

Civil Rights and Civil Liberties

- **SSCG7 Demonstrate knowledge of civil liberties and civil rights.**
- **7a. Define civil liberties as protections against government actions (e.g., First Amendment).**

Civil Liberties

- **Protections against government actions**
- **Most of these are found in the Bill of Rights, especially in the First Amendment**

First Amendment Freedoms: Religion

- Establishment Clause: government can't take actions that create an official religion or favor one religion over another



First Amendment Freedoms: Religion

- “Separation of church and State”: this statement comes from a Thomas Jefferson letter & expresses his defense of the 1st Amendment (not in the Constitution!)
- Earlier courts interpreted Jefferson’s words to indicate that the government was not to interfere with the religious expression unless it violated “peace & good order”

First Amendment Freedoms: Religion

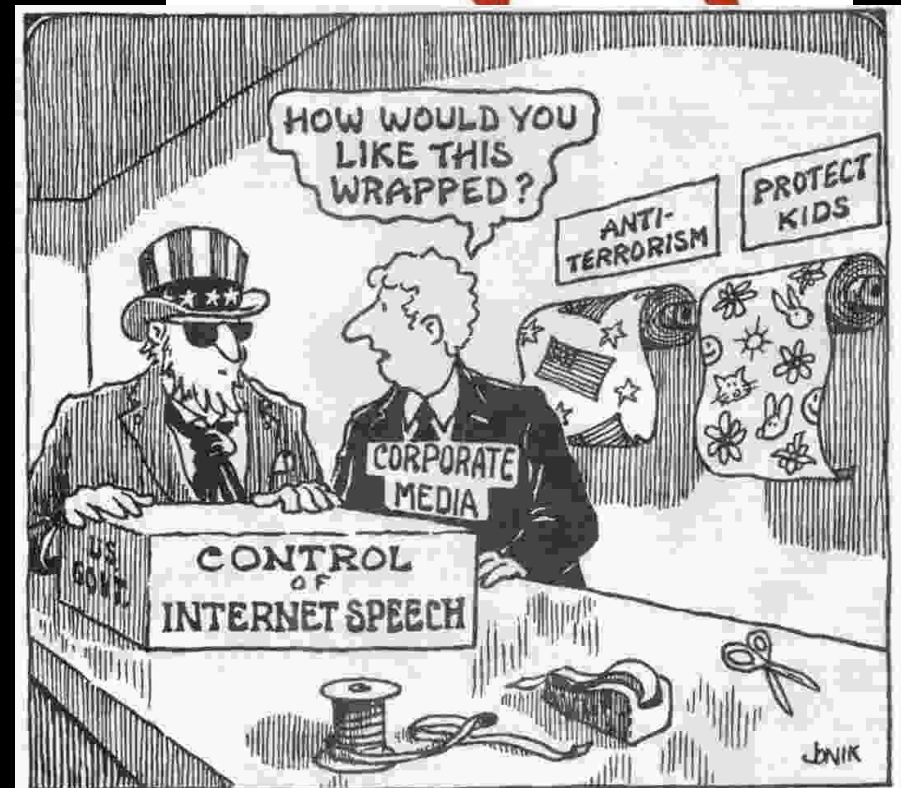
- “Separation of church and state cont.:
 - Later courts have used the establishment clause and Jefferson’s words to strike down many state laws that encourage or facilitate public religious expression
- Establishment clause issues:
 - Public religious displays
 - Prayer in public schools
 - Public funding for religious schools
 - Polygamy
 - Patriotism
 - School attendance

First Amendment Freedoms: Religion



First Amendment Freedoms: Speech & Press

- To participate in government, citizens must have full access to a full range of opinions, beliefs, information
- Freedoms of speech/press protect unpopular ideas



First Amendment Freedoms: Speech & Press

- Limiting Freedom of speech & press:
 - Obscene material (What is obscene?)
 - False advertising
 - Speech that harms others (falsely shouting fire in a crowded theater)
 - Slander: a spoken defamatory statement
 - Libel: a printed defamatory statement
 - Issues of national security
 - Treason: making war against the US or giving aid to its enemies
 - Sedition: speech/actions inspiring revolt against the government

