THE FOURTEENTH AMENDMENT

Equal Protection under the 14th Amendment of the United States Constitution affects an expansive range of issues important to the lives of Americans. This exhibit touches only on some of the impact of the Fourteenth Amendment in the area of education.

Following the Civil War, many former Confederate states adopted laws referred to as "Black Codes" which severely restricted the rights of blacks, including the rights to: hold real estate; form legally enforceable contracts; and to sue, give evidence, or be witnesses. These Codes also created harsher criminal penalties for blacks than for whites.


A MAN KNOWS A MAN.

"Give me your hand, Comrade! We have each lost a Leg for the good cause; but, thank God, we never lost Heart."

THE RECONSTRUCTION AMENDMENTS

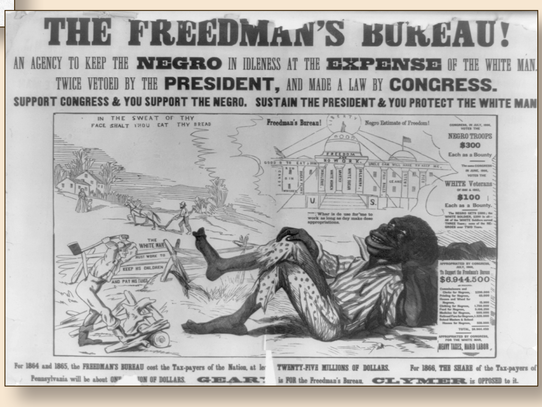
Between the years 1865 and 1870, three amendments, known collectively as the "Reconstruction Amendments," were added to the Constitution.

One of these, the 14th Amendment, greatly expanded civil rights protections to all Americans. The 14th Amendment's first section includes **the Equal Protection Clause.**

The Equal Protection Clause was created largely in response to the Black Codes, and requires each state to provide equal protection under the law to all people, including all non-citizens, within its jurisdiction.

"Ought not the time to be now passed when one measure of justice is to be meted out to a member of one caste while another and a different measure is meted out to the member of another caste, both castes being alike citizens of the United States, both bound to obey the same laws, to sustain the burdens of the same Government, and both equally responsible to justice and to God for the deeds done in the body?"

— Senator Jacob Howard's speech to the Senate



> No state shall make or enforce any law which shall abridge the privileges and 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.

YICK WO v. HOPKINS

In ***Yick Wo v. Hopkins*** (1886), the Supreme Court clarified the meaning of "person" and "within its jurisdiction" in the Equal Protection Clause, stating: "**These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality**, and the equal protection of the laws is a pledge of the protection of equal laws."

"The holding of Yick Wo was that a law that's administered with an evil eye or an unequal hand violates [a person's] right to equal protection."

— Justice Anthony Kennedy

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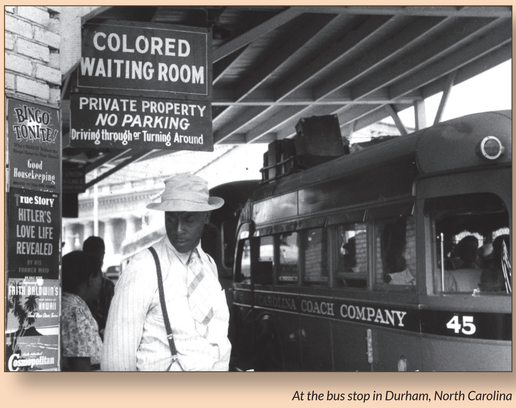
EQUAL PROTECTION: *Access to Instruction*

PLESSY v. FERGUSON

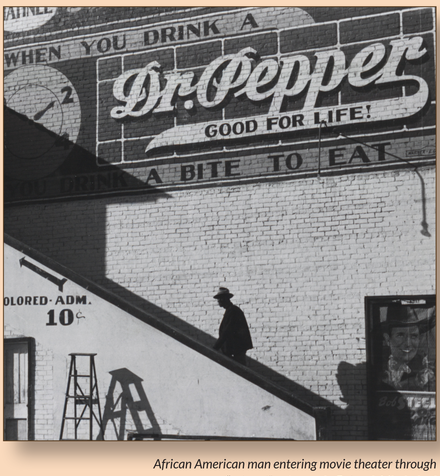
In 1890, Louisiana passed **the Separate Car Act which required that all railroads operating in the state provide "equal but separate accommodations" for white and African American passengers**. The Act prohibited passengers from entering accommodations other than those to which they had been assigned on the basis of their race.

