

TESTS USED BY THE FEDERAL COURT IN DECIDING DISCRIMINATION CASES

(Written by Dr. Isidore Starr, 1995)

When Congress or a state legislature passes a law which infringes on First Amendment rights or the Fourteenth Amendment Equal Protection of Laws Clause, federal judges and Justices of the Supreme Court apply one of three tests to determine their constitutionality.

THE RATIONAL BASIS TEST (THE MOST LENTIENT TEST)

A law is constitutional if there is a rational (reasonable) relationship between the purpose of the law and a legitimate governmental objective (protection of the lives, morals, health, welfare, and general safety of the people). Here, the interest of the courts is not on the wisdom of the law, but its relationship to what a legislature can do under the Constitution. The tendency here is to uphold the law, and the one who attacks it must show that it is capricious, arbitrary, or unreasonable. Today, this test is generally applied to economic and some social issues.

THE STRICT SCRUTINY TEST (THE STRICTEST TEST)

In cases involving fundamental rights (First Amendment Freedoms) and discrimination against minorities on the basis of race, religion, national origin, or ethnicity, the Justices use the Strict Scrutiny Test, which has two parts:

- 1) To be declared constitutional, the state must prove that it has a compelling reason for enacting the law; and
- 2) To be declared constitutional, the state must show that it has used the least restrictive means to achieve its objective.

The federal courts use strict scrutiny in the case of those minorities which have been the subject of historic discrimination. These groups have been referred to as "suspect classes."

THE INTERMEDIATE SCRUTINY TEST

Between the least restrictive test and the most restrictive test stands the Intermediate Scrutiny Test, which has been applied to cases involving gender and illegitimacy. Under this standard, the state must show that its action has a substantial relationship to an important governmental objective.

Intermediate Scrutiny was developed by Justice Brennan in *Craig v. Boren* (1976), which dealt with gender classification.