

**CONSTITUTION**

**MODULE 14**

**THE  
14TH AMENDMENT:  
BATTLES FOR  
FREEDOM AND EQUALITY**



## CONSTITUTION 101

### Module 14: The 14th Amendment: Battles for Freedom and Equality Lesson Plan

# THE 14TH AMENDMENT: BATTLES FOR FREEDOM AND EQUALITY

The 14th Amendment wrote the Declaration of Independence's promise of freedom and equality into the Constitution. Ratified after the Civil War, this amendment transformed the Constitution forever and is at the core of a period that many scholars refer to as our nation's "Second Founding." Even so, the 14th Amendment remains the focus of many of today's most important constitutional debates (and Supreme Court cases). In many ways, the history of the modern Supreme Court is largely a history of modern-day battles over the 14th Amendment's meaning. So many of the constitutional cases that Americans care about today turn on the 14th Amendment.

## Learning Objectives

At the conclusion of this module, you should be able to:

1. Explain why the 14th Amendment was added to the Constitution.
2. Identify the core principles in clauses of the 14th Amendment.
3. Summarize how the Supreme Court has interpreted the meaning of the 14th Amendment.
4. Evaluate the effect of the 14th Amendment on liberty and equality.

## 14.1 Activity: Why Did We Need the 14th Amendment

### Purpose

Ratified after the Civil War, the 14th Amendment wrote the Declaration of Independence's promise of freedom and equality into the Constitution. It transformed the Constitution forever. And it's at the heart of what many scholars refer to as America's "Second Founding." In this activity, you will examine why the 14th Amendment was needed in its own time.

### Process

In this clip from *FOURTEEN: A Theatrical Performance*—an original play written and produced by the National Constitution Center—performers read sections of the Black Codes. White Southerners passed these laws after the Civil War, seeking to impose second-class citizenship on African Americans and reduce many formerly enslaved people to conditions that resembled slavery. However, African Americans fought back against these laws, often using petitions like

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the one in the clip from the South Carolina Colored Convention to advance their own vision of post-Civil War America.

Begin by reading the text of the [Black Codes from South Carolina and Mississippi](#) and the related background summaries from the [Founders' Library](#).

Then, watch the [video clip](#) from FOURTEEN: The Black Codes.

In small groups, discuss the following questions and record your group's answers:

- When were the Black Codes passed by the ex-Confederate states?
- What did these states hope to achieve by passing them?
- What was the response of the Colored Conventions? How would you describe their constitutional vision for post-Civil War America?
- What changes were the Colored Conventions calling for during this period?
- What founding principles did the Colored Conventions emphasize in their push for reform? What rights did they emphasize?
- To what degree did the 14th Amendment realize the constitutional vision of the Colored Conventions?

As a class, share your group's responses to the discussion questions.

#### **Activity 14.1 Notes & Teachers Comments**

##### **Launch**

Have the students read the text of the Black Codes from South Carolina and Mississippi and the related background summaries from the Founders' Library. Then, give students time to watch the video clip from FOURTEEN: The Black Codes and discuss the big ideas it presents.

##### **Activity Synthesis**

Have students share one takeaway from 14th Amendment: The Black Codes video that they did not know before watching the clip.

As a class, have students share their group's responses to the discussion questions.

- When were the Black Codes passed by the ex-Confederate states?
- What did these states hope to achieve by passing them?
- What was the response of the Colored Conventions? How would you describe their constitutional vision for post-Civil War America?
- What changes were the Colored Conventions calling for during this period?
- What founding principles did the Colored Conventions emphasize in their push for reform? What rights did they emphasize?

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- To what degree did the 14th Amendment realize the constitutional vision of the Colored Conventions?

Use those responses to discuss the effects of Black Codes on African Americans in the South and to explore the role of state Colored Conventions in fighting for a different vision of post-Civil War America.

#### Activity Extension (Optional)

Have students explore the [Colored Conventions Project](#) page and write a short essay on a new source.

### 14.2 Activity: Big Ideas of the 14th Amendment

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#### Purpose

Watch the video of Reconstruction historian Eric Foner discussing the origins and meaning of the 14th Amendment. [Video: Eric Foner on the Origins and Meaning of the 14th Amendment.](#)

Next, complete the [Activity Guide: Introduction to the 14th Amendment](#) worksheet. Split up into groups, review your assigned key clause of the 14th Amendment, and share with the larger group.

As background support, review the [Info Brief: Reconstruction and America's "Second Founding."](#)

Finally, present your group's assigned clause to the class. If this is not your section, take notes and complete your worksheet. Your class will then discuss the big ideas contained in the 14th Amendment and how the amendment remains relevant today. Explore the following key questions:

- Why do you think that the Reconstruction generation added that language to the Constitution?
- What big idea did it write into the Constitution?
- How did it respond to the Civil War and the challenges of Reconstruction in its own time?
- How does it remain relevant today? What are some of the modern debates over its meaning and application?

At the end of this module, you will build your own virtual exhibit, so begin to take notes on the stories, images, primary sources, and Supreme Court cases that you may want to include in your exhibit. Think about what stories you will tell.

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#### **Activity 14.2 Notes & Teachers Comments**

##### **Launch**

Review the big ideas of the 14th Amendment. There are multiple parts to the 14th Amendment. Focus on Sections 1 and 5.

As background, watch [Eric Foner on the Origins and Meaning of the 14th Amendment](#) and review Activity Guide: Introduction to the 14th Amendment.

Read the amendment over as a class and then have students complete the worksheet in groups. Assign each group a key clause of the 14th Amendment. Have them read the Common Interpretation essay in the Interactive Constitution, use the Drafting Table tool to explore the debates over their clause and its framing history, and complete a chart on their assigned clause.

##### **Activity Synthesis**

Have students present their assigned clause to the class. Groups should address the following key questions:

- Why do you think that the Reconstruction generation added that language to the Constitution?
- What big idea did the clause write into the Constitution?
- How did it respond to the Civil War and the challenges of Reconstruction in its own time?
- How does it remain relevant today? What are some of the modern debates over its meaning and application?

Then, as a class, have students summarize the significance of the 14th Amendment as a whole and its big ideas. What did it add to the Constitution?

#### **14.3 Video Activity: 14th Amendment**

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##### **Purpose**

In this activity, you will explore how the 14th Amendment was created, what it says, and debates over how to interpret it.

##### **Process**

Watch [the video](#) about the 14th Amendment.

Then, complete the [Video Reflection: The 14th Amendment](#) worksheet.

Identify any areas that are unclear to you or where you would like further explanation. Be prepared to discuss your answers in a group and to ask your teacher any remaining questions.

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#### Activity 14.3 Notes & Teachers Comments

##### Launch

Give students time to watch the video and answer the questions.

##### Activity Synthesis

Have students share their responses in small groups and then discuss as a class.

#### 14.4 Activity: Tests of the 14th Amendment

##### Purpose

The 14th Amendment is the focus of many of the most important constitutional debates (and Supreme Court cases) today. In many ways, the history of the modern Supreme Court is really a history of modern-day battles over the 14th Amendment's meaning. So many of the constitutional cases that you care about today turn on the text of the amendment. In this activity, you will connect cases to the clauses and big ideas in the 14th Amendment, and then summarize the cases for your assigned theme.

##### Process

Complete the [Case Brief: Tests of the 14th Amendment](#) worksheet to review key cases based on the 14th Amendment's big ideas.

- [United States v. Wong Kim Ark \(1898\)](#)
- [Brown v. Board of Education of Topeka \(1954\)](#)
- [Gideon v. Wainwright \(1963\)](#)
- [Loving v. Virginia \(1967\)](#)
- [Obergefell v. Hodges \(2015\)](#)
- [United States v. Virginia \(1996\)](#)
- [Dobbs v. Jackson Women's Health Organization \(2022\)](#)

Each group completes a short presentation of the case for the class that includes visuals.

#### Activity 14.4 Notes & Teachers Comments

##### Launch

Briefly review the cases that students will research and assign small groups to each case:

- *United States v. Wong Kim Ark* (1898)
- *Brown v. Board of Education of Topeka* (1954)
- *Gideon v. Wainwright* (1963)

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- *Loving v. Virginia* (1967)
- *Obergefell v. Hodges* (2015)
- *United States v. Virginia* (1996)
- *Dobbs v. Jackson Women’s Health Organization* (2022)

#### Activity Synthesis

Have students share their assigned Case Brief: Tests of the 14th Amendment with a short presentation of the case for the class that includes visuals and quotes.

#### Activity Extension (Optional)

Have students analyze cases that limit the 14th Amendment: [The Slaughter-House Cases](#), [the Civil Rights Cases](#), and [Plessy v. Ferguson](#). Read the excerpts in the *Founders' Library* and develop a case brief for the class.

## 14.5 Activity: Showcasing the 14th Amendment

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### Purpose

The 14th Amendment’s powerful language transformed the Constitution forever. In this activity, you will design your own museum exhibit to teach about the history and significance of the 14th Amendment.

### Process

Complete the [Activity Guide: Showcasing the 14th Amendment](#) worksheet and then create your own interactive museum exhibit that showcases the [14th Amendment using the Activity Tool: Create Your Own Museum](#).

## Activity 14.5 Notes & Teachers Comments

### Launch

Discuss with students the role of museums as keepers of history. Share with them this quote. “Museums are storytellers. They exist because once upon a time some person or group believed there was a story worth telling, over and over, for generations to come.” — Leslie Bedford

### Activity Synthesis

Students are tasked with building their own online exhibit. Prior to launching into activity, discuss with them the goal of a museum, the role of storytelling, but also the burden of choosing whose story to tell and from what perspective.

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Key questions to place on the board for their work:

- Who is the story about?
- What point of view are you taking?
- What goes wrong?
- What events happen?
- What details will you share and what will you let go of?
- How does it end?
- Why does this story matter to the audiences engaging with the exhibit?

Encourage students to add images, video, text, and audio to make their exhibit multimodal and engaging.

## 14.6 Test Your Knowledge

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### Purpose

Congratulations for completing the activities in this module! Now it's time to apply what you have learned about the basic ideas and concepts covered.

### Process

Complete the questions in the following quiz to test your knowledge.

- [Test Your Knowledge: The 14th Amendment: Battles for Freedom and Equality](#)



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Battles 14.2 Info Brief

# RECONSTRUCTION AND AMERICA'S “SECOND FOUNDING”

Following the Civil War, the American people transformed the Constitution—its very text—forever. This is why some scholars—including leading Reconstruction historian Eric Foner—refer to the 14th Amendment as a core component of America’s “Second Founding.” Do you agree?

During this critical period, our nation confronted a series of vexing questions.

- What was the meaning of the Civil War—a bloody, bloody war—and what should be the terms of a lasting peace?
- How should our nation answer the Declaration of Independence’s prophetic call for freedom and equality?
- How should we define what it means to be a U.S. citizen?
- How broadly should the right to vote sweep?
- And what role—if any—should the national government play in protecting the civil and political rights of all?

And make no mistake, the Reconstruction Amendments transformed our Constitution forever. Recall where the Constitution stood before this critical period.

Of course, it didn’t mention the word “slavery.” However, various constitutional provisions—including the Three-Fifths Clause and the Fugitive Slave Clause—had increased the political power of the slaveholding states throughout the pre-Civil War period.

The Constitution was silent on the Declaration of Independence’s promise of equality and on the issue of African American voting rights.

States could violate key Bill of Rights protections like free speech with impunity—and many Southern states did just that, banning abolitionist speech and writings.

And citizenship rights were left to the states and the courts—with Chief Justice Roger Brooke Taney infamously concluding in *Dred Scott v. Sandford* that African Americans could not be citizens and that they had “no rights which the white man was bound to respect.”

And after our nation’s Second Founding?

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#### Battles 14.2 Info Brief

- Our Constitution abolished slavery. (That's the 13th Amendment.)
- It made everyone born on American soil a U.S. citizen. (That's the 14th Amendment.)
- It promised equal protection of the laws for all. (That's the 14th Amendment—again.)
- It protected us from state abuses of important rights enshrined in the Bill of Rights like free speech. (That's the 14th Amendment—yet again)
- It guaranteed the right to vote free of racial discrimination. (That's the 15th Amendment.)
- And it gave the national government the authority to protect the civil and political rights of all. (That's the 13th, 14th, *and* 15th Amendments.)

Now, of course, the Second Founding wasn't perfect. It was thwarted in its own time by violence in the South, a mix of racism and indifference in the North, and a desire for North-South (white) reconciliation, more generally.