In response, a group of prominent black, Creole, and white New Orleans residents formed the Citizens' Committee to test the constitutionality of the Separate Car Act. The Committee chose a person of mixed race as plaintiff in the case to support its contention that the law could not be consistently applied. **Homer Plessy, who was seven-eighths white and one-eighth African American, purchased a ticket and took a seat in a car reserved for white passengers. After refusing to move, he was arrested and charged with violating the Separate Car Act.**



At the bus stop in Durham, North Carolina

In upholding the Separate Car Act, Justice Henry Billings Brown found that **the 14th Amendment was intended to secure only the legal equality of African Americans and whites, not their social equality;** and legal equality was adequately respected in the Act because the accommodations provided for each race while separate, were required to be equal. Justice Harlan was the lone dissenter.



African American man entering movie theater through "colored" entrance in Belzoni, Mississippi

> "[I]n view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens."
>
> — Justice Harlan's dissent in *Plessy v. Ferguson*

MENDEZ v. WESTMINSTER SCHOOL DISTRICT OF ORANGE COUNTY

While many know *Brown v. Board of Education*, the landmark 1954 Supreme Court decision that declared segregated public schools to be unconstitutional, less familiar is the **foundational 1947 California Ninth Circuit case, *Mendez v. Westminster School District of Orange County*.**

In 1945, Sylvia Mendez was turned away from attending a public school reserved for "Whites-only." Her parents brought a class action suit against four Los Angeles area school districts, arguing that the public schools' establishment of **separate schools for Mexican students was unconstitutional race discrimination.**

In the District Court, the Mendez family's attorney, **David Marcus, introduced social science evidence to support his argument that the practice of school segregation created a feeling of inferiority amongst the students of Mexican/Latino heritage.** U.S. District Court Judge Paul McCormick ruled in favor of the plaintiffs, writing:

*"[T]he equal protection of the laws pertaining to the public school system in California is not provided by furnishing in separate schools the same technical facilities, textbooks and courses of instruction to children of Mexican ancestry that are available to the other public school children regardless of their ancestry. **A paramount requisite in the American system of public education is social equality. It must be open to all children by unified school association regardless of lineage."***

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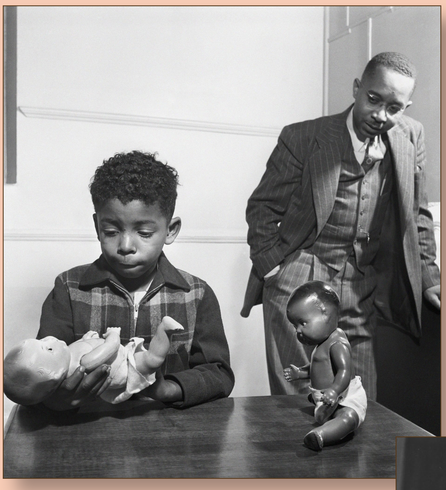
EQUAL PROTECTION: *Access to Instruction*

BROWN v. BOARD OF EDUCATION

Five years after *Mendez*, the National Association for the Advancement of Colored People ("NAACP") and the Legal Defense and Educational Fund, developed a systematic attack against the doctrine of "separate but equal." Many Southern black schools lacked basic necessities. **For example, the white schools were brick and stucco; the black schools were made of rotting wood. The white schools had indoor plumbing; the black schools had outhouses.**

