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Civil Rights

"Our Constitution is colorblind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law."

—Justice John Marshall Harlan's dissent in *Plessy v. Ferguson,* 1896

Essential Question: How have constitutional provisions, the Supreme Court, and citizen-state interactions led to laws and policies that promote equality?

United States political culture places a high priority on freedom and equality and on **civil rights,** protections from discrimination based on such characteristics as race, national origin, religion, and sex. These principles are evident in the Declaration of Independence, the Constitution, the Bill of Rights, and later constitutional amendments. They are guaranteed to all citizens under the due process and equal protection clauses in the Constitution and according to acts of Congress. Civil rights organizations representing African Americans and women have pushed for governments to deliver on the promises these documents laid out. In more recent years, other groups—Latinos, people with disabilities, and gays, lesbians, and transgender individuals—have petitioned the government for fundamental fairness and equality. All three branches have responded in varying degrees to address civil rights issues. Even so, racism, sexism, and other forms of bigotry have not disappeared. Today, a complex body of law shaped by constitutional provisions, Supreme Court decisions, federal statutes, executive directives, and citizen-state interactions defines civil rights in America.

Constitutional Provisions Supporting Equality

In the United States, federal and state governments generally ignored civil rights policy before the Civil War. The framers of the Constitution left the legal question of slavery up to the states, allowing the South to strengthen its plantation system and relegate slaves and free blacks to subservience. The North had a sparse black population and little regard for fairness to African Americans. Abolitionists, religious leaders, and progressives sought to outlaw slavery and advocated for African Americans in the mid-1800s.

A major setback for the antislavery movement came with the Supreme Court's Dred Scott decision, also known as *Dred Scott v. Sandford.* (See page 201.) Scott, a slave living in free territory, sued for his freedom, but the Court did not recognize Scott as a citizen and ruled that he had no legal grounds to bring a case. Ruling on the Fifth Amendment, the Court declared that property—including slaves—cannot be taken away without just compensation through due process.

This blow ignited support for abolition on a national level and helped to bring about the Civil War and the Reconstruction Era following the South's defeat. Throughout the 19th and 20th centuries, the Supreme Court, because of its changing makeup, sometimes protected and sometimes restricted the civil rights of African Americans and other minority groups as it interpreted constitutional provisions regarding equality.

The Fourteenth Amendment and Other Reconstruction Amendments

During the Civil War, a Republican-dominated Congress outlawed slavery in the capital city, and President Abraham Lincoln issued the Emancipation Proclamation. After the Confederacy surrendered, Radical Republicans took the lead. The House and Senate passed legislation, including proposals for three constitutional amendments, to reconstruct the Union and to protect the freed slaves. The amendments were ratified by the states, sometimes as a condition of Southern states resuming their delegations in Congress.

The **Thirteenth Amendment** outlawed slavery across the United States, trumping the Tenth Amendment's reserved power that before had enabled states to have slavery. The **Fifteenth Amendment** prohibited states from denying the vote to anyone "on account of race, color, or previous condition of servitude." It was the **Fourteenth Amendment,** however, that became the foundation for policy and social movements for equality.

The Fourteenth Amendment had a host of provisions to protect freed slaves. It promised U.S. citizenship to anyone born or naturalized in the United States. The Fourteenth Amendment required states to guarantee privileges and immunities to its own citizens as well as those from other states. The due process clause (see page 236) ensured all citizens would be afforded due process in court as criminal defendants or in other areas of law. The amendment's **equal protection clause** prohibited state governments from denying persons within their jurisdiction equal protection of the laws.

Section 1 of the Fourteenth Amendment is the section used most often in legal cases. It reads: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

As with the other Reconstruction amendments, the Fourteenth Amendment was obviously directed at protecting the freed slaves, making them citizens and ensuring equal treatment from the states. But since neither slaves nor African Americans are specifically mentioned in the amendment, several other groups—women; ethnic minorities; people in the lesbian, gay, bisexual, transgender (LGBT) community—have benefitted from it in their search for equality. Criminal defendants have made claims against states to establish new legal standards. As with native-born U.S. citizens, immigrants, documented or undocumented, who bear children in the United States will see their offspring become U.S. citizens because of the Fourteenth Amendment.

RECONSTRUCTION AMENDMENTS
• The **Thirteenth Amendment** (1865) abolished slavery.
• The **Fourteenth Amendment** (1868) guaranteed citizenship, privileges and immunities, due process, and equal protection.
• The **Fifteenth Amendment** (1870) prevented state denial of suffrage on account of race.

Another expansion of civil rights looked imminent after the **Civil Rights Act of 1875** made it illegal for privately owned places of public accommodation—trains, hotels, and taverns—to make distinctions between black and white patrons. The law also outlawed discrimination in jury selection, public schools, churches, cemeteries, and transportation. These measures created a relative equality for the emancipated slave. The franchise (the right to vote) greatly expanded black men's rights. African Americans elected men from their own ranks to represent them in state capitals and in Washington. Virginia had at least some black representation in the state assembly every year from 1869 to 1891. Between 1876 and 1894, North Carolina elected 52 black representatives to its state legislature. Ten black men were sent to Congress during Reconstruction; ten others were elected afterward.

Restrictions from the Supreme Court The black presence in elected bodies and federal protections, however, soon disappeared after federal troops departed from the South and after a conservative Supreme Court took away Congress's authority over civil rights. When Union troops departed, so did the freed slaves' protection. Additionally, the Supreme Court reviewed the civil rights law. In a series of decisions collectively dubbed the ***Civil Rights Cases*** **(1883)**, the Court ruled that the equal protection clause was meant to protect African Americans against unfair state action and not to guide a shopkeeper's service policy.

Disenfranchisement, economic reprisals, and discrimination against blacks followed. States created a body of law that segregated the races in the public sphere. These **Jim Crow laws**—named after a disrespected character in a minstrel show in which whites performed in "blackface"—separated blacks and whites on trains, in theaters, in public restrooms, and in public schools.

Circumventing the Fifteenth Amendment As former Confederates returned to power, the Southern states circumvented the Fifteenth Amendment. Disenfranchising African Americans, Southern whites believed, would return them to second-class status. The South began requiring property or literacy qualifications to vote. Several states elevated the **literacy test**—a test of reading skills required before one could vote—into their state constitutions. The **poll taxes**—a simple fee required of voters—became one of the most effective ways to discourage the potential black voter. And the **grandfather clause**, which allowed states to recognize a registering voter as it would have recognized his grandfather, prevented thousands of blacks from voting while it allowed illiterate and poor whites to be exempt from the literacy test and poll tax. The **white primary**, too—a primary in which only white men could vote—became a popular method for states to keep African Americans out of the political process. Though primary elections empowered greater numbers of rank and file voters, primaries in the South became another method used to disenfranchise blacks early in the electoral process.

These state-level loopholes did not violate the absolute letter of the Constitution because they never prevented blacks from voting "on account of race, color, or previous condition of servitude," as the Fifteenth Amendment prohibits.

"Separate but Equal" Policymakers continued to draw lines between the races. They separated white and black citizens on public carriers, in public restrooms, in theaters, and in public schools. This institutionalized separation was tested in ***Plessy v. Ferguson* (1896)**. Challenging Louisiana's separate coach law, Homer Adolph Plessy, a man with one-eighth African blood and thus subject to the statute, sat in the white section of a train. He was arrested and convicted and then appealed his conviction to the Supreme Court. His lawyers argued that separation of the races violated the Fourteenth Amendment's equal protection clause. The Supreme Court saw it differently, however, and sided with the state's right to segregate the races in public places, claiming **"separate but equal"** facilities satisfied the amendment. One lone dissenter, Justice John Marshall Harlan, decried the decision (as he had in the *Civil Rights Cases*) as a basic violation to the freed African Americans. Unfortunately, Harlan's dissent was only a minority opinion. Segregation and Jim Crow continued for two more generations.

The Fourteenth Amendment and the Social Movement for Equality

The Fourteenth Amendment's equal protection clause also spurred citizens to take action. One organization, the NAACP, stood apart from the others in promoting equal rights for African Americans.

State-sponsored discrimination and a violent race riot in Springfield, Illinois, led civil rights leaders to create the **National Association for the Advancement of Colored People (NAACP)** in 1909. On Abraham Lincoln's

birthday, a handful of academics, philanthropists, and journalists sent out a call for a national conference. Harvard graduate and Atlanta University professor Dr. W.E.B. DuBois was among those elected as the association's first leaders. By 1919, the organization had more than 90,000 members.

Citizen Action

Before World War I, the citizen group and its leaders pressed President Woodrow Wilson to overturn segregation in federal agencies and departments. The NAACP had also hired two men as full-time lobbyists in Washington, one for the House and one for the Senate. The association joined in filing a case to challenge the grandfather clause. The Supreme Court ruled the practice a violation of the Fifteenth Amendment. Two years later, the Court again sided with the NAACP when it ruled government-imposed residential segregation a constitutional violation.

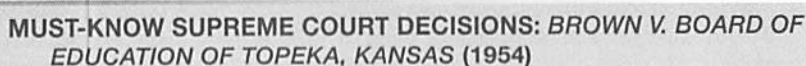
Legal Defense Fund The NAACP regularly argued cases in the Supreme Court. It added a legal team led by Charles Hamilton Houston, a Howard University law professor, and his assistant, Baltimore native Thurgood Marshall. The association's Legal Defense Fund's lawyers argued for the Scottsboro Nine—nine black youths falsely accused of rape—to have the right to counsel in a death penalty case. They defended helpless and mostly innocent black defendants across the South in front of racist judges and juries. Finally, they successfully convinced the Supreme Court to outlaw the **white primary**—a primary in which only white men could vote. The white primary, in suppressing African American voters, had essentially extinguished the Republican Party—the party of Lincoln—in the South, allowing Southern Democrats to stay in power and pass discriminatory laws.

Desegregating Schools The NAACP next developed a legal strategy to chip away at state school segregation. The federal judiciary was the ideal place to start since federal judges served life terms and could issue an unpopular decision in the South without fear of losing their jobs. Thurgood Marshall and other attorneys would prove that states and local school boards did not follow the Fourteenth Amendment's equal protection clause while creating segregated schools. Marshall argued that the *Plessy v. Ferguson* principle of "separate but equal" simply did not result in equal education.

The NAACP filed suits to integrate college and graduate schools first and then K-12 schools. Early success came with the case of *Missouri ex. Rel. Gaines v. Canada* (1938), with which the NAACP won Lloyd Gaines's entrance into the University of Missouri's Law School. The state had offered to pay his out-of-state tuition at a neighboring law school, but the Fourteenth Amendment specifically requires states to treat the races equally, and failing to provide the "separate but equal" law school, the Court claimed, violated the Constitution. The state created an all-black law school within the University of Missouri campus.

In 1950, the NAACP won decisions against graduate and law schools in Oklahoma and Texas. Beyond the obvious differences in the facilities and tangible materials, the Court recognized stark differences in discourse and the professional connections essential to success in the field after graduation. The Supreme Court ruled that separate schools were not equal and that states had to admit blacks seeking advanced degrees.

As the Supreme Court delivered these decisions, the NAACP had already filed several suits in U.S. district courts to overturn *Plessy v. Ferguson*, which had provided the justification for K-12 segregation. With assistance from sociologists Kenneth and Mamie Clark, two academics from New York, the NAACP improved its strategy. In addition to arguing that segregation was morally wrong, they argued that separate schools were psychologically damaging to black children. In experiments run by the Clarks, when black children were shown two dolls identical except for their skin color and asked to choose the "nice doll," they chose the white doll. When asked to choose the doll that "looks bad," they chose the dark-skinned doll. With these results, the Clarks argued that the segregation system caused feelings of inferiority in the black child. Armed with this scientific data, attorneys sought strong, reliable plaintiffs who could withstand the racist intimidation and reprisals that followed the filing of a lawsuit.



