

Civil Liberties and Individual Rights

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Syllabus

- Updated syllabus online is **SUBJECT TO CHANGE!**
- Final paper outline now due March 10th
 - Please run topics by me **THIS WEEK!**
- Final class session will involve informal presentations of final papers (~5 minutes, slides optional)
 - Part of class participation component of grade

<http://bit.ly/PublicHealthLaw>



Public Comment Brief

- Topic: “Treatment of E-Cigarettes in the Mail” (U.S. Postal Service)
- Review the docket announcement and related materials for a Proposed Rule. Consult relevant legal, regulatory, and public health material to educate yourself about the context and implications for the proposed action.
- A structured “public comment” brief (5-7 pages) will be submitted to the agency by Monday, March 22, 2021 **(25% of grade)**
- NEW REQUIREMENT: a draft is due to me in Word format by March 15th so I can provide feedback before submission!
- Instructions are now posted on the syllabus page



Final Paper

- The final paper on a pre-approved topic should be 16-18 pages in length and contain appropriately formatted BlueBook references. **(50% of grade)**
- A proposal outlining the topic significance, key questions, expected outcomes and preliminary sources will be due before class on Monday, March 8, 2021
- Sample proposal and final paper instructions are now posted to the syllabus page
- Please clear the topic with Dr. Sinha prior to beginning the proposal. Use the Mariner casebook as a resource for paper ideas.
- The final paper will be due **by 3pm** on Friday, May 7, 2021



#PHLaw on Twitter

- Engage with course materials and current topics in patent law and policy by joining the conversation on Twitter!
- Counts toward participation!
- Be sure to tag the following in your tweets:
 - @DrSinhaEsq
 - #PHLaw
- Optional additional tags: @PHLawWatch, @PHLR_Temple, @NetworkforPHL, #PublicHealthLaw, #LawTwitter
- Student tweets will be highlighted at the beginning of each class
- If you want help getting started on Twitter, schedule time during office hours



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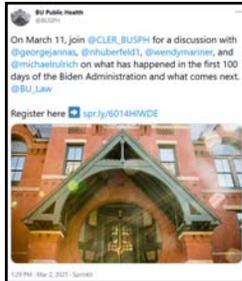




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Review: Interstate Commerce

- Use of the channels of interstate commerce
 - *e.g.*, highways, hotels
- Instrumentalities of or persons or things in interstate commerce
 - *e.g.*, railroads, airlines, household goods
- Intrastate activities with a substantial effect on interstate commerce
 - *e.g.*, illicit drugs, goods or items moving in commerce that need to be regulated in the aggregate



Review: Tax & Spend Power

- Congress can *indirectly* regulate (and/or influence policy) through taxing and spending powers
- Congress can also spend federal money *directly*
- But Congress cannot *force* states to act (federalism principles; *NFIB v. Sebelius*)



Civil Liberties, Equality, and Individual Rights



Civil Liberties, Equality, and Individual Rights

- Strong evidence for a tie between public health and civil rights
- Attention to social determinants of health and social justice fortifies that connection



Individual Rights Analysis

- (1) Is it a FUNDAMENTAL RIGHT?
- **Yes:** strict scrutiny
 - **No:** rational basis review



Individual Rights Analysis

- (1) Is it a FUNDAMENTAL RIGHT?
- (2) Is the right INFRINGED?
- Sometimes clear: prohibition on exercising the right (*e.g.*, prohibiting speech in a public forum)
 - Sometimes difficult: burdening the exercise of a right (*e.g.*, does marriage penalty in tax law infringe the right to marry?)



Individual Rights Analysis

- (1) Is it a FUNDAMENTAL RIGHT?
- (2) Is the right INFRINGED?
- (3) Is there a SUFFICIENT JUSTIFICATION for the law?
 - If strict scrutiny, then the governmental justification must be *compelling*
 - If rational basis review, then the justification need be *legitimate*

Individual Rights Analysis

- (1) Is it a FUNDAMENTAL RIGHT?
- (2) Is the right INFRINGED?
- (3) Is there a SUFFICIENT JUSTIFICATION for the law?
- (4) Are the means SUFFICIENTLY RELATED to the ends?
 - If fundamental right, the means must be *necessary* or *narrowly tailored* to the compelling purpose of the law (the least restrictive alternative)
 - Otherwise, means must be *reasonable* to achieve a legitimate purpose