First Amendment Freedoms: Speech & Press

- Alien & Sedition Acts (1798): supposed to protect the US from domestic dissent during war but seen as silencing Dem.-Rep.; mostly repealed
- “Clear & present danger”: speech can be limited if it causes an outcome the government has right to prevent (Schenck v. US, Abrams v. US, Whitney v. Cal., Brandenburg v. Ohio)

Freedom of the Press

- A free press is important to the spread of information & ideas
- Government has to balance need for free press with others' rights & national security
- Radio & TV broadcasting are more regulated by government (FCC) than print media
- Cable systems have greater freedom than broadcasters as they do not use public airwaves
- The internet is also less subject to government regulation

Freedom of the Press

- Prior restraint: government action to prevent material from being published
- Near v. Minnesota (1931): Court ruled that prior restraint is almost always unconstitutional
- New York Times Co. v. US (1971): In this case, government could not prove that publishing certain material was a threat national security

Freedom of Speech:

- Symbolic speech: communication of ideas through words or actions
- Court has held that some symbolic speech deserves protection if it does not threaten property or public order
 - *Stromberg v. Cal.* (1931): ruled a state law prohibiting a red flag was unconstitutional
 - *Tinker v. Des Moines ICDS* (1969): students wearing black armbands to protest Vietnam War was free speech
 - *Texas v. Johnson* (1989): even though it is offensive, burning a US flag was free symbolic speech

Freedom of Assembly

- People have the right to meet together to express their view peacefully
 - DeJonge v. Oregon (1937): ruled that a meeting of the Communist party was legal if no illegal actions were discussed; incorporated freedom of assembly into the 14th Amendment

Freedom of Petition

- Government cannot interfere with the right of the people to ask the government for relief from unfair treatment
 - Edwards v. S. Carolina (1963): Court ruled that African American students had the right to peaceably protest racial injustice

2nd Amendment: the Right to Keep & Bear Arms

- Originally to protect states' rights to form militias & ease fears of a federally controlled standing army
- Some believe it protects individual rights to own any kind of firearm
 - US v. Miller (1939): 2nd Amendment not meant to protect rights to all types of weapons, just those that might be used in a militia
 - D.C v. Heller (2008): does protect some individual rights to own guns but government can impose reasonable restrictions

3rd Amendment: No Quartering of Troops

- Keeps the government from housing troops in private homes without the owners consent & due process
- Included in the Bill of Rights since this was a major problem colonists had with the British Army & a complaint listed in the Declaration of Independence
- Largely forgotten today & never the subject of a Supreme Court case
- Not incorporated into the 14th Amendment

Which Civil Liberty Applies?

- Scenarios:

1. The City of Macon is sued for displaying a nativity in front of city hall during Christmas.
2. President Obama requires that private citizens house national guard troops who are helping with tornado disaster relief
3. A man carries a gun into a public park without a permit.
4. The county expands a busy road without consent of property owners and does not allow them to ask the government for relief from unfair treatment
5. As part of the healthcare law, Christian businesses must pay for coverage of abortions & other birth control to which they are opposed

4th Amendment: Searches, Seizures, & Arrests

- Prohibits the government from illegal arrests or searching/seizing private property without a search warrant
 - Can enter property in emergencies but only search for evidence related to the crime being investigated; other evidence can be seized but only if in “plain view”
 - Weeks v. US (1914): evidence obtained illegally may not be used against a person in court (exclusionary rule)

4th Amendment: Searches, Seizures, & Arrests

- Mapp v. Ohio (1961): expanded exclusionary rule to include state actions

4th Amendment: Searches, Seizures, & Arrests

- Pedestrians & Cars: Police can stop people on the street or vehicles if there is reasonable suspicion:
 - If they are acting oddly
 - If they have committed a traffic violation
- Police can search for hidden weapons or search vehicles without a warrant and seize “plain view” evidence

