or whether it's sometimes fair to treat certain people differently because of certain circumstances.

Section 1.

The goal of this section is to try to get the class to agree on how to generally define "fair" and "unfair."

The presenter can give examples to get the discussion started (If we're playing a game, is it fair to change the rules in the middle of a game?).

Ask students to give examples of what they may consider unfair.

Section 2.

*Break the class into two groups. One group will be advocating for why a particular example is fair, and the other group will advocate why it is unfair.

Review each item below with the students and ask how many think each situation is fair or unfair. Encourage the students to think and explain their reasons to back up their opinion. Tally the results on a chalkboard. Try to spend no more than 3-5 minutes per example.

- a. Students under the age of 10 get less homework than students who are 10 years old or older.
- b. Girls are not allowed to join the Boys baseball team.
- c. The school prohibits ipods/mp3 players in class, but allows cell phones.
- d. Students who come to school sick are not allowed to sit in the same area of the classroom with the students who are not sick.
- e. There are twice as many kids on the soccer team as there are positions. The coach plays the worst players more than the best players.

The goal of this exercise is to help students to understand the concept that there needs to be some basis (rationale or reasonable) for treating people differently in some circumstances.

Reference Sheet 2

The Equal Protection Analysis (reference for presenter)

*Depending upon the students' age, some of the information should be omitted.

The Equal Protection Clause of the Constitution

The Fourteenth Amendment provides that no state shall deny to any person equal protection under the law. That means it applies to a law or government practice, not to purely private matters. Obviously, the existence of a statute or ordinance establishes that the government is involved.

Once government involvement is established, courts use three different tests to determine whether the equal protection clause has been violated, depending upon the nature of the group or right involved. They are:

Strict Scrutiny Test

Applies to laws and practices that discriminate on the basis of race, national origin, alien status, or some fundamental right such as freedom of speech or religion. The government must show that it has a compelling interest (this means a very important reason), and that this governmental action is the least restrictive means to achieving its purpose and is narrowly tailored to advance this compelling interest.

Substantial Relationship Test

This intermediate scrutiny applies to government acts that classify on the basis of gender. The government must show an important reason to justify its classification. There must be a close relationship between the government's act and its purpose.

Rational Relationship Test

The lowest level of scrutiny. There must be a logical relationship between the classification and the law's or practice's purpose. The government's interest in discriminating must be a legitimate one.

Selected Federal Civil Rights Laws

The discussion may turn to some of the well-known laws that affect equal treatment of persons. Here is a quick look at several important ones:

The Civil Rights Act of 1964, amended in 1972, prohibits discrimination in public accommodations based on race, color, religion, or national origin. It prohibits discrimination based on race, color, sex, religion, or national origin (1) in employment by businesses with more than 15 employees; (2) by state and local governments and public educational institutions; and (3) in any program or activity receiving any federal funds.

The Age Discrimination in Employment Act of 1967, amended in 1978, prohibits arbitrary age discrimination of persons aged 40 and older by employers of 20 or more persons.

The Americans with Disabilities Act of 1990 prohibits discrimination against individuals with disabilities in employment, public services, public accommodations, telecommunications, and other activities