Equal Protection Analysis

- (1) What is the CLASSIFICATION?
 - Does classification affect immutable characteristics or implicate historic discrimination?
 - Sometimes clear on face of law
 - *e.g.*, no women can be doctors
 - Sometimes law is “facially neutral,” but purpose or effect is discriminatory
 - *e.g.*, requirement that police officers must be 5’10” and 150 pounds (40% of men, 2% of women meet this requirement)

Equal Protection Analysis

- (1) What is the CLASSIFICATION?
- (2) What STANDARD OF REVIEW do courts apply?
 - **rational basis review:** law must be rationally related to achieving a legitimate government purpose
 - **intermediate scrutiny:** law must be substantially related to achieving an important government purpose.
 - **strict scrutiny:** law must be necessary to achieve a compelling government purpose

Equal Protection Analysis

- (1) What is the CLASSIFICATION?
- (2) What STANDARD OF REVIEW do courts apply?
- (3) Does government action satisfy THE APPLICABLE standard of review?
 - Is the justification matched to the means chosen for the particular law?

Equal Protection Review

Standard of Review	Description	Examples (Law that affects, or discriminates based on...)
Rational Basis	law must be <u>rationally related</u> to a <u>legitimate</u> governmental purpose (most deferential, law usually constitutional)	...mental or physical disability, age, wealth/class, sexual orientation
Intermediate Scrutiny	law must bear <u>substantial relationship</u> to <u>important</u> governmental purpose (law has about equal chance of being struck down or deemed constitutional)	...gender/sex, non-marital children
Strict Scrutiny	law must be <u>narrowly tailored</u> to meet a <u>compelling</u> governmental purpose (usually fatal for law challenged)	...fundamental rights; race, national origin, alienage (Equal Protection Clause)

Estelle v. Gamble (1976)

Background and Holding

8th Amendment:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.



Strange irony: in the US, only prisoners have a “right to health care” due to the 8th Amendment (and that right is limited, giving correctional officers considerable leeway)

How does this apply to medication for opioid use disorder while incarcerated?

Meyer v. Nebraska (1923)

Background and Holding

Pierce v. Society of Sisters (1923)

Background and Holding

Meyer and Pierce

- Some of the earliest Supreme Court cases finding fundamental rights protected by Due Process Clause of the 14th Amendment
- Parents have a fundamental right to make decisions as to how their children will be raised without governmental interference
 - Governmental interference requires a compelling interest in interfering with parental choice
- This right is not absolute: for instance, parents cannot demand that schools abandon educational standards that teach that the Earth is round in the name of “raising children as they see fit”
 - The state can easily show a compelling interest in scientifically accurate curricula; teaching fact-based science is properly tailored to the goal of accurate education

Loving v. Virginia (1967)

Background and Holding

City of Cleburne v. Cleburne Living Center (1985)

Background and Holding

Constitutional Rights

5th Amendment:

“[No person shall be...] nor be deprived of life, liberty, or property, without due process of law”

14th Amendment:

§1 “nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

§5 “The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.”

Other fundamental rights

- The Supreme Court under Chief Justice Earl Warren:
 - Involved in several civil rights decisions
 - Strong language objecting to Jim Crow laws' inherent racism
 - Fundamental right to marry under the Due Process Clause
 - Impermissible classification based on race under the Equal Protection clause
- Classes of people (e.g., persons with disabilities) may not get special protections, but laws may still be irrational (rational basis "with teeth")

Can you imagine a law that rationally treats people with disabilities differently?
What state interest could justify differential treatment of people with disabilities?



Right to Refuse Treatment



Right to Refuse Treatment

- In re *Quinlan* (N.J. 1976): 22-year-old suffered anoxic brain injury, was in vegetative state. Father asks to discontinue treatment, state intervenes. Court grants discontinuation of life support.
- In re *Conroy* (N.J. 1985): "Organic brain syndrome" rendered 84-year-old patient periodically confused and adjudicated incompetent. Nasogastric feeding tube removed per Ms. Conroy's interest in freedom from invasive life-sustaining procedures.



Cruzan v Director, Missouri Department of Health (1990)

Background and Holding



Physician Aid-in-Dying



Washington v. Glucksberg (1997)

Background and Holding

Vacco v. Quill (1997)

Background and Holding





How does the state interest in these cases evolve over time?

What is the appropriate balance between civil rights and acknowledged state interests?



***NYC Friends of Ferrets v. City of New York* (1995)**

Background and Holding



Any questions?