4th Amendment: Searches, Seizures, & Arrests

- 4th Amendment protects a person's "paper" so it has been applied to telephone, telegraph, & internet communications
 - Katz v. US (1967): wiretapping constitutes an illegal search without a warrant
 - USA Patriot Act: parts of it struck down as it gave too much power to search phone/internet records without court oversight

4th Amendment: Searches, Seizures, & Arrests

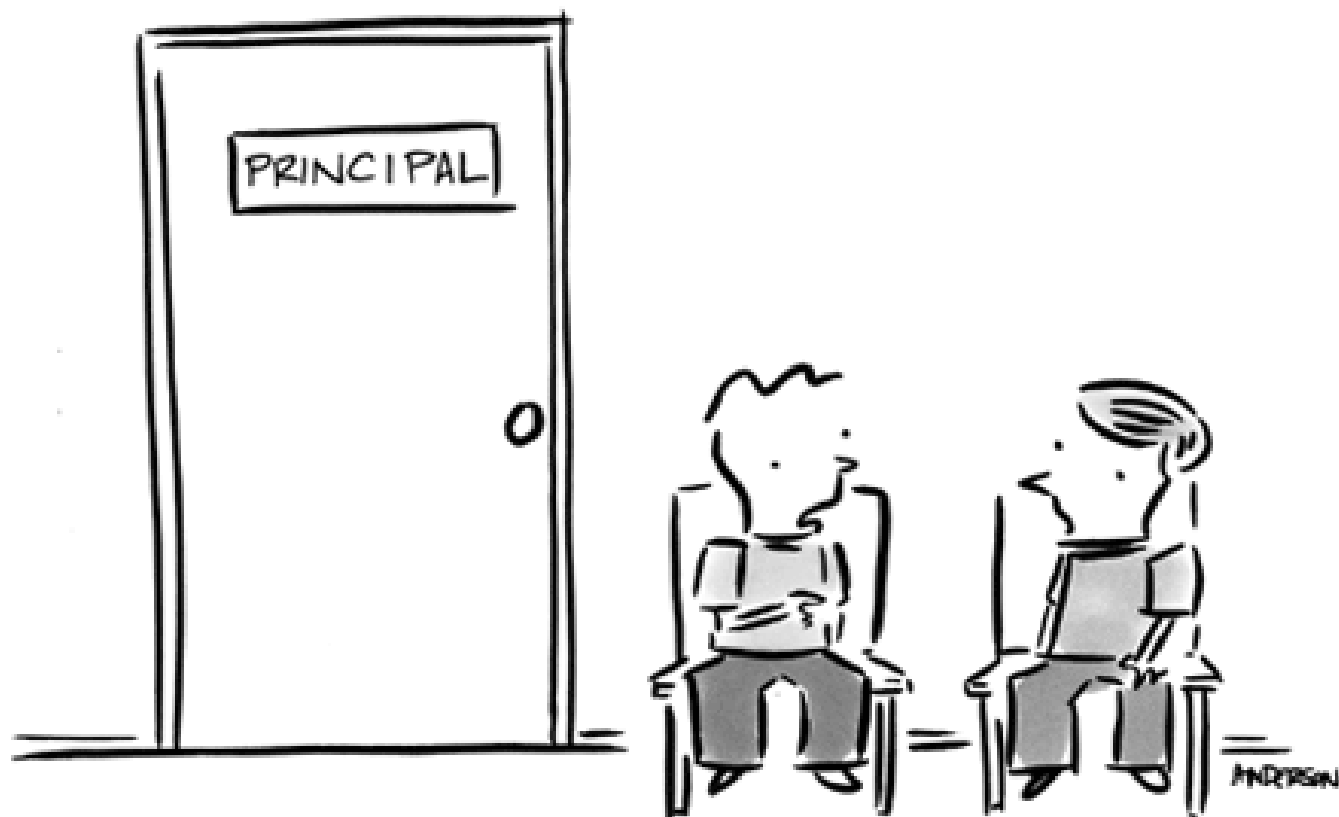
- Drug Testing:
 - Does it violate personal security/privacy?
 - Private employers have wide freedom to test workers to discourage drug use
 - Government is limited in its ability to test for drugs—the can't test everybody
 - Governments can test employees whose jobs affect public safety—pilots, mechanics, bus/truck drivers, railroad workers

