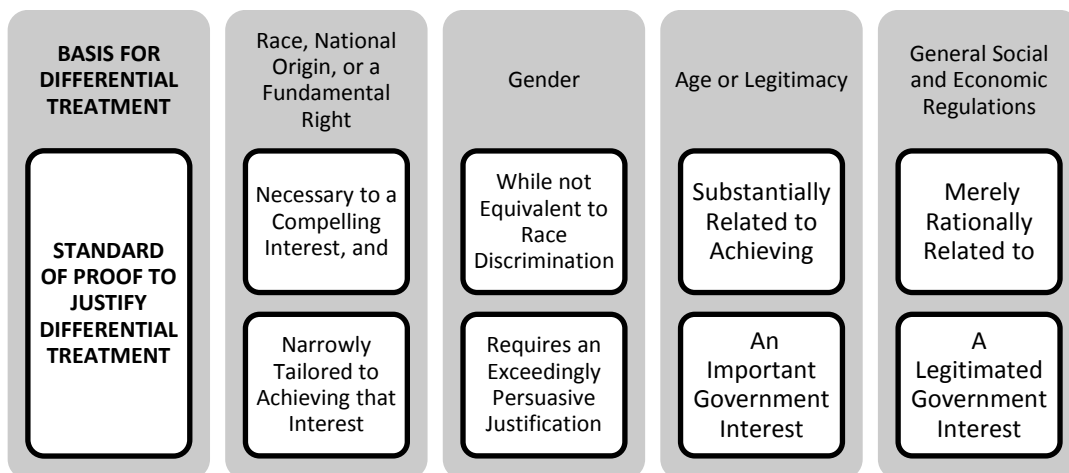


Differential treatment based on fundamental rights or suspect classifications such as race and national origin, are subjected to the strictest judicial scrutiny. To qualify as a suspect classification, the Court has held that the government action must be aimed at a “discrete and insular minority” that is: 1) Politically powerless; and 2) Historically discriminated against. To be politically powerless doesn’t mean the group has no political power, but instead they have no realistic opportunity to defend their rights against majoritarian power in the common legislative realm. Women, for example, have not been deemed a suspect class because adult women outnumber adult men, making it politically possible for women to defend their rights in the legislative realm or to even dominate the political process. Men are not a suspect class, however, because there is no substantial legislative history of discrimination against men. The Court treats gender discrimination as a quasi-suspect class, subject to an elevated standard of review.

Racial discrimination has been so pervasive, however, that the Court subjects any governmental use of race or ethnicity to strict scrutiny. All suspect classifications are subject to strict judicial scrutiny and must be justified by establishing that the differential treatment is necessary to a compelling governmental interest and narrowly tailored to achieving that interest. In practice, governmental actions subjected to strict judicial scrutiny rarely survive this rigorous judicial test. Justice Marshall recognized that strict scrutiny is generally "strict in theory, but fatal in fact." Until the Court’s sharply divided 5-4 decision in *Grutter v. Bollinger*, 539 U.S. 306 (2003), the last time a governmental racial classification survived strict scrutiny by the Court was in *Korematsu v. U.S.*, 323 U.S. 214 (1944), the now universally condemned case in which the Court upheld forced relocations and internments of Japanese-Americans in “war relocation camps.”

### Summary of Judicial Standards of Review under the Equal Protection Clause



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The core teaching of the Court’s cases on equal protection is that government officials cannot legally treat individuals differently for irrelevant, discriminatory reasons, such as the person’s race, color, religion, sex, national origin, disability, etc., when those factors bear no appropriate relationship to a sufficient governmental justification. Absent a legitimate and sufficient reason for differential treatment, federal, state, and local governments must treat all persons equally