

Equality Before the Law:

Caselaw Before and After the Equal Protection Clause

by Erin Dolph and Abigail Bennetts

Chisholm v. Georgia,
2 U.S. 419 (1793)

A South Carolina Citizen sued the State of Georgia for a debt, and the Court held that a state could be hauled into federal court by a citizen of another state. Justice Wilson opined that sovereignty rests in the people, not the state as an entity, and a state has no immunity that places it above the legal claims of an ordinary individual. The 11th Amendment (1795) reversed this holding, but the underlying principle remains: The government is answerable in law on the same terms as the governed.

Marbury v. Madison,
5 U.S. 137 (1803)

Though most famous for establishing judicial review, Chief Justice Marshall also opined that the U.S. is a "government of laws, and not of men" and that "where there is a legal right, there is also a legal remedy." The Court concluded that even the secretary of state is bound by law and amenable to legal process. A right means nothing if the powerful are not equally subject to the courts.

Fletcher v. Peck,
10 U.S. 87 (1810)

The first time the Supreme Court struck down a state statute as unconstitutional. After corrupt land grants, Georgia's legislature tried to rescind them. The Court held the rescission violated the Contract Clause and protected the vested rights of innocent purchasers. Legal rights must be applied uniformly and cannot be withdrawn through arbitrary or targeted legislation.

The Antelope,
23 U.S. 66 (1825)

Chief Justice Marshall acknowledged that the slave trade was "contrary to the law of nature," yet the Court enforced legal rules that treated some people as property. The Court admitted the gap between natural equality and positive law, conceding the moral truth while enforcing formal legality. Legal systems can uphold unequal treatment when discriminatory practices are allowed by positive law.

Barron v. Baltimore,
32 U.S. 243 (1833)

The Bill of Rights restrains only the federal government, not the states. The Constitution supplied no federal guarantee against state mistreatment of persons within their borders. This is the void the 14th Amendment was intended to fill.

CASELAW BEFORE AND AFTER THE EQUAL PROTECTION CLAUSE

<i>United States v. The Amistad</i> , 40 U.S. 518 (1841)	The Mende captives were seized in violation of treaties and laws banning the Atlantic trade. The Court held they were free persons unlawfully kidnapped, not property. The holding rested on the illegality of the seizure rather than any broad principle of human equality.
<i>Strader v. Graham</i> , 51 U.S. 82 (1851)	Enslaved musicians from Kentucky taken temporarily into the free state of Ohio remained enslaved. The Court held their status was fixed by Kentucky law. Chief Justice Taney opined that each state determines the status of persons within it. This was the doctrinal foundation upon which <i>Dred Scott</i> was built six years later and a key turning point in the chain of events that made the Reconstruction Amendments necessary.
<i>Dred Scott v. Sanford</i> , 60 U.S. 393 (1857)	Held that persons of African descent could not be citizens and had “no rights which the white man was bound to respect,” and struck down the Missouri Compromise. Constitutionalized racial subordination and made clear that equality could not be achieved through interpretation alone. The decision was a direct cause of the 14th Amendment which was drafted specifically to overrule it.
Fourteenth Amendment (1868)	Guarantees citizenship to all persons born or naturalized in the U.S. and prohibits states from depriving any person of due process or the equal protection of the laws
Fifteenth Amendment (1870)	Prohibits denial of the right to vote based on race
<i>Cummings v. National Bank</i> , 101 U.S. 153 (1879)	Addressed the constitutionality of differential taxation systems implemented by the State of Ohio. Unequal valuation of different property classes (real estate, personal property, monies) results in an unequal tax burden. Systematic disparities constitute a violation of the constitutional mandate for uniformity and equality in taxation.