4th Amendment: Searches, Seizures, & Arrests

- Public school students have fewer 4th Amendment protections than the general population! Why?
- Students have rights to privacy but schools must ensure safe learning environments—searching for drugs & weapons
 - N.J. v. T.L.O. (1985): court allowed search of a student’s purse without probable cause
 - Vernonia SD v. Acton(1995): schools can randomly test athletes for drug use
 - Pottawatomie Co. v. Earls (2002): extended Vernonia ruling to include drug testing for students in extracurricular activities

5th Amendment

- The 5th Amendment provides protections for those accused of crimes
 - Requires indictment by a grand jury before having to stand trial
 - No “double jeopardy” (being tried twice for the same crime”)
 - You can’t be required to be a witness against yourself
 - Due process
 - Government can’t take your property without just compensation (imminent domain)



"I'd plead the fifth, but we haven't learned fractions yet."

6th Amendment

- Requires a speedy, public jury trial
- The accused must be informed of charges against them
- The accused must be allowed to question those who have accused them
- The accused must be allowed a way to obtain witnesses in their favor
- The accused must have the opportunity to have a lawyer to defend them if they want one

7th Amendment

- Allows for jury trials in civil cases in which the controversy exceeds \$20
- Only applies to federal courts but most states constitutions include this as well

8th Amendment

- Courts cannot require excessive bail or fines
- No “cruel & unusual punishment” can be inflicted
 - This does not mean that the death penalty can’t be applied

9th & 10th Amendment

- **9th: Just because an individual right such as watching TV is not listed in the U.S. Constitution does not mean the government can take that right away.**
- **10th: Guarantees that any power not specifically given to the federal government in the Constitution is given to (reserved) to the states or the people**
- **Reserved Power aren't specified but the Supreme Court has ruled that laws affecting family relations (such as marriage, divorce, and adoption), intrastate commerce, and local law enforcement activities, are among those specifically reserved to the states or the people.**

- **7c. Analyze due process of law as expressed in the 5th and 14th amendments, as understood through the process of incorporation.**

Due Process

- 5th Amendment prevents the federal government from depriving anyone of life, liberty, or property (especially in the Bill of rights) without due process (established/complete legal procedures)
- 14th Amendment: due process clause guarantees much of the Bill of Rights applies to states as well (selective incorporation or process of incorporation)

5th /14th Amendments: Due Process

- **Procedural Due Process: the government must follow certain procedures before punishing a person (Are legal procedures fair?)**
- **This right can be limited if the government has strong reason to do so**
 - **Mackey v. Montrym (1979): court upheld revoking a drivers license when the driver refused to take an alcohol test.**
 - **The state penalized people without finding them guilty**
 - **The state's interest in getting drunk drivers off the road was strong enough to deny due process**

5th /14th Amendments: Due Process

- **Substantive Due Process: the idea that laws themselves must be fair & just since people have unalienable rights. (Are laws fair?)**
- **Slaughterhouse Cases (1873): ruled to allow 1 slaughterhouse to operate in a part of Louisiana**
- **Dissenting opinion said this was unconstitutional because it violated substantive due process by not allowing butchers to work**
- **This dissent later became the basis for defining due process in the future**

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"Since you can't afford an attorney,
one will be inflated for you."

- Create a scenario in which due process is denied.

Rights Incorporated in the 14th Amendment to apply to states

- 1st Amendment: establishment/free exercise of religion, speech, press, assembly, petition
- 2nd Amendment
- 4th Amendment
- 5th Amendment: double jeopardy, self-incrimination, imminent domain, due process
- 6th: trial by jury, face accuser, lawyer, obtain witness, notice of charges
- 8th: cruel/unusual punishment

- Discussion: Why do you think that Amendment like the 3rd and 7th have not been incorporated into the 14th Amendment due process clause (applied to the states)?

