Civil Rights: Equal Protection Under the Law

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CONTEMPORARY CONNECTION

The issue of police procedures resulting in the arrests and deaths of African-Americans created a national discussion after the New York City police used "stop and frisk" to search predominantly African-Americans, after an incident in Ferguson Missouri where a police officer shot and killed an African-American, and in New York City after an African-American was choked to death in a routine arrest. This chapter traces the history of how the Fourteenth Amendment to the U.S. Constitution guarantees equal protection under the law.

The history of the civil rights movement parallels the nationalization of the Fourteenth Amendment of the Constitution.

Even though the Civil War solved the problem of slavery and established the legitimacy and dominance of the federal government, the fact remained that many states still passed Jim Crow laws, legislation that legalized segregation even after the adoption of the Fourteenth Amendment. Segregation existed in America, and the Supreme Court in the *Plessy* decision stated "separate but equal" was an acceptable standard. Some inroads were made as civil rights activists pressured the national government to address the issue of racial discrimination. But it took the landmark *Brown v Board of Education* decision for the movement to see results.

Other minority groups such as women, immigrant groups, Native Americans, homosexuals, senior citizens, and the young have faced discrimination. Congressional legislation and Supreme Court decisions have used affirmative action programs as a means of providing equality under the law.

This chapter also explores the constitutional and legislative basis of civil rights for minority groups. It will focus on the issue of affirmative action programs and how government attempts to solve one of the most perplexing problems facing American society.

EQUAL PROTECTION TO ALL

"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."

The equal protection clause of the Fourteenth Amendment provides the basis of the civil rights movement.

We previously defined civil rights as the substantive application of equal protection under the law to individuals. Prior to the passage of the Fourteenth Amendment, the Bill of Rights was the only protection citizens had. Even the principles outlined in the Declaration of Independence, natural rights, inalienable rights, and the statement "all men are created equal" suggested that civil rights should be an integral part of our government. But the issue of slavery quickly brought to a stop any fulfillment of these principles. The *Dred Scott* case in 1857 established that slaves were property based on the due process clause of the Fifth Amendment.

Fourteenth Amendment

The significance of the Fourteenth Amendment is that it aimed to nationalize the meaning of civil rights through the Incorporation Doctrine. On the surface it seemed that states could no longer discriminate against their citizens. Yet one of the first key Court cases after the passage of the amendment had a chilling effect on any thought of nationalization of the Bill of Rights. The slaughterhouse cases, in 1873, involved suits by individuals against states, accusing the states of the denial of property rights under the Fifth and Fourteenth Amendments. The Supreme Court dismissed the suits and ruled that the intent of the Fourteenth Amendment was to protect the freed slaves, not incorporate the Bill of Rights. Yet when the Congress passed in 1875 the first civil rights acts since the Civil War, the Supreme Court did not follow the principle set down in the slaughterhouse cases.

When a provision of the civil rights act, which established the legality of access to public accommodations, theaters, hotels, and other public facilities, was challenged, the Supreme Court ruled that aspect of the congressional act unconstitutional. Its logic was that the Fourteenth Amendment applied only to the states "operating under cover of the law." But the definitive action by the Court in *Plessy v Ferguson* in 1896 put the issue to rest. When Homer Plessy challenged the Louisiana state law that created two classes of railroad fares, the Supreme Court, using the fact that the passenger train had only an intrastate route, ruled that separate but equal facilities were constitutional under the equal protection provision of the Fourteenth Amendment.

Even after the Supreme Court case nationalized the Bill of Rights in the *Gitlow* case (described in Chapter 5), it reversed itself in a significant due process case, *Palko v Connecticut* (1937). This case involving the issue of double jeopardy gave Connecticut the right to try an individual a second time. The concept of applying the Fifth and Fourteenth Amendments' due process provisions to citizens who felt their "privileges and immunities" were being violated by the state was rejected. The concept of ordered liberty became the criterion for any incorporation of the Bill of Rights into the Fourteenth Amendment.

Then how did the Fourteenth Amendment finally become the basis of the civil rights movement? It took the Supreme Court over 50 years to finally reverse *Plessy*. *Brown v Board of Education* signaled the beginning of equal protection under the law for African-Americans. There were, however, other significant First Amendment and due process cases before *Brown*, which started the process of incorporation.