MUST-KNOW SUPREME COURT DECISIONS: *BROWN V. BOARD OF EDUCATION OF TOPEKA, KANSAS* (1954)

The Constitutional Question Before the Court: Do state school segregation laws violate the equal protection clause of the Fourteenth Amendment?

The Decision: Yes, 9:0 for Brown

Before *Brown*: In 1896, the case of *Plessy v. Ferguson* reached the Supreme Court. In this effort, civil rights activists and progressive attorneys argued that Louisiana's state law segregating train passengers by race violated the Fourteenth Amendment's equal protection clause. In a 7:1 decision, the Court ruled that as long as states provided separate but equal facilities, they were in compliance with the Constitution.

Facts: Topeka, Kansas, student Linda Brown's parents and several other African American parents similarly situated filed suit against the local school board in hopes of overturning the state's segregation law. In fact, the NAACP had filed similar cases in three other states and against the segregated schools of the District of Columbia. The Supreme Court took all these cases at once, and they were together called *Brown v. Board of Education*.

Reasoning: The petitioners, led by Thurgood Marshall, put forth arguments found in social science research that the racially segregated system did damage to the black child's psyche and instilled feelings of inferiority. The inevitably unequal schools—unequal financially, unequal in convenience of location—created significant differences between them. Marshall and the NAACP argued that even in the rare cases where black and white facilities and education were the same tangibly, the separation itself was inherently unequal. In fact, part of this strategy resulted in Southern governments and school boards increasing

spending, late in the game, so black and white educational systems would appear equal during the coming court battles. Black leaders felt true integration was the only way to ever truly reach equality.

Chief Justice Earl Warren and all eight associate justices agreed and ruled in favor of striking down segregation and overturning *Plessy* to satisfy the equal protection clause of the Fourteenth Amendment. *Brown's* unanimous ruling came in part as a result of former politician Earl Warren, now chief justice, pacing the halls and shaping his majority opinion as he tried to bring the questionable or reluctant justices over to the majority.

Majority (Unanimous) Opinion by Mr. Justice Warren: Here, unlike *Sweatt v. Painter* [a case in which the Court ordered the University of Texas Law School to admit a black applicant because the planned "law school for Negroes" would have been grossly inferior], there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868, when the Amendment was adopted, or even to 1896, when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws . . .

We conclude that, in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.

Since *Brown*: The *Brown* decision of May 17, 1954, decided the principle of segregation but did not determine a timeline for when this drastic societal change would happen or how it would happen. So the Court invited litigants to return and present arguments. In *Brown II*, the Court determined that segregated school systems should desegregate "with all deliberate speed," and that the lower federal courts would serve as venues to determine if that standard was met. That is, black parents could take local districts to U.S. district courts to press for integration.

It took a decade before any substantial integration occurred in the Deep South and a generation before black-to-white enrollments were proportional to the populations of their respective school districts. A generation of litigation followed *Brown* that chipped away at unreasonable desegregation plans, brought racial enrollment targets, and tried to counter **white flight**—the movement of white

people from racially mixed neighborhoods to neighborhoods with little, if any, diversity. Nearly every Supreme Court ruling on this issue throughout the era was in favor of integration, and most were unanimous opinions.

Political Science Disciplinary Practices: Analyze and Interpret Supreme Court Decisions

As you read, Chief Justice Warren wanted to make certain this ruling was unanimous. He also wanted to make sure that the wording in the ruling was in plain language so that everyone reading it could understand the rationale. The opinion is also relatively brief. You may want to read the entire opinion, which you can do online at Oyez or other sites.

Apply: Complete the following activities.

1. Explain why the Court had to base its decision on factors other than "the tangible factors in the Negro and white schools."
2. Describe the type of evidence on which the NAACP relied to make its case.
3. Identify the clause in the Fourteenth Amendment on which this case was founded.
4. Explain the reasoning of the unanimous opinion.
5. Describe the differences between the opinion in *Brown* and the opinion in *Plessy*.
6. Explain how this case can be considered a turning point in civil rights.

Source: *Granger, NYC*

The great-grandson of a slave, Thurgood Marshall was a leader in shaping civil rights law well before he became the first African American justice on the Supreme Court in 1967.

POLICY MATTERS: ***POLICY AND CITIZEN-STATE INTERACTIONS***

The Southern response to the decision in *Brown* ranged from civil dissent to violent massive resistance. Southerners began a campaign to impeach members of the Supreme Court and quickly promised to defy the order. A total of 101 Southern members of Congress, attempting to sidestep the Supreme Court ruling, signed the Southern Manifesto, a document denouncing the ruling and promising to use all legal means to maintain "separate but equal" as the status quo. Racist organizations such as the Ku Klux Klan revived, and the White Citizens Council—sometimes referred to as "the white-collar Klan"—was born. Most school administrators across the segregated South stalled while a few brave African Americans enrolled in token, compliant school districts. Although these Congressional and citizen pressures succeeded in delaying integration, they did not succeed in defying the law of the land.

Over the next decade, against strong Southern opposition and in response to pressure from citizen groups committed to civil rights, Congress struggled but succeeded in passing legislation to fulfill the promise of the Fifteenth Amendment, to prevent discrimination in employment, and to enforce the school integration order. The NAACP had more than 300,000 members in the late 1950s, and other grassroots movements were visibly pushing for equality. The Urban League, the Congress on Racial Equality (CORE), and the Southern Christian Leadership Conference (SCLC) headed by Dr. Martin Luther King Jr. also petitioned Congress to enact laws to bring equality to African Americans. In the spring of 1956, more than 2,000 delegates from various civil rights organizations traveled to Washington for a national convention on civil rights.

President Dwight D. Eisenhower (1953–1961) had a less-than-aggressive record on civil rights, and the NAACP did not see him as an ally. In his January 1957 State of the Union address, he failed to note that four Montgomery, Alabama, churches had been bombed the night before. Though many may recall Eisenhower's order on September 24, 1957, to send the 101st Airborne into Little Rock to enforce a desegregation order, he is also remembered for criticizing Chief Justice Warren's *Brown* ruling.

In his second term, however, the president advocated for a civil rights bill. The proposal would create a civil rights commission to investigate voter discrimination, establish a civil rights division within the U.S. Justice Department, empower the attorney general to sue noncompliant school districts refusing to desegregate, and protect African Americans' right to vote in federal elections. After some debate, the House passed a modified version that accomplished three of Eisenhower's four goals; not until passage of a later, more comprehensive law would the attorney general be able to sue noncompliant school districts.

Passing the bill in the Senate was a much more difficult task. With Mississippi's James Eastland chairing the Senate Judiciary Committee, the bill had little chance of making it out of committee. However, a

handful of Southern senators—Lyndon Johnson of Texas among them—maneuvered the bill to passage.

Passage in the Senate required enduring a 24-hour filibuster by South Carolina Senator Strom Thurmond, a strong advocate of segregation. A *filibuster* is a strategy allowed by Senate rules that permits senators to talk as long as they want on any subject. Its purpose is to delay or sometimes even kill legislative efforts, a strategy known as "talking a bill to death." But rather than adjourn without voting, some senators brought in cots for sleeping, and on August 29, the **1957 Civil Rights Act** passed the Senate by a vote of 72–18. The passage of this act proved Northern Democrats and Republicans could work together to overcome southern obstructionism. Over the next few years, a series of organized citizen protests, along with the rise and fall of a presidential ally and national media attention to white-on-black violence in the South, brought the most sweeping civil rights package in American legislative history.

Outlawing Discrimination

The civil rights movement had a pivotal year in 1963, with both glorious and horrific consequences. On the one hand, Martin Luther King Jr. assisted the grassroots protests in Birmingham, and more than 200,000 people gathered in the nation's capital for the March on Washington. On the other hand, Mississippi NAACP leader Medgar Evers was shot and killed. In Birmingham, brutal police Chief Bull Connor turned fire hoses and police dogs on peaceful African American protesters.

FOUNDATIONAL DOCUMENTS: *LETTER FROM A BIRMINGHAM JAIL*

Motivated by the Fourteenth Amendment's equal protection clause, on April 12, 1963—Good Friday, the Friday before Easter—the Alabama Christian Movement for Human Rights and the Southern Christian Leadership Conference sponsored a parade down the streets of Birmingham, Alabama, to protest the continued segregation of the city's businesses, public spaces, and other institutions. Three key leaders headed the march of about 50 participants: the Revs. Fred Shuttlesworth and Ralph Abernathy, and Dr. Martin Luther King Jr. Because the city feared disruption from the march, the protesters had been denied a parade permit, and on those grounds, Dr. King and Ralph Abernathy were arrested and put in jail.

On the day of the march, "A Call for Unity," written by eight white clergymen from Birmingham and published in a Birmingham newspaper, called on the protesters to abandon their plans, arguing that the proper way to obtain equal rights was to be patient and let those in a position to

negotiate do their job. While serving 11 days in solitary confinement in a Birmingham jail, Dr. King composed a response to that entreaty and in so doing laid out the foundations for the nonviolent resistance to segregation that guided the civil rights movement.

Source: *Birmingham, Ala. Public Library Archives*
Fred Shuttlesworth, Ralph Abernathy, and Martin Luther King Jr. leading the Good Friday March.

> In any nonviolent campaign there are four basic steps: 1) Collection of the facts to determine whether injustices are alive. 2) Negotiation. 3) Self-purification and 4) Direct Action. We have gone through all of these steps in Birmingham. . . . Birmingham is probably the most thoroughly segregated city in the United States. Its ugly record of police brutality is known in every section of this country. Its unjust treatment of Negroes in the courts is a notorious reality. There have been more unsolved bombings of Negro homes and churches in Birmingham than any city in the nation. These are the hard, brutal and unbelievable facts. On the basis of these conditions Negro leaders sought to negotiate with the city fathers. But the political leaders consistently refused to engage in good faith negotiation. . . .we had no alternative except that of preparing for direct action, whereby we would present our very bodies as a means of laying our case before the conscience of the local and the national community. We were not unmindful of the difficulties involved. So we decided to go through a process of self purification. We started having workshops on nonviolence and repeatedly asked ourselves the questions, "Are you able to accept blows without retaliating?" "Are you able to endure the ordeals of jail?"

Dr. King also expressed disappointment in the white clergy, in whom he had hoped and expected to find allies. Yet he tried to understand their call for patience.

We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed. . . . For years now I have heard the word "Wait!" . . . .I guess it is easy for those who have never felt the stinging darts of segregation to say, "Wait." But when you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate filled policemen curse, kick, brutalize and even kill your black brothers and sisters with impunity; when you see the vast majority of your twenty million Negro brothers smothering in an air tight cage of poverty in the midst of an affluent society; . . . when you are forever fighting a degenerating sense of "nobodiness;" then you will understand why we find it difficult to wait. There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into an abyss of injustice where they experience the bleakness of corroding despair. I hope, Sirs, you can understand our legitimate and unavoidable impatience.

Political Science Disciplinary Practices: Explain How Argument Influences Behaviors

Dr. King's "Letter from a Birmingham Jail" is an argument—or more precisely, a counterargument. King addresses each of the points the white clergy make in "A Call for Unity" to make a clear case for the need for nonviolent direct action. Think about the implications of that argument on the political behaviors of African Americans and whites.

Apply: Complete the following activities.