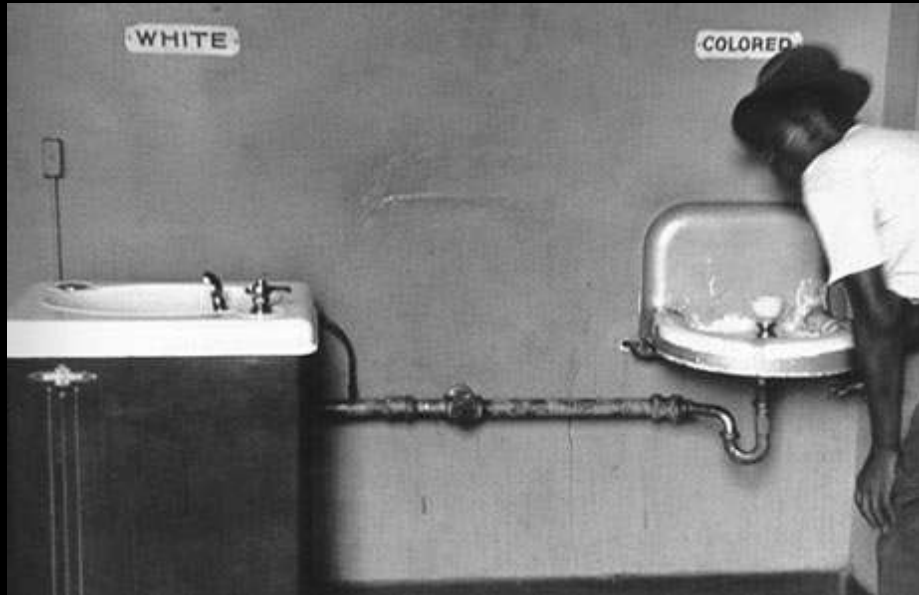
- **7b. Define civil rights as equal protections for all people (e.g., Civil Rights Act, Brown v. Board of Education, etc.)**

Civil Rights

- Defined as equal protections for all people
- Examples:
 - **Freedom from discrimination regardless of race, ethnicity, sex, religion, age, national origin, etc.**
 - **Equal opportunities to vote & run for political office, etc. (ability to influence/change government)**

Discrimination in U.S. History

- **African Americans:**
 - Over 250 years of slavery with violence, forced labor, separation from family/culture
 - Viewed as property, not citizens (Dred Scott decision)
 - 13th & 14th amendments ended slavery & gave citizenship/voting rights but were still denied rights through threats, attacks, & local laws



Discrimination in U.S. History

- **Native Americans:**
 - Pushed off lands as European then U.S. settlers advanced westward
 - Population weakened by diseases from Europe
 - U.S. government violation of treaties
 - Forced onto reservations
 - Forced to give up language & culture



Discrimination in U.S. History

- **Asian Americans:**
 - Chinese immigrants in the mid-1800's were discriminated against with jobs, housing, access to public service
 - Chinese Exclusion Act (1882)
 - Japanese internment during World War II



"(1942, you know.)"