It would take nearly a century and the civil rights movement to begin to fulfill the promises enshrined in the Reconstruction Amendments.

Nevertheless, our Reconstruction founders made an important start.

### RECONSTRUCTION AMENDMENTS

Finally, let's briefly review the power of each of the Reconstruction Amendments.

[The 13th Amendment](#)—ratified in December 1865—abolished slavery.

[The 14th Amendment](#)—ratified in July 1868—wrote the Declaration of Independence's promise of freedom and equality into the Constitution. It combined *four* big ideas—*four* ways in which it transformed the Constitution forever:

- Birthright citizenship: *Dred Scott* is overturned, African Americans *did* have rights that the white man was bound to respect, and generally speaking, if you're born on American soil, you're an American citizen.
- Equality: The original Constitution was silent on the issue of equality, and now the Declaration of Independence's founding promise is written into the Constitution.
- Freedom: The original Bill of Rights was limited to abuses by the *national* government, and now the Constitution protects those in the United States from abuses of key rights by the *states*—key rights like those in the Bill of Rights, including free speech and religious liberty.
- National power over civil rights: Congress is now given the power to enforce the protections enshrined in the 14th Amendment. The Reconstruction Amendments are the first set of constitutional amendments to *expand* the reach of national power—rather than *restrict* it. So, Congress has *more* power than before.

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#### 14.2 Info Brief

The [15th Amendment](#)—ratified in February 1870—promised to end racial discrimination in voting.

#### THE STORY OF THE 14TH AMENDMENT

Why did the Reconstruction generation frame and ratify the 14th Amendment? To begin to answer those tough questions, let's return to April 1865. The Civil War has ended, Abraham Lincoln has been assassinated, and Andrew Johnson has become president. Our nation is wrestling with some of the most difficult questions to arise since its founding. Should we pardon or punish the former rebels? Should we restore political power to the former Confederate states, and on what terms? And, of course, what duty do we owe to African Americans—many of whom fought in the Union Army, laying claim to our nation's promise of freedom and equality—in other words, to *equal* citizenship?

Following Lincoln's assassination, many Republicans remained optimistic about Reconstruction. In their new president—Andrew Johnson—they saw a border-state Unionist (a Tennessean) eager to punish the plantation class and, in turn, remake the conquered South.

They couldn't have been more wrong.

President Johnson *did* agree with many Republicans on the need for the former rebels to pledge their loyalty to the Union, abolish slavery, and renounce secession. However, that was just about all that Johnson required of them. He quickly pardoned thousands of high-ranking Confederate officials and large plantation owners, restoring their property rights and their political power.

He also deferred to the South on how to rebuild its postwar society, leaving the former rebels free to abuse African Americans and white Unionists and do everything possible to restore the pre-Civil War status quo. This led to the infamous Black Codes—what many (including Frederick Douglass) referred to as “slavery by another name.” President Johnson's post-Civil War vision wasn't a mystery. He came right out and said what he wanted to build—“a white man's government.” Northerners may have won the war, but congressional Republicans—the party of Lincoln and of the Union—feared that they might well lose the peace.

Enter the Joint Committee on Reconstruction and one of its key leaders, the hero of our 14th Amendment story, Representative John Bingham of the great state of Ohio. Congress established the Joint Committee on Reconstruction in December 1865. The body was tasked with studying the conditions in the post-Civil War South and recommending a congressional response—one that might counter President Johnson, rally the Republican Party, and provide a new blueprint for Reconstruction. The Committee's most enduring legacy is Section 1 of the 14th Amendment. This critical text was the handiwork of Representative John Bingham of Ohio.

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#### 14.1 Info Brief

First, a little bit about our forgotten hero. Bingham's professional credentials alone are astonishing. Prior to the Civil War, he was a leading antislavery voice in Congress—especially on behalf of robust federal protection of free speech rights and religious liberty. Following Lincoln's assassination, he was a member of the team that prosecuted John Wilkes Booth's co-conspirators. During Reconstruction, he was a leading Republican in the House of Representatives and a key member of the Joint Committee on Reconstruction. He also delivered the closing argument in President Andrew Johnson's impeachment trial. And, following Bingham's congressional career, President Ulysses S. Grant tapped him to be America's minister to Japan, a position that he held for 12 years. Not a bad run. However, Bingham's most lasting achievement was *constitutional*. He was the main author of [Section 1 of the 14th Amendment](#). In fact, the great Justice Hugo Black would later call Bingham the 14th Amendment's James Madison. And Gerard Magliocca—Bingham's biographer—described the Joint Committee on Reconstruction as “A Second Constitutional Convention.” High praise, and quite right.

#### THE POST-RECONSTRUCTION STORY

In the end, Reconstruction represents America's first attempt at multiracial democracy. And for a time—far too brief a time—it worked. It really worked.

We saw African Americans meeting in conventions throughout the nation—laying out their vision of what America's “new birth of freedom” ought to look like for the African American community in post-Civil War America.

We saw African Americans voting in massive numbers—electing Republicans throughout the South and pushing for the ratification of the 14th and 15th Amendments.

We saw African Americans holding office at all levels of government.

- As U.S. senators and U.S. House members.
- As governors and state legislators.
- All the way down to key positions in local governments throughout the South—like town sheriff.

And we saw the national government—for a time—acting to protect the constitutional rights of all.

However, after a period of success, Reconstruction ultimately faced a series of setbacks.

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#### 14.2 Info Brief

Over time, white Southerners regained political power and imposed second-class citizenship on African Americans.

This system of Jim Crow segregation forced African Americans to attend different schools than white Americans, drink from different water fountains, use different restrooms, travel in different train cars, and stay in different hotels—and on and on.

These states also used a mix of violence, intimidation, and laws on the books—including polls taxes and literacy tests—to keep African Americans from voting.

But the civil rights community kept fighting until the civil rights movement finally redeemed the promise of the Reconstruction Amendments through canonical Supreme Court decisions like *Brown v. Board of Education* and *Loving v. Virginia*, landmark civil rights laws like the Civil Rights Act of 1964 and the Voting Rights Act of 1965, and through timeless speeches like Dr. Martin Luther King's *I Have a Dream Speech*.

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14.2 Activity Guide

### INTRODUCTION TO THE 14TH AMENDMENT

The 14th Amendment's powerful language transformed the Constitution forever. In this activity, you will analyze the text of the 14th Amendment, break down its key parts, and explore the big ideas enshrined in its text.

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Read and mark up Sections 1 and 5 of the 14th Amendment. Summarize the big ideas for each section in one or two sentences. Consider significant words, key ideas, or words you need to define.

Discuss as a class.

#### Section 1

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.

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#### 14.2 Activity Guide

##### Section 5

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Read the text of your assigned clause and the relevant Common Interpretation essay in the *Interactive Constitution*.

Fill out the following chart for your assigned clause. Be prepared to share your clause with the class.

Text of 14th Amendment	Name of clause	Big idea of the clause	Three words from the text that you highlighted or underlined	Notes
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.	<b>Citizenship Clause</b>  <a href="#">Read the Common Interpretation</a>			

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#### 14.2 Activity Guide

<p>No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;</p>	<p><b>Privileges or Immunities Clause</b></p> <p><a href="#">Read the Common Interpretation</a></p>			
<p>nor shall any State deprive any person of life, liberty, or property, without due process of law;</p>	<p><b>Due Process Clause</b></p> <p><a href="#">Read the Common Interpretation</a></p>			





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#### 14.2 Activity Guide

<p>nor deny to any person within its jurisdiction the equal protection of the laws.</p>	<p><b>Equal Protection Clause</b></p> <p><a href="#">Read the Common Interpretation</a></p>			
<p>The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.</p>	<p><b>Enforcement Clause</b></p> <p><a href="#">Read the Common Interpretation</a></p>			



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14.3 Video Reflection

### THE 14TH AMENDMENT

In this activity, you will explore how the 14th Amendment was created, what it says, and debates over how to interpret it.

After you have watched the [video](#), write down your answers to the following questions.

The Civil Rights Act of 1866
What did the act do?
What challenge(s) was it designed to address?
What was the issue with the act?
What is the connection between the Civil Rights Act of 1866 and the 14th Amendment?

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14.3 Video Reflection

Landmark 14th Amendment Cases		
Case	What clause of the 14th Amendment is involved in this case?	Summarize the case in your own words.
<i>United States v. Wong Kim Ark</i>		
<i>The Slaughter - House Cases</i>		
<i>Plessy v. Ferguson</i>		
<i>Brown v. Board of Education</i>		



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14.4 Case Brief

### TESTS OF THE 14TH AMENDMENT

The 14th Amendment is the focus of many of the most important constitutional debates (and Supreme Court cases) today. In many ways, the history of the modern Supreme Court is really a history of modern-day battles over the 14th Amendment's meaning. So many of the constitutional cases that you care about today turn on the text of the amendment. In this activity, you will connect cases to the clauses and big ideas in the 14th Amendment, and then summarize the cases for their assigned theme.

You will work with a group to review one of the following cases:

- [United States v. Wong Kim Ark \(1898\)](#)
- [Brown v. Board of Education of Topeka \(1954\)](#)
- [Gideon v. Wainwright \(1963\)](#)
- [Loving v. Virginia \(1967\)](#)
- [Obergefell v. Hodges \(2015\)](#)
- [United States v. Virginia \(1996\)](#)
- [Dobbs v. Jackson Women's Health Organization \(2022\)](#)

Read excerpts from your assigned case from the *Founders' Library* and complete the chart below as if your role is to brief the case like a constitutional lawyer.

My Case:

Facts:

Who are all the people (parties) associated with the case? What was the dispute between them?

Issue:

What is the issue in this case? What constitutional provision is at issue? What is the constitutional question that needs to be answered?

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#### 14.4 Case Brief

##### Ruling:

How does the Court rule? What was the outcome in the case? Who won and who lost? How did the justices vote? What sort of rule does the Court come up with to resolve the issue?

Who was the author of the majority opinion?

Were there any concurring or dissenting opinions? Who authored them? What did they say? How would the justices who authored them have ruled in the case?

##### Application

How does this case connect with any of the big idea(s) from the 14th Amendment?

Prepare a short presentation of the case for the class that includes visuals.

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14.4 Primary Source

### UNITED STATES V. WONG KIM ARK (1898)

View the case on the National Constitution Center's website [here](#).

#### SUMMARY

Ratified in 1868, the 14th Amendment opens with the Citizenship Clause. 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." The Supreme Court addressed the meaning of this key provision in *United States v. Wong Kim Ark*. Wong Kim Ark was born in San Francisco to parents who were both Chinese citizens. At age 21, he took a trip to China to visit his parents. When he returned to the United States, he was denied entry on the grounds that he was not a U.S. citizen. In a 6-2 decision, the Court ruled in favor of Wong Kim Ark. Because he was born in the United States and his parents were not "employed in any diplomatic or official capacity under the Emperor of China," the Citizenship Clause of the 14th Amendment automatically made him a U.S. citizen. This case highlighted a disagreement between the justices over the precise meaning of one key phrase in the Citizenship Clause: "subject to the jurisdiction thereof."

[Read the Full Opinion](#)

#### **Excerpt: Majority Opinion, Justice Gray**

**This case addresses the meaning of the Fourteenth Amendment's Citizenship Clause.**

The question presented by the record is whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicil and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States by virtue of the first clause of the Fourteenth Amendment of the Constitution, "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." . . .

**The main purpose of the Citizenship Clause was to reverse *Dred Scott*, ensure that African American could become citizens, and establish the principle of birthright citizenship.** As appears upon the face of the amendment, as well as from the history of the times, th[e] [Citizenship Clause] was not intended to impose any new restrictions upon citizenship, or to prevent any persons from becoming citizens by the fact of birth within the United States who would thereby have become citizens according to the law existing before its

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#### 14.4 Primary Source

adoption. It is declaratory in form, and enabling and extending in effect. Its main purpose doubtless was, as has been often recognized by this court, to establish the citizenship of free negroes, which had been denied in the opinion delivered by Chief Justice Taney in *Dred Scott v. Sandford*, . . . and to put it beyond doubt that all blacks, as well as whites, born or naturalized within the jurisdiction of the United States are citizens of the United States. . . . But the opening words, “All persons born,” are general, not to say universal, restricted only by place and jurisdiction, and not by color or race . . . .