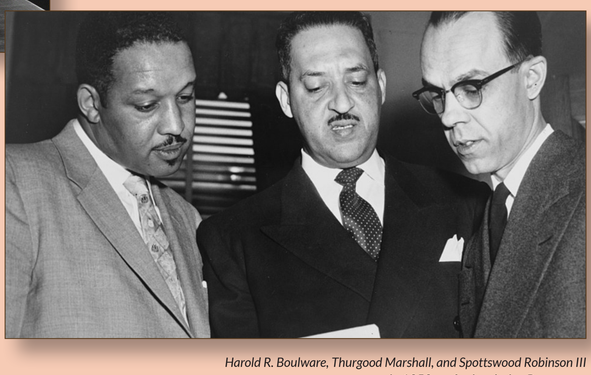


In 1950 and 1951, the NAACP filed lawsuits in Kansas, South Carolina, Virginia, Delaware, and the District of Columbia on behalf of black elementary school students who attended segregated schools. These suits alleged violation of the Equal Protection clause. Dozens of parents signed on as plaintiffs, including Oliver Brown, a welder and World War II veteran, who served as an assistant pastor at his local church. When the Supreme Court consolidated the cases in 1952, Brown's name appeared in the title.

In the 1940s, psychologists Kenneth and Mamie Clark had conducted experiments known as the "Doll Tests" to study the effects of segregation on African American children. NAACP chief counsel Thurgood Marshall cited to a study that found that black children preferred white to brown-colored dolls, arguing that state-imposed segregation was inherently discriminatory and emotionally damaging.

The Supreme Court implicitly acknowledged this research in its decision, holding:

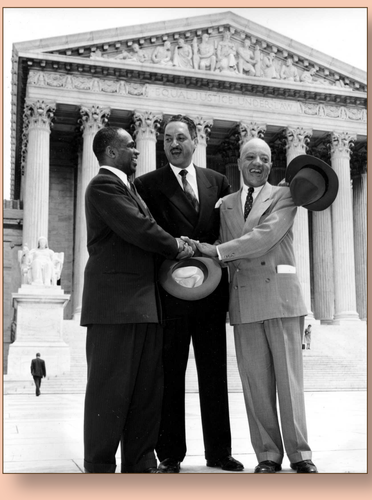
"To separate [African American children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."



Harold R. Boulware, Thurgood Marshall, and Spottswood Robinson III in 1953 conferring during Brown case

> "We conclude that in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal."
>
> — Chief Justice Earl Warren

After a Federal court ordered the desegregation of schools in the South, U.S. Marshals escorted a young Black girl, Ruby Bridges, to school



The Supreme Court announced its unanimous decision on May 17, 1954. It held that school segregation violated the Equal Protection and Due Process clauses of the Fourteenth Amendment. The following year the Court ordered desegregation **"with all deliberate speed."**

> "I was so happy, I was numb."
>
> — Thurgood Marshall talking about how he felt upon hearing the Supreme Court ruling in *Brown*. Marshall, the great-grandson of a slave, later became the first African American justice on the Supreme Court, serving from 1967 to 1991.

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EQUAL PROTECTION:
Overcoming Classroom Barriers

LAU v. NICHOLS (LANGUAGE)

In 1971, almost 3,000 students of Chinese ancestry in the San Francisco, California school system did not speak English, but only roughly one-third of them received supplemental English language courses. The remaining two-thirds brought a class action suit against the San Francisco Unified School District, arguing that they were not given equal educational opportunities, in violation of their rights under the 14th Amendment.

The Supreme Court ultimately found that the district's failure to provide English language instruction prohibited the children from effectively participating in public education. The Court based it decision not on Equal Protection, but rather on the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin in any program that receives federal financial assistance.

"For the first time in the history of the U.S., the Supreme Court recognized the rights of linguistic minorities in public education and, by the extension, in other vital public services for people with different needs across the country."

— UC Berkeley Professor Ling-chi Wang

In 2014, the U.S. Department of Education estimated that English Language Learners comprised 9.1% or 4.4 million students in public schools.

San Francisco History Center, San Francisco Public Library

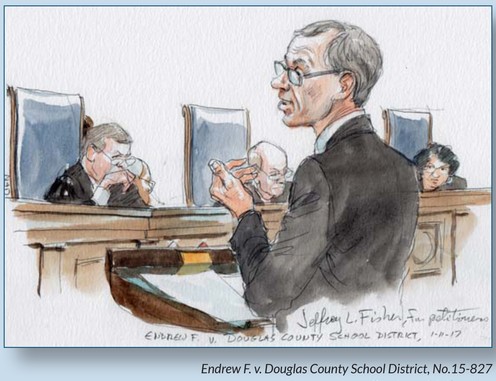
"...students who do not understand English are effectively foreclosed from any meaningful education. Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education."

