

### KEY CONCEPT 3.E: THE SUPREME COURT INTERPRETS CIVIL RIGHTS ISSUES

The Supreme Court's interpretation of civil rights issues such as school integration, affirmative action, and the composition of legislative districts can sometimes advance, and other times inhibit, the protection of civil rights.

The **Big Idea, Constitutionalism**, is reflected in this concept.

How did the Fourteenth Amendment finally become the basis of the civil rights movement? It took the Supreme Court over fifty years to finally reverse *Plessy*. This occurred with *Brown v Board of Education*, which signaled the beginning of equal protection under the law for African Americans. There were, however, other significant First Amendment and due process cases before *Brown*, which started the process of incorporation.

After the *Brown* decision, an activist Supreme Court used the principle of incorporation in many of their decisions to promote Fourteenth Amendment due process rights and equal protection under the law. The criteria they used were threefold:

- reasonable classification, the distinctions drawn between persons and groups;
- the rational basis test, if the legislative intent of a law is reasonable and legitimate and serves the public good; and
- the strict scrutiny test, which places the burden on the states to prove that laws that discriminate fulfill a “compelling governmental interest.”

### AFRICAN AMERICANS' FIGHT FOR CIVIL RIGHTS

At his confirmation hearings, Supreme Court nominee Stephen Breyer called *Brown v Board of Education* (1954) the most significant Supreme Court decision in the history of the court. In a unanimous decision written by Chief Justice Earl Warren, the court had redefined the meaning of the Fourteenth Amendment. Warren wrote: “In the field of public education the doctrine of ‘separate but equal’ has no place. . . . Segregation is a denial of the equal protection of the laws.” The decision also called upon states to end segregation practices using “all deliberate speed.” Yet, in a survey taken on the 50th anniversary of the *Brown* decision, many school districts still have not fulfilled the *Brown* vision.

The *Brown* case put an end to de jure segregation—segregation by law. States and local municipalities have been able to continue the practice through de facto segregation—segregation of schools and other public facilities through circumstance with no law supporting it. Housing patterns, schools, and other public facilities have existed where they set up segregation as a basic practice. The Congress and Supreme Court have attempted to deal with de facto segregation.

The Twenty-fourth Amendment, ratified in 1964, made illegal any tax related to the voting process. The Civil Rights Act of 1968, called the Open Housing Act, made illegal the practice of selling real estate based on race, color, religion, national origin, or gender. In 1971 the issue of busing to solve racial-discrimination practices was resolved in the *Swann v Charlotte Mecklenberg County Schools* case. The court ruled that busing was a legal means of achieving the “all deliberate speed” component of the *Brown* decision. *Milliken v Bradley* (1974) was a significant Supreme Court case dealing with the planned desegregation busing of public school students. Addressing busing across district lines in Detroit, the ruling clarified the distinction between de jure and de facto segregation, confirming that segregation was allowed if it were not considered an explicit policy of each school district. In particular, the court held that the school systems were not responsible for desegregation across district lines unless it could be shown that they had each deliberately engaged in a policy of de jure segregation.

Even though these actions contributed to the civil rights of African Americans, civil disobedience, racial riots, and stonewalling attempts on the part of public officials hampered the progress of the civil rights movement.

In an important split decision, the Supreme Court in *California Board of Regents v Bakke* in 1978 established two concepts. A majority ruled that Bakke, a white who was denied admission to medical school, had been the victim of "reverse discrimination" because the school established a set of racial quotas that violated Bakke's equal protection. However, in the more important part of the ruling, a 5-4 majority stated that even though race cannot be used as the sole basis for determining admission, the Constitution and Civil Rights Act of 1964 could be used as a criterion for affirmative action programs. President Johnson, with an executive order, had directed all federally supported programs to adopt this criterion.

### **Affirmative Action Decisions Create Controversy**

The *Bakke* case brought the issue of affirmative action into the forefront of civil rights. Both the Supreme Court and Congress have been sensitive to the issue of job discrimination. Legislation and decisions by the court have dealt with that issue and more often than not have accepted affirmative action as a basis of determining whether job discrimination exists. Part of the white public has been very critical of affirmative action as a means of achieving civil rights for African Americans and other minority groups. We will deal with affirmative action in relation to other groups later in this chapter.

