

Constitutional Law
Professor Harpaz
Due Process Review Question
Answer Sheet

Due Process Question (Welfare Reform Law) (total points - 40)

nature of right-argue the rt is fund'l-part of the rt of privacy-right to choose to have a child is an aspect of the rt in Griswold and Roe to decide whether or not to bear a child------(4)____

rt to have a child is a rt deeply rooted in history & tradition------(3)____

rt to autonomy in the imp decision of whether to bear a child, central to personal identity(2)____

argue the rt is nonfund'l-Michael H., not a trad'l family unit, no tradition of approval of having children outside of marriage------(4)____

the rt at stake is a nonfund'l eco. rt-rt. to state funding-not the rt to decide to have a child(3)____

is there infringement on fund'l right-can have the child, state just refuses to pay benefits-(3)____

relation to Casey-qualified fund'l rt-not an undue burden on rt to have a child because the woman is not prohibited from having a child, state is just making that decision more expensive--(4)____

standard of review: strict or minimum scrutiny (argue each alternatively)(pts allocated for accurate description of each standard------(4)____

application of facts to minimum scrutiny standard of review (rat'l means to legit end - state argues passes test because discouraging single women who receive AFDC benefits from having additional children is a legitimate end and refusing additional benefits is a rational means to that end, challenger argues fails test because the end is not legitimate)------(4)____

application of facts to strict scrut. including less burdensome alts (state argues passes test because the end is compelling and the means are the least restrictive means available since the law does not prohibit the having of children only imposes a financial disincentive, challenger argues fails test because the end of conserving the state's fiscal resources is not a compelling end and neither is the objective of discouraging childbirth which arguably is not even legitimate and even if there is a compelling end, the means are not necessary; the state could instead offer family planning services including contraceptives and an educational program)------(6)____

miscellaneous and special level of understanding of const'al issues------(3)____