1. Explain how the four basic steps of a nonviolent campaign were carried out in Birmingham before the Good Friday demonstration.
2. Explain the implications of Dr. King's argument on breaking or upholding the law.
3. Compare the lawbreaking of the protestors marching without a permit to the lawbreaking King refers to by mobs.
4. Explain how the civil rights movement was motivated by constitutional provisions.

Then read the full "Letter from a Birmingham Jail" on pages 670–680 and answer the questions that accompany it. You may also read it online.

Presidential Leadership As the events of the early 1960s unfolded, President John F. Kennedy (JFK) became a strong ally for civil rights leaders. He had avoided the topic in the 1960 campaign and let Cold War concerns push civil rights to the bottom of his agenda. However, the president's brother, Robert Kennedy, the nation's attorney general, witnessed violent, ugly confrontations between southern civil rights leaders and brutal state authorities. It was Robert who persuaded President Kennedy to alter his views. JFK began hosting black leaders at the White House and embraced

victims of the violence. By mid-1963, Kennedy buckled down to battle for a comprehensive civil rights bill. Kennedy's empathy for the plight of blacks, later followed by President Johnson's commitment to the civil rights cause, proved crucial to the enforcement of ideas written into the Reconstruction amendments a century earlier.

President Kennedy addressed Congress on June 11, 1963, informing the nation of the legal remedies of his proposal. "They involve," he stated, "every American's right to vote, to go to school, to get a job, and to be served in a public place without arbitrary discrimination." Kennedy's bill became the center of controversy over the next year and became the most sweeping piece of civil rights legislation to date. The proposal barred unequal voter registration requirements and prevented discrimination in public accommodations. It empowered the attorney general to file suits against discriminating institutions, such as schools, and to withhold federal funds from noncompliant programs. Finally, it outlawed discriminatory employment practices.

As Kennedy began to push for this omnibus bill, he faced several dilemmas. How strong should it be? The president had served in both the House and the Senate and knew the difficult path for such a revolutionary bill becoming a law. Should he put forth a fairly moderate bill that had better chances of passage, or should he push forward with a stronger civil rights proposal that the NAACP, Urban League, and Dr. King's SCLC desired? Should the process begin in the House or the Senate? And where exactly was the nation on civil rights?

Civil Rights Act of 1964

By this point, nationwide popular opinion favored action for civil rights. In one poll, 72 percent of the nation believed in residential integration, and a full 75 percent believed in school integration. Kennedy's popularity, however, was dropping; his 66 percent approval rating had sunk below 50 percent. The main controversy in his plan was the bill's public accommodations provision. Many Americans—even those opposed to segregation in the public sphere—still believed in a white shop owner's legal right to refuse service to a black patron. But Kennedy held fast to what became known as Title II of the law and sent the bill to Capitol Hill on June 19, 1963.

Days later, Attorney General Robert Kennedy arrived at the House Judiciary Committee's hearing. The House was the preferred starting ground for this controversial measure, largely because the Senate Judiciary Committee was known as the "graveyard for civil rights proposals."

Public Opinion By mid-1963, the national media had vividly presented the civil rights struggle to otherwise unaffected people. Shocking images of racial violence published in the *New York Times* and national newsweeklies such as *Time* and *Life* were eye-opening. Television news broadcasts that showed violence at Little Rock, standoffs at southern colleges, slain civil rights workers, and Bull Connor's aggressive Birmingham police persuaded Northerners to care more about the movement. (For more on the role of media as a linkage institution, connecting citizens and government, see Chapter 16.)

Suddenly the harsh, unfair conditions of the South were very real to the nation. In a White House meeting with black labor leader A. Phillip Randolph and Martin Luther King Jr., President Kennedy reportedly joked when someone criticized Connor: "I don't think you should be totally harsh on Bull Connor. After all, Bull Connor has done more for civil rights than anyone in this room."

Johnson Takes Over Soon after Kennedy had championed the cause of civil rights, he was slain by a gunman in Dallas on November 22, 1963. Within an hour, Lyndon Baines Johnson (LBJ) was sworn in as the 36th president. Onlookers and black leaders wondered how the presidential agenda might change. Johnson had supported the 1957 Civil Rights Act but only after he moderated it. Civil rights leaders hadn't forgotten Johnson's Southern roots or the fact that he and Kennedy had not seen eye to eye.

Fortunately, President Johnson took the helm and privately told two of his top aides that the first priority would be passage of Kennedy's bill. As Johnson and other Democratic leaders drafted his speech for his first televised presidential address, they paid tribute to Kennedy by supporting his civil rights package. "No memorial oration or eulogy could more eloquently honor President Kennedy's memory," Johnson stated to the nation, "than the earliest passage of the civil rights bill for which he fought so long." Days later, on Thanksgiving, Johnson promoted the bill again: "For God made all of us, not some of us, in His image. All of us, not just some of us, are His children."

Johnson was a much better shepherd for this bill than Kennedy. Johnson, having been a leader in Congress, was skilled at both negotiation and compromise. He had a better chance as the folksy, towering Texan than Kennedy had as the elite, overly polished, and often arrogant patriarch. Johnson was notorious for "the treatment," an up close and personal technique of muscling lawmakers into seeing things his way. Johnson beckoned lawmakers to the White House for close face-to-face persuasion that some termed "nostril examinations."

With LBJ's support, the bill had a favorable outlook in the House, which was more representative of popular opinion and more dominated by Northerners than the Senate. On February 10, after the House had debated for less than two weeks and with a handful of amendments, the House passed the bill 290 to 130.

The fight in the Senate was much more difficult. A total of 42 senators added their names as sponsors of the bill. Northern Democrats, Republicans, and the Senate leadership formed a coalition behind the bill which made passage of this law possible. After a 14-hour filibuster by West Virginia's Robert C. Byrd, a cloture vote was finally taken. A *cloture vote*, which must pass by a three-fifths majority, limits further debate on a subject to 30 hours. (For more on cloture, see page 92.) The final vote came on June 19 when the civil rights bill passed by 73 to 27, with 21 Democrats and six Republicans in dissent.

The ink from Johnson's signature was hardly dry when a Georgia motel owner refused service to African Americans and challenged the law. He claimed it exceeded Congress's authority and violated his constitutional right to operate his private property as he saw fit. In debating the bill, Congress had asserted

that its power over interstate commerce granted it the right to legislate in this area. Most of this motel's customers had come across state lines. By a vote of 9:0, the Court in *Heart of Atlanta Motel v. United States* (1964) agreed with Congress.

KEY PROVISIONS OF THE CIVIL RIGHTS ACT OF 1964
• Required equal application of voter registration rules (Title I)
• Banned discrimination in public accommodations and public facilities (Titles II and III)
• Empowered the Attorney General to initiate suits against noncompliant schools (Title IV)
• Cut off federal funding for discriminating government agencies (Title VI)
• Outlawed discrimination in hiring based on race, color, religion, sex, or national origin (Title VII)

Impact of the Civil Rights Act of 1964

In April 2014, President Barack Obama gave a speech at a ceremony in Austin, Texas, in honor of the 50th anniversary of LBJ's signing of the Civil Rights Act of 1964. Obama reminded listeners that LBJ himself had grown up in poverty, that he had seen the struggles of Latino students in the schools where he taught, and that he pulled those experiences and his prodigious skills as a politician together to pass this landmark law. "Because of the civil rights movement," Obama said, "because of the laws President Johnson signed, new doors of opportunity and education swung open for everybody, not all at once, but they swung open. Not just blacks and whites, but also women and Latinos and Asians and Native Americans and gay Americans and Americans with a disability. They swung open for you and they swung open for me. And that's why I'm standing here today, because of those efforts, because of that legacy. . . . Half a century later, the laws LBJ passed are now as fundamental to our conception of ourselves and our democracy as the Constitution and the Bill of Rights. They are a foundation, an essential piece of the American character."

As you will read in the following pages, the Civil Rights Act of 1964 had far-reaching effects. It laid the foundation for a new era of equal opportunity, not just for African Americans but for the other groups Obama listed as well. The Civil Rights Act of 1964 helped set the stage for passage of an immigration reform bill in 1965, which did away with national-origin quotas and increased the diversity of the U.S. population. Vice President Hubert Humphrey said before the bill's passage: "We have removed all elements of second-class citizenship from our laws by the Civil Rights Act. We must in 1965 remove all elements in our immigration law which suggest there are second-class people." Instruction in schools for students whose first language is not English relates back to the Civil Rights Act of 1964, which prohibits discrimination

on the basis of national origin. The Americans with Disabilities Act, passed in 1990, was modeled on the Civil Rights Act of 1964 and forbade discrimination in public accommodation on the basis of disability. Cases in the news today—from transgender use of bathrooms to baking a wedding cake for a same-sex couple—relate back to the bedrock provisions of the Civil Rights Act of 1964.

Focus on the Franchise

The 1964 Civil Rights Act addressed discrimination in voting registration but lacked the necessary provisions to fully guarantee African Americans the vote. Before World War II, about 150,000 black voters were registered throughout the South, about 3 percent of the region's black voting-age population. In 1964, African American registration in the Southern states varied from 6 to 66 percent but averaged 36 percent.

Twenty-Fourth Amendment Congress passed a proposal for the **Twenty-Fourth Amendment**, which outlaws the poll tax in any federal, primary, or general election, in 1962. At the time, only five states still charged such a tax. By January 1964, the required number of states had ratified the amendment. It did not address any taxes for voting at the state or local levels, but the Supreme Court ruled those unconstitutional in 1966.

Citizen Protest in Selma Many loopholes to the Fifteenth Amendment had been dismantled, yet intimidation and literacy tests still limited the number of registered African American voters. King had focused attention on Selma, Alabama, a town where blacks made up about 50 percent of the population but only 1 percent of registered voters. Roughly 9,700 whites voted in the town compared to only 325 blacks. To protest this inequity, King organized a march from Selma to Alabama's capital, Montgomery. Alabama state troopers violently blocked the mostly black marchers at the Edmund Pettus Bridge as they tried to cross the Alabama River. Mounted police beat these activists and fired tear gas into the crowd. Two Northerners died in the incident.

Again the media offered vivid images that brought great attention to the issue of civil rights. President Johnson had handily won the 1964 presidential election, and the Democratic Party again dominated Congress. In a televised speech before Congress, Johnson introduced his voting rights bill, ending with a line that defined the movement: "We shall overcome."

Voting Rights Act of 1965 The **Voting Rights Act** was signed into law on August 6, 1965, 100 years after the Civil War. It passed with greater ease than the 1964 Civil Rights Act. The law empowered Congress and the federal government to oversee state elections in Southern states. It addressed or "covered" states that used a "test or device" to determine voter qualifications or any state or voting district with less than 50 percent of its voting-age population actually registered to vote. The law effectively ended the literacy test.

BY THE NUMBERS REGISTERED AFRICAN AMERICAN VOTERS BEFORE AND AFTER THE 1965 VOTING RIGHTS ACT		
	1964	1971
Alabama	18%	54%
Arkansas	42%	81%
Florida	51%	54%
Georgia	28%	64%
Louisiana	32%	56%
Mississippi	6%	60%
North Carolina	44%	43%
South Carolina	33%	45%
Tennessee	66%	65%
Virginia	38%	52%

What do the numbers show? What impact did the 1965 Voting Rights Act have on black voter registration? Which states had the lowest voter registration before the law? Which states experienced the greatest increases in registration? Is there a regional trend regarding registration among these Southern states?

The law also required these states to ask for **preclearance** from the U.S. Justice Department before they could enact new registration policies. If Southern states attempted to invent new, creative loopholes to diminish black suffrage, the federal government could stop them.