**The Fourteenth Amendment only calls for a narrow group of exceptions to the broad principle of birthright citizenship.** The real object of the Fourteenth Amendment of the Constitution, in qualifying the words, “All persons born in the United States” by the addition “and subject to the jurisdiction thereof,” would appear to have been to exclude, by the fewest and fittest words (besides children of members of the Indian tribes, standing in a peculiar relation to the National Government, unknown to the common law), the two classes of cases – children born of alien enemies in hostile occupation and children of diplomatic representatives of a foreign State – both of which, . . . by the law of England and by our own law from the time of the first settlement of the English colonies in America, had been recognized exceptions to the fundamental rule of citizenship by birth within the country. . . .

**The Citizenship Clause applies to children born on American soil to non-citizen parents; if they fall outside of the narrow exceptions written into the Fourteenth Amendment, they become U.S. citizens, even though their parents were citizens of another country.** [T]he Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes. The Amendment, in clear words and in manifest intent, includes the children born, within the territory of the United States, of all other persons, of whatever race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States. . . .

**Generally speaking, non-citizens must follow American laws when on American soil, so they are “subject to the jurisdiction thereof” within the language of the Citizenship Clause.** It can hardly be denied that an alien is completely subject to the political jurisdiction of the country in which he resides – seeing that, as said by Mr. Webster, when Secretary of State, in his Report to the President on *Thrasher’s Case* in 1851, and since repeated by this court, “. . . it is well known that, by the public law, an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that

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government, and may be punished for treason, or other crimes, as a native-born subject might be, unless his case is varied by some treaty stipulations.” . . .

#### **Neither the President nor Congress can change this rule; it is part of the Constitution.**

Whatever considerations, in the absence of a controlling provision of the Constitution, might influence the legislative or the executive branch of the Government to decline to admit persons of the Chinese race to the status of citizens of the United States, there are none that can constrain or permit the judiciary to refuse to give full effect to the peremptory and explicit language of the Fourteenth Amendment, which declares and ordains that “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.”

**The Chinese are not an exception to the general rule.** Chinese persons, born out of the United States, remaining subjects of the Emperor of China, and not having become citizens of the United States, are entitled to the protection of, and owe allegiance to, the United States so long as they are permitted by the United States to reside here, and are “subject to the jurisdiction thereof” in the same sense as all other aliens residing in the United States. . . .

#### **The Chinese Exclusion Acts can’t change the meaning of the Fourteenth Amendment.**

The acts of Congress known as the Chinese Exclusion Acts, the earliest of which was passed some fourteen years after the adoption of the Constitutional Amendment, cannot control its meaning or impair its effect, but must be construed and executed in subordination to its provisions. And the right of the United States, as exercised by and under those acts, to exclude or to expel from the country persons of the Chinese race born in China and continuing to be subjects of the Emperor of China, though having acquired a commercial domicil in the United States, has been upheld by this court for reasons applicable to all aliens alike, and inapplicable to citizens of whatever race or color . . . .

**Wong Kim Ark is a U.S. citizen.** Upon the facts agreed in this case, the American citizenship which Wong Kim Ark acquired by birth within the United States has not been lost or taken away by anything happening since his birth. . . .

**Wong Kim Ark wins.** The evident intention, and the necessary effect, of the submission of this case to the decision of the court upon the facts agreed by the parties were to present for determination the single question stated at the beginning of this opinion, namely, whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicil and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States. For the reasons above stated, this court is of opinion that the question must be answered in the affirmative.



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##### **Excerpt: Dissent, Justice Field**

**The Citizenship Clause was a response to *Dred Scott*; however, its reach doesn't extend to non-citizens who owe their allegiance to another country.** “By the Thirteenth Amendment of the Constitution, slavery was prohibited. The main object of the opening sentence of the Fourteenth Amendment was to settle the question, upon which there had been a difference of opinion throughout the country and in this court, as to the citizenship of free negroes, *Scott v. Sandford*, . . . and to put it beyond doubt that all persons, white or black, and whether formerly slaves or not, born or naturalized in the United States, and *owing no allegiance to any alien power*, should be citizens of the United States, and of the State in which they reside. . . .”

**The Citizenship Clause establishes the principle of birthright citizenship, but there are exceptions to this general rule; the key language reads “subject to the jurisdiction thereof”; this means that the non-citizen must owe full allegiance to the United States and to no other country.** “This section contemplates two sources of citizenship, and two sources only: birth and naturalization. The persons declared to be citizens are ‘all persons born or naturalized in the United States, and subject to the jurisdiction thereof.’ The evident meaning of these last words is not merely subject in some respect or degree to the jurisdiction of the United States, but *completely subject to their political jurisdiction*, and *owing them direct and immediate allegiance*. And the words relate to the time of birth in the one case, as they do to the time of naturalization in the other. *Persons thus subject to the jurisdiction of the United States at the time of birth* cannot become so afterwards, except by being naturalized, either individually, as by proceedings under the naturalization acts, or collectively, as by the force of a treaty by which foreign territory is acquired.”

**To meet the requirements of the Citizenship Clause, the non-citizen must not even be partly subject to the political jurisdiction of another country.** To be “completely subject” to the political jurisdiction of the United States is to be in no respect or degree subject to the political jurisdiction of any other government. . . .

**Chinese citizens living in the United States owe their allegiance to the Emperor of China.** Generally speaking, I understand the subjects of the Emperor of China – that ancient Empire, with its history of thousands of years and its unbroken continuity in belief, traditions and government, in spite of revolutions and changes of dynasty – to be bound to him by every conception of duty and by every principle of their religion, of which filial piety is the first and greatest commandment, and formerly, perhaps still, their penal laws denounced the severest penalties on those who renounced their country and allegiance, and their abettors, and, in effect, held the relatives at home of Chinese in foreign lands as hostages for their loyalty. And whatever concession may have been made by treaty in the direction of admitting the right of expatriation in some sense, they seem in the United States to have remained pilgrims and sojourners, as all their fathers were. . . . At all events, they have never been allowed by our laws

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to acquire our nationality, and, except in sporadic instances, do not appear ever to have desired to do so.

#### **The Fourteenth Amendment doesn't grant birthright citizenship to children born on U.S. soil to Chinese citizens.**

The Fourteenth Amendment was not designed to accord citizenship to persons so situated and to cut off the legislative power from dealing with the subject. . .

#### **.Congress and the President can make decisions about whether the children of Chinese parents can become citizens.**

I insist that it cannot be maintained that this Government is unable, through the action of the President, concurred in by the Senate, to make a treaty with a foreign government providing that the subjects of that government, although allowed to enter the United States, shall not be made citizens thereof, and that their children shall not become such citizens by reason of being born therein. . . .

#### **Wong Kim Ark doesn't qualify for birthright citizenship under the Fourteenth Amendment.**

"Born in the United States, and subject to the jurisdiction thereof," and "naturalized in the United States, and subject to the jurisdiction thereof," mean born or naturalized under such circumstances as to be completely subject to that jurisdiction, that is as completely as citizens of the United States, who are, of course, not subject to any foreign power, and can of right claim the exercise of the power of the United States on their behalf wherever they may be. When, then, children are born in the United States to the subjects of a foreign power, with which it is agreed by treaty that they shall not be naturalized thereby, and as to whom our own law forbids them to be naturalized, such children are not born so subject to the jurisdiction as to become citizens, and entitled on that ground to the interposition of our Government, if they happen to be found in the country of their parents' origin and allegiance, or any other. . . .

**Field lays out the general rule.** [T]he Fourteenth Amendment does not exclude from citizenship by birth children born in the United States of parents permanently located therein, and who might themselves become citizens; nor, on the other hand, does it arbitrarily make citizens of children born in the United States of parents who, according to the will of their native government and of this Government, are and must remain aliens.

**Wong Kim Ark loses.** Tested by this rule, Wong Kim Ark never became and is not a citizen of the United States, and the order of the District Court should be reversed.

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

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# BROWN V. BOARD OF EDUCATION OF TOPEKA (1954)

View the case on the National Constitution Center's website [here](#).

## SUMMARY

*Brown v. Board of Education of Topeka* is a consolidated case addressing the constitutionality of school segregation. There, the challengers—African American children and their parents—attacked the “separate but equal” doctrine created in *Plessy v. Ferguson*. They argued that school segregation violated the 14th Amendment by depriving the African American students of equal educational opportunities. In a unanimous decision authored by Chief Justice Earl Warren, the Court agreed—overturning *Plessy* and declaring school segregation unconstitutional. As part of its analysis, the Court cited the negative impact of segregation on children’s mental and emotional development. With this landmark decision, the Court took an important step in desegregating our nation’s schools, opening the door to further legal challenges to Jim Crow laws in other contexts, and reinvigorating the promise of the 14th Amendment’s Equal Protection Clause.

[Read the Full Opinion](#)

### **Excerpt: Majority Opinion, Chief Justice Warren**

**These cases come from a variety of states, not just the Jim Crow South.** These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion.

**The challengers are children and their parents arguing that school segregation conflicts with the Fourteenth Amendment’s Equal Protection Clause and is, therefore, unconstitutional; the lower courts upheld school segregation under the separate-but-equal doctrine from *Plessy v. Ferguson*.** In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called “separate but equal” doctrine announced by this Court in *Plessy v. Ferguson* . . . . Under that

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doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. . . .

**The challengers argue that separate schools cannot be made equal; separate schools are inherently unequal, even if they have equal funding, etc.** 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. . . .

***Plessy* established the doctrine of separate but equal decades after the ratification of the Fourteenth Amendment; courts have struggled to apply it over time; in recent years, the Court has trimmed back on the doctrine, but the Court hasn’t had to reexamine *Plessy* itself until now.** In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race. The doctrine of “separate but equal” did not make its appearance in this Court until 1896 in the case of *Plessy v. Ferguson*, . . . involving not education but transportation. American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the “separate but equal” doctrine in the field of public education. In *Cumming v. County Board of Education* . . . and *Gong Lum v. Rice* . . . the validity of the doctrine itself was not challenged. In more recent cases, all on the graduate school level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. . . . In none of these cases was it necessary to reexamine the doctrine to grant relief to the Negro plaintiff. And in *Sweatt v. Painter* . . . , the Court expressly reserved decision on the question whether *Plessy v. Ferguson* should be held inapplicable to public education.

**This case requires us to reexamine *Plessy*.** In the instant cases, that question is directly presented. Here . . . , 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. . . .

**Education is of central importance to modern America; it is one of the most important functions of state and local governments; to succeed in life and fulfill the duties of citizenship, students must have equal access to an education.** Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these

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days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

**Even if the school facilities are equal, school segregation itself denies African American students equal educational opportunities.** We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other “tangible” factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does. . . .

**School segregation is degrading to African American students and makes them feel inferior to their white counterparts; and this experience will likely affect them for the rest of their lives.** To separate them 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. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs: “Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.” . . .

**This is Chief Justice Warren’s famous conclusion.** 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 [equal protection of the laws].

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

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### GIDEON V. WAINWRIGHT (1963)

View the case on the National Constitution Center's website [here](#).

#### SUMMARY

In *Johnson v. Zerbst* (1938), the Supreme Court held that the Sixth Amendment's right to assistance of counsel required the federal government to appoint counsel to an indigent defendant who could not afford one. In *Gideon v. Wainwright* (1963), a much more famous case, the Supreme Court "incorporated" this right against the state government. There, Clarence Earl Gideon was accused of a burglary at a pool hall in Florida, but he could not afford an attorney. As a result, Gideon had to represent himself in court, and he was convicted of the burglary and sentenced to five years in prison. While in prison, Gideon became a "jailhouse" lawyer—studying the Constitution, building his case, and eventually petitioning the Supreme Court to take it up. The Court took Gideon's case and ruled in his favor—concluding that he *did* have a right to an attorney. The case was part of the Warren Court's revolution in criminal procedure, whereby the Court systematically began to interpret constitutional provisions in cases such as *Miranda* and *Mapp* more favorably for criminal defendants.

[Read the Full Opinion](#)

#### **Excerpt: Majority Opinion, Justice Black**

**Justice Black begins with the Sixth Amendment's text and a statement of how the Court has applied the right to counsel in the context of federal courts.** The Sixth Amendment provides, 'In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.' We have construed this to mean that in federal courts counsel must be provided for defendants unable to employ counsel unless the right is competently and intelligently waived. . . .

**The Court has incorporated many Bill of Rights provisions against the states, including the First Amendment, the Fourth Amendment, the Fifth Amendment's Takings Clause, and the Eighth Amendment's protection against cruel and unusual punishment.** In many cases . . . this Court has looked to the fundamental nature of original Bill of Rights guarantees to decide whether the Fourteenth Amendment makes them obligatory on the States. Explicitly recognized to be of this 'fundamental nature' and therefore made immune from state invasion by the Fourteenth, or some part of it, are the First Amendment's freedoms of speech, press, religion, assembly, association, and petition for redress of grievances. For the same reason, though not always in precisely the same terminology, the Court has made obligatory on the

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States the Fifth Amendment's command that private property shall not be taken for public use without just compensation, the Fourth Amendment's prohibition of unreasonable searches and seizures, and the Eighth's ban on cruel and unusual punishment. . . .