In 1979 the court again permitted an affirmative action program, this time favoring African Americans in private industry if the program corrected past injustices (*Weber v Kaiser Aluminum*, 1979). In 1988, Congress passed new civil rights legislation that permitted the federal government to take away federal funds from colleges that discriminate. And in 1991 it passed a Civil Rights Act that placed the burden on the employer to prove that hiring practices are not discriminatory in nature. This 1991 act became a battleground between Congress and President George H. W. Bush, who initially vetoed the legislation, calling it a "quota bill." Congress revised the bill to include the hiring provision as well as a provision that placed a responsibility on the employer rather than the worker to determine if any hiring tests were discriminatory. The significance of this act was that Congress was responding to previous Supreme Court decisions that seemed to place the responsibility of initiating antidiscrimination suits on the individual. In addition, the act illustrated the heated nature of affirmative action programs.

The nature of affirmative action started evolving in dramatic form during the Clinton presidency. In a major policy speech, President Clinton indicated that he favored a policy of affirmative action that would "mend it, not end it." However, individual states moved toward ending it. A Texas federal appeals court ruled the *Bakke* decision allowing race to be used as a factor for admission did not apply to Texas state colleges. In 1996 the California State Board of Regents also invalidated race as a factor in admissions in their university system. That same year, California voters also approved the California Civil Rights Initiative, also known as Proposition 209. This initiative effectively directed California not to take race or gender into account in government hiring practices. A California appeals court ruled the measure constitutional. The Supreme Court refused to hear the case. Thus, the provisions of the referendum were implemented in California.

Because minority enrollment decreased, California instituted a policy that guaranteed admittance to its university system for the top 10 percent of minority students applying. In the spring of 2003, a 5-4 Supreme Court ruled in two cases involving the University of Michigan undergraduate school and University of Michigan Law School that the principles laid out in the *Bakke* decision were still valid. Writing for the majority, Justice Sandra Day O'Connor said in the undergraduate

case that the school could not use a point system in which race was a basis for their admissions because it was too similar to a quota system. However, a “critical mass” criteria could be used as a basis for admissions to the law school. These cases were significant because they continued the long-standing practice of using race as a basis for admissions. In 2006, voters in Michigan rejected the use of race-based affirmative action programs.

In 2013, the Supreme Court heard arguments concerning the affirmative action admissions policy of the University of Texas at Austin. The case, brought by undergraduate Abigail Fisher in 2008, asks that the court declare the admissions policy of the university inconsistent with *Grutter v Bollinger*, a 2003 case. Fisher was denied enrollment because the state had a policy of accepting 10 percent of each high school’s graduating class. Fisher fell below that standard and was turned down despite having higher scores than minority applicants who were accepted even though they were also below the 10 percent in their graduating classes.

The Supreme Court ruled the Texas affirmative action program was unconstitutional, sending the case back to the lower courts to review the entire program. However, the court still recognized that race could be used as a factor in college admissions and did not overthrow other college affirmative action programs previously ruled constitutional. In 2014, the court ruled that a Michigan constitutional amendment that banned affirmative action in the state’s public universities was legal.

## Key Court Cases

### ***Plessy v Ferguson* (1896)**

The court established the doctrine of “separate but equal,” legitimizing Jim Crow laws and segregation.

### **Required Court Case**

#### ***Brown v Board of Education, I* (1954)**

**Essential Fact:** Brown was forced to attend segregated schools that the state claimed were “separate but equal.”

**Constitutional Issue:** Did the state violate Brown’s equal protection as established in the Fourteenth Amendment.

**Unanimous Decision:** “Segregation of children in public schools solely on the basis of race deprives children of the minority group of equal educational opportunities, even though the physical facilities and other ‘tangible’ factors may be equal.” The “separate but equal” doctrine adopted in *Plessy v Ferguson*, has no place in the field of public education.

The court found that race-based segregation violated the equal protection clause of the Fourteenth Amendment and ordered schools to be integrated.

#### ***Brown v Board of Education, II* (1955)**

Following the *Brown I* decision, the Supreme Court directed all segregated schools to integrate “with all deliberate speed.”