Section 2 of the Voting Rights Act further requires that voting districts not be drawn in such a way as to "improperly dilute minorities' voting power." The Supreme Court in *Thornburg v. Gingles* (1982) determined that recently drawn districts in North Carolina "discriminated against blacks by diluting the power of their collective vote," and the Court established criteria for determining whether vote dilution has occurred. The Court also ruled that **majority-minority districts**—voting districts in which a minority or group of minorities make up a majority—can be created to redress situations in which African Americans were not allowed to participate fully in elections, a right secured by the Voting Rights Act.

Over time, as the makeup of the Court changed, the Court has revised its position. The Court ruled in 1993 in *Shaw v. Reno* that if redistricting is done on the basis of race, the actions must be held to strict scrutiny in order to meet the requirement of the equal protection clause, yet race must also be considered to satisfy the requirements of the Voting Rights Act, bringing into question the "colorblind" nature of the Constitution. **Strict scrutiny** is the highest standard of judicial review. It requires that laws infringing on a fundamental right must meet two tests: 1) there must be a compelling state interest for the law; and 2) the law is necessary to protect that interest and designed to be as narrow as possible. Most laws examined under strict scrutiny are overturned. (See page 325 for other levels of scrutiny.) Justice Blackmun in his dissent to *Shaw v. Reno* noted that "[i]t is particularly ironic that the case in which today's majority chooses to abandon settled law . . . is a challenge by white voters to the plan under which North Carolina has sent black representatives to Congress for the first time since Reconstruction."

The Court once again interpreted the law, upholding the rights of the majority, in its 2017 ruling on *Cooper v. Harris*, determining that districts in North Carolina were unconstitutionally drawn because they relied on race as the dominant factor.

The Voting Rights Act was the single greatest improvement for African Americans in terms of access to the ballot box. The law shifted the registration burden from the victims to the perpetrators. By 1967, black voter registration in six Southern states increased from about 30 to more than 50 percent. African Americans soon held office in greater numbers. Within five years of the law's passage, several states saw marked increases in their numbers of registered voters. The original law expired in 1971, but Congress has renewed the Voting Rights Act several times, most recently in 2006.

THINK AS A POLITICAL SCIENTIST: *ANALYZE AND INTERPRET QUANTITATIVE DATA ON AFRICAN AMERICAN SUFFRAGE*

Analysis and interpretation of quantitative (numbers-based) sources require that you first understand the purpose, labels, and contents of an informational illustration and then look for patterns and relationships. For example, do the numbers go up or down in a predictable pattern? If there is a sudden change in a pattern, how can you explain it? Is there a clear trend visible in the information? Draw a conclusion from the information to explain what it implies or illustrates about political principles, processes, behaviors, and outcomes.

Practice: Describe the data in the table and the trends, patterns, and variations they represent. Referring to this information, describe and explain in a brief essay the change in Southern African American voter registration during the period shown in the table. Explain how the data relate to each of the following: 1) political principles, 2) processes, 3) institutions, and 4) behavior.

AFRICAN AMERICAN VOTER REGISTRATION IN SOUTHERN STATES

State	1960	1964	1968
Alabama	14%	23%	57%
Arkansas	38%	54%	68%
Florida	39%	64%	62%
Georgia	n/a	39%	56%
Louisiana	40%	32%	59%
Mississippi	6%	7%	59%
North Carolina	38%	47%	55%
South Carolina	n/a	39%	51%
Tennessee	64%	69%	73%
Texas	34%	58%	83%
Virginia	23%	46%	58%

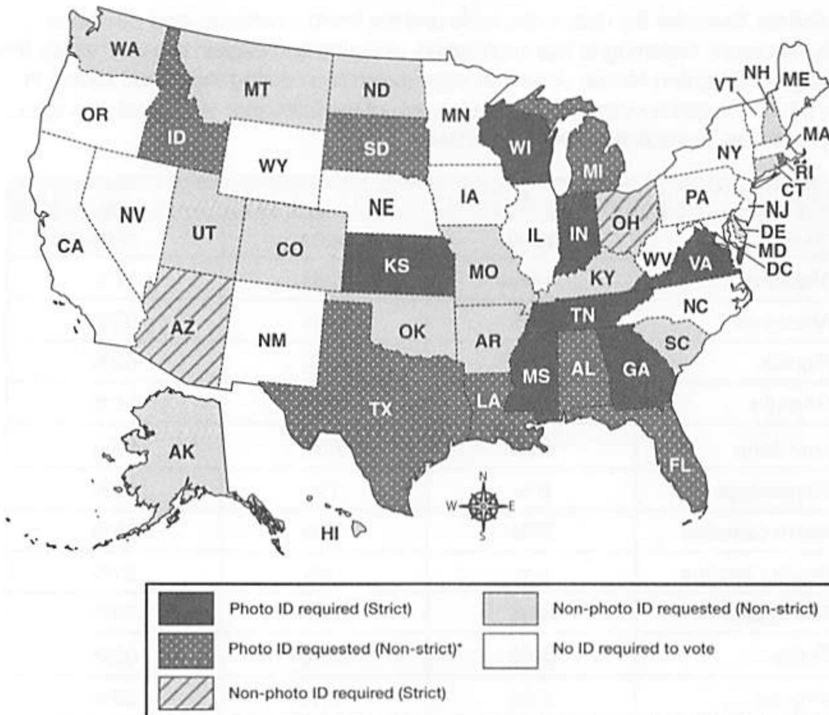
Source: *Piven, et al. Keeping Down the Black Vote, 2009*

Voting Rights Today More recent, racially charged voting rights controversies have arisen around a Supreme Court decision on part of the Voting Rights Act and the fairness of voter identification laws. Seeking to reclaim local control and to end the preclearance procedure, Shelby County, Alabama, sued. In a 5:4 ruling in *Shelby County v. Holder* (2013), the Court struck down the formula that determines which districts are covered for preclearance, stating that it imposes burdens that "must be justified by current needs."

State laws requiring voters to present identification at the voting booth have also brought criticism and constitutional challenges. Since 2011, 13 mostly Republican-dominated states have introduced voter ID laws. Conservative supporters of voter ID laws cite very rare instances of voter fraud and the goal of restoring integrity in elections. Liberal opponents say these laws create another voting impediment and unfairly disenfranchise lower socioeconomic groups—minorities, workers, the poor, immigrants—who also typically vote for Democrats. They point out that very little coordinated voter fraud actually goes on in the United States. A 2007 Justice Department study found virtually no proof of organized skewing of elections. A 2014 Loyola Law School study of elections since 2000 found just 31 examples of voter impersonation.

Are these voter ID requirements suppressing the vote? The Brennan Center for Justice says about 25 percent of eligible black voters and 16 percent of Hispanics do not have IDs compared to 9 percent of whites. It's likely that

VOTER ID LAWS IN EFFECT IN 2018



Source: *National Conference of State Legislatures*

at least some of the 33 to 35 percent of eligible African American voters who did not participate before the voter ID requirements are among those without IDs. Participation among these groups has generally grown during that period, and voter ID laws could interfere with that growth. At the same time, voter ID laws seem to serve as a rallying cry against voter suppression and actually help increase turnout. *The National Council of State Legislatures* reports that as of 2018, 34 states have some variation of a voter ID law on the books.

Fulfilling the Spirit of *Brown*

After gaining civil rights protections and increasing black voting via Congress throughout the 1960s, interest groups and civil rights activists questioned the effectiveness of the *Brown* decision on schools across the nation. The ruling met with varying degrees of compliance from state to state and from school district to school district. A great degree of segregation still existed in both the North and the South.

The *Brown* ruling and the *Brown II* clarification spelled out the Court's interpretation of practical integration, but a variety of reactions followed. To avoid the Court's ruling, school officials created measures such as **freedom-of-choice plans** that placed the transfer burden on black students seeking a move to more modern white schools. Intimidation too often prevented otherwise willing students to ask for a transfer.

In short, "all deliberate speed" had resulted in a deliberate delay. In 1964, only about one-fifth of the school districts in the previously segregated Southern states taught whites and blacks in the same buildings. In the Deep South, only 2 percent of the black student population had entered white schools. And in many of those instances, there were only one or two token black students willing to stand up to an unwelcoming school board and face intimidation from bigoted whites. Rarely did a white student request a transfer to a historically black school. Clearly, the intention of the *Brown* ruling had been thwarted.

Bearing the Burden of Brown

Activists and civil rights lawyers took additional cases to the Supreme Court to ensure both the letter and the spirit of the *Brown* ruling. From 1958 until the mid-1970s, a series of lawsuits—most filed by the NAACP and most resulting in unanimous pro-integration decisions—brought greater levels of integration in the South and North.

The Little Rock Nine faced violent confrontations as they entered school on their first day at Central High School in 1957. School officials and the state government asked for a delay until tempers could settle and until a safer atmosphere would allow for smoother integration. The NAACP countered in court and appealed this case to the high bench. In *Cooper v. Aaron*, the Court ruled potential violence was not a legal justification to delay compliance with *Brown*.

Source: *A. Y. Owen / Getty Images*

President Dwight Eisenhower dispatched the 101st Airborne division to Arkansas to escort African American students into Little Rock's Central High School, executing a court order to desegregate.

By the late 1960s, the transfer option had yielded few integration results. In 1968, the Court ruled the freedom-of-choice plans, by themselves, were not a satisfactory remedy for integration.

BY THE NUMBERS DESEGREGATED DISTRICTS 1964		
	Percent of African Americans Attending Schools with Whites	
South	Alabama	0.03
	Arkansas	0.81
	Florida	2.65
	Georgia	0.37
	Louisiana	1.12
	Mississippi	0.02
	North Carolina	1.41
	South Carolina	0.10
	Tennessee	5.33
	Texas	7.26
	Virginia	5.07

BY THE NUMBERS DESEGREGATED DISTRICTS 1964		
Percent of African Americans Attending Schools with Whites		
Border	Delaware	57.8
	D.C.	86.0
	Kentucky	62.5
	Maryland	51.7
	Missouri	44.1
	Oklahoma	31.7
	West Virginia	88.1

What do the numbers show? What percentage of African American students attended with whites? How effective was the *Brown* ruling in integrating previously segregated schools? What states reached the highest integration levels? Describe the factors that kept the percentage of African Americans in traditionally white schools low.

Balancing Enrollments Three years later, in ***Swann v. Charlotte-Mecklenburg* (1971)**, the Supreme Court addressed a federal district judge's solution to integrate a North Carolina school district. The judge had set a mathematical ratio as a goal to achieve higher levels of integration. The district's overall white-to-black population was roughly 71 to 29 percent. The district judge ordered the school district to assign students to school buildings across town to reflect roughly the same proportion of black to white students in each building. The Supreme Court later approved his decision and thus sanctioned mathematical ratios to achieve school integration in another unanimous decision.

Busing The *Swann* opinion ended a generation of litigation necessary to achieve integration, but it did not end the controversy. A popular movement against busing for racial balance sprang up as protesters questioned the placement of students at distant schools based on race. Ironically, though the constitutionality of busing grew out of a Southern case, cases from Indianapolis, Dayton, Buffalo, Detroit, and Denver brought much protest. Those protests included efforts to sabotage buses as well as seek legal means to stop this ruling. The antibusing movement grew strong enough to encourage the U.S. House of Representatives to propose a constitutional amendment to outlaw busing for racial balance, though the Senate never passed it. White parents in scores of cities transferred their children from public schools subject to similar rulings or relocated their families to adjacent, suburban districts to avoid rulings. This situation, known as white flight, became commonplace as inner cities became blacker and the surrounding suburbs became whiter.

