

VALIDITY OF NONRESIDENT AND OTHER DISCRIMINATORY REGULATIONS IN MUNICIPAL RECREATION

A policy which discriminates against non-residents may be illegal when it can be proven that the residency policy is a mere pretext to discriminate against individuals in a particular suspect class.

municipality should be able to provide data and a clearly stated rationale which demonstrates a reasonable relationship between a regulation and legitimate governmental goals.

ordinance cannot arbitrarily, oppressively, or unreasonably discriminate against nonresidents
ordinance would unconstitutionally deny nonresidents equal protection of the law.

“RATIONAL BASIS” TEST

Nonresidents, however, are not members of a suspect class. Ordinances which discriminate against this group will be upheld if they can satisfy the “rational basis” test.

municipality must demonstrate a reasonable relationship between the regulation and legitimate governmental goals.

state may prefer its residents over the residents of other states, or condition the enjoyment of the nonresident upon such terms as it sees fit.”

CAN TOWNS RESTRICT PUBLIC PARK ACCESS TO RESIDENTS AND THEIR GUESTS?

public parks, streets, and sidewalks "have been used historically as locations for free expression."
"municipal parks are deemed to be held in trust for the benefit of the general public and not solely for the use of residents of the municipality."

Public places historically associated with the free exercise of expressive activities, such as streets, sidewalks, and parks, are considered, without more, to be public forums.

failed to explain why the ordinance's virtual ban on nonresidents is a reasonable time, place or manner restriction on the use of the park by such nonresidents."

[1]n a public forum, by definition, all parties have a constitutional right of access.

FIELD USE POLICY FAVORED RESIDENTS

cope with the high demand, the City's parks and playing fields had been governed by a City Field Use Policy which limited permits for the use of City fields to "organizations and teams" with a majority of San Carlos residents in their membership.

City's residency restriction related to “recreational activities and did not implicate a suspect classification” (i.e., based on race, creed, color or national origin),

City need only have a rational basis for the restriction.”

Evidence of a legitimate state interest could be found in an October 2001 agronomic report on the condition of the City's playing fields

rational relationship between the problem of overuse and the City's Field Use Policy which was implemented to reduce field usage.

EQUITY IN LATINO NEIGHBORHOOD PARKS QUESTIONED

alleged that Latino neighborhoods in unincorporated areas of Stanislaus County received fewer and poorer public services than other neighborhoods in the incorporated City of Modesto with predominantly white populations

no evidence that Stanislaus County owned Sharp Park or that the money for the grant came from the County. Since the City of Modesto, not the County, owned the park, the court found that the Committee had failed to establish “any discrimination by the County.

RESIDENCY POLICY RACIAL DISCRIMINATION CLAIM

Residency is not a suspect class. Moreover, public recreational opportunities are not a fundamental right guaranteed under the Constitution.

Accordingly, governmental entities can generally discriminate on the basis of residency in providing public recreational opportunities, favoring their residents, as long as there is a rational connection between a residency classification policy and a legitimate governmental interest that is not unduly burdensome on the individual rights of non-residents.