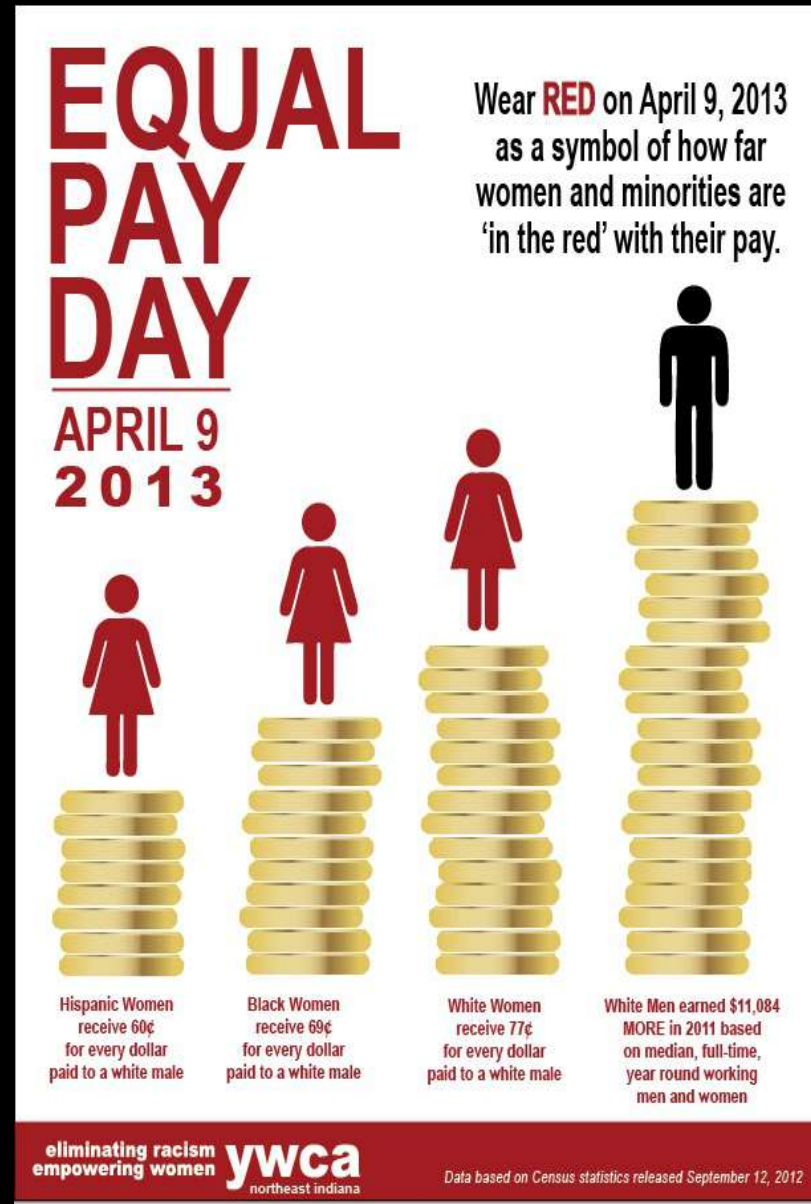
Discrimination in U.S. History

- Mexican Americans in newly acquired territories in the West (like TX, CA) in the 1840's sometimes had land taken and were forced to live in separate communities
- Hispanic immigrants from Mexico, Puerto Rico, & Cuba have also faced discrimination as a result of their different culture



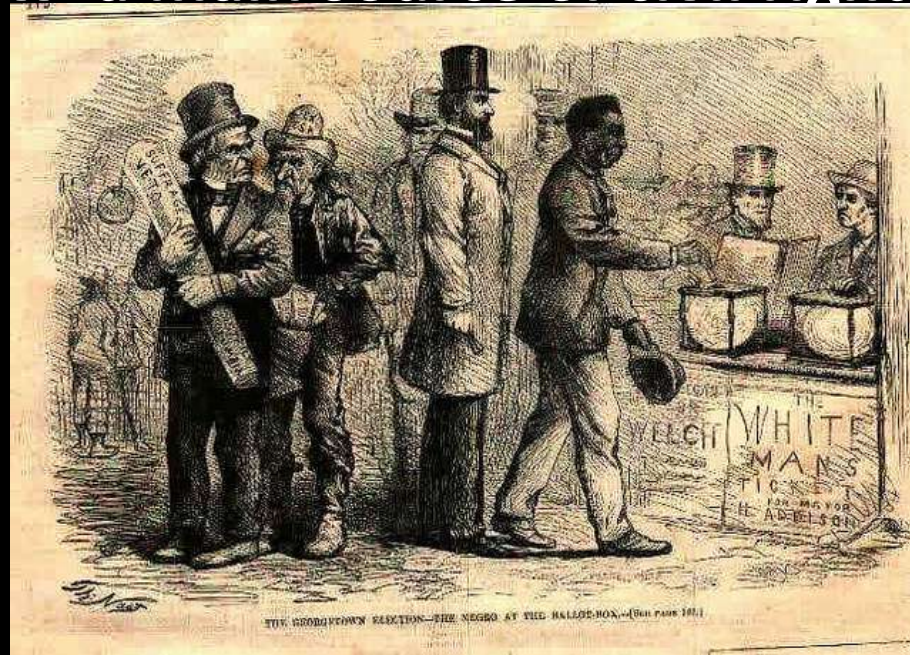
Discrimination in U.S. History

- **Women:**
 - Not given right to vote until 1920
 - Could not serve on juries, unequal property/custody rights
 - Were considered socially inferior by some (expected to be mothers/homemakers)
 - Fewer opportunities for education/jobs/equal pay