**We must incorporate a Bill of Rights provision if it is fundamental and essential to ensuring a fair trial.** We accept . . . that a provision of the Bill of Rights which is 'fundamental and essential to a fair trial' is made obligatory upon the States by the Fourteenth Amendment. . . .

**The Sixth Amendment satisfies this rule and must be incorporated against the states; poor defendants must not be denied access to a lawyer, whether in federal court or state court.** [R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the wide-spread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. . . .

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**



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### LOVING V. VIRGINIA (1967)

View the case on the National Constitution Center's website [here](#).

#### SUMMARY

Mildred and Richard Loving, an interracial couple, married in D.C. but moved to Virginia where interracial marriage was banned. They sued for violation of the Equal Protection Clause. The Court held that the Virginia law violated the Fourteenth Amendment because of the law's clear purpose to create a race-based restriction. The Court reasoned that the law treated people differently based on race because it prohibited marriage based on the race of the other party to the marriage. Here, a white man who married a Black woman was committing a crime because the woman he chose to marry was Black. This holding marked an expansion of the Court's interpretation of the Equal Protection Clause and the characteristics it protects.

[Read the Full Opinion](#)

#### **Excerpt: Majority Opinion, Chief Justice Earl Warren**

**State bans on interracial marriage violate the Fourteenth Amendment; they are unconstitutional.** This case presents a constitutional question never addressed by this Court: whether a statutory scheme adopted by the State of Virginia to prevent marriages between persons solely on the basis of racial classifications violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment. For reasons which seem to us to reflect the central meaning of those constitutional commands, we conclude that these statutes cannot stand consistently with the Fourteenth Amendment. . . .

**Sixteen states still ban interracial marriage.** Virginia is now one of 16 States which prohibit and punish marriages on the basis of racial classifications. Penalties for miscegenation arose as an incident to slavery, and have been common in Virginia since the colonial period. The present statutory scheme dates from the adoption of the Racial Integrity Act of 1924, passed during the period of extreme nativism which followed the end of the First World War. The central features of this Act, and current Virginia law, are the absolute prohibition of a "white person" marrying other than another "white person," a prohibition against issuing marriage licenses until the issuing official is satisfied that the applicants' statements as to their race are correct, certificates of "racial composition" to be kept by both local and state registrars, and the carrying forward of earlier prohibitions against racial intermarriage. . . .



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**The core purpose of the Fourteenth Amendment was to attack racial discrimination by the states.** The clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination in the States.

**Virginia's ban on interracial marriage discriminates on the basis of race.** There can be no question but that Virginia's miscegenation statutes rest solely upon distinctions drawn according to race. The statutes proscribe generally accepted conduct if engaged in by members of different races. Over the years, this Court has consistently repudiated '(d)istinctions between citizens solely because of their ancestry' as being 'odious to a free people whose institutions are founded upon the doctrine of equality.' At the very least, the Equal Protection Clause demands that racial classifications, especially suspect in criminal statutes, be subjected to the 'most rigid scrutiny,' and, if they are ever to be upheld, they must be shown to be necessary to the accomplishment of some permissible state objective, independent of the racial discrimination which it was the object of the Fourteenth Amendment to eliminate. Indeed, two members of this Court have already stated that they 'cannot conceive of a valid legislative purpose . . . which makes the color of a person's skin the test of whether his conduct is a criminal offense.'

**The state has no legitimate purpose for imposing this ban.** There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification. The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy. We have consistently denied the constitutionality of measures which restrict the rights of citizens on account of race. There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause. . . .

**The right to marry is a fundamental right protected by the Fourteenth Amendment.**

Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival. . . . To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State.

**The Lovings win.** These convictions must be reversed.

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

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### UNITED STATES V. VIRGINIA (1996)

View the case on the National Constitution Center's website [here](#).

#### SUMMARY

Beginning in the 1970s, the Supreme Court decided a series of cases that applied the 14th Amendment's Equal Protection Clause to policies that discriminated on the basis of sex. These cases culminated in Justice Ruth Bader Ginsburg's landmark opinion in *United States v. Virginia*. In 1990, the United States sued Virginia on behalf of several women who wanted to attend the Virginia Military Institute (VMI)—a public, all-male university. The Supreme Court ruled that VMI's male-only admissions policy violated the 14th Amendment's Equal Protection Clause. In her majority opinion for the Court, Justice Ginsburg explained that for a state policy providing differential treatment on the basis of sex to survive 14th Amendment scrutiny, the state must offer an "exceedingly persuasive justification." In the end, Justice Ginsburg concluded that Virginia's attempts to justify VMI's all-male admission policy failed such a test. As a result, the Court ruled that women had a constitutional right to be admitted to VMI.

[Read the Full Opinion](#)

#### **Excerpt: Majority Opinion, Justice Ginsburg**

**VMI's male-only admissions policy violates the Fourteenth Amendment's Equal Protection Clause.** Virginia's public institutions of higher learning include an incomparable military college, Virginia Military Institute (VMI). The United States maintains that the Constitution's equal protection guarantee precludes Virginia from reserving exclusively to men the unique educational opportunities VMI affords. We agree. . . .

**VMI offers a unique form of education.** Founded in 1839, VMI is today the sole single-sex school among Virginia's 15 public institutions of higher learning. VMI's distinctive mission is to produce "citizen-soldiers," men prepared for leadership in civilian life and in military service. VMI pursues this mission through pervasive training of a kind not available anywhere else in Virginia. Assigning prime place to character development, VMI uses an "adversative method" modeled on English public schools and once characteristic of military instruction. VMI constantly endeavors to instill physical and mental discipline in its cadets and impart to them a strong moral code. The school's graduates leave VMI with heightened comprehension of their capacity to deal with duress and stress, and a large sense of accomplishment for completing the hazardous course.



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**VMI has many successful alums.** VMI has notably succeeded in its mission to produce leaders; among its alumni are military generals, Members of Congress, and business executives. The school's alumni overwhelmingly perceive that their VMI training helped them to realize their personal goals. . . .

**VMI's approach to education is not inherently unsuitable for women; and it shouldn't be surprising that some women want to attend VMI because of its successful alums; even so, VMI maintains its all-male admissions policy.** Neither the goal of producing citizen-soldiers nor VMI's implementing methodology is inherently unsuitable to women. And the school's impressive record in producing leaders has made admission desirable to some women. Nevertheless, Virginia has elected to preserve exclusively for men the advantages and opportunities a VMI education affords. . . .

**Virginia has tried to create an alternative program for women.** In response to [a previous lower-court ruling], Virginia proposed a parallel program for women: Virginia Women's Institute for Leadership (VWIL). The 4-year, state-sponsored undergraduate program would be located at Mary Baldwin College, a private liberal arts school for women, and would be open, initially, to about 25 to 30 students. Although VWIL would share VMI's mission-to produce "citizen-soldiers" – the VWIL program would differ, as does Mary Baldwin College, from VMI in academic offerings, methods of education, and financial resources. . . .

**But this alternative changed some of the key features of the VMI program.** [T]he Task Force [establishing VWIL] determined that a military model would be "wholly inappropriate" for VWIL. VWIL students would participate in ROTC programs and a newly established, "largely ceremonial" Virginia Corps of Cadets, but the VWIL House would not have a military format, and VWIL would not require its students to eat meals together or to wear uniforms during the school day. In lieu of VMI's adversative method, the VWIL Task Force favored "a cooperative method which reinforces self-esteem." In addition to the standard bachelor of arts program offered at Mary Baldwin, VWIL students would take courses in leadership, complete an off-campus leadership externship, participate in community service projects, and assist in arranging a speaker series.

**Virginia has committed to equal funding for this alternative program and access to the VMI alumni network.** Virginia represented that it will provide equal financial support for in-state VWIL students and VMI cadets and the VMI Foundation agreed to supply a \$5.4625 million endowment for the VWIL program. . . . The VMI Alumni Association has developed a network of employers interested in hiring VMI graduates. The Association has agreed to open its network to VWIL graduates, but those graduates will not have the advantage afforded by a VMI degree. . . .

**Justice Ginsburg presents the constitutional questions in the case.** The cross-petitions in this suit present two ultimate issues. First, does Virginia's exclusion of women from the

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educational opportunities provided by VMI – extraordinary opportunities for military training and civilian leadership development – deny to women “capable of all of the individual activities required of VMI cadets,” the equal protection of the laws guaranteed by the Fourteenth Amendment? Second, if VMI's “unique” situation – as Virginia's sole single-sex public institution of higher education – offends the Constitution's equal protection principle, what is the remedial requirement? . . .

**Ginsburg lays out the relevant legal standard for sex discrimination claims under the Fourteenth Amendment.** Parties who seek to defend gender-based government action must demonstrate an “exceedingly persuasive justification” for that action.

**This demanding standard is justified by our nation's long history of sex discrimination.** Today's skeptical scrutiny of official action denying rights or opportunities based on sex responds to volumes of history. As a plurality of this Court acknowledged a generation ago, “our Nation has had a long and unfortunate history of sex discrimination.” Through a century plus three decades and more of that history, women did not count among voters composing “We the People”; not until 1920 did women gain a constitutional right to the franchise. And for a half century thereafter, it remained the prevailing doctrine that government, both federal and state, could withhold from women opportunities accorded men so long as any “basis in reason” could be conceived for the discrimination.

**The Court began applying the Fourteenth Amendment to sex discrimination in the 1970s; these cases demand equal citizenship for women.** In 1971 (in *Reed v. Reed*), for the first time in our Nation's history, this Court ruled in favor of a woman who complained that her State had denied her the equal protection of its laws. Since *Reed*, the Court has repeatedly recognized that neither federal nor state government acts compatibly with the equal protection principle when a law or official policy denies to women, simply because they are women, full citizenship stature—equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities. Without equating gender classifications, for all purposes, to classifications based on race or national origin, the Court . . . has carefully inspected official action that closes a door or denies opportunity to women (or to men).

**Ginsburg derives her demanding legal standard from the Court's previous sex discrimination cases.** To summarize the Court's current directions for cases of official classification based on gender: Focusing on the differential treatment or denial of opportunity for which relief is sought, the reviewing court must determine whether the proffered justification is “exceedingly persuasive.” The burden of justification is demanding and it rests entirely on the State. The State must show “at least that the [challenged] classification serves ‘important governmental objectives and that the discriminatory means employed’ are ‘substantially related to the achievement of those objectives.’” The justification must be genuine, not hypothesized or invented post hoc in response to litigation. And it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females.

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**There are some differences between men and women; example: certain physical differences.** The heightened review standard our precedent establishes does not make sex a proscribed classification. Supposed “inherent differences” are no longer accepted as a ground for race or national origin classifications. Physical differences between men and women, however, are enduring: “[T]he two sexes are not fungible; a community made up exclusively of one [sex] is different from a community composed of both.”

**States may not use bogus claims of “inherent differences” as an excuse to discriminate against women.** “Inherent differences” between men and women, we have come to appreciate, remain cause for celebration, but not for denigration of the members of either sex or for artificial constraints on an individual’s opportunity. Sex classifications may be used to compensate women “for particular economic disabilities [they have] suffered,” to “promot[e] equal employment opportunity,” to advance full development of the talent and capacities of our Nation’s people. But such classifications may not be used, as they once were, to create or perpetuate the legal, social, and economic inferiority of women.

#### Excerpt: Dissent, Justice Scalia

**The Court has shut down a longstanding institution that has served Virginians well; in so doing, it ignores the factual record, casts aside tradition, and issues a decision that conflicts with the Court’s previous sex discrimination cases.** Today the Court shuts down an institution that has served the people of the Commonwealth of Virginia with pride and distinction for over a century and a half. To achieve that desired result, it rejects (contrary to our established practice) the factual findings of two courts below, sweeps aside the precedents of this Court, and ignores the history of our people. As to facts: It explicitly rejects the finding that there exist “gender-based developmental differences” supporting Virginia’s restriction of the “adversative” method to only a men’s institution, and the finding that the all-male composition of the Virginia Military Institute (VMI) is essential to that institution’s character. As to precedent: It drastically revises our established standards for reviewing sex-based classifications. And as to history: It counts for nothing the long tradition, enduring down to the present, of men’s military colleges supported by both States and the Federal Government.

