

Instructor: Prof. Freeman

1. The Woodside Cemetery Association is a purely private corporation. In 1990, Alice Albright purchased two cemetery plots. The terms of the purchase agreement provided that only white persons be buried in the plots. Alice's husband Barry, who is African-American, died in 1996 and Alice sought to have Barry's remains buried at Woodside. Woodside refused, based on the provision in the purchase agreement. Alice temporarily interred Barry's remains in another cemetery and brought suit in state court seeking injunctive relief to compel Woodside to permit the burial of Barry's remains in one of the plots purchased by Alice. The state courts ruled in favor of Woodside. The case was finally decided on the merits by the United States Supreme Court on federal constitutional grounds only. What results, and why?

BEST ANSWER

The issue in this case is whether or not the discriminatory acts of a private actor may be ruled a constitutional violation of the 14th Amendment's equal protection clause. While the purpose of the 14th Amendment is to limit the ability of government to discriminate against individuals, in certain instances, private conduct may be viewed as a violation. This occurs when the Court deems "State Action" is present. In this case, a private organization discriminated against Alice, facially depriving her of equal protection under the law, thus allowing the analysis to continue to the next step. Woodside Cemetery must be functioning as a state actor for this violation to have occurred, either as a public function or with significant government involvement. The first strand, public function, is reserved for areas traditionally in the exclusive prerogative of the state, which includes only two areas: elections and company towns. Significant government involvement looks to the conferral of mutual benefits and the relationship between the state and the private actor. Under this strand, judicial enforcement of a restrictive covenant based on race does infer state action under cases which have the qualities of a "willing buyer and willing seller," the discrimination being compelled by the judicial enforcement. Here, Woodside's private agreement is not a "willing seller," thus the discrimination is not due to judicial enforcement rising to state action. Thus, the discriminatory acts of Woodside do not amount to a violation of 14th Amendment Equal Protection.

2. Assume, irrespective of your answer in Question #1 above, that the United States Supreme Court affirmed the state courts, permitting Woodside Cemetery to deny burial privileges to non-whites. Soon thereafter, Congress enacted a statute prohibiting all cemeteries in the country, without exception, from denying burial privileges based on race and lack of United States citizenship. In spite of the statute, Woodside Cemetery continued to refuse to permit the burial of non-whites, and also refused to permit the burial on those who had not been United States citizens. Suits were brought by several persons to compel Woodside to permit the burial of non-whites and non-United States citizens. These cases are now before the United States Supreme Court on federal constitutional grounds only. What results, and why?

BEST ANSWER

The issue is whether Congress has the power to pass a law prohibiting all cemeteries from discriminating on the basis of race and citizenship. Congress' power under Section 5 of the 14th and section 2 of the 13th differ. Under the 13th Ad., Congress can determine what is the badge of slavery and prohibit purely private action. Under the 14th, Congress can only pass corrective law (Civil Rights Cases) and Congress probably needs to find some state action. While the 13th Ad., applies only to race, the 14th, section 5, is more broad. The test under the 14th for Congressional powers is whether the end is legitimate; that Congress may have broad power is enacting means to a legitimate end.

Thus, Congress' statute prohibiting private cemeteries from discriminating on the basis of race is constitutional because the 13th Ad. does not require state action and the classification is race.

Congress' statute prohibiting discrimination on the basis of citizenship cannot be upheld under the 13th Ad. The classification is not race under the 14th Ad., while prohibiting discrimination on the basis of citizenship is a legitimate end. Congress still cannot prohibit purely private activity under the 14th.

However, because Congress has the plenary power over citizenship, Congress' powers here should be broad. While the Courts are concerned about a separation of powers argument, Congress has the explicit right to control citizenship. The SC might apply RB in that instance and then uphold the statute under Congress' plenary powers. But Congress would not have the power under the 14th for the citizenship classification where it is purely private action.

3. Capital City, State of Franklin, requires that applicants for the city fire department must possess several characteristics. One such characteristic is that applicants must be at least 5'8" in height and weight at least 150 pounds. Statistical evidence indicates that while a significant majority of men meet the requirement, a significant majority of women do not. Doris Daniels, a woman who meets all qualifications for applicants to the police fire except the height and weight requirement, brought suit alleging that the requirement is a denial of equal protection. The case was finally decided by the United States Supreme Court on constitutional grounds only. What result, and why?

BEST ANSWER

The issue is whether the disparate impact of the state regulation (state action) on females denies them equal protection of the laws under the 14th amendment. A statute/regulation can be discriminatory in three ways. First, a statute may discriminate on its face – meaning that a plain reading of the statute shows discrimination. A statute can be neutral but discriminatory as applied – meaning that the individual (state) is applying it in such an arbitrary way to purposely discriminate as in *Yick Wo*. Lastly, the statute can be neutral on its face, but creates a disparate impact on a certain class. Disparate impact is not enough – it must be coupled with purpose and intent to discriminate to trigger a heightened standard of scrutiny. If purpose and intent are not found, the court will apply rational basis review. Purpose and intent are determined by looking at (1) historical background of the legislative action, (2) departures from normal standard procedures, (3) legislative and administrative history of the law/regulation. In this case, if intent and purpose were found, the court would use intermediate review (“regulations must have a fair and substantial relation to an important government interest”) because there would be an intent to discriminate based on gender which is a semi-suspect class (3 indicia of suspectness: 1) immutable characteristics, 2) history of purposeful discrimination, 3) political powerlessness). Here, there appears to be no intent on the part of the state to discriminate – the job as firefighter requires lifting of heavy objects and height to see over flames. The court will use rational basis and uphold the regulation as rational regulation in achieving a legitimate government interest.