In one of the final attempts in this busing saga, the NAACP tried to convince the Supreme Court to approve a multi-school district integration order that assigned racial enrollments and interdistrict busing (busing across district lines) of students for racial balance and to combat white flight. The Court stopped

short of approving this plan (by a close vote of 5:4) in its 1974 ruling in the Detroit case of *Milliken v. Bradley*, noting that if the district boundaries were not drawn for the purpose of racial segregation, interdistrict busing is not justified by the *Brown* decision. Such a plan would have meant that parents electing school boards in their home district would not have had a say in the school board in the district where their children were assigned to attend. In his dissent, Justice Thurgood Marshall wrote, "School district lines, however innocently drawn, will surely be perceived as fences to separate the races when, under a Detroit-only decree, white parents withdraw their children from the Detroit city schools and move to the suburbs in order to continue them in all-white schools." At the time, the Detroit public schools were, in fact, 99 percent black.

Women's Rights

Women's quest for equal rights began formally at the Seneca Falls Convention in 1848, was enhanced with a suffrage amendment, and reached new levels when Congress passed legislation that mandated equal pay, fairness in property and family law, and a more even playing field in education.

The western states, beginning with Wyoming, allowed women to vote in some or all elections. In the late 1800s, women entered the workplace, and they became a valued part of the workforce during World War I. After the war's end, women secured the right to vote. It wasn't until the 1950s and 1960s, however, that women organized to gain full independence, equal protection, and civil rights.

Seeking Women's Suffrage

Obtaining the franchise was key to altering public policy toward women, and Susan B. Anthony led the way. In 1872, in direct violation of New York law, she walked into a polling place and cast a vote. An all-male jury later convicted her. She authored the passage that would eventually make it into the Constitution decades later as the Nineteenth Amendment.

Women and Industry At the end of the 1800s, industrialization brought large numbers of women into the workplace. They took jobs in urban factories for considerably lower pay than men. Oregon passed a law that set a maximum number of work hours for women, but not for men. The law was largely to prevent harsh supervisors from overworking female employees who needed to be healthy to bear children. In 1908, noted attorney Louis Brandeis, representing Oregon's right to enact such a law, presented social science findings that proved a woman's physical makeup made her less suited to work lengthy days in rough conditions. The Court decided the state had a right to establish such a law that allowed it to treat women differently from men. This was a bittersweet victory for women. On the one hand, progressives sought to protect the health and safety of women; on the other, this double standard gave lawmakers ammunition to treat women differently.

Suffragists still pressed on. By 1914, 11 states allowed women to vote. In the 1916 election, both major political parties endorsed the concept of women's suffrage in their platforms, and Jeanette Rankin of Montana became the first woman elected to Congress. The following year, however, World War I completely consumed Congress and the nation, and the issue of women's suffrage drifted into the background.

Organized groups pressured President Woodrow Wilson. Suffrage leader Alice Paul had organized public picket lines in the nation's capital. Women were arrested and jailed—usually for minor charges such as disturbing the peace—in the name of seeking a stronger political voice. The perpetual picket lasted for more than a year until President Wilson, after pardoning the arrested suffragists, spoke in favor of the amendment, influencing its vote in Congress. The measure passed both houses in 1919 and was ratified as the **Nineteenth Amendment** in 1920.

From Suffrage to Action

What impact did the amendment have on voter turnout for women, how did it impact elections after 1920, and what did it do for the overall quest for women's rights? An in-depth study of a Chicago election from the early 1920s found that 65 percent of potential women voters stayed home, many responding that it wasn't a woman's place to engage in politics or that the act would offend their husbands. Men outvoted women by roughly 30 percent.

Voting laws were not the states' only unfair practice. The Supreme Court had ruled in 1948 that states could prevent women from tending bar unless the establishment was owned by a close male relative, and states were allowed to seat all-male juries. The 1960s, however, witnessed advancements for women in the workplace. In 1963, Congress passed the **Equal Pay Act** that required employers to pay men and women the same wage for the same job. It was still legal, even after the Equal Pay Act, to deny women job opportunities. Thus, equal pay applied only when women were hired to do the same jobs that men were hired to do. The 1964 Civil Rights Act protected women from discrimination in employment.

In addition, Betty Friedan, the author of *The Feminine Mystique*, encouraged women to speak their minds, to apply for male-dominated jobs, and to organize for equality in the public sphere. Friedan went on to cofound the **National Organization for Women (NOW)** in 1966.

Women and Equality

In the 1970s, Congress passed legislation to give equal opportunities to women in schools and on college campuses. Pro-equality groups pressed the Court to apply strict scrutiny standards to policies that treated genders differently. However, the women's movement fell short of some of its goals. The Court never declared that legal gender classification deserves the same level of strict scrutiny as policies that differentiated classes based on race or national origin, but instead could be determined with intermediate or heightened scrutiny (see page 325). Additionally, women were unable to amend the Constitution to declare absolute

equality of the sexes. All in all, though, the 1970s was a successful decade for women gaining legal rights and elevating their political and legal status.

Title IX of the Education Amendments Act of 1972, which amended the 1964 Civil Rights Act, guaranteed that women have the same educational opportunities as men in programs receiving federal government funding. Two congresswomen, Patsy Mink (D-HI) and Edith Green (D- OR), introduced the bill, which passed with relative ease. The law states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." This means colleges must offer comparable opportunities to women. Schools don't have to allow females to join football and wrestling teams—though some have—nor must schools have precisely the same number of student athletes from each gender. However, any school receiving federal dollars must be cognizant of the pursuits of women in the classroom and on the field and maintain gender equity.

To be compliant with Title IX, colleges must make opportunities available for male and female college students in substantially proportionate numbers based on their respective full-time undergraduate enrollment. Additionally, schools must try to expand opportunities and accommodate the interests of the underrepresented sex.

The controversy over equality, especially in college sports, has created a conundrum for many that work in the field of athletics. Fair budgeting and maintaining programs for men and women that satisfy the law has at times been difficult. Some critics of Title IX claim female interest in sports simply does not equal that of young men, and therefore a school should not be required to create a balance. In 2005, the Office of Civil Rights began allowing colleges to conduct surveys to assess student interest among the sexes. Title IX advocates, however, compare procedures like these to the burden of the freedom-of-choice option in the early days of racial integration. Federal lawsuits have resulted in courts forcing Louisiana State University to create women's soccer and softball teams and requiring Brown University to maintain school-funded varsity programs for girls.

In 1972, about 30,000 women competed in college varsity-level athletics. Today, more than five times that many do. When the USA women's soccer team won the World Cup championship in 1999, President Clinton referred to them as the "Daughters of Title IX."

Pro-Choice vs. Pro-Life The year after Title IX passed, the Supreme Court made its landmark *Roe v. Wade* (1973) decision. Many women's groups and the ACLU felt state restrictions on abortion denied a pregnant woman and her doctor the right to make a highly personal and private medical choice. In Texas, where abortion was a crime, pro-choice attorneys provided assistance to a pregnant young woman, given the alias of Jane Roe, who sought an abortion.

The Court in *Roe v. Wade* decided that a state cannot deny a pregnant woman the right to an abortion during the first trimester of the pregnancy.

In a 7:2 decision, the *Roe* opinion erased or modified statutes in most states, effectively legalizing abortion (see page 288).

Since then, however, the battle over abortion has continued. States can still regulate abortion by requiring brief waiting periods and other restrictions. Anti-abortion or pro-life groups continue to press for legal rights for the unborn, many believing that life begins at conception and for that reason even a zygote—a fertilized egg—is entitled to legal protection.

Strict Scrutiny and the Equal Protection Clause Also during the 1970s, women pressed the Supreme Court to give gender-based laws the same level of scrutiny it required of laws that distinguish classes of citizens based on race or national origin. In 1971, activists looked on as the Supreme Court heard an Idaho case in which both the mother and the father of their deceased child wanted to administer the child's estate. Idaho law gave preference to the father when both parents made equal claims. Then-ACLU attorney Ruth Bader Ginsburg, who was appointed to the U.S. Supreme Court in 1993, argued that the law arbitrarily favored men over women and thus created a legal inequity. The Court agreed and struck down this law because it "establishes a classification subject to scrutiny under the equal protection clause." For the first time, the Court concluded sex-based differences of policy were entitled to some degree of scrutiny. Ginsburg's brief devoted 46 pages to applying the strict scrutiny standard. However, only four of the eight in the majority wanted to make gender a classification deserving of strict scrutiny. Although feminists won this case, they also felt somewhat of a loss because the Court did not conclude that gender classifications deserved "strict scrutiny."

Five years later, an Oklahoma law that prevented the sale of beer to men under 20 and women under 18 was at issue. Under this law, young women could purchase beer two years before young men could. The Court ruled that this violated the equal protection of the law and that the state would have to set the same drinking age for both men and women. But more importantly, the Court established what has become known as the intermediate or **heightened scrutiny test**.

To this day, the Court has not given the same kind of deference to laws that create classes of gender as it has to those that distinguish people of different races and has instead offered a **reasonableness standard** for treating the sexes differently—for allowing gender bias. For example, it is deemed reasonable for the federal government to require men, but not women, to register for the military draft—in fact, women cannot register for the draft—and to assign men, but not women, to combat roles in the armed services (though women serve in combat roles today).

Equal Rights Amendment Feminists and their supporters also fell short of adding the **Equal Rights Amendment** to the Constitution. Alice Paul, the suffragist mentioned earlier and founder of the National Woman's Party, actually managed to get the Equal Rights Amendment introduced into Congress in 1923. The proposed amendment stated, "Equality of rights under the law shall not be denied on account of sex" and gave Congress power to

enforce this. The amendment was introduced in every session of Congress with various degrees of support until 1972, when it passed both the House and the Senate. Both major parties supported the amendment. Thirty of the 38 states necessary to ratify the amendment approved the ERA within one year. At its peak, 35 states had ratified the proposal, but when the chance for full ratification expired in 1982, the ERA failed.

Why would anyone vote against the idea of equality of the sexes? Several reasons might explain their reluctance. Though it was easy for Congress to reach the two-thirds requirement, it was hard to overcome traditionalists' concerns about the military draft, coed bunking of men with women, and other potentially delicate matters that might arise from the ERA. The *Roe v. Wade* decision, though seen as a victory among feminists, was not approved by masses of people in the 1970s. The *Roe* decision likely harmed the credibility of the ERA's allies, such as NOW and the ACLU. Finally, the proposition of absolute equality caused opponents to argue the amendment might hurt women, especially in cases involving assault, alimony, and child custody.

Gay Rights and Equality

Like African Americans and women, those who identify as LGBT have been discriminated against and have sought and earned legal equality and rights to intimacy, military service, and marriage.

The state and federal governments had long set policies that limited the freedoms and liberties of these citizens. One historian notes that in the 1950s, Senator Joseph McCarthy railed against gays and lesbians, much as he did against communists, and claimed they "lacked emotional stability of normal persons." President Eisenhower signed an executive order banning any type of "sexual perversion" as it was defined in the order in any sector of the federal government. And Congress enacted an oath of allegiance for immigrants to assure that they were neither communist nor gay. State and local authorities closed gay bars. Meanwhile, the military intensified its exclusion of homosexuals.

The first magazine cover story suggesting "homophile" marriage was printed in *One*, a publication targeted at gay readers. It made the case for the public and legal same-sex relationship not just on equality terms but also to remove the stereotype of promiscuity. The first known public gay rights protest outside the White House took place in 1965. In 1973, psychiatrists removed homosexuality as a mental disorder from their chief diagnostic manual.