Key Court Cases

- ***Gitlow v New York* (1925)**—freedom of speech
- ***Near v Minnesota* (1931)**—freedom of the press
- ***Powell v Alabama* (1932)**—access to a lawyer in capital cases
- ***De Jonge v Oregon* (1937)**—freedom of assembly
- ***Cantwell v Connecticut* (1940)**—freedom of religion
- ***Wolf v Colorado* (1949)**—unreasonable search and seizure
- ***Baker v Carr* (1961)**—The Supreme Court, using the due process clause of the 14th Amendment, established the principle of "one man, one vote" requiring that city population be represented proportionally equal to rural areas in legislative redistricting.

*Required case

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

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

AFRICAN-AMERICANS

The civil rights era for African-Americans was ushered in by the *Brown* decision, other Supreme Court decisions, and congressional legislation.

Supreme Court Justice Stephen Breyer, at his confirmation hearings, called *Brown v. Board of Education* (1954) the most significant Supreme Court decision in the history of the Court. In a unanimous decision written by Chief Justice Earl Warren, the Court redefined the meaning of the Fourteenth Amendment. It said that "in the field of public education the doctrine of 'separate but equal' has no place. . . . Segregation is a denial of the equal protection of the laws." It also called upon states to end segregation practices using "all deliberate speed." Yet in a survey taken on the fiftieth anniversary of the *Brown* decision, many school districts still have not fulfilled the *Brown* vision.

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

The landmark Civil Rights Act of 1964 made discrimination in public accommodations such as hotels and restaurants illegal. The law was affirmed by the landmark *Heart of Atlanta Motel v United States* in 1964. This case involved an Atlanta motel on an interstate highway that serviced a majority of travelers. The motel discriminated against African-American patrons. It claimed that the Title II provision of the Civil Rights Act of 1964 was unconstitutional. In a unanimous decision, the Court, using the interstate commerce provision of the Constitution, upheld the legality of the law. The Twenty-Fourth Amendment, passed the same year, made any tax related to the voting process illegal. In 1965 the Voting Rights Act was passed. This law protected the right of African-Americans to vote and made provisions for federal assistance in the registration process. The Civil Rights Act of 1968, called the Open Housing Act, made illegal the practice of selling real estate based on race, color, religion, national origin, or sex. The issue of busing to solve racial discrimination practices was resolved in the *Swann v Charlotte-Mecklenberg County Schools* case in 1971. The Court ruled that busing was a legal means of achieving the "all deliberate speed"

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

The modern civil rights movement for African-Americans has been characterized by attempts to achieve gains through affirmative action.

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

Affirmative Action

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

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

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

Because minority enrollment decreased, California instituted a policy that guaranteed admittance to its university system for the top 10 percent of minority students applying for admission.

In the spring of 2003, a 5–4 Supreme Court ruled in two cases involving the University of Michigan undergraduate school and University of Michigan Law School that the principles laid out in the *Bakke* decision were still valid. Writing for the majority, Justice Sandra Day O'Connor said

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

In 2013, the Supreme Court heard arguments concerning the affirmative action admissions olicy of the University of Texas at Austin. The case, brought by undergraduate Abigail Fisher in 008, asks that the Court declare the admissions policy of the University inconsistent with *Grutter v Bollinger*, a 2003 case. Fisher was denied enrollment in the university system because the tate had a policy that accepted ten percent of each high school's population. Fisher fell below hat standard and was denied entrance even though she had higher scores than minorities who were accepted even though they were also below the ten percent in their graduating classes.

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

Key Court Cases

***Plessy v Ferguson* (1896)**—The Court established the doctrine of "separate but equal," legitimizing Jim Crow laws and segregation.

***Brown v Board of Education, I* (1954)**—The Court found that race-based segregation violated the equal protection clause of the 14th Amendment and ordered schools to be integrated.

***Brown v Board of Education, II* (1955)**—Following the Brown I decision, the Supreme Court directed all segregated schools to integrate their students "with all deliberate speed."

***Shaw v Reno* (1993)**—The Court, using the Voting Rights Act of 1965, mandated that legislative redistricting must use race as one of the factors to ensure minority representation.

***Richmond v Corson* (1989)**—This case created the impetus for Congress to pass the Civil Rights Act of 1991. It established the following five procedures for evaluating the legitimacy of affirmative action programs.

