

PLYLER v. DOE (1982)

BACKGROUND

In 1975, Texas passed a Alien Children Education (ACE) law withholding state funds for the education of illegal immigrant children and authorizing local school districts not to enroll these children in public schools.

In 1977, lawyers filed suit in District Court on behalf of Mexican children who could not prove that they were legal immigrants and who had been excluded from the Tyler School District, claiming that ACE violates the rights of these children under the Equal Protection Clause of the 14th Amendment. Similar suits were filed across Texas in 1978 and 1979. In 1980, a District Court found that ACE was unconstitutional. In 1981, the Fifth Circuit Court of Appeals agreed, and Texas appealed. The case was accepted by the U.S. Supreme Court, which affirmed (by a vote of 5-4) the judgment of the Appeals Court in 1982.

BRENNAN'S DECISION

Brennan was joined by Marshall, Blackmun, Powell, and Stevens. The dissenters were led by Burger, who was joined by White, Rehnquist, and O'Connor.

Brennan argued that the proper standard in the case is **Intermediate Scrutiny**, according to which a law that burdens the members of one group over others is unconstitutional unless it is **substantially** related to an **important** government purpose.

Brennan then found that, of the State's four reasons for passing ACE, none passes the Intermediate Scrutiny test. He concluded that ACE is unconstitutional under the EP Clause, and should be struck down.

THE QUESTION OF JURISDICTION

The text of the Equal Protection Clause: "no State shall...deny to any person **within its jurisdiction** the equal protection of the laws".

Texas argued that illegal immigrants, because they violated immigration law in entering the United States, do not fall within the "jurisdiction" of any State. Consequently the EP Clause does not apply to them.

Brennan makes short work of this argument. He considers both precedent and principle. First, a number of precedents indicate that the phrase "within its jurisdiction" has been interpreted to mean "within its borders". In this case, there is no doubt that the relevant children are within Texas's borders.

Second, the point or purpose of the EP Clause is “the abolition of all caste-based and invidious class-based legislation”. In this case, the automatic exclusion of illegal aliens from the reach of the EP Clause would allow the creation of a class of persons who possess a form of legal inferiority, i.e., a lower caste.

Brennan concludes that any person, whether illegal immigrant or not, residing within a State’s borders is protected by the EP Clause.

WHY INTERMEDIATE SCRUTINY?

Brennan acknowledges that the only way for a law to trigger Strict Scrutiny is for it to engage in suspect classification or infringe a fundamental right.

In this case, to treat persons differently (by imposing burdens on the members of one class without imposing them on the members of another class) on the basis of “undocumented” status is not a form of suspect classification. The reason for this is that the presence of illegal aliens “in this country in violation of federal law is not a ‘constitutional irrelevancy’”. To maintain its integrity as a Nation, it is constitutionally permissible for the United States to distinguish, in its deportation proceedings, between legal and illegal residents.

The right to an education is not fundamental (see *Rodriguez*), and the plaintiffs cannot cite any other fundamental right that ACE may plausibly be held to infringe.

Under ordinary circumstances, a law that does not trigger Strict Scrutiny triggers the Rational Basis Test. But this case is no ordinary case. When a law imposes serious “costs to the Nation and to the innocent children who are its victims”, the proper test to apply is Intermediate Scrutiny.

1. Costs to the Nation

Unlike other forms of social welfare, education is critical to the maintenance of a properly functioning democracy.

2. Costs to the Children

A. Minor children are not responsible for their illegal status. Yet, it is a “basic concept of our legal system that legal burdens should bear some relationship to individual responsibility or wrongdoing.”

B. The deprivation of an education takes an “inestimable toll...on the social, economic, intellectual, and psychological well-being of the individual.”

Notice that Brennan’s argument involves appeal to moral theory. As he argues, the proper level of scrutiny should reflect the overall costs imposed on individuals and on society by the relevant law. The lower the cost, the lower the proper level of scrutiny. The higher the cost, the higher the proper level of scrutiny. The moral calculus here is **utilitarian**: the constitutional status of a law is held to depend on the overall goodness or badness of its consequences. If the law’s benefits outweigh its costs, it is constitutionally acceptable. Otherwise, not.

WHY ACE FAILS THE INTERMEDIATE SCRUTINY TEST

Texas cites four reasons in defense of ACE’s constitutionality.