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CASELAW BEFORE AND AFTER THE EQUAL PROTECTION CLAUSE

<i>Strauder v. West Virginia</i> , 100 U.S. 303 (1880)	Struck down a state law barring Black citizens from jury service as a violation of the Equal Protection Clause. The first decision to use the 14th Amendment to invalidate a racially discriminatory statute. Established that the Clause was meant to protect the recently freed against hostile state legislation.
<i>United States v. Lee</i> , 106 U.S. 196 (1882)	No government official is above the law.
<i>The Civil Rights Cases</i> , 109 U.S. 3 (1883)	Found Sections 1 and 2 of the Civil Rights Act of 1875 unconstitutional because they exceeded congressional power by regulating private individuals. Fourteenth amendment did not permit the federal government to prohibit discriminatory acts by private parties.
<i>Yick Wo v. Hopkins</i> , 118 U.S. 356 (1886)	A facially neutral San Francisco ordinance was administered to close Chinese-operated businesses while sparing others. The ordinance was held to violate equal protection. Equal protection extends to all persons. A law “fair on its face” but applied with “an evil eye and an unequal hand” is unconstitutional. This was the foundational case for discriminatory application doctrine.
<i>Plessy v. Ferguson</i> , 163 U.S. 537 (1896)	Louisiana implemented the Separate Car Act, which mandated separate rail cars for Black and white individuals. The Court held that the law was constitutional, as separate treatment does not infer the inferiority of Black Americans. Birth of separate but equal. Segregation is not in and of itself unlawful discrimination.

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Nineteenth Amendment (1868)

Prohibits denial of the right to vote based on sex

Leser v. Garnett,
258 U.S. 130 (1922)

Held the 19th Amendment to the Constitution was validly ratified, and states may not deny the right to vote on the basis of sex. Affirmed that equal political participation could not depend on state preferences or discriminatory state constitutions.

Missouri ex rel. Gaines v. Canada,
305 U.S. 337 (1938)

Missouri had no in-state Black law school and offered to pay tuition elsewhere. The Court found the state could not deny Black students access to the legal education it offered white students. Equality is not satisfied by substitute benefits.

Hirabayashi v. United States,
320 U.S. 81 (1943)

President Roosevelt's executive orders to exclude certain people from "military areas" and established the War Relocation Authority, which had the power to remove, maintain, and supervise people who were not allowed in "military areas." A student violated a curfew and relocation order, and the Supreme Court found constitutional discrimination because the country was in time of war and important national interest.

Akins v. Texas,
325 U.S. 398 (1945)

Addressed racial discrimination in jury selection, ruling that merely having a low proportional representation of Black individuals on a grand jury did not inherently violate the Equal Protection clause.

Shelley v. Kraemer,
334 U.S. 1 (1948)

St. Louis neighborhood enacted a racially restrictive covenant. A Black couple moved into neighborhood, and a white couple sued to enforce the covenant. Court held that racially restrictive covenants alone do not violate the 14th amendment, private parties may abide by them. However, individuals may not seek judicial enforcement of a racially restrictive covenant because that would constitute state action in violation of the 14th amendment.

McLaurin v. Oklahoma State Regents,
339 U.S. 637 (1950)

A Black graduate student was forced to sit in segregated areas of classrooms and the library. Court held the student was denied equal protection and that segregation impaired his ability "to study, to engage in discussions, and to learn." Established that internal segregation within an integrated institution still inflicts constitutional injury.

Brown v. Board of Education,
347 U.S. 483 (1954)

Overruling *Plessy*, a unanimous Court held that "separate educational facilities are inherently unequal." State-imposed separation generates a feeling of inferiority that affects "the hearts and minds" of children.

Bolling v. Sharpe,
347 U.S. 497 (1954)

Mirrored the decision in *Brown v. Board*. Barred segregation in the District of Columbia's schools. Because the Equal Protection Clause binds only states, the Court found an equal-protection component within the Fifth Amendment's Due Process Clause, establishing that the federal government also has a duty not to discriminate.

CASELAW BEFORE AND AFTER THE EQUAL PROTECTION CLAUSE

Griffin v. Illinois,
351 U.S. 12 (1956)

A state that conditions appellate review on a trial transcript must furnish one free to indigent defendants. "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." Held a legal right is of little value if only those who can afford to exercise it may benefit from it.

