
CHAPTER 2

BUSINESS AND THE CONSTITUTION

ANSWERS TO CRITICAL THINKING QUESTIONS IN THE FEATURE

MANAGERIAL STRATEGY—BUSINESS QUESTIONS

1A. *Can a business manager's religious beliefs factor into the business's hiring treatment of same-sex partners? Why or why not?* No, a business manager should avoid letting her or his religious beliefs factor into the business's treatment of same-sex partners with regard to family and medical leave and health insurance.

Although many religions disapprove of same-sex relationships, treating same-sex partners less favorably than heterosexual employees with respect to employment benefits may lead to legal challenges and to disgruntled employees. The general public increasingly believes that homosexual couples should be entitled to equal treatment under the law. It stands to reason that a firm's heterosexual employees might be upset if the firm treats same-sex couples differently than any other employees.

As noted in the feature, no federal law defines marriage, and federal courts are increasingly likely to invalidate state laws that prohibit same-sex marriage. The federal government has already indicated that it will treat same-sex couples the same in terms of bankruptcy and federal benefits, and it may be that states will start requiring equal treatment of same-sex couples in employment benefits. Therefore, it would be wise for a manager to steer clear of any appearance of discriminatory treatment of employees involved in same-sex relationships, even if they are based on the manager's religious beliefs.

2A. *Must business owners in all states have to provide the same benefits to employees in a same-sex union as they do to heterosexual couples?* It seems likely that eventually, most states will recognize the rights of same-sex couples, particularly with regard to employment benefits, such as family and medical leave and health insurance. The public perception of same-sex unions has changed, and many of the firm's employees may support equal treatment of homosexual couples in such matters. Therefore, the owner of a business located in one of the states that bans same-sex marriage may want to provide the same benefits to employees in a same-sex union as they do to married employees. This would show their

employees that they are committed to fair treatment of all employees in the workplace. It would also show that the business is ahead of the curve (existing law) on this issue.

ANSWERS TO QUESTIONS AT THE ENDS OF THE CASES

CASE 2.1—CRITICAL THINKING

WHAT IF THE FACTS WERE DIFFERENT?

If this case had involved a small, private retail business that did not advertise nationally, would the result have been the same? Why or why not? It is not likely that the result in this case would have been different even if the facts had involved a small, private retail business that did not advertise nationally. The intended impact of the decision in *Heart of Atlanta* was to uphold the constitutionality of the Civil Rights Act of 1964 and the power of Congress to regulate interstate commerce to stop local discriminatory practices. In the Supreme Court's opinion, "The power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities in both the States of origin and destination, which might have a substantial and harmful effect upon that commerce."

Thus, if the case had involved a small, local retail business, the Court would have found participation in interstate commerce based on the use of a phone, or a Facebook page (or other Web presence), or sales to customers who traveled across state lines—or, as in *Wickard v. Filburn*, participation might have been based on any transaction that might otherwise have occurred in interstate commerce.

CASE 2.2—CRITICAL THINKING

WHAT IF THE FACTS WERE DIFFERENT?

If Bad Frog had sought to use the offensive label to market toys instead of beer, would the court's ruling likely have been the same? Why or why not? Probably not. The reasoning underlying the court's decision in the case was, in part, that "the State's prohibition of the labels . . . does not materially advance its asserted interests in insulating children from vulgarity . . . and is not narrowly tailored to the interest concerning children." The court's reasoning was supported in part by the fact that children cannot buy beer. If the labels advertised toys, however, the court's reasoning might have been different.

LEGAL ENVIRONMENT

Whose interests are advanced by the banning of certain types of advertising? The government's interests are advanced when certain ads are banned. For example, in the *Bad Frog* case, the court acknowledged, by advising the state to restrict the locations where certain ads could be displayed, that banning of "vulgar and profane" advertising from children's sight arguably advanced the state's interest in protecting children from those ads.

CASE 2.3—LEGAL REASONING QUESTIONS

1. What is the standard for determining whether a government restriction on a religious practice is constitutional under the First Amendment? The First Amendment states that the government may not prohibit the free exercise of religious practices. This is the free exercise clause. The standard for determining whether a restriction on a religious practice is constitutional under this clause begins by asking whether a government actor imposed the restriction—the constitutional guarantee of free exercise restricts only the actions of the government, not those of private individuals or businesses.