#### ***Gratz v Bollinger; Grutter v Bollinger* (2004)**

The University of Michigan undergraduate school’s admission practice was unconstitutional (*Gratz*) because it relied too much on a quota system. The University of Michigan’s law school’s admission system was constitutional (*Grutter*) because it relied on a broad-based policy of using race as a basis for admissions. Both decisions affirmed the *Bakke* case.

## Civil Rights Legislation

### Required Document

#### Dr. Martin Luther King's *Letter from Birmingham Jail*

*The Letter from Birmingham Jail*, also known as the Letter from Birmingham City Jail and *The Negro Is Your Brother*, is an open letter written on April 16, 1963, by Martin Luther King Jr. The letter defends the strategy of nonviolent resistance to racism. It says people have a moral responsibility to break unjust laws and to take direct action rather than waiting potentially forever for justice to come through the courts.

#### Key Quote:

"We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed. Frankly, I have yet to engage in a direct-action campaign that was 'well timed' in the view of those who have not suffered unduly from the disease of segregation. For years now I have heard the word 'Wait!' It rings in the ear of every Negro with piercing familiarity. This 'Wait' has almost always meant 'Never.' We must come to see, with one of our distinguished jurists, that 'justice too long delayed is justice denied.'"

### Civil Rights Act of 1964

← Students  
Must  
Know

Activists such as Martin Luther King have influenced the political process through mass demonstrations such as the March on Washington in 1963. Elected officials responded by passing the Civil Rights Act of 1964. A year before, King was arrested for civil disobedience at a sit-in against racial discrimination in Birmingham, Alabama. While imprisoned, he wrote the *Letter from Birmingham Jail*, calling for defying unjust laws while maintaining respect for the rule of law.

#### Key Quote:

"In no sense do I advocate evading or defying the law, as would the rabid segregationist. That would lead to anarchy. One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law."

The landmark Civil Rights Act of 1964 made discrimination in public accommodations such as hotels and restaurants illegal. The law was affirmed by the landmark *Heart of Atlanta Motel v United States* in 1964. This case involved a Georgia motel on an interstate highway that discriminated against African-American patrons. The motel owners claimed that the Title II provision of the Civil Rights Act of 1964 was unconstitutional. In a unanimous decision, the court, using the interstate commerce provision of the Constitution, upheld the legality of the law.

The issue of equal employment was also addressed in the Civil Rights Act of 1964. The issue of "comparable worth," paying women equally for jobs comparable to those held by men, was challenged in 2007 in the Supreme Court case *Ledbetter v Goodyear Tire and Rubber Company*. Lilly Ledbetter sued her longtime employer, Goodyear Tire, after she discovered that her salary was lower than that received by men for the same job. However, the suit was brought to court after the expiration of the legal time limit to sue for damages, which is set forth in the Title VII section of the Civil Rights Act of 1964. In a 5-4 decision, the court ruled against Ledbetter, declaring that she did

public office. She also ran unsuccessfully for the Democratic presidential nomination in 2008, but was appointed secretary of state by President Obama. In 2016, she became the first woman to be nominated for president by a major political party. In 2008, Sarah Palin became the first woman to run for vice president, joining the Republican ticket with Senator John McCain.

## **LGBTQ Community**

For years, attempts by gay rights activists—including Lesbians, Gays, Bisexuals, and the Transgender community—and federal and state legislatures to guarantee equal protection inevitably fell short. Many initiative referendums, including one in Colorado in 1993, not only rejected gay rights proposals, but also established legal obstacles for gays. The Supreme Court, too, was not sympathetic. *Bowers v Hardwick* in 1986 dealt with the issue of the legality of a Georgia anti-sodomy law. Because the challenge took place by two gay men who violated the law, the case was viewed as a test for gay rights. The Supreme Court upheld the validity of Georgia's state law. Then, in 2003, the court reversed *Bowers* in *Lawrence v Texas*, ruling that a Texas sodomy law was unconstitutional.

However, in 1992, the people of Colorado had adopted a statewide initiative known as Amendment 2. This provision provided that the state could not adopt any laws providing protected status for gays. The referendum was challenged and reached the Supreme Court in *Roemer v Evans*. The court found Amendment 2 unconstitutional based on the fact that "this class of persons was being denied 'equal protection of the laws' because they were being precluded from seeking protection under the law against discrimination based on their defining characteristic." The decision provided a victory for gay-rights supporters.