1. A scrutiny test evaluates programs based on racial classification.
2. Congress has more power than the states through the provisions of the Fourteenth Amendment to enforce equal protection provisions.
3. When the state takes action, it must do so based on evidence that past discriminatory practice existed.
4. Affirmative action remedies must be specific and apply to past injustices.
5. States may develop affirmative action programs "narrowly tailored . . . necessary to break down patterns of deliberate exclusion."

***Gratz v Bollinger; Grutter v Bollinger* (2004)**—The University of Michigan undergraduate school's admission practice was unconstitutional (*Gratz*) because it relied too much on a quota system. The University of Michigan's law school's admission system was constitutional (*Grutter*) because it relied on a broad-based policy of using race as a basis for admissions. Both decisions affirmed the *Bakke* case.

*Required cases

WOMEN

The fight to gain equality for women has been tedious and arduous.

Most political scientists point to the Seneca Falls Convention in 1848 as the beginning of the fight for equality. At this convention Elizabeth Cady Stanton led the fight for political suffrage and supported a doctrine very similar in nature to the Declaration of Independence. The Declaration of Sentiments and Resolutions for women's rights stated in part, "The history of mankind is a history of repeated injuries and usurpations on the part of man toward woman. . . ." It listed a series of abuses such as government failing to allow women to vote, the compelling of women to submit to laws in which they had no voice in passing, and the withholding of rights given to other members of society. It took the passage of the Nineteenth Amendment in 1920 for women to gain the right to vote.

The Age of Feminism

A turning point in the battle for equality was the publication of Betty Friedan's book *The Feminine Mystique* in 1963. The dawn of the age of feminism was born. Groups such as the National Organization for Women (NOW) and the National Women's Political Caucus were formed. They supported a proposed amendment to the Constitution, the Equal Rights Amendment.

Previously described in Chapter 4 in the section dealing with the amending process, it attempted to do for women what the Fourteenth Amendment eventually did for African-Americans. It was ironic that one of the arguments used against its passage was that the amendment was not necessary because the equal protection clause of the Fourteenth Amendment already existed. One of the earliest acts passed was the Equal Pay Act of 1963, which required employers to pay men and women the same wages for doing the same jobs.

The issue of "comparable worth," paying women equally for jobs similar to those held by men, was challenged in 2007 in the Supreme Court case *Ledbetter v Goodyear Tire and Rubber Company*. Lilly Ledbetter sued Goodyear Tire, her longtime employer, after she discovered that her salary was lower than what men received for the same job. However, the suit was brought to court after the expiration of the legal time limit to sue for damages, which is set forth in the Title VII section of the Civil Rights Act of 1964. In a 5–4 decision, the court ruled against Ledbetter, declaring that she did not meet the legal deadline of suing within 180 days of the start of the alleged discrimination, even though she claimed to be unaware of the salary differential for many years. This decision was criticized by labor unions and women, who argued that the result of the case ignored the fact that Goodyear had discriminated against Ledbetter. Congress attempted to rectify this by passing the Lilly Ledbetter Act, which allows suits to be filed after the discovery of discrimination regardless of when that discrimination first occurred. It was vetoed by George W. Bush but passed again by Congress and signed into law by President Obama shortly after he was elected president.

Women's Rights

Women's rights became a reality as a result of many of the acts of Congress and Supreme Court decisions that came about initially to give African-Americans their civil rights. The Civil Rights Act of 1964 had an anti-sex discrimination provision. In 1972 those Title VII provisions were extended by the Education Act of 1972. Title IX of that act made sex discrimination in federally funded education programs illegal. Just prior to that legislation, in 1969, a presidential order directed that equal opportunities for women be considered as national policy. It took a key court case, *Reed v Reed* (1971), which made a state law that favored men over women in the selection of an estate's executor unconstitutional, to establish a legal precedent. Two years later in *Frontiero v Richardson* (1973), the Court spoke definitively, stating that "There can be no doubt that our nation has had a

long and unfortunate history of sex discrimination. . . ." A "medium scrutiny" standard was established in 1976 in *Craig v Boren* when the Court ruled that if discrimination was apparent, whether it was aimed at men or women, it would be illegal. The courts have also ruled that certain work-related situations constitute job discrimination. In 1977 in *Dothard v Rawlinson*, the Court struck down an Alabama law forbidding women from serving as prison guards in all-male prisons. In 1992 in *UAW v Johnson Controls*, the Court ruled that Johnson Controls could not prevent women from working in a battery factory, even if the work caused infertility in women.