If a government actor was involved, then to comply with this clause, a restriction must not be a substantial burden on religious practices. A burden is substantial if it pressures an individual to modify his or her behavior and to violate his or her beliefs.

2. How did that standard apply to the prison guards' conduct in this case? In the *Thompson* case, the plaintiff, a Muslim prison inmate, alleged that he was denied an accommodation provided to other Muslim inmates—meal bags distributed nightly during the month of Ramadan to break the religious sunrise-to-sunset fast. He further claimed that this denial was a substantial burden on the free exercise of his religion.

To determine whether “forcing an inmate to choose between daily nutrition and religious practice is a substantial burden” on the inmate’s free exercise right, the court weighed the consequences to the plaintiff inmate of the denial of his food. He did not have a “proper meal” for more than two days, which caused him to feel “weak and tired.” He did not know when—or even if—he would again be added to the Ramadan meal-distribution list and receive a meal bag. This pressured him to go to the prison cafeteria to eat during daylight hours in violation of his religious practice.

The court concluded that these facts indicated a substantial burden on the plaintiff’s free exercise right. “The anxiety left him unable to practice Ramadan properly.”

3. Were all of the guards personally involved in the alleged violation of the First Amendment? Explain. In this case, the court determined that there was sufficient evidence in the circumstances for a reasonable jury to find that all of the defendants were involved in the restriction imposed on the plaintiff. The restriction consisted of denying the plaintiff, a Muslim prison inmate, meal bags provided to other Muslim inmates during the month of Ramadan to break the religious sunrise-to-sunset fast.

All of the defendants were prison guards. The guard responsible for delivering meal bags to the inmates on the prison’s eligibility list did not deliver the food to the plaintiff inmate for two days and lied about the inmate’s name being taken off the list. The other defendants also lied to the plaintiff about the removal of his name, refused to bring him meal bags, and directed him to eat in the prison cafeteria.

ANSWERS TO QUESTIONS IN THE REVIEWING FEATURE AT THE END OF THE CHAPTER

1A. *Equal protection*

When a law or action limits the liberty of some persons but not others, it may violate the equal protection clause. Here, because the law applies only to motorcycle operators and passengers, it raises equal protection issues.

2A. *Levels*

The three levels of scrutiny that courts apply to determine whether the law or action violates equal protection are strict scrutiny (if fundamental rights are at stake), intermediate scrutiny (in cases involving discrimination based on gender or legitimacy), and the rational basis test (in matters of economic or social welfare).

3A. *Standard*

The court would likely apply the rational basis test. Similar to seat-belt laws and speed limits, a statute requiring motorcyclists to wear helmets involves the state's attempt to protect the welfare of its citizens. Thus, the court would consider the statute a matter of social welfare and require that it be rationally related to a legitimate government objective.

4A. *Application*

The statute is probably constitutional, because requiring helmets is rationally related to a legitimate government objective (public health and safety). Under the rational basis test, courts rarely strike down laws as unconstitutional, and this statute will likely further the legitimate state interest of protecting the welfare of citizens and promoting safety.

ANSWER TO DEBATE THIS QUESTION IN THE REVIEWING FEATURE AT THE END OF THE CHAPTER

Legislation aimed at “protecting people from themselves” concerns the individual as well as the public in general. Protective helmet laws are just one example of such legislation. Should individuals be allowed to engage in unsafe activities if they choose to do so? Certainly many will argue in favor of individual rights. If certain people wish to engage in risky activities such as riding motorcycles without a helmet, so be it. That should be their choice. No one is going to argue that motorcycle riders believe that there is zero danger when riding a motorcycle without a helmet. In other words, individuals should be free to make their own decisions and consequently, their own mistakes.

In contrast, there is a public policy issue involved. If a motorcyclist injures him- or herself in an accident because he or she was not wearing a protective helmet, society ends up paying in the form of increased medical care expenses, lost productivity, and even welfare for other family members. Thus, the state has an interest in protecting the public in general by limiting some individual rights.

ANSWERS TO ISSUE SPOTTERS AT THE END OF THE CHAPTER

1A. Can a state, in the interest of energy conservation, ban all advertising by power utilities if conservation could be accomplished by less restrictive means? Why or why not? No. Even if commercial speech is neither related to illegal activities nor misleading, it may be restricted if a state has a substantial interest that cannot be achieved by less restrictive means. In this case, the interest in energy conservation is substantial, but it could be achieved by less restrictive means. That would be the utilities' defense against the enforcement of this state law.