**The Court should have left this issue to the elected branches; instead it imposes its own elite values on everyone else; the Constitution takes no sides in this debate.** Much of the Court’s opinion is devoted to deprecating the closed-mindedness of our forebears with regard to women’s education, and even with regard to the treatment of women in areas that have nothing to do with education. Closedminded they were—as every age is, including our own, with regard to matters it cannot guess, because it simply does not consider them debatable. The virtue of a democratic system with a First Amendment is that it readily enables the people, over time, to be persuaded that what they took for granted is not so, and to change their laws accordingly. That system is destroyed if the smug assurances of each age are removed from the democratic process and written into the Constitution. So to counterbalance the Court’s criticism of our

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ancestors, let me say a word in their praise: They left us free to change. The same cannot be said of this most illiberal Court, which has embarked on a course of inscribing one after another of the current preferences of the society (and in some cases only the countermajoritarian preferences of the society's law-trained elite) into our Basic Law. Today it enshrines the notion that no substantial educational value is to be served by an all-men's military academy—so that the decision by the people of Virginia to maintain such an institution denies equal protection to women who cannot attend that institution but can attend others. Since it is entirely clear that the Constitution of the United States—the old one—takes no sides in this educational debate, I dissent. . . .

**The Court should look to preserve our nation's values, not revolutionize them; and our tests and rulings shouldn't conflict with longstanding traditions that extend back to the time when a given provision was added to the Constitution.** [I]n my view the function of this Court is to preserve our society's values regarding (among other things) equal protection, not to revise them; to prevent backsliding from the degree of restriction the Constitution imposed upon democratic government, not to prescribe, on our own authority, progressively higher degrees. For that reason it is my view that, whatever abstract tests we may choose to devise, they cannot supersede—and indeed ought to be crafted so as to reflect—those constant and unbroken national traditions that embody the people's understanding of ambiguous constitutional texts. More specifically, it is my view that “when a practice not expressly prohibited by the text of the Bill of Rights bears the endorsement of a long tradition of open, widespread, and unchallenged use that dates back to the beginning of the Republic, we have no proper basis for striking it down.” The same applies . . . to a practice asserted to be in violation of the post-Civil War Fourteenth Amendment.

**VMI's male-only admissions policy is one such tradition; and it is consistent with longstanding approaches at other military colleges throughout the nation; any changes should be left to the elected branches.** The all-male constitution of VMI comes squarely within such a governing tradition. Founded by the Commonwealth of Virginia in 1839 and continuously maintained by it since, VMI has always admitted only men. And in that regard it has not been unusual. For almost all of VMI's more than a century and a half of existence, its single-sex status reflected the uniform practice for government-supported military colleges. . . . [T]he tradition of having government-funded military schools for men is as well rooted in the traditions of this country as the tradition of sending only men into military combat. The people may decide to change the one tradition, like the other, through democratic processes; but the assertion that either tradition has been unconstitutional through the centuries is not law, but politics-smuggled-into-law.

**The Court's ruling threatens single-sex education in other contexts; this was the norm throughout American history; this norm has changed over time, but with the elected branches driving policy changes in this area.** And the same applies, more broadly, to single-sex education in general, which . . . is threatened by today's decision with the cutoff of all state

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and federal support. Government-run nonmilitary educational institutions for the two sexes have until very recently also been part of our national tradition. “[It is] [c]oeducation, historically, [that] is a novel educational theory. From grade school through high school, college, and graduate and professional training, much of the Nation’s population during much of our history has been educated in sexually segregated classrooms.” These traditions may of course be changed by the democratic decisions of the people, as they largely have been.

**Here, the Court is imposing the change; it is rewriting the Constitution.** Today, however, change is forced upon Virginia, and reversion to single-sex education is prohibited nationwide, not by democratic processes but by order of this Court. Even while bemoaning the sorry, bygone days of “fixed notions” concerning women’s education, the Court favors current notions so fixedly that it is willing to write them into the Constitution of the United States by application of custom-built “tests.” This is not the interpretation of a Constitution, but the creation of one. . . .

**The Court has made up a new test to reach the result in this case.** Only the amorphous “exceedingly persuasive justification” phrase, and not the standard elaboration of intermediate scrutiny, can be made to yield this conclusion that VMI’s single-sex composition is unconstitutional because there exist several women (or, one would have to conclude under the Court’s reasoning, a single woman) willing and able to undertake VMI’s program. Intermediate scrutiny has never required a least-restrictive-means analysis, but only a “substantial relation” between the classification and the state interests that it serves. . . . There is simply no support in our cases for the notion that a sex-based classification is invalid unless it relates to characteristics that hold true in every instance. . . .

**Virginia is promoting an important state interest here; and it is promoting it in a way consistent with longstanding tradition.** It is beyond question that Virginia has an important state interest in providing effective college education for its citizens. That single-sex instruction is an approach substantially related to that interest should be evident enough from the long and continuing history in this country of men’s and women’s colleges. But beyond that, “That single-gender education at the college level is beneficial to both sexes is a fact established in this case.” The evidence establishing that fact was overwhelming—indeed, “virtually uncontradicted” . . . .

**VMI is a unique institution, providing a distinctive education; and the factual record shows that this approach is only consistent with male-only admissions.** But besides its single-sex constitution, VMI is different from other colleges in another way. It employs a “distinctive educational method,” sometimes referred to as the “adversative, or doubting, model of education.” “Physical rigor, mental stress, absolute equality of treatment, absence of privacy, minute regulation of behavior, and indoctrination in desirable values are the salient attributes of the VMI educational experience.” . . . No one contends that this method is appropriate for all individuals; education is not a “one size fits all” business. Just as a State may wish to support junior colleges, vocational institutes, or a law school that emphasizes case practice instead of

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classroom study, so too a State's decision to maintain within its system one school that provides the adversative method is "substantially related" to its goal of good education. Moreover, it was uncontested that "if the state were to establish a women's VMI-type [i. e., adversative] program, the program would attract an insufficient number of participants to make the program work," and it was found by [the lower court] that if Virginia were to include women in VMI, the school "would eventually find it necessary to drop the adversative system altogether." Thus, Virginia's options were an adversative method that excludes women or no adversative method at all. . . . **We should reaffirm the value of federalism and oppose this turn to judicial arrogance.** Justice Brandeis said it is "one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." But it is one of the unhappy incidents of the federal system that a self-righteous Supreme Court, acting on its Members' personal view of what would make a "more perfect Union," (a criterion only slightly more restrictive than a "more perfect world"), can impose its own favored social and economic dispositions nationwide. As today's disposition . . . show[s], this places it beyond the power of a "single courageous State," not only to introduce novel dispositions that the Court frowns upon, but to reintroduce, or indeed even adhere to, disfavored dispositions that are centuries old. The sphere of self-government reserved to the people of the Republic is progressively narrowed. . . .

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**





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# OBERGEFELL V. HODGES (2015)

View the case on the National Constitution Center's website [here](#).

## SUMMARY

Jim Obergefell and others sued for recognition of their same-sex marriages, which were legal in the states where they were married but illegal in other states. The denial of marriage impedes many legal rights and privileges, such as adoptions, parental rights, and property transfer. The Supreme Court has long held that marriage is a fundamental right. Here, the Court held that states must allow and recognize same-sex marriages under the Due Process and Equal Protection Clauses of the 14th Amendment. In his majority opinion, Justice Kennedy concluded that the fundamental right to marry cannot be limited to heterosexual couples.

[Read the Full Opinion](#)

### **Excerpt: Majority Opinion, Justice Kennedy**

**To identify and protect fundamental rights, the Court looks to history and tradition, but there's more to the Court's analysis than that; the Court can't let our past alone rule the present.** The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution. That responsibility, however, "has not been reduced to any formula." Rather, it requires courts to exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect. . . . That process is guided by many of the same considerations relevant to analysis of other constitutional provisions that set forth broad principles rather than specific requirements. History and tradition guide and discipline this inquiry but do not set its outer boundaries. That method respects our history and learns from it without allowing the past alone to rule the present.

**We learn about new injustices over time; the generations who ratified the Bill of Rights and the Fourteenth Amendment knew as much and left it to future generations to read the Constitution's broad text in ways that apply to new injustices.** The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning. . . .

**Looking at our past cases, we see four key principles that support a right to same-sex marriage.** The four principles and traditions to be discussed demonstrate that the reasons marriage is fundamental under the Constitution apply with equal force to same-sex couples.

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**The first principle is that the right to marry is connected with our constitutional commitment to personal choice and individual autonomy.** A first premise of the Court's relevant precedents is that the right to personal choice regarding marriage is inherent in the concept of individual autonomy. . . . Like choices concerning contraception, family relationships, procreation, and childrearing, all of which are protected by the Constitution, decisions concerning marriage are among the most intimate that an individual can make. Indeed, the Court has noted it would be contradictory "to recognize a right of privacy with respect to other matters of family life and not with respect to the decision to enter the relationship that is the foundation of the family in our society." . . .

**The second principle is that the right to marry supports two-person unions.** A second principle in this Court's jurisprudence is that the right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals. . . .

**Marriage saves us from loneliness and provides companionship.** Marriage responds to the universal fear that a lonely person might call out only to find no one there. It offers the hope of companionship and understanding and assurance that while both still live there will be someone to care for the other. . . .

**The third principle is that the right to marry protects our children and families.** A third basis for protecting the right to marry is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education. The Court has recognized these connections by describing the varied rights as a unified whole: "[T]he right to 'marry, establish a home and bring up children' is a central part of the liberty protected by the Due Process Clause." Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser. . . .

**The fourth principle is that marriage is central to our social order.** Fourth and finally, this Court's cases and the Nation's traditions make clear that marriage is a keystone of our social order. . . . Marriage remains a building block of our national community. . . .

**Same-sex marriage bans are unconstitutional; they violate the Fourteenth Amendment's Due Process and Equal Protection Clauses.** [T]he right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the [Fourteenth Amendment](#) couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them. . . .

**Same-sex couples aren't attacking marriage here; in fact, they respect marriage so much that they want to be able to get married, too; they seek equal dignity; the Constitution grants it to them.** No union is more profound than marriage, for it embodies the highest ideals

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of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.

#### **Excerpt: Dissent, Chief Justice Roberts**

**There may be policy arguments that support same-sex marriage; but the Constitution doesn't stand in the way of state same-sex marriage bans; these bans are constitutional.** Although the policy arguments for extending marriage to same-sex couples may be compelling, the legal arguments for requiring such an extension are not. The fundamental right to marry does not include a right to make a State change its definition of marriage. And a State's decision to maintain the meaning of marriage that has persisted in every culture throughout human history can hardly be called irrational. In short, our Constitution does not enact any one theory of marriage. The people of a State are free to expand marriage to include same-sex couples, or to retain the historic definition.

**The supporters of same-sex marriage have won numerous political battles in recent years, persuading their fellow citizens; but the Court's decision ends those political debates and imposes a single rule on the nation; this will make it more difficult for same-sex marriage opponents to accept this big social change.** Today, however, the Court takes the extraordinary step of ordering every State to license and recognize same-sex marriage. Many people will rejoice at this decision, and I begrudge none their celebration. But for those who believe in a government of laws, not of men, the majority's approach is deeply disheartening. Supporters of same-sex marriage have achieved considerable success persuading their fellow citizens—through the democratic process—to adopt their view. That ends today. Five lawyers have closed the debate and enacted their own vision of marriage as a matter of constitutional law. Stealing this issue from the people will for many cast a cloud over same-sex marriage, making a dramatic social change that much more difficult to accept.

**The Court's ruling isn't based on the Constitution's text or history, and it isn't consistent with the Court's precedent; this is judicial arrogance, not judicial humility.** The majority's decision is an act of will, not legal judgment. The right it announces has no basis in the Constitution or this Court's precedent. The majority expressly disclaims judicial "caution" and omits even a pretense of humility, openly relying on its desire to remake society according to its own "new insight" into the "nature of injustice." As a result, the Court invalidates the marriage laws of more than half the States and orders the transformation of a social institution that has formed the basis of human society for millennia, for the Kalahari Bushmen and the Han Chinese, the Carthaginians and the Aztecs. Just who do we think we are?

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**The Court shouldn't impose its own policy views on the American people.** It can be tempting for judges to confuse our own preferences with the requirements of the law. But as this Court has been reminded throughout our history, the Constitution “is made for people of fundamentally differing views.” Accordingly, “courts are not concerned with the wisdom or policy of legislation.” The majority today neglects that restrained conception of the judicial role. It seizes for itself a question the Constitution leaves to the people, at a time when the people are engaged in a vibrant debate on that question. And it answers that question based not on neutral principles of constitutional law, but on its own “understanding of what freedom is and must become.” I have no choice but to dissent.