— Justice William Douglas

ENDREW F. v. DOUGLAS COUNTY SCHOOL DISTRICT (ABILITY)

When Endrew F. was in fourth grade, his parents took him out of his local public school and brought him to a private school. This school was far better equipped to work with Endrew, who had autism and attention deficit disorder. There, Endrew made significant progress both academically and socially. In 2012, Endrew's parents sued the school district to recover the cost of the private school's tuition, **arguing that the public school's individual education plan for their son denied him equal opportunity for educational success.**

In 2017, the Supreme Court ruled in favor of Endrew, holding that individual education plans in public schools for children with disabilities must be **"reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."**



Endrew F. v. Douglas County School District, No.15-827
Courtesy of Arthur Lien

"It cannot be right that the IDEA [Individuals with Disabilities Education Act] generally contemplates grade-level advancement for children with disabilities who are fully integrated in the regular classroom, but is satisfied with barely more than de minimis progress for children who are not. For children with disabilities, receiving instruction that aims so low would be tantamount to "sitting idly ... awaiting the time when they were old enough to 'drop out.'"

— Chief Justice John Roberts

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EQUAL PROTECTION:
Access to Admissions


UC wins high court stay of ban on admission policy

College protesters join Bakke march

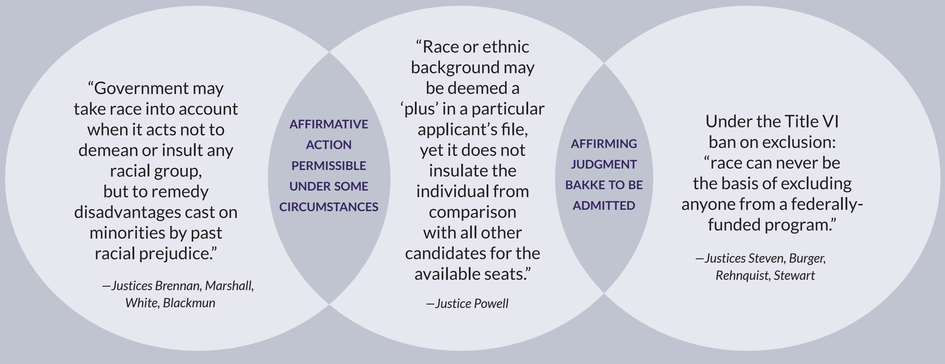
Bakke Is Puzzler

BAKKE v. REGENTS OF CALIFORNIA
(GRADUATE SCHOOL ADMISSIONS)

Allan Bakke applied and was twice rejected from UC Davis Medical School, despite being a well-qualified candidate for admission. Following his rejections, Bakke challenged the school's special admissions program, under which 16 of the 100 available spots were reserved exclusively for qualified minorities, who could also compete with white students for the remaining 84 seats. Bakke argued that in the two years that he applied to Davis, his GPA and test scores were significantly higher than those of the minority students who were admitted.

The case fractured the Supreme Court; the nine justices issued a total of six opinions. The judgment of the court was written by Justice Lewis Powell, Jr.; two different blocs of four justices joined various parts of Powell's opinion. Finding diversity in the classroom to be a compelling state interest, Powell opined that affirmative action in general was allowed under the Constitution and the Civil Rights Act of 1964. Nevertheless, the Court ultimately found that Davis' use of a specific racial quota was unconstitutional and discriminated against Bakke.

The 150 page *Bakke* opinion, with its various concurrences and dissents, is difficult to summarize. The graphic below is intended only to give a sense of the divisions within the Court.



GRUTTER v. BOLLINGER
(GRADUATE SCHOOL ADMISSIONS) &
GRATZ v. BOLLINGER
(UNDERGRADUATE ADMISSIONS)

25 years after *Bakke*, the Supreme Court took up affirmative action in admissions again in a pair of cases involving the University of Michigan admissions.

In *Grutter v. Bollinger*, Barbara Grutter, a white applicant who had a 3.8 GPA and 161 LSAT score, was denied admission to the University of Michigan Law School. She argued that minority applicants had a greater chance of admission than similar students from non-minority groups, in violation of her Equal Protection rights.