2A. Suppose that a state imposes a higher tax on out-of-state companies doing business in the state than it imposes on in-state companies. Is this a violation of equal protection if the only reason for the tax is to protect the local firms from out-of-state competition? Explain. Yes. The tax would limit the liberty of some persons (out-of-state businesses), so it is subject to a review under the equal protection clause. Protecting local businesses from out-of-state competition is not a legitimate government objective. Thus, such a tax would violate the equal protection clause.

ANSWERS TO BUSINESS SCENARIOS AT THE END OF THE CHAPTER

2-1A. Commerce clause

A Georgia statute that requires the use of contoured rear-fender mudguards on trucks and trailers operating within its state lines, when thirty-five other states make it legal to use straight mudguards and Florida explicitly mandates the use of straight mudguards, would violate the commerce clause. This hypothetical question is based on *Bibb v. Navajo Freight Lines, Inc.* [359 U.S. 520, 79 S.Ct. 962, 3 L.Ed.2d 1003 (1959)], in which the United States Supreme Court concluded that a similar statute placed an unconstitutional burden upon interstate commerce. In *Bibb*, the Court acknowledged the fact that a state that insists upon a particular regulation may sometimes place a substantial burden of delay and inconvenience on interstate commerce. As in *Bibb*, the burden placed on interstate commerce by this Georgia statute would outweigh Georgia's interest in regulating its highways. According to the facts in this hypothetical, the contoured mudguard is not clearly superior in safety to the straight mudguard.

2-2A. Equal protection

According to the standards applied to determine compliance with the equal protection clause, this ordinance's classification—a gender-based distinction—is subject to intermediate scrutiny. Under this standard, the court could dismiss the plaintiffs' complaint. Gender-based distinctions are acceptable in circumstances in which the two genders are not similarly situated. The city's

objectives of preventing crime, maintaining property values, and preserving the quality of urban life, are legitimate and important. Regulation of female, but not male, topless dancing, in the context of the overall regulation of sexually explicit commercial establishments, could reasonably be interpreted as substantially related to achieving these objectives. The court might point out, for example, that males are often topless on beaches, in sporting events, during performances at the ballet, and in magazine photos without sexual suggestiveness. Female breasts are rarely exposed in public venues without sexual overtones, however. This arguably makes it permissible for the law to regard female toplessness differently from male toplessness.

ANSWERS TO BUSINESS CASE PROBLEMS AT THE END OF THE CHAPTER

2–3A. SPOTLIGHT ON PLAGIARISM—*Due process*

To adequately claim a due process violation, a plaintiff must allege that he was deprived of “life, liberty, or property” without due process of law. A faculty member’s academic reputation is a protected interest. The question is what process is due to deprive a faculty member of this interest and in this case whether Gunasekera was provided it. When an employer inflicts a public stigma on an employee, the only way that an employee can clear his or her name is through publicity. Gunasekera’s alleged injury was his public association with the plagiarism scandal. Here, the court reasoned that “a name-clearing hearing with no public component would not address this harm because it would not alert members of the public who read the first report that Gunasekera challenged the allegations. Similarly, if Gunasekera’s name was cleared at an unpublicized hearing, members of the public who had seen only the stories accusing him would not know that this stigma was undeserved.” Thus the court held that Gunasekera was entitled to a public name-clearing hearing.

2–4A. BUSINESS CASE PROBLEM WITH SAMPLE ANSWER—*The dormant commerce clause*

The court ruled that, like a state, Puerto Rico generally may not enact policies that discriminate against out-of-state commerce. The law requiring companies that sell cement in Puerto Rico to place certain labels on their products is clearly an attempt to regulate the cement market. The law imposed labeling regulations that affect transactions between the citizens of Puerto Rico and private companies. State laws that on their face discriminate against foreign commerce are almost always invalid, and this Puerto Rican law is such a law. The discriminatory labeling requirement placed sellers of cement manufactured outside Puerto Rico at a competitive disadvantage. This law therefore contravenes the dormant commerce clause.

2-5A. *Freedom of speech*

No, Wooden’s conviction was not unconstitutional. Certain speech is not protected under the First Amendment. Speech that violates criminal laws—threatening speech, for example—is not constitutionally protected. Other unprotected speech includes fighting words, or words that are

likely to incite others to respond violently. And speech that harms the good reputation of another, or defamatory speech, is not protected under the First Amendment.