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

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# DOBBS V. JACKSON WOMEN'S HEALTH ORGANIZATION (2022)

View the case on the National Constitution Center's website [here](#).

## SUMMARY

*Dobbs v. Jackson Women's Health Organization* was a landmark decision addressing whether the Constitution protects the right to an abortion. In *Dobbs*, the Supreme Court reviewed the constitutionality of Mississippi's Gestational Age Act—a law banning most abortions after 15 weeks of pregnancy with exceptions for medical emergencies and fetal abnormalities. In a divided opinion, the Court upheld the Mississippi law and overturned *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992)—concluding that the Constitution does not protect the right to an abortion. As a result, the Court's decision returned the issue of abortion regulation to the elected branches. In an opinion concurring in the judgment, Chief Justice Roberts agreed to uphold the Mississippi law, but chided the majority for reaching out to decide the broader question of whether to overrule *Roe* and *Casey*. He would have left that important constitutional question to a future case. Finally, in a rare joint dissent, Justices Breyer, Kagan, and Sotomayor criticized the Court for unsettling nearly five decades of precedent and undermining the Constitution's promise of freedom and equality for women.

[Read the Full Opinion](#)

### **Excerpt: Majority Opinion, Justice Alito**

**Until 1973, states were free to set their own abortion policies; *Roe* changed that.** For the first 185 years after the adoption of the Constitution, each State was permitted to address this issue in accordance with the views of its citizens. Then, in 1973, this Court decided *Roe v. Wade*. Even though the Constitution makes no mention of abortion, the Court held that it confers a broad right to obtain one. It did not claim that American law or the common law had ever recognized such a right, and its survey ranged from the constitutionally irrelevant (e.g., its discussion of abortion in antiquity) to the plainly incorrect (e.g., its assertion that abortion was probably never a crime under the common law). After cataloging a wealth of other information having no bearing on the meaning of the Constitution, the opinion concluded with a numbered set of rules much like those that might be found in a statute enacted by a legislature.

***Roe* set out a framework for analyzing constitutional challenges to abortion regulations; fetal viability was a key dividing line.** Under this scheme, each trimester of pregnancy was regulated differently, but the most critical line was drawn at roughly the end of the second

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trimester, which, at the time, corresponded to the point in which a fetus was thought to achieve “viability,” i.e., the ability to survive outside the womb. Although the Court acknowledged that States had a legitimate interest in protecting “potential life,” it found that this interest could not justify any restriction on pre-viability abortions. The Court did not explain the basis for this line, and even abortion supporters have found it hard to defend Roe’s reasoning.

**Roe set a national rule that ran afoul of every state law in the nation.** At the time of *Roe*, 30 States still prohibited abortion at all stages. In the years prior to that decision, about a third of States had liberalized their laws, but *Roe* abruptly ended that political process. It imposed the same highly restrictive regime on the entire Nation, and it effectively struck down the abortion laws of every single State.

**In *Casey*, the Court upheld *Roe* because it was a well-established precedent.** Eventually, in *Planned Parenthood v. Casey*, the Court revisited *Roe* . . . . The opinion concluded that *stare decisis*, which calls for prior decisions to be followed in most instances, required adherence to what it called *Roe*’s “central holding”—that a State may not constitutionally protect fetal life before “viability”—even if that holding was wrong.

***Casey* created a new “undue burden” standard for analyzing constitutional challenges to abortion regulations; the three Justices who wrote the controlling opinion hoped to offer a final settlement for the nation on the issue of abortion.** *Casey* threw out *Roe*’s trimester scheme and substituted a new rule of uncertain origin under which States were forbidden to adopt any regulation that imposed an ‘undue burden’ on a woman’s right to have an abortion. . . . The three Justices who authored the controlling opinion “call[ed] for the contending sides of a national controversy to end their national division” by treating the Court’s decision as the final settlement of the question of the constitutional right to abortion.

***Casey* failed to settle the national debate over abortion; many states continue to pass laws that challenge *Roe* and *Casey*; and 26 states have asked us to overrule those cases now.** As has become increasingly apparent in the intervening years, *Casey* did not achieve that goal. Americans continue to hold passionate and widely divergent views on abortion, and state legislatures have acted accordingly. Some have recently enacted laws allowing abortion, with few restrictions, at all stage of pregnancy. Others have tightly restricted abortion beginning well before viability. And in this case, 26 States have expressly asked this Court to overrule *Roe* and *Casey* and allow the States to regulate or prohibit pre-viability abortions.

**This case involves a constitutional challenge to a Mississippi law that runs afoul of *Roe* and *Casey*.** Before us now is one such state law. The State of Mississippi asks us to uphold the constitutionality of a law that generally prohibits an abortion after the 15th week of pregnancy—several weeks before the point at which a fetus is now regarded as “viable” outside the womb. In defending this law, the State’s primary argument is that we should reconsider and overrule *Roe* and *Casey* and once again allow each State to regulate abortion as its citizens wish. On

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the other side, respondents and the Solicitor General ask us to reaffirm *Roe* and *Casey*, and they contend that the Mississippi law cannot stand if we do so.

**Today, we overrule *Roe* and *Casey*; the Constitution’s text doesn’t mention abortion; and abortion rights can’t be implied from any other constitutional provision; under the doctrine of substantive due process, we may only recognize such a right if it is deeply rooted in our nation’s history and tradition.** We hold that *Roe* and *Casey* must be overruled. The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of *Roe* and *Casey* now chiefly rely—the Due Process Clause of the Fourteenth Amendment. That provision has been held to guarantee some rights that are not mentioned in the Constitution, but any such right must be “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.”

**Abortion rights are not deeply rooted in our nation’s history and tradition; when the Fourteenth Amendment was ratified, three quarters of the states criminalized abortion; such a right was unknown in American law until the late twentieth century; and the abortion right is different from the other rights recognized under the Fourteenth Amendment because it ends fetal life.** The right to abortion does not fall within this category. Until the latter part of the 20th century, such a right was entirely unknown in American law. Indeed, when the Fourteenth Amendment was adopted, three quarters of the States made abortion a crime at all stages of pregnancy. The abortion right is also critically different from any other right that this Court has held to fall within the Fourteenth Amendment’s protection of “liberty.” *Roe*’s defenders characterize the abortion right as similar to the rights recognized in past decisions involving matters such as intimate sexual relations, contraception, and marriage, but abortion is fundamentally different, as both *Roe* and *Casey* acknowledged, because it destroys what those decisions called “fetal life” and what the law now before us describes as an “unborn human being.”

**Even though *Roe* is an old case, we need not stand by that precedent; *Roe* was wrong the day it was decided; it was poorly reasoned; it has had bad consequences; and it has further deepened divisions over abortion.** Stare decisis, the doctrine on which *Casey*’s controlling opinion was based, does not compel unending adherence to *Roe*’s abuse of judicial authority. *Roe* was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences. And far from bringing about a national settlement of the abortion issue, *Roe* and *Casey* have enflamed debate and deepened division.

**We are returning the issue of abortion to the elected branches.** It is time to heed the Constitution and return the issue of abortion to the people’s elected representatives. . . .

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##### **Excerpt: Concurrence, Justice Kavanaugh**

**There are powerful arguments on both sides of the abortion issue.** Abortion is a profoundly difficult and contentious issue because it presents an irreconcilable conflict between the interests of a pregnant woman who seeks an abortion and the interests of protecting fetal life. The interests on both sides of the abortion issue are extraordinarily weighty.

**The Constitution is neutral on the issue of abortion, so we must send the issue back to the elected branches.** The issue before this Court . . . is not the policy or morality of abortion. The issue before the Court is what the Constitution says about abortion. The Constitution does not take sides on the issue of abortion. . . . On the question of abortion, the Constitution is . . . neither pro-life nor pro-choice. The Constitution is neutral and leaves the issue for the people and their elected representatives to resolve through the democratic process in the States or Congress—like the numerous other difficult questions of American social and economic policy that the Constitution does not address. . . .

**I will now address some of the constitutional issues that may arise after this case.** After today's decision, the nine Members of this Court will no longer decide the basic legality of pre-viability abortion for all 330 million Americans. . . . But the parties' arguments have raised other related questions, and I address some of them here.

**Today's decision will not upset other constitutional liberties recognized under the Fourteenth Amendment through the doctrine of substantive due process.** *First*, is the question of how this decision will affect other precedents involving issues such as contraception and marriage—in particular, the decisions in *Griswold v. Connecticut* . . . , *Eisenstadt v. Baird* . . . , *Loving v. Virginia* . . . , and *Obergefell v. Hodges* . . . . I emphasize what the Court today states: Overruling *Roe* does not mean the overruling of those precedents, and does not threaten or cast doubt on those precedents.

**Justice Kavanaugh addresses a couple of other constitutional issues that may arise in future cases.** *Second*, as I see it, some of the other abortion-related legal questions raised by today's decision are not especially difficult as a constitutional matter. For example, may a State bar a resident of that State from traveling to another State to obtain an abortion? In my view, the answer is no based on the constitutional right to interstate travel. May a State retroactively impose liability or punishment for an abortion that occurred before today's decision takes effect? In my view, the answer is no based on the Due Process Clause or the *Ex Post Facto Clause*.

##### **Excerpt: Concurrence, Justice Thomas**

**The Fourteenth Amendment's Due Process Clause protects procedural rights (e.g., the right to a fair process), not substantive rights like the right to an abortion.** I write separately to emphasize a . . . more fundamental reason why there is no abortion right



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guarantee lurking in the Due Process Clause. Considerable historical evidence indicates that “due process of law” merely requires executive and judicial actors to comply with legislative enactments and the common law when depriving a person of life, liberty, or property. . . . [T]he Due Process Clause at most guarantees process. It does not, as the Court’s substantive due process cases suppose, “forbi[d] the government to infringe certain ‘fundamental’ liberty interests at all, no matter what process is provided.” . . .

**Today, we overrule one line of substantive due process precedent; in future cases, we should reexamine the others.** [I]n future cases, we should reconsider all of this Court’s substantive due process precedents, including *Griswold* [*v. Connecticut*], *Lawrence* [*v. Texas*], and *Obergefell* [*v. Hodges*]. Because any substantive due process decision is “demonstrably erroneous” . . . , we have a duty to “correct the error” established in those precedents . . . . After overruling these demonstrably erroneous decisions, the question would remain whether other constitutional provisions guarantee the myriad rights that our substantive due process cases have generated. For example, we could consider whether any of the rights announced in this Court’s substantive due process cases are “privileges or immunities of citizens of the United States” protected by the Fourteenth Amendment.

**Substantive due process empowers judges to impose their own policy views on everyone else.** Substantive due process exalts judges at the expense of the People from whom they derive their authority. . . . In practice, the Court’s approach for identifying those fundamental rights unquestionably involves policymaking rather than neutral legal analysis. The Court divines new rights in line with its own, extra-constitutional value preferences and nullifies state laws that do not align with the judicially created rights.

**We should get rid of substantive due process.** Substantive due process . . . has harmed our country in many ways. Accordingly, we should eliminate it from our jurisprudence at the earliest opportunity.

#### **Excerpt: Concurrence in the Judgment, Chief Justice Roberts**

**I agree with the Court that we should get rid of the viability line from *Roe* and *Casey*; we should uphold the Mississippi law because it gives women a reasonable amount of time to decide whether to choose an abortion.** I would take a more measured course. I agree with the Court that the viability line established by *Roe* and *Casey* should be discarded under a straightforward stare decisis analysis. That line never made any sense. Our abortion precedents describe the right at issue as a woman’s right to choose to terminate her pregnancy. That right should therefore extend far enough to ensure a reasonable opportunity to choose, but need not extend any further— certainly not all the way to viability. Mississippi’s law allows a woman three months to obtain an abortion, well be-yond the point at which it is considered “late” to discover a pregnancy... I see no sound basis for questioning the adequacy of that opportunity.

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**But the majority goes too far in overruling *Roe* and *Casey*; it is not necessary to overrule those cases to decide this case, so I wouldn't; the Court should have pursued a more restrained course.** But that is all I would say, out of adherence to a simple yet fundamental principle of judicial restraint: If it is not necessary to decide more to dispose of a case, then it is necessary not to decide more. Perhaps we are not always perfect in following that command, and certainly there are cases that warrant an exception. But this is not one of them. Surely we should adhere closely to principles of judicial restraint here, where the broader path the Court chooses entails repudiating a constitutional right we have not only previously recognized, but also expressly reaffirmed applying the doctrine of stare decisis. The Court's opinion is thoughtful and thorough, but those virtues cannot compensate for the fact that its dramatic and consequential ruling is unnecessary to decide the case before us. . . .