Gideon v. Wainwright,
372 U.S. 335 (1963)

The Court unanimously held that a fair trial cannot turn on a defendant's ability to hire a lawyer. Guaranteed appointed counsel to indigent felony defendants in state court. Framed as a Sixth Amendment right.

Reynolds v. Sims,
377 U.S. 533 (1964)

The Court held both chambers of state legislatures must be apportioned by population, ensuring that all citizens have an equal voice in the election process. "One person, one vote." Ended systematic dilution of urban and minority votes and made political equality a justiciable constitutional command. "Legislators represent people, not trees or acres."

Harper v. Virginia Board of Elections,
383 U.S. 663 (1966)

Struck down the poll tax in state elections as a violation of equal protection. Held that wealth or fee-paying has "no relation to voting qualifications." Cemented voting as a fundamental right free from wealth-based barriers.

In re Gault,
387 U.S. 1 (1967)

Held that juveniles are entitled to essential procedural due process protections under the Due Process Clause when facing delinquency proceedings that could lead to confinement. Constitutional protections do not depend on age alone.

Loving v. Virginia,
388 U.S. 1 (1967)

Unanimously invalidated state laws that prohibited interracial marriage. Held they violated the Equal Protection Clause and the Due Process Clause of the 14th Amendment. Applied strict scrutiny to the racial classification and recognized marriage as a fundamental right.

Griggs v. Duke Power,
401 U.S. 424 (1971)

Established the "disparate impact" theory of employment discrimination. Neutral employment requirements (aptitude tests or high school diplomas) are discriminatory if they disproportionately disqualify minority candidates and are not directly related to job performance even if there is not discriminatory intent.





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Reed v. Reed,
404 U.S. 71 (1971)

The first time the Court struck a state statute for sex-based discrimination. Held that Idaho's mandatory preference for men in the administration of estates constituted arbitrary discrimination and violated the 14th Amendment. The government cannot distribute legal rights and responsibilities according to generalized notions about gender. Individuals must be judged on their own merits rather than on membership in a particular class.

Roe v. Wade,
410 U.S. 113 (1973)

Held that the fundamental right to privacy protects a woman's choice whether to have an abortion. Due process clause protects against state action right to privacy and a woman's right to choose to have an abortion falls within a right to privacy. State law that broadly prohibits violates that right.

United States v. Nixon,
418 U.S. 683 (1974)

Held that a president is not above the law and must comply with a judicial subpoena for evidence in a criminal investigation. Rejected the claim that executive privilege is absolute.

Washington v. Davis,
426 U.S. 229 (1976)

Two Black individuals applied to police department and were rejected, filed suit for discrimination against the mayor and alleged that recruiting procedures including a written personnel test was discriminatory against racial minorities. Court found written test did not constitute racial discrimination, clause is designed to prevent official discrimination on the basis of race, but acts that had racially disproportionate impacts do not automatically become constitutional violations.

Craig v. Boren,
429 U.S. 190 (1976)

Held that sex-based classifications are subject to intermediate scrutiny. Created a constitutional framework that requires governments to demonstrate important reasons for treating men and women differently and to ensure that such distinctions are closely related to those reasons.

Regents of Univ. of California v. Bakke,
438 U.S. 265 (1978)

Court's first sustained encounter with affirmative action. Justice Powell's controlling opinion rejected fixed racial quotas while permitting race as one factor among many in a holistic admission process in pursuit of educational diversity. Framed the affirmative action debate: equality as color blindness versus equality as anti-subordination.

Plyler v. Doe,
457 U.S. 202 (1982)

The Court struck down a Texas law that excluded undocumented children from public education. Held that the Equal Protection Clause protects anyone within a state's jurisdiction and the state's interest did not justify punishing children for their immigration status. Recognized the special weight of education.