In his e-mail and audio notes to the alderwoman, Wooden discussed using a sawed-off shotgun, domestic terrorism, and the assassination and murder of politicians. He compared the alderwoman to the biblical character Jezebel, referring to her as a “bitch in the Sixth Ward.” These references caused the alderwoman to feel threatened. The First Amendment does not protect such threats, which in this case violated a state criminal statute. There was nothing unconstitutional about punishing Wooden for this unprotected speech.

In the actual case on which this problem is based, Wooden appealed his conviction, arguing that it violated his right to freedom of speech. Under the principles set out above, the Missouri Supreme Court affirmed the conviction.

2–6A. Equal protection

Yes, the equal protection clause can be applied to prohibit discrimination based on sexual orientation in jury selection. The appropriate level of scrutiny would be intermediate scrutiny. Under the equal protection clause of the Fourteenth Amendment, the government cannot enact a law or take another action that treats similarly situated individuals differently. If it does, a court examines the basis for the distinction. Intermediate scrutiny applies in cases involving discrimination based on gender. Under this test, a distinction must be substantially related to an important government objective.

Gays and lesbians were long excluded from participating in our government and the privileges of citizenship. A juror strike on the basis of sexual orientation tells the individual who has been struck, as well as the trial participants and the general public, that the judicial system still treats gays and lesbians differently. This deprives these individuals of the opportunity to participate in a democratic institution on the basis of a characteristic that has nothing to do with their fitness to serve.

In the actual case on which this problem is based, SmithKline challenged the strike. The judge denied the challenge. On SmithKline’s appeal, the U.S. Court of Appeals for the Ninth Circuit held that the equal protection clause prohibits discrimination based on sexual orientation in jury selection and requires that heightened scrutiny be applied to equal protection claims involving sexual orientation. The appellate court remanded the case for a new trial.

2–7A. Procedural due process

No, the school’s actions did not deny Brown due process. Procedural due process requires that any government decision to take life, liberty, or property must be made fairly. The government must give a person proper notice and an opportunity to be heard. The government must use fair procedures—the person must have at least an opportunity to object to a proposed action before a fair, neutral decision maker.

In this problem, Robert Brown applied for admission to the University of Kansas School of Law. He answered “no” to the questions on the application about criminal history and acknowledged that a false answer constituted cause for dismissal. He was accepted for admission to the school. But Brown had previous criminal convictions for domestic battery and driving under the influence. When school officials discovered this history, Brown was notified of

their intent to dismiss him and given an opportunity to respond in writing. He demanded a hearing. The officials refused, and expelled him. As for due process, Brown knew he could be dismissed for false answers on his application. The school gave Brown notice of its intent to expel him and gave him an opportunity to be heard (in writing). Due process does not require that any specific set of detailed procedures be followed as long as the procedures are fair.

In the actual case on which this problem is based, Brown filed a suit in a federal district court against the school, alleging denial of due process. From a judgment in the school's favor, Brown appealed. The U.S. Court of Appeals for the Tenth Circuit affirmed, concluding that "the procedures afforded to Mr. Brown were fair."

2-8A. The commerce clause

Yes, Massachusetts's use tax is valid under the commerce clause. When a state regulation that affects interstate commerce is challenged under the commerce clause, the court weighs the state's interest in regulating the matter against the burden that the regulation places on interstate commerce. Because a court balances the interests involved, it is difficult to predict the outcome in a particular case. State laws that alter conditions of competition to favor in-state interests over out-of-state competitors in a market are considered discriminatory and usually invalidated.

In this problem, Regency Transportation, Inc., operates a freight business throughout the eastern United States. Regency maintains a headquarters, warehouses, and other facilities in Massachusetts. All of the vehicles in Regency's fleet were bought in other states. When Massachusetts imposed a use tax on the purchase price of each tractor and trailer in Regency's fleet, the trucking firm challenged the assessment as discriminatory under the commerce clause. But Massachusetts imposes the tax on all taxpayers subject to its jurisdiction, not only those that, like Regency, do business in interstate commerce. Hence, the tax is not discriminatory. As for the balancing test, Massachusetts presumably imposes the tax based on the benefits derived from a company's using and storing vehicles in the state. The burden that the regulation places on interstate commerce seems slight weighed against the state's interest in regulating this matter.