But in a narrow 5–4 decision in 2000 the Supreme Court, ruled that a gay Boy Scout leader could be barred from that position by the Boy Scouts of America's national organization. The case arose when the Boy Scouts barred New Jersey Scout leader, Jim Dale, from his position. The Scouts claimed that they had a right under the First Amendment's freedom of association to decide whom to exclude from membership in their organization. New Jersey claimed that since the Boy Scouts' meetings took place in a public school, the Scouts violated the state's public accommodation laws. The court ruled in favor of the Boy Scouts. Fallout from the decision was widespread as many schools throughout the country refused to allow the Boy Scouts to meet if gays were barred from participation. In 2014, the Boy Scouts of America announced they were rescinding their past opposition to allowing gay scouts.

## **Don't Ask; Don't Tell**

In 1992 President Bill Clinton, through an executive order, directed the military to follow a "Don't ask, don't tell, don't pursue" policy. It allowed gays to enlist and serve in the military as long as they did not disclose the fact that they were gay. This policy was criticized by many in Congress, and the military establishment had a difficult time accepting it. The order was challenged in federal court, and the Supreme Court declared part of the policy unconstitutional based on the First Amendment free speech provision and the Fifth Amendment due process provision. The uneasily balanced policy did not change during the administration of the next president, George W. Bush. When President Barack Obama was elected in 2008, he signaled his support for the repeal of Don't Ask, Don't Tell. The military leadership was hesitant to advocate a change because the United States was involved in two wars, one in Iraq and the other in Afghanistan. From 2008 to 2010 gay groups and discharged gay servicemen and women filed court petitions asserting the law was unconstitutional. Federal appeal courts sided with these suits and ordered the military to stop the policy. The Obama administration convinced the courts to order a stay,

halting implementation of the repeal. The Defense Department conducted a review of the policy, and President Obama urged Congress to pass legislation repealing the Don't Ask, Don't Tell policy. Congress passed the repeal in 2010, and President Obama signed the law. The military ceased removing gay soldiers from service, and in 2011 gays were allowed to serve in the military without fear of dismissal.

Although there have been few concrete victories, gay activist groups have been outspoken in their quest for equal protection under the law. They have insisted on marching alongside mainstream groups in parades, and they have made inroads on college campuses.

## **Same-Sex Marriage**

The biggest victory for gay rights came in 2015 when the United States Supreme Court ruled same-sex marriages were legal.

## **Other Groups**

The minority group pie is being cut up into smaller and smaller pieces. Lobbyists and special interests represent almost every segment of American society. Senior citizens, sometimes known as "gray panthers," have become an activist group, especially since life expectancy has increased tremendously. Society and government have become very sensitive to the needs of the handicapped. And with the realization that young people are the future leaders of the country, Congress has passed civil rights legislation especially in areas affecting educational policy that has an impact on the youth.

## **Senior Citizens**

Ever since Social Security became an entitlement as part of Franklin Roosevelt's New Deal program, senior citizens have been recognized as a segment of society that is a responsibility of the government; today, they are one of the fastest growing segments. Any time there is talk of government cutbacks on Social Security or Medicare, groups such as the American Association of Retired Persons (AARP) lobby against the cuts. Senior citizens care about the issue of age-based job discrimination. Even with many seniors retiring voluntarily at age 65, a number of complaints have surfaced regarding employer discrimination against senior citizens. Age discrimination acts were passed by Congress in 1967, and in 1975 civil rights laws made it illegal for any employer to discriminate against people over 40. In 1978 an amendment to the Age Discrimination in Employment Act raised the compulsory retirement age to 70. However, today there is a growing movement to ban any kind of mandatory retirement age. The issue of health care has also been a major concern of senior citizens.

## **Americans with Disabilities**

Americans with disabilities comprise around 20 percent of the population. They include people with physical, mental, and emotional disabilities. Many have been denied support services. It is only in the last twenty years that government has recognized the needs of this group. The exception was the recognition that veteran groups needed aid when they returned from World Wars I and II. The GI Bill of Rights was a major piece of legislation passed at the conclusion of World War II. In 1975 the Education of All Handicapped Children Act was passed, giving children the right to an education with appropriate services that meet the needs of specific disabilities. The landmark Americans with Disabilities Act (ADA), passed in 1991, requiring employers, schools, and public