1. The “preservation of...limited resources for the education of...lawful citizens”

Brennan’s Reply: This concern standing alone, though admittedly important, “can hardly justify the *classification* used in allocating” the relevant resources. What Texas needs is a justification for its *differential* treatment of children on grounds of “documentation”.

2. Protection from an “influx of illegal immigrants”

Brennan’s Reply: First, “there is no evidence... suggesting that illegal entrants impose any significant burden on the State’s economy.” Illegal immigrants pay more than enough in taxes to compensate for their relative underutilization of public services. So Texas does not need protection against illegal immigrants.

Second, the dominant motive for illegal immigration is not the use of public services (such as access to public schools), but the availability of employment. So, even if Texas did need protection against illegal immigrants, ACE would be “ludicrously ineffectual” as a means to stem the “influx”.

Notice here that Brennan’s standard for whether a law counts as *substantially* related to a given State interest depends on its degree of *effectiveness*. The less effective the law, the less likely it is to count as substantial. The more effective the law, the more likely it is to count as substantial.

3. Undocumented children impose “special burdens...on the State’s ability to provide high-quality public education”

Brennan’s Reply: “The record in no way supports the claim that exclusion of undocumented children is likely to improve the overall quality of education in the State.”

4. Undocumented children “are less likely than other children to remain within the boundaries of the State, and...put their education to productive...use within the State”

Brennan’s Reply: The probabilities are virtually unquantifiable. So there is little or no evidence that this claim is true.

Brennan concludes that there is no important State interest to which ACE bears a substantial relation, that ACE therefore fails the Intermediate Scrutiny Test, and hence that ACE violates the EP Clause of the 14th Amendment.

BURGER’S DISSENT

Burger accepts Brennan’s claim that the EP Clause applies to all persons within the borders of a State. What he denies is that the proper standard of judicial review in this case is Intermediate Scrutiny.

Like Brennan, Burger accepts that “illegal aliens” do not form a suspect class and that the right to an education is not fundamental. Unlike Brennan, Burger concludes that the proper standard of judicial review is the Rational Basis Test.

Burger considers both of Brennan’s reasons for thinking that this case should trigger Intermediate Scrutiny.

2A: “Children are not responsible for their illegal status”

Burger’s Reply: This argument proves too much. Persons are (in many cases) not responsible for their “ill health, need for public assistance, or place of residence”. Brennan’s “lack of responsibility” argument therefore entails that State laws that distribute benefits on the basis of mental health, relative financial need, or place of residence must also be subjected to Intermediate Scrutiny. It also follows that laws permitting or requiring the deportation of illegal alien children would also need to be subjected to Intermediate Scrutiny. Both results are absurd.

“The Equal Protection Clause protects against arbitrary and irrational classifications, and against invidious discrimination stemming from prejudice and hostility; it is not an all-encompassing ‘equalizer’ designed to eradicate every distinction for which persons are not ‘responsible’.”

1 and 2B: Social Costs and Personal Costs of Illiteracy and Innumeracy

Burger’s Reply: This argument proves too much. The social and personal costs of inadequate nutrition, shelter, or medical care are surely comparable to the social and personal costs of illiteracy and innumeracy. Yet no-one would claim that the State is not permitted to distinguish (in a rational way) between legal and illegal residents in the distribution of food, shelter, and medical care.

Furthermore, it is not the job of the Supreme Court to estimate the societal importance of different interests. This is a job for the legislative branch.

BURGER APPLIES THE RATIONAL BASIS TEST

Burger concludes that the proper standard of review is the Rational Basis Test. In order for the law to pass constitutional muster, Texas need only show that ACE is rationally related to a legitimate purpose.

The purpose in this case is the preservation of finite educational resources. This is clearly a legitimate goal. The real question is whether distinguishing between children on grounds of immigration status in the allocation of educational resources is rationally related to the goal of resource preservation. And surely it is.

“It simply is not ‘irrational’ for a state to conclude that it does not have the same responsibility to provide benefits for persons whose very presence in the state and this country is illegal as it does to provide for persons lawfully present. By definition, illegal aliens have no right whatever to be here, and the state may reasonably, and constitutionally, elect not to provide them with governmental services at the expense of those who are lawfully in the state.”

So the justification for saving money at the expense of illegal alien children is, quite simply, that such children “have no right whatever to be here”.

Burger concludes that ACE (though it may be unwise from the point of view of social policy) passes the Rational Basis Test, and hence is constitutionally permissible under the EP Clause.