**I would leave the question of whether to overrule *Roe* and *Casey* to another day.** Here, there is a clear path to deciding this case correctly without overruling *Roe* all the way down to the studs: recognize that the viability line must be discarded, as the majority rightly does, and leave for another day whether to reject any right to an abortion at all. . . .

**Evidence suggests that 15 weeks is enough time for women to learn about their pregnancy and decide whether to end it.** Almost all know [about a pregnancy] by the end of the first trimester. Safe and effective abortifacients, moreover, are now readily available, particularly during those early stages. Given all this, it is no surprise that the vast majority of abortions happen in the first trimester. Presumably most of the remainder would also take place earlier if later abortions were not a legal option. Ample evidence thus suggests that a 15-week ban provides sufficient time, absent rare circumstances, for a woman to decide for herself whether to terminate her pregnancy. . . .

**The majority's rule unsettles the law.** The Court's decision to overrule *Roe* and *Casey* is a serious jolt to the legal system—regardless of how you view those cases. A narrower decision rejecting the misguided viability line would be markedly less unsettling, and nothing more is needed to decide this case. . . .

**I do not share the certitude of the majority and the dissent.** Both the Court's opinion and the dissent display a relentless freedom from doubt on the legal issue that I cannot share. I am not sure, for example, that a ban on terminating a pregnancy from the moment of conception must be treated the same under the Constitution as a ban after fifteen weeks. . . . I would decide the question we granted review to answer—whether the previously recognized abortion right bars all abortion restrictions prior to viability, such that a ban on abortions after fifteen weeks of pregnancy is necessarily unlawful. The answer to that question is no, and there is no need to go further to decide this case.

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#### **Excerpt: Joint Dissent, Justices Breyer, Kagan, and Sotomayor**

**Roe and Casey are well-settled law; they have protected the liberty and equality of women.** For half a century, *Roe v. Wade* and *Planned Parenthood of Southeastern Pa. v. Casey* have protected the liberty and equality of women. *Roe* held, and *Casey* reaffirmed, that the Constitution safeguards a woman's right to decide for herself whether to bear a child. *Roe* held, and *Casey* reaffirmed, that in the first stages of pregnancy, the government could not make that choice for women. The government could not control a woman's body or the course of a woman's life: It could not determine what the woman's future would be. Respecting a woman as an autonomous being, and granting her full equality, meant giving her substantial choice over this most personal and most consequential of all life decisions.

**Roe and Casey offered a balanced approach to a complicated and contested issue.** The Court struck a balance, as it often does when values and goals compete. It held that the State could prohibit abortions until after fetal viability, so long as the ban contained exceptions to safeguard a woman's life or health. It held that even before viability, the State could regulate the abortion procedure in multiple and meaningful ways. But until the viability line was crossed, the Court held, a State could not impose a "substantial obstacle" on a woman's "right to elect the procedure" as she (not the government) thought proper, in light of all the circumstances and complexities of her own life.

**Today, the Court upsets that balance.** Today, the Court discards that balance. It says that from the very moment of fertilization, a woman has no rights to speak of. . . .

**Women now have fewer rights than before and have become second-class citizens.** [O]ne result of today's decision is certain: the curtailment of women's rights, and of their status as free and equal citizens. Yesterday, the Constitution guaranteed that a woman confronted with an unplanned pregnancy could (within reasonable limits) make her own decision about whether to bear a child, with all the life-transforming consequences that act involves. And in thus safeguarding each woman's reproductive freedom, the Constitution also protected "[t]he ability of women to participate equally in [this Nation's] economic and social life." . . . But no longer.

**States are now free to curtail abortion rights; this will have terrible consequences for women.** As of today, this Court holds, a State can always force a woman to give birth, prohibiting even the earliest abortions. A State can thus transform what, when freely undertaken, is a wonder into what, when forced, may be a nightmare. Some women, especially women of means, will find ways around the State's assertion of power. Others—those without money or childcare or the ability to take time off from work—will not be so fortunate. Maybe they will try an unsafe method of abortion, and come to physical harm, or even die. Maybe they will undergo pregnancy and have a child, but at significant personal or familial cost. At the least, they will incur the cost of losing control of their lives. The Constitution will, today's majority holds, provide no shield, despite its guarantees of liberty and equality for all.

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**Next, the Court may attack other related rights like the right to contraception and the right to same-sex marriage; they are all part of the same line of substantive due process precedent.** And no one should be confident that this majority is done with its work. The right *Roe* and *Casey* recognized does not stand alone. To the contrary, the Court has linked it for decades to other settled freedoms involving bodily integrity, familial relationships, and procreation. Most obviously, the right to terminate a pregnancy arose straight out of the right to purchase and use contraception. . . . In turn, those rights led, more recently, to rights of same-sex intimacy and marriage. . . . They are all part of the same constitutional fabric, protecting autonomous decision making over the most personal of life decisions. . . .

**The Court has no good reason to overturn *Roe* and *Casey*.** The majority has no good reason for the upheaval in law and society it sets off. *Roe* and *Casey* have been the law of the land for decades, shaping women's expectations of their choices when an unplanned pregnancy occurs. Women have relied on the availability of abortion both in structuring their relationships and in planning their lives. The legal framework *Roe* and *Casey* developed to balance the competing interests in this sphere has proved workable in courts across the country. No recent developments, in either law or fact, have eroded or cast doubt on those precedents. Nothing, in short, has changed. . . .

**The only reason the Court overruled *Roe* and *Casey* is that the composition of the Court has changed; Justice Kavanaugh replaced Justice Kennedy, and Justice Barrett replaced Justice Ginsburg.** The Court reverses course today for one reason and one reason only: because the composition of this Court has changed. *Stare decisis*, this Court has often said, contributes to the actual and perceived integrity of the judicial process by ensuring that decisions are founded in the law rather than in the proclivities of individuals. Today, the proclivities of individuals rule. The Court departs from its obligation to faithfully and impartially apply the law. We dissent. . . .

**The Court's analysis turns on the status of abortion law at the time that the Fourteenth Amendment was ratified.** The majority makes this change based on a single question: Did the reproductive right recognized in *Roe* and *Casey* exist in "1868, the year when the Fourteenth Amendment was ratified?" . . . The majority says (and with this much we agree) that the answer to this question is no: In 1868, there was no nationwide right to end a pregnancy, and no one thought that the Fourteenth Amendment provided one. . . .

**The Court binds us to the views of the ratifying generation.** The majority's core legal postulate, then, is that we in the 21st century must read the Fourteenth Amendment just as its ratifiers did. And that is indeed what the majority emphasizes over and over again. . . . If the ratifiers did not understand something as central to freedom, then neither can we. Or said more particularly: If those people did not understand reproductive rights as part of the guarantee of liberty conferred in the Fourteenth Amendment, then those rights do not exist.

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**But women couldn't vote when the amendment was ratified.** As an initial matter, note a mistake in the just preceding sentence. We referred to the "people" who ratified the Fourteenth Amendment: What rights did those "people" have in their heads at the time? But, of course, "people" did not ratify the Fourteenth Amendment. Men did. So it is perhaps not so surprising that the ratifiers were not perfectly attuned to the importance of reproductive rights for women's liberty, or for their capacity to participate as equal members of our Nation. . . . **So, how should we interpret the Constitution?** So how is it that, as *Casey* said, our Constitution, read now, grants rights to women, though it did not in 1868? . . . **Traditionally, the Court has interpreted the Constitution more broadly than the majority does today.** The answer is that this Court has rejected the majority's pinched view of how to read our Constitution. . . . [I]n the words of the great Chief Justice John Marshall, our Constitution is "intended to endure for ages to come," and must adapt itself to a future "seen dimly," if at all. . . . That is indeed why our Constitution is written as it is. The Framers (both in 1788 and 1868) understood that the world changes. So they did not define rights by reference to the specific practices existing at the time. Instead, the Framers defined rights in general terms, to permit future evolution in their scope and meaning. And over the course of our history, this Court has taken up the Framers' invitation. It has kept true to the Framers' principles by applying them in new ways, responsive to new societal understandings and conditions. . . .

**The majority abandons the Court's usual approach to precedent.** [Finally,] [b]y overruling *Roe*, *Casey*, and more than 20 cases reaffirming or applying the constitutional right to abortion, the majority abandons *stare decisis*, a principle central to the rule of law. [In previous cases overturning precedent,] the Court found, for example, (1) a change in legal doctrine that undermined or made obsolete the earlier decision; (2) a factual change that had the same effect; or (3) an absence of reliance because the earlier decision was less than a decade old. . . . None of those factors apply here: Nothing—and in particular, no significant legal or factual change—supports overturning a half-century of settled law giving women control over their reproductive lives.

**The majority makes it too easy to change the path of the law; the majority gets rid of *Roe* and *Casey* because the Justices in the majority have always hated those decisions and now have the votes to get rid of them.** [The Court's decision] makes radical change too easy and too fast, based on nothing more than the new views of new judges. The majority has overruled *Roe* and *Casey* for one and only one reason: because it has always despised them, and now it has the votes to discard them. The majority thereby substitutes a rule by judges for the rule of law.

**The majority has moved as quickly as possible to overrule *Roe* and *Casey*.** Now a new and bare majority of this Court—acting at practically the first moment possible—overrules *Roe* and *Casey*. It converts a series of dissenting opinions expressing antipathy toward *Roe* and *Casey* into a decision greenlighting even total abortion bans. It eliminates a 50-year-old constitutional right that safeguards women's freedom and equal station. It breaches a core rule-

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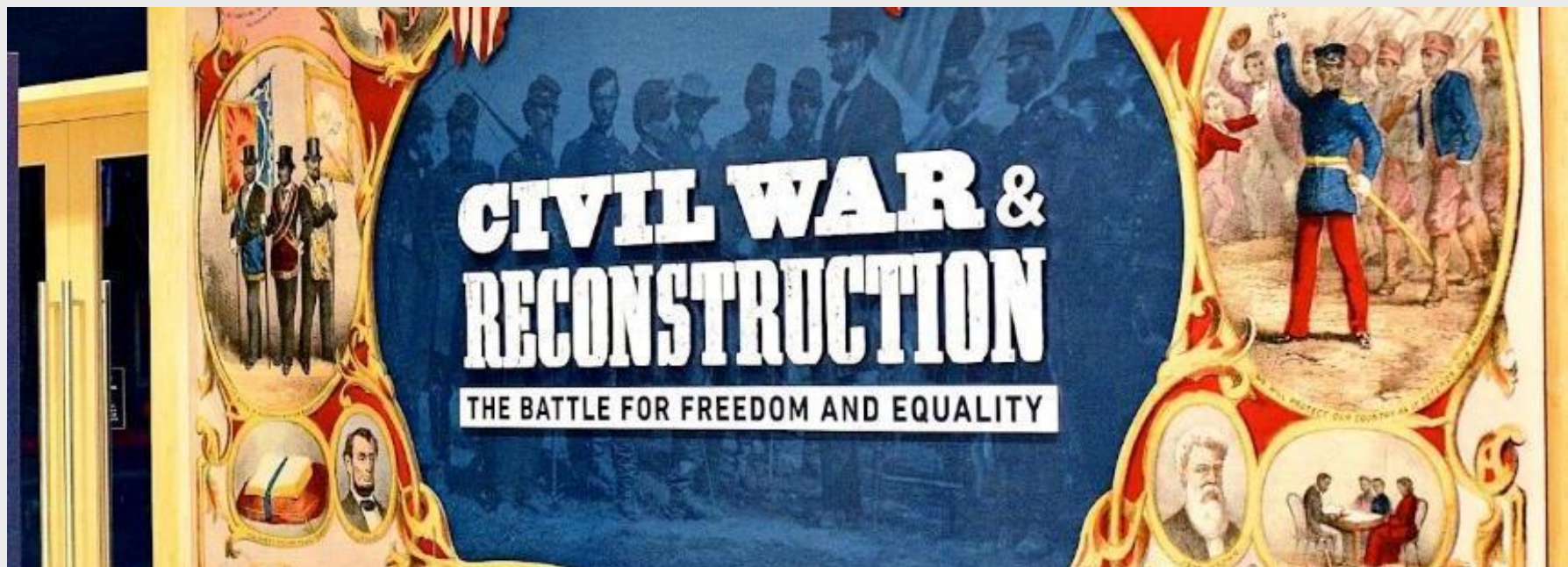
of-law principle, designed to promote constancy in the law. In doing all of that, it places in jeopardy other rights, from contraception to same-sex intimacy and marriage. And finally, it undermines the Court's legitimacy. . . .