In the actual case on which this problem is based, Nichols filed a suit in a federal district court against TNI, alleging discrimination on the basis of sex. TNI filed a motion for summary judgment, which the court granted. But the U.S. Court of Appeals for the Eighth Circuit reversed. "Genuine issues of material fact remain."

2-9A. A QUESTION OF ETHICS—Defamation

(a) The answers to these questions begin with the protection of the freedom of speech under the First Amendment. The freedom to express an opinion is a fundamental aspect of liberty. But this right and its protection are not absolute. Some statements are not protected because, as explained in the *Balboa* decision, "they are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." Defamatory statements are among those that are not protected.

Arguments in favor of protecting such statements include the perception of the right to freedom of speech as necessary to liberty and a free society. Arguments opposed to such protection include “the social interest in order and morality.” In between these positions might fall a balancing of both their concerns. Under any interpretation the degree to which statements can be barred before they are made is a significant question.

In the *Balboa* case, the court issued an injunction against Lemen, ordering her to, among other things, stop making defamatory statements about the Inn. On appeal, a state intermediate appellate court invalidated this part of the injunction, ruling that it violated Lemen’s right to freedom of speech under the Constitution because it was a “prior restraint”—an attempt to restrain Lemen’s speech before she spoke. On further appeal, the California Supreme Court phrased “the precise question before us [to be] whether an injunction prohibiting the repetition of statements found at trial to be defamatory violates the First Amendment.” The court held it could enjoin the *repetition* of such statements without infringing Lemen’s right to free speech. Quoting from a different case, the court reasoned, “The special vice of a prior restraint is that communication will be suppressed, either directly or by inducing excessive caution in the speaker, before an adequate determination that it is unprotected by the First Amendment. An injunction that is narrowly tailored, based upon a continuing course of repetitive speech, and granted only after a final adjudication on the merits that the speech is unprotected does not constitute an unlawful prior restraint.” The court added that the injunction could not prevent Lemen from complaining to the authorities, however.

(b) To answer this question requires a standard to apply to the facts. A different chapter in the text sets out two fundamental approaches to ethical reasoning: one involves duty-based standards, which are often derived from religious precepts, and the other focuses on the consequences of an action and whether these are the “greatest good for the greatest number.”

Under the former approach, a pre-established set of moral values founded on religious beliefs can be taken as absolute with regard to behavior. Thus, if these values proscribed Lemen’s name-calling as wrong, it would be construed as wrong, regardless of the truth of what she said or any effect that it had. Similarly, if the values prescribed Lemen’s conduct as correct, it might be unethical not to engage in it. A different duty-based approach grounded on philosophical, rather than religious, principles would weigh the consequences of the conduct in light of what might follow if everyone engaged in the same behavior. If we all engaged in name-calling, hostility and other undesirable consequences would likely flourish. A third duty-based approach, referred to as the principle of rights theory, posits that every ethical precept has a rights-based corollary (for example, “thou shalt not kill” recognizes everyone’s right to live). These rights collectively reflect a dignity to which we are each entitled. Under this approach, Lemen’s name-calling would likely be seen as unethical for failing to respect her victims’ dignity.

Finally, an outcome-based approach focuses on the consequences of an act, requiring a determination as to whom it affects and assessments of its costs and benefits, as well as those of alternatives. The goal is to seek the maximum societal utility. Here, Lemen’s behavior appears to have had little positive effect on herself or the objects of her criticism (the Inn, its employees, its patrons, and its business). The Inn’s business seems to have been affected in a substantial way, which in Lemen’s eyes may be a “benefit,” but in the lives of its owners, employees, and customers, would more likely be seen as a “cost.”

2-10A. SPECIAL CASE ANALYSIS—Freedom of religion*Case No. 2.3**Thompson v. Holm*

United States Court of Appeals, Seventh Circuit, 2016

809 F.3d 376

(a) Issue: *The focus in this case was on an allegation of the violation of which clause of the Constitution and by what means?* The clause of the Constitution alleged to have been violated in this case was the free exercise clause of the First Amendment. This clause states that the government may not prohibit the free exercise of religious practices. The violation was alleged to have occurred when a Muslim prison inmate was denied an accommodation granted to other inmates—meal bags provided during Ramadan to break the daily sunrise-to-sunset fast. The denial compelled the inmate to consider eating in the prison cafeteria during daylight hours and forego his religious practice or to go hungry and be unable to experience his religion properly.