Throughout the 1970s and 1980s, in part to seek legal protections and gain a political voice, homosexuals "came out" and began publicly proclaiming their sexual identity. Governments make a host of policies and thus legal definitions regarding sexual behaviors, relationships, and family law in which the LGBT community has an interest, as do people who believe in traditional marriage. When states had to define and regulate marriage, morality, public health, adoption, and wills, controversy over to whom these laws pertained and how they would be applied to straight and LGBT citizens followed.

Debates regarding these issues are complex, with a wide array of overlapping constitutional principles. The states' police powers, privacy, and equal protection are all at stake. Federalism and geographic mobility create additional complexities. To what degree should the federal government intervene in governing marriage, a reserved power of the states? When gays and lesbians moved from one state to another, differing state laws concerning marriage, adoption, and inheritance brought legal standoffs as the Constitution's full-faith-and-credit clause (Article IV) and the states' reserved powers principle (Tenth Amendment) clashed.

Seeking Legal Intimacy

Traditionalists responded to the growing visibility of gays by passing laws that criminalized homosexual behavior. Though so-called anti-sodomy laws had been around for more than a century, it was not until the 1970s when state laws were passed that specifically criminalized same-sex relations and behaviors. Can a state regulate such behavior as part of its police powers? The Supreme Court ruled in *Bowers v. Hardwick* (1986) that it could.

The Court heard the issue again and reversed itself in the case of ***Lawrence v. Texas* (2003)**. Law enforcement officers had entered John Lawrence's home based on a reported weapons disturbance only to discover homosexual activity. The Texas law declared, "a person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex." Lawrence's attorneys argued that the equal protection clause voided this law because the statute specifically singled out gays and lesbians. The Court agreed. Writing for the majority, Justice Anthony Kennedy stated, the Court "was not correct when it was decided, and it is not correct today."

Culture Wars of the 1990s

The battle between the religious right—those social conservatives who coalesced in the early 1980s around an anti-*Roe*, pro-family values platform—and the social liberals of the Democratic Party created major friction. Republican presidential primary candidate Pat Buchanan got only a fraction of the Republican vote, but he spoke for much of the religious right at the party's 1992 convention when he declared, "we stand with [George H.W. Bush] against the amoral idea that gay and lesbian couples should have the same standing in law as married men and women." Into the 1990s, these competing interests battled over who should serve in the military, to what degree gays and lesbians should be protected, and which organizations can lawfully exclude gays.

Military The U.S. Armed Forces has addressed the issue of gays within its ranks since the creation of the United States. In 1917, the Articles of War passed by Congress in 1916 were implemented, making sodomy illegal. In 1949, the military banned any "homosexual personnel" and began discharging known homosexuals from service. More recently, high-ranking officers and the civilian personnel in the Pentagon debated the impact—real or perceived—that homosexuals would have on the military's morale, unit cohesion, discipline, and combat readiness.

In the 1992 presidential campaign, Democratic candidate Bill Clinton promised to end the ban on gays in the military. Clinton won the election but soon discovered that neither commanders nor the rank and file welcomed reversing the ban. In a controversy that mired the first few months of his presidency, Clinton compromised as the Congress passed the **"don't ask, don't tell"** policy. This rule prevented the military from asking about the private sexual status of its personnel but also prevented gays and lesbians from acknowledging or revealing it. In short, "don't ask, don't tell" was meant to cause both sides to ignore the issue and focus on defending the country.

The debate continued for 17 years. Surveys conducted among military personnel and leadership began to show a favorable response to allowing gays to serve openly. In December 2010, with President Obama's support, the House and Senate voted to remove the "don't ask, don't tell" policy so all service members can serve their country openly.

DOMA Not long after Hawaii's state supreme court became the first statewide governing institution to legalize same-sex marriage in 1993, lawmakers elsewhere reacted to prevent such a policy change in their backyards. Utah was the first state to pass a law prohibiting the recognition of same-sex marriage. In a presidential election year at a time when public opinion was still decidedly against gay marriages, national lawmakers jumped to define and defend marriage in the halls of Congress. The 1996 **Defense of Marriage Act (DOMA)** defined marriage at the national level and declared that states did not have to accept same-sex marriages recognized in other states. The law also barred federal recognition of same-sex marriage for purposes of Social Security, federal income tax filings, and federal employee benefits. This was a Republican-sponsored bill that earned nearly every Republican vote. Democrats, however were divided on it. Civil rights pioneer and Congressman John Lewis declared: "I have known racism. I have known bigotry. This bill stinks of the same fear, hatred, and intolerance." The sole Republican vote against the law came from openly gay member Steve Gunderson who asked on the House floor, "Why shouldn't my partner of 13 years be entitled to the same health insurance and survivor's benefits that individuals around here, my colleagues with second and third wives, are able to give them?" The bill passed in the House 342 to 67, and in the Senate, 85 to 14. Republicans supported it nearly unanimously, while Democrats supported with majorities in both chambers. By 2000, 30 states had enacted laws refusing to recognize same-sex marriages in their states or those coming from elsewhere.

Discrimination Gays have faced discrimination in the workforce and in the private sector as well. During the 1960s civil rights movement, outlawing racial discrimination in the private sector was difficult because the Fourteenth Amendment's equal protection clause does not require states to prohibit nongovernmental discrimination. In the 1970s and 1980s, states and cities

began passing laws to prevent discrimination against homosexuals. These policies surfaced in urban areas and in states with higher numbers of LGBT residents. Conservatives argued that these policies created a special class for the LGBT community and were thus unequal and unconstitutional.

The Supreme Court, however, did not stop private organizations from discriminating against gays. In 1990 when Scoutmaster James Dale was outed as gay, the Boy Scouts of America quickly invoked its policy and dismissed Dale. He sued, arguing that the Boy Scouts, though nongovernmental, amounted to a public accommodation under state civil rights law. Dale won at the state level, but after the Boy Scouts appealed, the U.S. Supreme Court disagreed. In a ruling in 2000, it upheld the Boy Scouts' right to create and enforce its own policies with regard to membership under free speech and free association ideals.

Same-Sex Marriage

While Dale failed to secure equal treatment from the Boy Scouts, other activists pursued gaining the right to marry. Even before the *Lawrence* decision, few states enforced their anti-sodomy statutes. Thus, same-sex partners lived with one another yet lacked formal legal recognition and the legal benefits that came with a state-sanctioned marriage. Since their founding, states have defined and regulated marriage. The states set age limits, marriage license requirements, divorce law, and other policies. If members of the LGBT community could legally marry, not only could they publicly enjoy the principled expressions and relationships that go with marriage, they could also begin to enjoy the practical and tangible benefits granted to heterosexual couples: purchasing a home together, inheriting a deceased partner's estate, and qualifying for spousal employee benefits. In order for these benefits to accrue, states would have to change their marriage statutes.

Initial Legalization The first notable litigation occurred in 1971 when Minnesota's highest court heard a challenge to the state's refusal to issue a marriage license to a same-sex couple. The state court dismissed the plaintiff's argument that preventing gays from marrying paralleled state laws preventing interracial marriage, which the Supreme Court had struck down. "In common sense and constitutional sense," the state court said, "there is a clear distinction between a marital restriction based merely on race and one based upon the fundamental difference in sex." This opinion also relied on the simple definitions from *Webster's Dictionary* and *Black's Law Dictionary* to uphold the Minnesota legislature's marriage definition.

These may seem like simple sources for courts to consult, but the issue is very basic: Should the state legally recognize same-sex partnerships, and if so, should the state refer to it as "marriage"? In the past two decades, the United States battled over these two questions, as advocates sought for legal equality and as public opinion on these questions shifted dramatically.

Vermont was an early state to legally recognize same-sex relationships and did so via the Vermont Supreme Court. The legislature then passed

Vermont's "civil unions" law, which declared that same-sex couples have "all the same benefits, protections and responsibilities under law … as are granted to spouses in a civil marriage," but stopped short of calling the new legal union a "marriage." Massachusetts's high court also declared its traditional marriage statute out of line, which encouraged the state to legalize same-sex marriage there. What followed was a decade-long battle between conservative opposition and LGBT advocates, first in the courts and then at the ballot box, ending much of the controversy at the U.S. Supreme Court in 2015.

The 2004 Ballot Initiatives After gay marriage became legal in New England, conservatives in 11 states countered with ballot measures in November 2004. Most of these statewide initiatives added to their respective state constitutions a distinct definition of traditional marriage to prevent state courts from overturning traditional marriage statutes. President George W. Bush supported the movement and, in his pursuit of a second term, called for a national constitutional amendment to do the same. Conservatives turned out on Election Day to pass these various ballot issues and to re-elect Bush.

The Push and Pull for Marriage Equality After the 2004 elections, however, a patchwork of marriage law was sewn across the United States mostly by the hands of courts, then by legislatures and ballot initiatives, in a trajectory toward legalizing same-sex marriage that culminated in the Supreme Court 2015 decision in *Obergefell v. Hodges*.

In that decade before the landmark ruling, a coalition of gay rights advocates and legal teams sought to overturn "traditional marriage" laws. Occasional successful policy geared toward protecting heterosexual marriage passed and some court cases were lost. While pro-gay lawyers articulated and won most legal arguments, public opinion moved in a direction that would eventually make it practical to campaign for marriage rights in the political arena as well as the legal arena.

Additional statewide initiatives affirmed traditional marriage and conservative groups campaigned to oust state judges who ruled in favor of same-sex marriage. The legal arguments centered on the equal protection, full-faith-and-credit, and reserved powers clauses. Meanwhile, public opinion "solidified" on the issue, according to Gallup. The year 2011 marks the point when more than half of the public consistently favored legalizing same-sex marriage, and it has grown since.

President Obama had publicly opposed same-sex marriage during the 2008 campaign and after. He stood on the side of gay rights generally and was preferred by the gay community tenfold over the Republican candidate, but he stopped short of advocating for same-sex marriage. However, in May 2012, he publicly supported same-sex marriage. What followed was a surge in public opinion among the African American community for marriage equality. An endorsement from the NAACP followed. Black support for same-sex marriage went from 41 to 59 percent.

That November, for the first time, pro-same-sex marriage initiatives passed in all four states where they were on the ballot. This outcome broke a 31-state losing streak at the actual polls. Political pundits suggest that Obama's public switch likely turned out greater numbers of voters passionate about the issue and contributed largely to his reelection win on the same day.

Two Supreme Court rulings secured same-sex marriage nationally. The first was filed by New York state resident Edith Windsor, legally married in Canada to a woman named Thea Spyer. Spyer died in 2009. Under New York state law, Windsor's same-sex marriage was recognized, but it was not recognized under federal law, which governed federal inheritance taxes. Windsor thus owed taxes in excess of $350,000. A widow from a traditional marriage in the same situation would have saved that amount. The Court saw the injustice and ruled that DOMA created "a disadvantage, a separate status, and so a stigma" on same-sex marriage that was legally recognized by New York.

The ruling saved Windsor the unfair tax, chipped away at DOMA, and encouraged the legal teams that were already going after the remaining state marriage laws that prevented members of the LGBT community from entering into same-sex marriages. After separate rulings in similar cases at the sixth and ninth circuit courts of appeals, the Supreme Court decided to hear ***Obergefell v. Hodges* (2015).** By the time both sides arrived for arguments, Alabama had become the thirty-seventh state to have same-sex marriage rights.