**We dissent.** With sorrow—for this Court, but more, for the many millions of American women who have today lost a fundamental constitutional protection—we dissent.

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**



# BUILD YOUR OWN EXHIBIT ON RECONSTRUCTION



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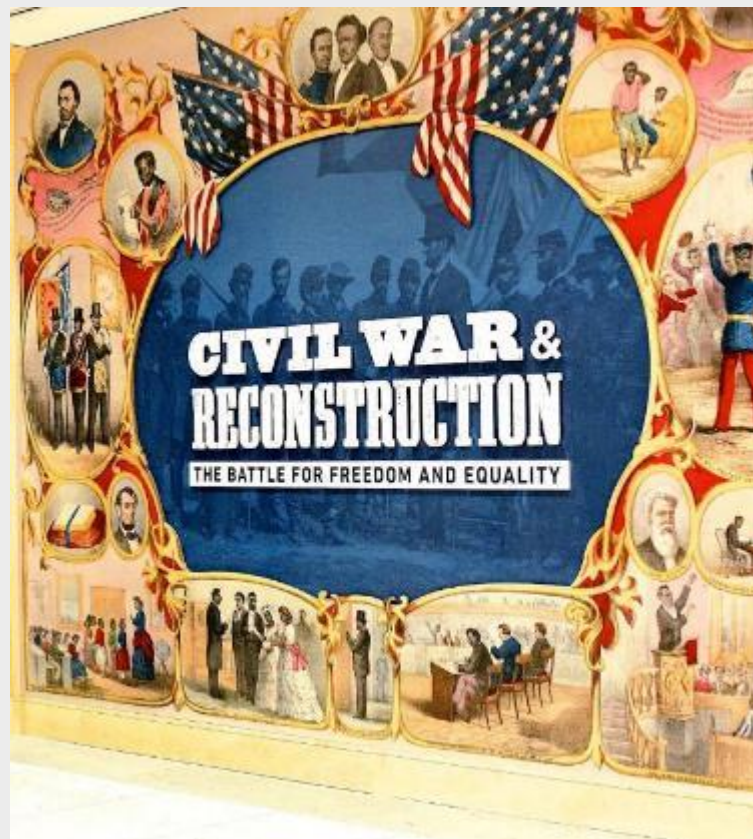
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# BUILD YOUR OWN EXHIBIT ON RECONSTRUCTION

The 14th Amendment's powerful language transformed the Constitution forever. In this activity, you will design your own museum exhibit to teach about the history and significance of the 14th Amendment.

Follow the instructions below to help build your 14th Amendment museum exhibit. As you go, check out these additional resources from the National Constitution Center:

- [Interactive Constitution 14th Amendment](#)
- [Drafting Table](#)
- [Founder's Library: Civil War and Reconstruction Documents](#)
- [Civil War and Reconstruction Exhibit](#)
- [Virtual Tour of the Civil War.](#)





# BUILD YOUR OWN EXHIBIT ON RECONSTRUCTION



Here are some key questions to think about throughout the exercise:

- Who is the story about?
- What point of view are you taking?
- What goes wrong?
- What events happen?
- What details will you share and what will you let go of?
- How does it end?
- Why does this story matter to the audiences engaging with the exhibit?

# BUILD YOUR OWN EXHIBIT ON RECONSTRUCTION



## STEP ONE:

To begin, decide as a class how you are going to organize your exhibit. For instance, you could tell the story of the 14th Amendment through a timeline, you could divide your exhibit into sections based on the four big ideas of the amendment, or you might choose to focus your exhibit on the related landmark Supreme Court cases.



## STEP TWO:

Next, it's time to curate your exhibit by choosing the people, events, primary sources, and/or Supreme Court cases that you feel should be included in your exhibit. Discuss as a class which subjects will help highlight the 14th Amendment's full story. Once you have a final list of subjects, assign them to individual students.

# BUILD YOUR OWN EXHIBIT ON RECONSTRUCTION

## STEP THREE:

Now, it's time to start building your display for the exhibit. Research the individual subject you were assigned, and create a display about it. This display can include text, photographs, objects, interactive activities, and more. (Hint: For inspiration, think about interesting displays that you have seen when you've visited museums.)

Use one or more of the following slides to build your virtual display.









# BUILD YOUR OWN EXHIBIT ON RECONSTRUCTION

## STEP FOUR:

After the individual displays are complete, come back together as a class to set up your museum exhibit! Put your slides back together in one presentation to build your virtual museum! Remember to follow the organizational model you agreed on in Step One.

Once the museum exhibit is complete, enjoy exploring it like a visitor. View your classmates' displays, and let the exhibit spark conversations about the 14th Amendment.



## CONSTITUTION 101

Module 14: Battles for Freedom and Equality: Modern Battles  
14.5 Activity Guide

### SHOWCASING THE 14TH AMENDMENT

The 14th Amendment's powerful language transformed the Constitution forever. In this activity, you will design your own museum exhibit to teach about the history and significance of the 14th Amendment.

Follow the instructions below to help build your 14th Amendment museum exhibit.

As you go, check out these additional resources from the National Constitution Center: [Interactive Constitution 14th Amendment](#), the [Drafting Table](#), the [Founder's Library: Civil War and Reconstruction Documents](#), and the [Civil War and Reconstruction Exhibit](#) and [virtual tour](#).

Here are some key questions to think about throughout the exercise:

- Who is the story about?
- What point of view are you taking?
- What goes wrong?
- What events happen?
- What details will you share and what will you let go of?
- How does it end?
- Why does this story matter to the audiences engaging with the exhibit?

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To begin, decide as a class how you are going to organize your exhibit. For instance, you could tell the story of the 14th Amendment through a timeline, you could divide your exhibit into sections based on the four big ideas of the amendment, or you might choose to focus your exhibit on the related landmark Supreme Court cases.



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### Module 14: Battles for Freedom and Equality: Modern Battles

#### 14.5 Activity Guide

##### Step Two:

Next, it's time to curate your exhibit by choosing the people, events, primary sources, and/or Supreme Court cases that you feel should be included in your exhibit. Discuss as a class which subjects will help highlight the 14th Amendment's full story. Once you have a final list of subjects, assign them to individual students.

##### Step Three:

Now, it's time to start building your display for the exhibit. Research the individual subject you were assigned, and create a display about it. This display can include text, photographs, objects, interactive activities, and more. (Hint: For inspiration, think about interesting displays that you have seen when you've visited museums.)

##### Step Four:

After the individual displays are complete, come back together as a class to set up your museum exhibit. Put your slides back together in one presentation to build your virtual museum. Remember to follow the organizational model you agreed on in Step One.

Once the museum exhibit is complete, enjoy exploring it like a visitor. View your classmates' displays, and let the exhibit spark conversations about the 14th Amendment.



## CONSTITUTION 101

### Module 14: Battles for Freedom and Equality: Modern Battles

#### 14.6 Test Your Knowledge

## BATTLES FOR FREEDOM AND EQUALITY: MODERN BATTLES

Complete the questions in the following quiz to test your knowledge of basic ideas and concepts covered in this module.

1. The 13th, 14th, and 15th Amendments were ratified during a transformative period after the Civil War that was known as \_\_\_\_\_.
  - a. The Age of Jackson
  - b. The Antebellum era
  - c. The Founding era
  - d. Reconstruction era
  
2. What did the 14th Amendment do?
  - a. Abolished slavery
  - b. Wrote the promise of equality into the Constitution
  - c. Granted Congress the power to pass an income tax
  - d. Provided for the direct election of senators
  
3. Republicans in Congress thought a new amendment was necessary to protect African Americans from laws that denied them the rights of citizenship. These laws were known as the \_\_\_\_\_.
  - a. Black Codes
  - b. White Codes
  - c. Southern Codes
  - d. Reconstruction Codes
  
4. This congressman, a Republican from Ohio, is considered the primary author of the 14th Amendment.
  - a. Abraham Lincoln
  - b. John Bingham
  - c. Thaddeus Stevens
  - d. Ulysses S. Grant
  
5. According to Section 1 of the 14th Amendment, a person is a citizen of the United States and of the state wherein they reside if they \_\_\_\_\_.
  - a. Pay their taxes on time
  - b. Own property

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#### 14.6 Test Your Knowledge

- c. Live in the United States for 14 years
  - d. Are born or naturalized in the United States, and subject to the jurisdiction thereof
6. Section 5 granted which of the following the power to enforce the promises of the 14th Amendment?
  - a. Congress (national government)
  - b. Local sheriffs only
  - c. State legislatures
  - d. State governors
7. 7. On the issue of equality, the original Constitution \_\_\_\_\_.
  - a. Said all men are created equal
  - b. Was silent
  - c. Went into great detail
  - d. Contained the Equal Protection Clause
8. The infamous *Dred Scott* decision asserted that African Americans \_\_\_\_\_.
  - a. Could become citizens
  - b. Were citizens if free
  - c. Were not and could never be United States citizens
  - d. Should petition for citizenship
9. The Supreme Court declared that Wong Kim Ark was an American citizen because \_\_\_\_\_.
  - a. His parents were diplomats
  - b. He was 21 when he traveled to China
  - c. He was born in America
  - d. He had passed the citizenship test
10. The Privileges and Immunities Clause of the 14th Amendment was effectively written out of the Constitution as a result of the Supreme Court decision in \_\_\_\_\_.
  - a. *The Dred Scott Case*
  - b. *The Slaughter-House Cases*
  - c. *Plessy v. Ferguson*
  - d. *Marbury v. Madison*
11. What clause in the 14th Amendment was used in *Brown v. Board of Education* (1954) to end school segregation?
  - a. Preamble

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#### 14.6 Test Your Knowledge

- b. Commerce Clause
  - c. 10th Amendment
  - d. Equal Protection Clause
12. In what ways did Southern states deny the promise of the 14th Amendment in the Jim Crow era?
- a. Violence
  - b. Intimidation
  - c. Laws
  - d. All of the above
13. The case of *Plessy v. Ferguson* \_\_\_\_\_.
- a. Allowed the practice of separate but equal
  - b. Banned all Jim Crow laws
  - c. Banned segregation in schools
  - d. Granted African Americans the right to vote
14. Writing for the majority in the *Plessy* case, Justice Henry Billings Brown wrote that while the object of the 14th Amendment was to enforce equality before the law, it also \_\_\_\_\_.
- a. Ended school segregation
  - b. Promoted social equality
  - c. Forced the commingling of races
  - d. None of the above
15. What was the reasoning given by Justice John Marshall Harlan for dissenting in the case of *Plessy v. Ferguson*?
- a. In the eye of the law, there is no superior dominant class of citizens.
  - b. The Constitution is colorblind.
  - c. He predicted that the majority's decision will prove as pernicious as the *Dred Scott* case.
  - d. All of the above
16. This lawyer, who later became the first African American to serve on the Supreme Court, read Justice Harlan's dissent before making his argument in *Brown v. Board of Education*.
- a. Martin Luther King Jr.
  - b. Thurgood Marshall
  - c. Clarence Thomas
  - d. Malcolm X

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#### 14.6 Test Your Knowledge

17. In the landmark ruling of *Brown v. Board of Education*, this chief justice concluded that, “in the field of education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”
- Henry Billings Brown
  - John Marshall Harlan
  - Earl Warren
  - Roger Taney
18. In the *Loving* and *Obergefell* Cases, the court protected the right to marry using the \_\_\_\_\_.
- Equal Protection Clause
  - First Amendment
  - Due Process Clause
  - Both A and C
19. The fancy word for taking the national freedoms of the Bill of Rights and applying them to the states is called \_\_\_\_\_.
- Filibuster
  - Incorporation
  - Jurisprudence
  - Doctrine
20. Which of the following helped ensure that the Declaration of Independence’s promise of freedom and equality became a reality?
- The 14th Amendment
  - The *Brown v. Board of Education* decision
  - The Civil Rights Act of 1964
  - All of the above

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### Module 14: Battles for Freedom and Equality: Modern Battles 14.6 Test Your Knowledge

#### Answer Key

1. D
2. B
3. A
4. B
5. D
6. A
7. B
8. C
9. C
10. B
11. D
12. D
13. A
14. D
15. D
16. B
17. C
18. D
19. B
20. D