A related issue, sexual harassment in the workplace, has been raised since the confirmation hearings of Supreme Court Justice Clarence Thomas. Since University of Oklahoma law professor Anita Hill raised those charges, the public's awareness of the issue has been on the rise. President Clinton's appointment of Ruth Bader Ginsburg to the Supreme Court in 1994 sent a signal that job discrimination and sexual harassment would not be tolerated.

Advances in political office also became a feature of the quest for women's rights. From the victory of Connecticut Governor Ella Grasso in 1974; to the appointment of Sandra Day O'Connor as the first woman Supreme Court Justice in 1981, Ruth Bader Ginsburg in 1994, Sonia Sotomayor, the first Hispanic woman in 2009, and Elena Kagan in 2010; to the 2014 appointment of Janet Yellen as the head of the Federal Reserve; to the nomination of Geraldine Ferraro as Walter Mondale's running mate in the 1984 presidential election; and to the election of Representative Nancy Pelosi as the first Speaker of the House, women have successfully attained significant public positions. In the 1992 elections more women were elected to Congress than ever before, including the first African-American Senator, Carol Moseley Braun. The trend continued in the 2000 election when more women senators were elected, including Hillary Rodham Clinton, who was elected as a senator from New York. She is the first former First Lady elected to public office. She also ran unsuccessfully for president in 2008 and was appointed secretary of state by President Obama. In 2016, she became the first woman to be nominated for president by a major political party. Margaret Chase Smith ran as a Republican against Goldwater in 1964, and Shirley Chisholm ran as a Democrat in 1972. In 2008, Sarah Palin became the first woman to run for vice president on the Republican ticket with Senator John McCain.

LGBT COMMUNITY

Gay rights have lagged behind the gains of other minority groups.

Attempts by gay activists, including Lesbians, Gays, Bisexuals, the Transgender community, and federal and state legislatures to guarantee equal protection for gays have fallen short. In fact, many initiative referendums, including one in Colorado in 1993, not only rejected gay rights proposals, but also established legal obstacles for gays. Even the Supreme Court was not sympathetic. *Bowers v Hardwick* in 1986 dealt with the issue of the legality of a Georgia antisodomy law. Because the challenge took place by two gay men who violated the law, the case was viewed as a test for gay rights. The Supreme Court upheld the validity of the Georgia state law. In 2003, the Court reversed *Bowers* in *Lawrence v Texas*, ruling that a Texas sodomy law was unconstitutional.

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

But in 2000 the Supreme Court, in a narrow 5–4 decision, ruled that a gay Boy Scout leader could be barred from that position by the Boy Scouts of America's national organization. The case

arose when the Boy Scouts barred New Jersey Scout leader Jim Dale, a gay scout, from his position. The Scouts claimed that they had a right under the First Amendment's freedom of association to decide whom to exclude from membership in their organization. New Jersey claimed that since the Boy Scouts' meetings took place in a public school, the Scouts violated New Jersey's public accommodation laws. The Court ruled in favor of the Boy Scouts. Fallout from the decision was widespread as many schools throughout the country refused to allow the Boy Scouts to meet if gays were barred from participation. In 2013, the Boy Scouts of America announced they were reconsidering their past opposition to allowing gay scouts.

Don't Ask; Don't Tell

In 1992 President Bill Clinton, through an executive order, directed the military to follow a "Don't ask, don't tell, don't pursue" policy. It allowed gays to enlist and serve in the military as long as they did not disclose the fact that they were gay. This policy was criticized by many in Congress, and it had a difficult time being accepted by the military establishment. The order was challenged in federal court, and the Court declared part of the policy unconstitutional based on the First Amendment free speech provision and the Fifth Amendment due process provision. The uneasily-balanced policy did not change during the administration of the next president, George W. Bush. When President Barack Obama was elected in 2008, he signaled his support for the repeal of Don't Ask, Don't Tell. The military leadership was hesitant to advocate a change because the United States was involved in two wars, one in Iraq and the other in Afghanistan. From 2008 to 2010 gay groups and gay servicemen and women who were discharged filed court petitions to find the law unconstitutional. Federal appeal courts sided with these suits and ordered the military to stop the policy. The Obama administration convinced the courts to order a "stay," halting the implementation of the repeal. The Defense Department conducted a review of the policy, and President Obama urged Congress to pass legislation repealing the Don't Ask, Don't Tell policy. Congress passed the repeal in 2010 and President Obama signed the law. The military ceased removing gay soldiers from service, and in 2011 gays were allowed to serve in the military without fear of dismissal.