Fourteenth Amendment Foundation The Court was being asked two questions: Does the Fourteenth Amendment require a state to issue a marriage license to two people of the same sex?" and "Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state?" If the answer to the first question is "yes," then the second question becomes moot. On June 26, 2015, the Court ruled 5:4 that states preventing same-sex marriage violated the Constitution. Justice Anthony Kennedy wrote the opinion, his fourth pro-gay rights opinion in nearly 20 years.

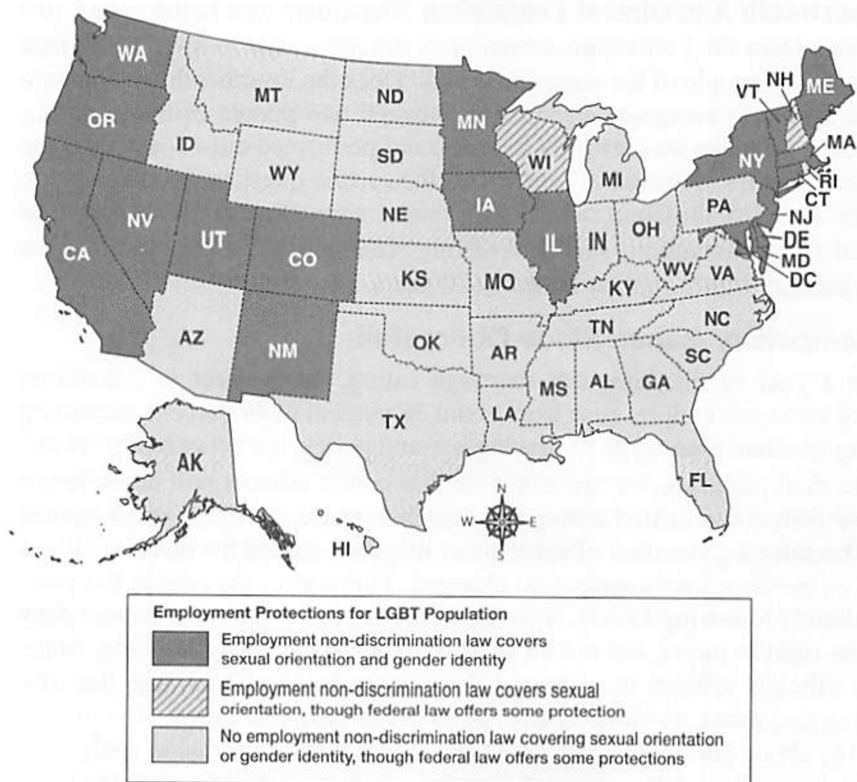
Contemporary Issues Since Obergefell

Within a year of the same-sex marriage ruling, the percent of cohabiting married same-sex couples rose from about 38 percent to 49 percent, according to *Congressional Quarterly*. In making law and policy, it's never really "over." For practical purposes, we can conclude that public schools will never return to a pre-*Brown* segregated status, not simply because the Court ruled against it, but because a generation of subsequent litigation settled the law and citizen views on public school segregation changed. This wasn't the case in the years immediately following *Brown*. Now the Court has ruled that states cannot deny gays the right to marry, but not all Americans have accepted the ruling. Some public officials refused to carry out their duties to issue marriage licenses, claiming that doing so violated their personal or religious views of marriage. In 2016, about 200 state-level anti-LGBT bills were introduced (only four became law). Though the *Obergefell* decision was recent and was determined

by a close vote on the Court, public opinion is moving in such a direction that the ruling is on its way to becoming settled law. Yet controversies around other public policies—such as hiring or firing people because they are transgender, refusing to rent housing to same-sex couples, or refusing business services, such as catering, for same-sex weddings—affect the LGBT community and have brought debates and changes in the law.

Workplace Discrimination When the 1964 Civil Rights Act prevented employers from refusing employment or firing employees for reasons of race, color, sex, nationality, or religion, it did not include homosexuality or gender identity. No federal statute has come to pass that would protect LGBT groups. Twenty-two states and the District of Columbia bar such a practice and afford a method for victims of such discrimination to take action against the employer. In several of the remaining states, efforts are being made to create similar legislation. Localities can sometimes pass ordinances that govern or regulate such commercial behavior, however; states can also make statewide rules to guide or prevent cities from doing so. Three states have a law that limits localities from enacting LGBT protections. Yet, the Seventh Circuit Court of Appeals recently ruled that discrimination against gays is covered by the 1964 law. For up-to-date information on the status of these ordinances, the

EMPLOYMENT PROTECTIONS FOR LGBT PEOPLE, 2018



Source: *Movement Advancement Project*

Movement Advancement Project (MAP) shows the progress of policy changes in LGBT law, in a "mapped" state-by-state fashion. Go to www.lgbtmap.org.

One aspect of workplace discrimination is sexual harassment. In the 1986 case *Meritor Savings Bank v. Vinson*, the Supreme Court ruled that sexual harassment creates unlawful discrimination against women by fostering a hostile work environment and is a violation of Title VI of the 1964 Civil Rights Act. Sexual harassment became a major issue in 2017 when a number of women came forward to accuse men in prominent positions in government, entertainment, and the media of sexual harassment. In a number of the high-profile cases, the accused men lost their jobs and the victims received financial compensation. In a show of solidarity and to demonstrate how widespread the problem of sexual harassment is, the #MeToo movement went viral. Anyone who had experienced sexual harassment or assault was asked to write #MeToo on a social media platform. Millions of women took part. A 2016 report by the Equal Employment Opportunity Commission found that between 25 and 85 percent of women experience sexual harassment at work, but most are afraid to report it for fear of losing their jobs. The "Time's Up" movement, also started in 2017, is an effort to raise money to provide funding for legal support for victims of sexual harassment and to lobby for laws that impose consequences on employers who engage in sexual harassment.

Refusal to Serve and Religious Freedom The 1964 law did not include LGBT persons when it defined the reasons merchants could not refuse service, the so-called public accommodations section of the law. So, depending on the state, businesses might have the legal right to refuse service, especially products or services directly tied to a lesbian wedding. In reaction to *Obergefell*, a movement sprang up to enshrine in state constitutions wording that would protect merchants or employees for this refusal, particularly if it is based on the merchant's religious views. How can the First Amendment promise a freedom of religion if the state can mandate participation in some event or ceremony that violates the individual's religious beliefs? About 45 of these bills were introduced in 22 states in the first half of 2017.

Transgender Issues One more unresolved issue is how schools and other government institutions handle where transgender citizens go to the restroom or what locker room they use. In education, this controversy is often handled on a local level. But not all citizens have been satisfied with how it has been handled. Several "bathroom bills" have surfaced at statehouses across the country. In other scenarios, the issue has been solved at a school board meeting or in a federal court. President Obama's Department of Education issued a directive after interpreting language from Title IX that would guarantee transgendered students the right to use whatever bathroom matched their gender identity. President Donald Trump's administration has rescinded that interpretation. The reversal won't change policy everywhere, but it returns to the states and localities the prerogative to shape policy on student bathroom use, at least for now as courts are also examining and ruling on the issue.

Affirmative Action

Affirmative action is the label placed on institutional efforts to diversify by race or gender. Presidents Kennedy and Johnson helped define the term as they developed policy in the hope of creating an equal environment for the races. Both men knew that merely overturning "separate but equal" would not bring true equality. Kennedy issued an executive order to create the Committee on Equal Employment Opportunity and mandated that federal projects "take affirmative action" to ensure hiring free of racial bias. Johnson went a step further in his own executive order requiring federal contractors to "take affirmative action" in hiring prospective minority contractors and employees. President Johnson also said in a speech at Howard University, "You do not take a man who for years has been hobbled by chains, liberate him, bring him to the starting line of a race, saying, 'you are free to compete with all the others,' and still justly believe you have been completely fair."

Seeking Diversity

Civil rights organizations, progressives, and various institutions agree with Kennedy's ideas and Johnson's statements. The federal government, states, colleges, and private companies have echoed these sentiments in their hiring and admissions practices. Yet, affirmative action has been mired in controversy since the term was coined.

Two current schools of thought generally follow a pro- or anti-affirmative action line, though neither willingly accepts those labels. One group believes that our government institutions and society should follow *Brown* and later decisions and be blind to issues of race and gender. Another group, influenced by feminists and civil rights organizations, asks government and the private sector to develop policies that will create parity by elevating those individuals and groups who have been discriminated against in the past. The debate on affirmative action includes Supreme Court justices who insist that the Constitution is colorblind and justices who maintain that it forbids racial classifications only when they are designed to harm minorities, not help them.

These two groups have divergent views on college admissions and hiring practices. Colleges and companies have set aside spots for applicants with efforts to accept or hire roughly the same percent of minorities that exist in a locality or in the nation. Institutions that use such numeric standards refer to these as **targets**, while those opposed call them **quotas**.

Supreme Court and Affirmative Action The issue of affirmative action came to a head in the decision in ***Regents of the University of California v. Bakke* (1978)**. This case addressed the UC-Davis medical school and its admission policy. The school took in 100 applicants annually and had reserved 16 spots for minorities and women. Allan Bakke, a white applicant, was denied admission and sued to contest the policy. He and his lawyers discovered that his test scores and application in general were better than some of the minorities and women who were admitted ahead of him. He argued that the university violated the equal protection clause and denied his admission because of his race.

In this reverse-discrimination case, the Court sided with Bakke in a narrow 5:4 ruling, leaving the public and policymakers wondering what was constitutional and what was not. As far as mandatory quotas are concerned, this case made them unconstitutional. Yet the Court, through its nine different opinions (all justices gave an interpretation), made it clear that the concept of affirmative action was permitted, provided the assisted group had suffered past discrimination and the state has a compelling governmental interest in assisting this group. Clearly, recruitment of particular groups could continue, but government institutions could not be bound by hard and fast numeric quotas.

The ruling was a victory for those who believed in equality of opportunity, but it by no means ended the debate. Since *Bakke*, the Court has upheld a law that set aside 10 percent of federal construction contracts for minority-owned firms. It overturned a similar locally sponsored set-aside policy. Then it upheld a federal policy that guaranteed a preference to minorities applying for broadcast licenses.

Legal scholars and government students alike are confused by this body of law. Quotas have a hard time passing the strict scrutiny test that is applied to them. To give preference, a pattern of discriminatory practices must be proven.

The Court heard two more cases regarding admissions policies from the University of Michigan. The Michigan application process worked on a complex numeric point system that instantly awarded 20 extra points for ethnic minorities including African Americans, Hispanics, and Native Americans. By contrast, an excellent essay was awarded only one point. Though the school did not use a quota system per se, the point breakdown resembled something rather close to what *Bakke* banned. The Court reaffirmed its 1978 stance and made it plain by rejecting the University of Michigan's use of fixed quotas for individual undergraduate applicants, though it upheld the practice for admission to the university's law school. In 2016, the Court ruled race-based admissions at the University of Texas were permissible only under a standard of strict judicial scrutiny.

REFLECT ON THE ESSENTIAL QUESTION

Essential Question: *How have constitutional provisions, the Supreme Court, and citizen-state interactions led to laws and policies that promote equality?* On separate paper, complete a chart like the one below to gather details to answer that question.