Mississippi Univ. for Women v. Hogan,
458 U.S. 718 (1982)

Mississippi had a university for nursing for women only, saying it was "compensatory" and therefore not discriminatory. Mississippi made no showing that women lacked opportunities to obtain training in the field of nursing or to attain positions of leadership in that field. Court found the university's policy of excluding males tends to perpetuate the stereotyped view of nursing as an exclusively women's job. Violates the equal protection clause.

CASELAW BEFORE AND AFTER THE EQUAL PROTECTION CLAUSE

City of Cleburne v. Cleburne Living Center,
473 U.S. 432 (1985)

Held that intellectual disability is not a suspect class and is instead subject to rational-basis review. Invalidated government action rooted in "irrational prejudice" and stereotypes. Developed what many call "rational basis with a bite" as a form of review when laws appear to be motivated by animus.

Americans with Disabilities Act
(1990)

Prohibits discrimination against individuals with disabilities

Romer v. Evans,
517 U.S. 620 (1996)

Struck down Colorado's Amendment 2, which barred any legal protection for gay and lesbian residents. Held that a law singling out a particular group for broad legal disadvantages violates the Equal Protection Clause. Established the modern anti-animus principle holding that a "bare desire to harm a politically unpopular group" is not a legitimate state interest.

Clinton v. Jones,
520 U.S. 681 (1997)

Held that a sitting president is not immune from civil litigation for unofficial conduct occurring before taking office. Rejected Clinton's claim of temporary presidential immunity. Distinguished between official acts, for which presidents may receive immunity in some circumstances, and private conduct that occurred before taking office.



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CASELAW BEFORE AND AFTER THE EQUAL PROTECTION CLAUSE

Grutter v. Bollinger,
539 U.S. 306 (2003)

Reaffirmed and clarified the diversity rationale in *Bakke*. Upheld a university's individualized, race-conscious admissions accepting student-body diversity as a compelling governmental interest. Held public universities may consider race as one factor among many in a holistic admissions process to achieve the educational benefits of a diverse student body. Policy must be narrowly tailored and does not operate as a quota.

Obergefell v. Hodges,
576 U.S. 644 (2015)

Held that the 14th Amendment requires states to license and recognize same-sex marriages. The fundamental right to marry applies equally to same-sex couples under the Due Process and Equal Protection Clauses.

Bostock v. Clayton County,
590 U.S. 644 (2020)

An employer violates Title VII of the Civil Rights Act of 1964 when they fire or otherwise discriminate against employees because they are gay or transgender. Held that Title VII's bar on discrimination "because of sex" also covers sexual orientation and gender identity.

Trump v. Vance,
No. 19-635 (U.S. July 9,
2020)

Held that a sitting president is not absolutely immune from a state grand jury subpoena for personal records, emphasizing that no citizen, including the president, is categorically exempt from the administration of justice.

*Dobbs v. Jackson Women's
Health Org.*,
597 U.S. 215 (2022)

Held the Constitution does not confer a right to abortion, overruling *Roe v. Wade*.

*Students for Fair Admissions,
Inc. v. President & Fellows of
Harvard Coll.*,
600 U.S. 181 (2023)

Held Harvard's race-based admissions system violates the equal protection clause and failed to meet strict scrutiny, non-stereotyping, and termination criteria that was set forth in *Grutter* and *Bakke*, though nothing prohibits universities considering how race has affected an applicant's life.

Trump v. United States,
144 S. Ct. 2312 (2024)

Held that a former president has absolute immunity from criminal prosecution for actions within his conclusive and preclusive constitutional authority, at least presumptive immunity from prosecution for all official acts, and no immunity for unofficial acts. Absolute immunity exists because Congress cannot criminalize, and courts cannot review, the president's exercise of these core constitutional authorities.

West Virginia v. B.P.J.,
No. 24-43 (U.S. June 30,
2026)

Held that Title IX permits states to draw sex-based distinctions in school sports.

Trump v. Barbara,
No. 25-365 (U.S. June 30,
2026)

The Citizenship Clause of the 14th Amendment guarantees birthright citizenship to all persons born in the U.S., regardless of their parents' immigration status. The president may not restrict that constitutional guarantee through executive order. 