The University used race as only one factor amongst other individualized factors in determining which students would be offered admission. **The Court upheld the admissions policy because it was narrowly tailored to accomplish a critical mass of diverse students, a compelling state interest.** The impermanence of the program weighed in the University's favor, with the Court holding that this race-conscious program would eventually not be necessary to achieve diversity in higher education.

Jennifer Gratz and Patrick Hamacher applied for admission and were both denied and sued. The University's system was on a 150 point scale, with 100 points needed for an applicant to gain admission. Minority students received an automatic 20 point bonus, without any prior individualized assessment being taken into consideration. The Court struck down the admissions policy of the University of Michigan undergraduate program, finding that its point-based system was too similar to an unconstitutional quota system.


ADMISSIONS ON TRIAL

CIR claims win over preferences

Gratz speaks at Union amidst massive protest

BAMN clashes with MCRI director

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EQUAL PROTECTION:
Title IX and Beyond

37 WORDS THAT CHANGED EVERYTHING

Title IX was signed into law on June 23, 1972 by President Richard Nixon. Representative Patsy T. Mink of Hawaii is recognized as the major author and sponsor of Title IX. After Rep. Mink's death, Title IX was officially renamed in her honor.

Patsy T. Mink

"No person in the United States shall, on the basis of sex, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

— Title IX

Billie Jean King

"So often people think Title IX is just about sports. The amendment is primarily about education and completely about equal rights. But, so often people think the amendment is about sports. Why do they think that– because athletes are so visible. Just a little more than one year after the passage of Title IX, I played Bobby Riggs in a much heralded match in Houston, Texas. **This event– which was dubbed the "Battle of the Sexes"–was a tennis match only on the outside. In reality, it was much more about social change than tennis**... I felt I could be an example to show women what we **could do** if we just had the opportunity **to do**."

— Billie Jean King Testimony Before the U.S. Senate Committee on Health, Education, Labor & Pensions, June 19, 2012

"The passage of Title IX … changed the trajectory of American women, thus transforming our culture. We found our way into space, onto the Supreme Court and into the high echelons of politics. In the sporting arena, we became visible affirmations of what is possible, offering up strong, confident role models for future generations."

— Donna da Varona, Olympic gold medalist and Title IX advocate

LAST THOUGHTS

The Supreme Court's decision-making in *Bakke* "reveals a group of Americans just as divided as 'ordinary' citizens over whether minorities and women should receive preferential treatment in hiring, promotion, and admission to universities and other areas of social and political life."

— Lee Epstein and Jack Knight, *Yale Law & Policy Review Vol. 19:341, 2001*

"Classifying persons according to their race is more likely to reflect racial prejudice than legitimate public concerns."

— Chief Justice Warren Burger, *Palmore v. Sidoti*

"I recommitted myself to the principle of equality… diversity and other equally good intentions should not trump the principle of equal justice under law."

— Jennifer Gratz

"The goal of the equal protection clause is not to stamp out impure thoughts, but to guarantee a full measure of human dignity for all…."

— Professor Laurence Tribe

"I believe people have the right to sign a petition without having someone scream *racist* in their face."

— University of Michigan student, 2004

"Race matters. Race matters in part because of the long history of racial minorities' being denied access to the political process… Race matters because of the slights, the snickers, the silent judgements that reinforce that most crippling of thoughts: 'I do not belong here.'… This refusal to accept the stark reality that race matters is regrettable. The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination."

— Justice Sonia Sotomayor dissent in *Schuette v. Coalition to Defend Affirmative Action*

Images courtesy of Arthur Lien; the California Digital Newspaper collection; Library of Congress; San Francisco Public Library; The Michigan Daily; the Official Website of Billie Jean King; the Yale Policy & Law Review.

The NJCHS wishes to express its profound gratitude to our researcher, Elizabeth Medrano, and to our designer, Camille Contreras for their tireless efforts in creating this Exhibit. We also wish to thank the Ninth Circuit Court of Appeals; the District Courts throughout the Ninth Circuit; the NJCHS Board and Advisory Council; and all of our members, whose generous support makes this Exhibit, and the other important work of the NJCHS possible. Find out more about the NJCHS at NJCHS.org.

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