Groups Seeking Equality	Constitutional Provisions	Supreme Court	Laws and Policies

KEY TERMS AND NAMES

affirmative action/334
Brown v. Board of Education of Topeka, Kansas (1954)/305
Civil Rights Act (1875)/302
Civil Rights Act (1957)/309
Civil Rights Act (1964)/312
Civil Rights Cases (1883)/302
Defense of Marriage Act (DOMA)/328
"don't ask, don't tell"/328
Equal Pay Act (1963)/323
equal protection clause/301
Equal Rights Amendment/325
Fifteenth Amendment/301
Fourteenth Amendment/301
freedom-of-choice plans/319
grandfather clause/303
heightened scrutiny test/325
Jim Crow laws/302
Lawrence v. Texas (2003)/327
literacy test/303
majority-minority districts/316
National Association for the Advancement of Colored People (NAACP)/303
National Organization for Women (NOW)/323
Nineteenth Amendment/323
Obergefell v. Hodges (2015)/331
Plessy v. Ferguson (1896)/303
poll taxes/303
preclearance/316
quotas/334
reasonableness standard/325
Regents of the University of California v. Bakke (1978)/334
"separate but equal"/303
strict scrutiny/316
Swann v. Charlotte-Mecklenburg (1971)/321
Thirteenth Amendment/301
Title IX/324
Twenty-Fourth Amendment/315
Voting Rights Act (1965)/315
white flight/306
white primary/303

MULTIPLE-CHOICE QUESTIONS

Questions 1–3 are based on the table on the next page, which comes from the study on racial identification and preference by Kenneth B. Clark and Mamie P. Clark that helped provide support for the *Brown* decision. Among the eight requests made to the African American child participants in the study, this table reports on responses to (1) Give me the doll that you like to play with (or like best); (2) Give me the doll that is a nice doll; (3) Give me the doll that looks bad; and (4) Give me the doll that is a nice color. Review the table and then answer the questions that follow it.

CHOICES OF SUBJECTS AT EACH AGE LEVEL*										
	3 yr.		4 yr.		5 yr.		6 yr.		7 yr.	
Choice	No.	%	No.	%	No.	%	No.	%	No.	%
Request 1 (play with) colored doll	13	42	7	24	12	26	21	29	30	40
white doll	17	55	22	76	34	74	51	71	45	60
Request 2 (nice doll) colored doll	11	36	7	24	13	28	33	46	33	44
white doll	18	58	22	76	33	72	38	53	39	52
Request 3 (looks bad) colored doll	21	68	15	52	36	78	45	63	32	43
white doll	6	19	7	24	5	11	11	15	13	17
Request 4 (nice color) colored doll	12	39	8	28	9	20	31	43	36	48
white doll	18	58	21	72	36	78	40	56	36	48

*Individuals failing to make either choice not included; hence some percentages add to less than 100.

1. Which of the following statements reflects a trend represented in the table?

   (A) When asked which doll looks bad, the older children are more likely to say the colored doll than the younger children.

   (B) In response to most requests, preference for the black doll increases between ages 3 and 4 and then steadily declines.

   (C) In response to most requests, preference for the white doll increases between ages 3 and 4 and then steadily declines.

   (D) When asked which doll they wanted to play with, a higher percentage of 7-year-olds chose the white doll than did the 3-year-olds.

2. Which of the following expresses a reasonable interpretation of a trend in the table?

   (A) Seven-year-olds in the study have lower self-esteem than three-year-olds.

   (B) Four- and five-year-olds appear to be sensitive to cultural attitudes toward race.

   (C) Preschool programs would help African American students integrate well with whites.

   (D) Separate black schools might boost the self-esteem of African American students.

3. Which of the following statements from the *Brown* opinion ties most directly to the table?

   (A) "Under [*Plessy v. Ferguson*], equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate."

   (B) "The plaintiffs contend that segregated public schools are not 'equal' and cannot be made 'equal,' and that hence they are deprived of the equal protection of the laws.

   (C) "The question presented in these cases must be determined, not on the basis of conditions existing when the Fourteenth Amendment was adopted, but in the light of the full development of public education and its present place in American life throughout the Nation."

   (D) "To separate [African American children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

Questions 4 and 5 refer to the cartoon below.

Source: Mike Keefe, InToon.com

4. Which of the following best describes the message in the political cartoon?
   (A) Affirmative action should not be allowed in the United States.
   (B) The Supreme Court has limited the way colleges can recruit minorities.
   (C) Republicans practice affirmative action policy, while Democrats do not.
   (D) The Supreme Court refuses to consider the constitutionality of affirmative action policies.

5. Which of the following best explains why the figure holding the scales of justice is blindfolded?
   (A) To show that justice is turning a blind eye to racial discrimination
   (B) To show that justice should be colorblind
   (C) To show that the Court has blinded justice with restrictions
   (D) To show that affirmative actions laws are blindsided by the Court

6. Which of the following is an accurate comparison of the two court cases?

	Brown v. Board of Education	*Roe v. Wade*
(A)	Required all-black schools to have facilities and faculties of the same quality as all-white schools	Brought vocal opposition to abortion and encouraged legislatures to reshape abortion policy
(B)	Required students to be bused	Made abortion illegal in all states
(C)	Concluded that "separate but equal" schools are impossible	Assured a pregnant woman's right to have an abortion in the first trimester
(D)	Upheld the separation of races in public accommodations	Upheld states' police powers to regulate safety, health, and morals.

7. Which of the following comparisons of the 1964 Civil Rights Act and the 1965 Voting Rights Act are accurate?
   (A) One applied to white citizens and one applied to African American citizens.
   (B) One outlawed discrimination in hiring and the other increased African American voter registration and participation.
   (C) One allowed discrimination in certain government agencies and the other made literacy tests easier to pass.
   (D) One has been entirely struck down by the Supreme Court and one has not.

Questions 8 –10 refer to the passage below.

> It is now clear that the challenged laws burden the liberty of same-sex couples, and it must be further acknowledged that they abridge central precepts of equality. Here the marriage laws enforced by the respondents are in essence unequal: same-sex couples are denied all the benefits afforded to opposite-sex couples and are barred from exercising a fundamental right. Especially against a long history of disapproval of their relationships, this denial to same-sex couples of the right to marry works a grave and continuing harm. The imposition of this disability on gays and lesbians serves to disrespect and subordinate them.
>
> —Justice Anthony Kennedy, Majority Opinion in *Obergefell v. Hodges* (2015)

8. Which statement best summarizes Justice Kennedy's opinion?

(A) Some level of burden on the liberty of same-sex couples is acceptable.

(B) The framers of the Constitution did not support legal marriage of gays and lesbians.

(C) Same-sex couples are unfairly harmed by states' denial of their legal marriage.

(D) Gay couples have the right to all tangible benefits under civil unions but not in marriage.

9. Which of the following constitutional provisions would the author cite to support the opinion?

(A) The equal protection clause of the Fourteenth Amendment

(B) The establishment clause of the First Amendment

(C) The reserved powers clause of the Tenth Amendment

(D) The due process clause of the Fifth Amendment

10. With which of the following statements would supporters of Kennedy's position above be most likely to agree?

(A) Marriage laws are rightfully left to the states to decide.

(B) Gays and lesbians are equal to other people under the law.

(C) Congress should pass a law to protect traditional marriage.

(D) Government should stay out of personal matters.

FREE-RESPONSE QUESTIONS

1. "The white man can lynch and burn and bomb and beat Negroes—that's all right: 'Have patience' . . . 'The customs are entrenched' . . .

'Things are getting better.' . . . .Well, I believe it's a crime for anyone who is being brutalized to continue to accept that brutality without doing something to defend himself. . . .

I tried in every speech I made to clarify my new position regarding white people—I don't speak against the sincere, well-meaning, good white people. . . . I am speaking against and my fight is against the white racists. I firmly believe that Negroes have the right to fight against these racists, by any means that are necessary. . . .

I am for violence if non-violence means we continue postponing a solution to the American black man's problem—just to avoid violence. I don't go for non-violence if it also means a delayed solution. To me a delayed solution is a non-solution."—Malcolm X, from *The Autobiography of Malcolm X* (1965)

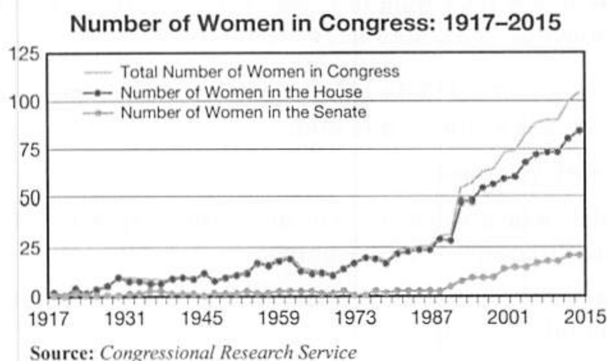
After reading the above quotation, respond to A, B, and C below.

(A) Describe an action by a citizen organization that would address the concerns of Malcolm X without the use of violence.

(B) In the context of this passage, explain how the action described in Part A would be affected by the actions Malcolm X recommends.

(C) Explain how Malcolm X's approach reflects the relationship between political behavior and the rule of law.

2. Use the information in the graphic below to respond to A, B, and C below it.



Source: *Congressional Research Service*

(A) Describe the data conveyed in the graphic.

(B) Describe a trend conveyed in the graphic, and draw a conclusion about the cause of that trend.

(C) Explain how the information in the graphic demonstrates the impact of the Nineteenth Amendment.

3. In 2013, the Supreme Court ruled on a case involving a white student, Abigail Fisher, who was denied undergraduate admission to the University of Texas. The University of Texas accepts all in-state students who graduate in the upper 10 percent of their class, but for the remainder of the admissions, the university considers race as one factor among many in an effort to reflect the diversity of the population. Fisher was not in the upper 10 percent of her class, and when she was denied admission, she sued the school on the grounds that her constitutional rights were violated because the university used race to consider applicants. The district and circuit courts affirmed the university's policy, so she appealed to the Supreme Court. In *Fisher v. University of Texas* (2013), the Court found that the circuit court had not exercised strict scrutiny and remanded the case. In 2015, the Court heard the case again (*Fisher v. University of Texas II,* 2016) after the lower court, applying strict scrutiny, once again sided with the university. This time the Court upheld the right of the university to use race as one factor in considering admission under strict judicial scrutiny.

   (A) Identify the constitutional provision that is common to both *Brown v. Board of Education* (1954) and *Fisher v. University of Texas II* (2016).

   (B) Based on the constitutional provision identified in part A, explain a difference in the facts of the case between *Fisher v. University of Texas II* and *Brown v. Board of Education* (1954).

   (C) Explain how the ruling in *Fisher v. University of Texas II* relates to the principle of a colorblind Constitution.

4. Develop an argument that explains whether citizen engagement in civil rights matters is a worthwhile effort.

   In your essay you must

   - Articulate a defensible claim or thesis that responds to the prompt and establishes a line of reasoning
   - Support your claim with at least TWO pieces of accurate and relevant information:
     - At least ONE piece of evidence must come from one of the following foundational documents
       - "Letter from a Birmingham Jail"
       - The Fourteenth Amendment of the Constitution

- Use a second piece of evidence from another foundational document from the list above or from your study of civil rights
- Use reasoning to explain why your evidence supports your claim/thesis
- Respond to an opposing or alternative perspective using refutation, concession, or rebuttal

WRITING: *USE SUBSTANTIVE EXAMPLES*

In your argument essay, use strong, specific examples and put them clearly to use in supporting the claim you assert. For example, if you use "Letter from a Birmingham Jail" as one of your documents, pull from it as many relevant points as you can to make your point. Refer specifically to the parts of the letter that support your argument. Quoting key words from the foundational documents may also add strength to your examples and evidence. You might note, for example, that Dr. King wrote about the "self-purification" necessary to participate in civil disobedience and argue that that process alone adds worth to citizen engagement in civil rights issues.

Source: *Library of Congress*
With the March on Washington, more than 200,000 activists petitioned their government to address injustices and inequalities. In the photo, individuals and organizations surround the Reflecting Pool at the Washington Monument, August 28, 1963.