(b) Rule of Law: *What is required to establish that this clause has been violated?* Government action must be consistent with the free exercise clause. To comply with this clause, a government action must not be a substantial burden on religious practices. A burden is substantial if it pressures an individual to modify his or her behavior and to violate his or her beliefs.

(c) Applying the Rule of Law: *How did the court determine whether the claim of a violation was supported in this case?* To determine whether the claim of a violation was supported in this case, the court considered whether “forcing an inmate to choose between daily nutrition and religious practice is a substantial burden” on the inmate’s free exercise right. The court weighed the consequences to the plaintiff inmate of the denial of his food. He did not have a “proper meal” for more than two days, which caused him to feel “weak and tired.” He did not know when—or even if—he would again be added to the Ramadan list and be given a meal bag. This exerted pressure on him to contemplate returning to the prison cafeteria in violation of his religious practice, creating a substantial burden on his free exercise right. “The anxiety left him unable to practice Ramadan properly.”

The court also decided that there was sufficient evidence for a reasonable jury to find that all of the defendants were personally involved. The defendants were prison guards. The guard responsible for delivering meal bags to the inmates on the list did not deliver the food to the plaintiff for two days and lied about his name being removed from the list. The other defendants also lied to the plaintiff about the removal of his name, refused to bring him meal bags, and directed him to the cafeteria to eat.

(d) Conclusion: *What did the court conclude with respect to the plaintiff’s claim, and what did the court order as the next step in the case?* With respect to the plaintiff’s claim, the court concluded that the guards’ withholding of the Muslim inmate’s meal bags during Ramadan constituted a substantial burden on his free exercise right under the First Amendment. The court vacated the judgment of the lower court, which had issued a summary decision in favor of the defendant guards, and remanded the case for trial.

ANSWERS TO LEGAL REASONING GROUP ACTIVITY QUESTIONS AT THE END OF THE CHAPTER

2–11A. *Free speech and equal protection*

(a) The rules in this problem regulate the content of expression. Such rules must serve a compelling governmental interest and must be narrowly written to achieve that interest. In other words, for the rules to be valid, a compelling governmental interest must be furthered only by those rules. To make this determination, the government's interest is balanced against the individual's constitutional right to be free of the rules. For example, a city has a legitimate interest in banning the littering of its public areas with paper, but that does not justify a prohibition against the public distribution of handbills, even if the recipients often just toss them into the street. In this problem, the prohibition against young adults' possession of spray paint and markers in public places imposes a substantial burden on innocent expression because it applies even when the individuals have a legitimate purpose for the supplies. The contrast between the numbers of those cited for violating the rules and those arrested for actually making illegal graffiti also undercuts any claim that the interest in eliminating illegal graffiti could not be achieved as effectively by other means.

(b) The rules in this problem do not regulate the content of expression—they are not aimed at suppressing the expressive conduct of young adults but only of that conduct being fostered on unsuspecting and unwilling audiences. The restrictions are instead aimed at combating the societal problem of criminal graffiti. In other words, the rules are content neutral. Even if they were not entirely content neutral, expression is always subject to reasonable restrictions. Of course, a balance must be struck between the government's obligation to protect its citizens and those citizens' exercise of their right. But the rules at the center of this problem meet that standard. Young adults have other creative outlets and other means of artistic expression available.

(c) Under the equal protection clause of the Fourteenth Amendment, a state may not "deny to any person within its jurisdiction the equal protection of the laws." This clause requires a review of the substance of the rules. If they limit the liberty of some person but not others, they may violate the equal protection clause. Here, the rules apply only to persons under the age of twenty-one. To succeed on an equal protection claim, opponents should argue that the rules should be subject to strict scrutiny—that the age restriction is similar to restrictions based on race, national origin, or citizenship. Under this standard, the rules must be necessary to promote a compelling governmental interest. The argument would be that they are not necessary—there are other means that could accomplish this objective more effectively. Alternatively, opponents could argue that the rules should be subject to intermediate scrutiny—that the age restriction is similar to restrictions based on gender or legitimacy. Under this level of scrutiny, the restrictions must be substantially related to an important government objective. In this problem, the contrast between the numbers of those cited for violating the rules and those arrested for actually making illegal graffiti undermines any claim that the restrictions are substantially related to the interest in eliminating illegal graffiti. If neither of these arguments is successful, opponents could cite these same numbers to argue that the rules are not valid because there is no rational basis on which their restrictions on certain persons relate to a legitimate government interest.