

# Strict Scrutiny Test

manifested in

“Compelling Interest Test”



*The notion of "levels of judicial scrutiny", including strict scrutiny, was introduced in Footnote 4 of the U.S. Supreme Court decision in *United States v. Carolene Products Co.* (1938), one of a series of decisions testing the constitutionality of New Deal legislation. The first and most notable case in which the Supreme Court applied the strict scrutiny standard and found the government's actions valid was *Korematsu v. United States* (1944), in which the Court upheld the exclusion of Japanese Americans from designated areas during World War II.*

*U.S. courts apply the strict scrutiny standard in two contexts: when a fundamental constitutional right is infringed, particularly those found in the Bill of Rights and those the court has deemed a fundamental right protected by the Due Process Clause or "liberty clause" of the 14th Amendment, or when a government action applies to a "suspect classification," such as race, national origin or religion.*

## **To pass strict scrutiny, the law or policy must satisfy three tests:**

It must be justified by a **compelling governmental interest**. While the Courts have never brightly defined how to determine if an interest is compelling, the concept generally refers to something necessary or crucial, as opposed to something merely preferred. Examples include national security, preserving the lives of multiple individuals, and not violating explicit constitutional protections.

The law or policy must be **narrowly tailored** to achieve that goal or interest. If the government action encompasses too much (overbroad) or fails to address essential aspects of the compelling interest, then the rule is not considered narrowly tailored.

The law or policy must be the **least restrictive means** for achieving that interest. That is, there cannot be a less restrictive way to effectively achieve the compelling government interest. The test will be met even if there is another method that is equally the least restrictive. Some legal scholars consider this "least restrictive means" requirement part of being narrowly tailored, though the Court generally evaluates it separately.