Equal Protection of the Law

- **14th Amendment—Equal Protection Clause: states must apply the law the same way for one person as they would for any other person under the same circumstances**
- **Originally for protection of newly freed former slaves; now a main source of civil rights protection**



Reasonable Distinction

- **The government can distinguish/discriminate between different groups if it has a good reason**
 - **Example: Government charges visitor fees at state parks—visitors must pay; non-visitors don't have to**
 - **However, the government must charge fees for all visitors, not just those with green eyes or black hair**
 - **Federal Courts use three tests to determine if distinctions made by government are fair:**
 - **Rational basis**
 - **Intermediate scrutiny**
 - **Strict Scrutiny**

Rational Basis Test

- **Treating groups differently is valid if the law in question establishes reasonable methods of accomplishing a legitimate government goal**
 - **Example: States have established a minimum driving age of 16 since people below that age may not have the maturity/experience to drive safely**
 - **The legitimate goal of government is to ensure public safety so the government can treat people of different age differently**

Intermediate Scrutiny Test

- **The challenged law must further an important government interest by means that are substantially related to that interest. More strict than rational basis**
- **Often used for classifications based on sex.**
 - **Men & women are treated differently in military matters such as only requiring men to register for selective service**

Strict Scrutiny Test

- **Government must show that a law classifying a group of people is a compelling reason to accomplish a legitimate role of government**
- **Applied when:**
 - **Fundamental rights are restricted (free speech, vote)**
 - **Classification is based on race or national origin (called suspect classification)**

Strict Scrutiny Test Examples

- **Korematsu v. U.S. (1944):** Korematsu refused to evacuate CA during WWII as ordered; claimed Japanese internment was unfair racial discrimination; Court ruled that government's compelling interest in preventing sabotage outweighed the civil rights of Japanese Americans
- **Loving v. Virginia (1967):** Supreme Court struck down a Virginia law outlawing marriage between whites & African-Americans; ruled that Virginia had no legitimate or compelling interest in preventing such marriages

Laws & Segregation After the Civil War

- **1865- 13th Amendment outlawed slavery in the United States**
- **Civil Rights Act of 1866-attempt to guarantee African-Americans the right to sue, own property, & be a witness in court**
- **1868-14th Amendment: granted citizenship to African-Americans; required states to provide “due process” & Equal protection of laws**
- **1870-15th Amendment granted African-American men the right to vote**

Laws & Segregation After the Civil War

- **Civil Rights Act of 1871:** attempted to protect African-Americans from KKK violence; allowed individuals to sue for civil rights violations
- **Jim Crow laws (late 1800's-early 1900's):** legalized segregation designed to maintain white power/privilege & relegate nonwhites to an inferior position
- **Civil Rights Act of 1875:** attempted to give African-Americans equal access to public places; overturned in 1883 by court ruling that 14th Amendment applied to government not individuals

Plessy v. Ferguson(1896)

- Upheld a Louisiana law requiring African-Americans to ride in separate railway cars
- Established “separate-but-equal” doctrine: laws could require separate facilities as long as those facilities were equal; legalized segregation/Jim Crow laws (“de jure”)



Brown v. Board of Education of Topeka, Kansas (1954)

- Class action lawsuit filed on behalf of all African American students denied entry into public schools
- Directly Challenged “separate-but-equal” doctrine
- Supreme Court overturned *Plessy 9-0*, thus declaring segregation of public schools illegal



Late News

56th Year Founded February, 1888
Vol. 2538

**Associated Press
Leased Wires**

The Bee

Danville, Va., Monday Afternoon, May 17, 1954

FOR ALL DEPARTMENTS CALL
4500

Price: FIVE CENTS

SEGREGATION IN PUBLIC SCHOOLS ENDED BY COURT

Suit Being Tried

ALEXANDRIA, Va. (AP)—A suit by John Locke Green to force his reception as a Democratic candidate for Congress went to trial before a Circuit Judge federal court here today. Green, a Republican who he held office as Arlington County Treasurer, brought the suit against Virginia's 10th District Democratic Committee after it refused to accept him as a party candidate for the forthcoming congressional election.

Funds Requested

WASHINGTON (AP)—President Eisenhower asked Congress today for an extra \$33,100,000 to help areas crowded by federal workers or veterans on federal projects with school construction.

The request, in a letter to Speaker of the House Martin, is for funds for the next fiscal year beginning July 1. The extra money is in addition to 48 million dollars already in the budget for the same purpose for the fiscal year ahead.

Considering Violations

WASHINGTON (AP)—Att. Gen. Brownell said officials under the Justice Department are considering "possible" violations of the criminal law in the preparation and dissemination of a document Sen. McCarthy presented May 4 in the McCarthy-Army hearings.

Brownell made the disclosure in a letter that is part of the document that he distributed throughout the country. But he said it will hear further arguments this week.

Strike Called

Ruled Unconstitutional By Supreme Court; Date To End Practice Not Set

Rules Separate Facilities Are Unequal

Danville School Board Will Meet At Once To Study Court Decision

Officials Give Views On Matter Call For Calm Study On All Sides

Good Progress

Firm Entered, Haul Is Made; Boy Wounded

Man Accidentally Shot In The Hand

Paroled Slayer Captured After Bizarre Deaths

Held For Four Brutal Killings

McCarthy-Army Hearings' Future Thrown In Doubt

Presidential Order Shutting Off Inquiry Denounced By Sen. McCarthy

- Discussion: How are Plessy v. Ferguson and Brown v. Board different?

Modern Civil Rights Laws

- **Civil Rights Act of 1964: banned discrimination based on race, color, national origin, or sex in voting, employment & public accommodations; created Equal Employment Opportunity Commission**
- **Voting Rights Act of 1965: banned unfair tests in voting such as literacy tests; allowed federal agents to help register African American voters**
- **Civil Rights Act of 1968: banned discrimination in the sale, rental, or financing of housing**

Affirmative Action

- **Requires employers and institutions to provide opportunities for members of historically underrepresented groups**
- **Supporters: government should not just ban discrimination but actively promote equality for members of racial/ethnic groups & women**
- **Opponents: leads to special privileges for members of targeted groups & are unfair to whites**

History of Affirmative Action

- **1965: Pres. Johnson, by executive order, Dept. of Labor organized requirements of goal setting & timetables for minority**
- **Regents of Univ. of Cal. v. Bakke (1978): race can be used as a factor in college admissions but quotas are unconstitutional**
- **Johnson v. Transportation Agency Santa Clara Co. (1987): consideration of sex as a factor is acceptable**
- **Adarand Constructors v. Peña (1995): affirmative action must be targeted at specific problems of past discrimination, not just general discrimination of society as a whole.**

History of Affirmative Action

- **2003: Gratz v. Bollinger & Grutter v. Bollinger**
 - Gratz was granted admission to U of MI since points awarded to minorities were awarded based solely on the fact they were minorities
 - Grutter's admission was not overturned because there was not automatic award of points for being a minority. Rather race was only 1 factor of several taken into account
- **California Proposition 209 Civil Rights Initiative (1996):** state constitution amended to forbid state/local agencies (including universities) from giving preferential treatment to any person or group based on race, color, ethnicity, or sex

- **7d. Identify how amendments extend the right to vote.**

Constitutional Amendments that extend voting rights

- 15th: right to vote can't be denied based on race
- 19th: right to vote can't be denied based on sex
- 24th : abolished the poll tax
- 26th: set minimum voting age at 18

- What are civil liberties? Give 3 examples.
- What is the difference in the 5th and 14th amendment due process clauses?
- What are civil rights?
- Give 2 example of groups that have been discriminated against in the past.
- To which groups have Constitutional amendments extended voting rights?