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

Gay Marriage

However, the biggest victory for gay rights came in the spring of 2004 when the Massachusetts Supreme Court ruled that gay marriages were legal. A firestorm reaction from opponents of the decision resulted in the drafting of an amendment to the United States Constitution that would define marriage as the union of a man and woman and make illegal any attempt to recognize on a national basis the legality of a gay marriage. Even though Congress passed and Bill Clinton signed the Defense of Marriage Act in 1996, a law that allowed states not to recognize gay marriages from other states and made illegal any federal benefits to states that did allow gay marriages, proponents of the amendment and President George W. Bush felt that its passage would be the only way to protect the institution of marriage. The Senate debated the issue and the amendment never came to a vote because of a Democratic filibuster.

Connecticut became the second state to approve same-sex marriage in 2005. In 2008, the California Supreme Court struck down the state's ban on same-sex marriage, and about 18,000 gay couples were married in California. In 2008, opponents of the decision passed a statewide initiative, Proposition 8, which created a constitutional amendment banning same-sex marriage. The

initiative was challenged but was upheld by the California Supreme Court. Same-sex marriages performed prior to the passage of Proposition 8 remained legal. In 2010, a federal appeals court overturned the ban and the proponents of the proposition appealed the ruling. Ultimately, this case, as well as the legality of the 1996 Defense of Marriage Act (a law that prohibited federal benefits to gay couples who were married or recognized by a state), ended up before the U.S. Supreme Court. In 2010, California District Court and a federal appeals court overturned the ban and the proponents of the proposition appealed the ruling. State officials refused to defend the case. The Supreme Court ruled that Proposition 8 was unconstitutional because the lower court ruled that way and the Supreme Court said that the party defending the proposition had no "standing" to argue the case. The 1996 Defense of Marriage Act was ruled unconstitutional allowing legally married gay couples to receive federal benefits. Currently 37 states plus the District of Columbia permit gay marriages and 4 states recognize civil unions. The Supreme Court ruled 5–4 in 2015 in *Obergefell v Hodges* that the equal protection clause of the Fourteenth Amendment required that states issue marriage licenses to gay couples. This meant that gay marriage was legal in the United States.

OTHER MINORITY GROUPS

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

Senior Citizens

Senior citizens, the handicapped, and young people seeking civil rights and equal protection under the law have influenced government, resulting in the creation of public policies.

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

Americans with Disabilities

Americans with disabilities make up around 20 percent of the population. They include people with physical, mental, and emotional disabilities. Many of them have been denied support services. It is only in the last 20 years that government has recognized the needs of this group. The exception to this was the recognition that veteran groups needed aid when they returned from World War I and World War II. The GI Bill of Rights was a major piece of legislation passed at the conclusion of World War

II. In 1975 the Education of All Handicapped Children Act was passed, giving children the right to an education with appropriate services that meet the needs of specific disabilities. The landmark act passed in 1991, the Americans with Disabilities Act (ADA), required employers, schools, and public buildings to reasonably accommodate the physical needs of disabled individuals by providing such things as ramps, elevators, and other appropriate facilities. This act also extended into the job market, making it illegal for employers to discriminate against the disabled. The courts have recognized these acts protecting the rights of disabled Americans. Yet there are issues that may not be as definitive. Does the ADA protect individuals with chronic diseases? The Supreme Court has imposed limits. But in a decision reached in 2001, the Court ruled that a professional golfer, Casey Martin, who had a physical disability would be able to use a golf cart during tournament play.

In subsequent decisions, the Court using the sovereign immunity provision of the Eleventh Amendment limited individual lawsuits against states under the provisions of the Americans with Disabilities Act.

Age Discrimination

Many of the same problems facing senior citizens or the disabled also face young people, who have no significant lobby group. How have their civil rights been taken away? Cases like *Hazelwood v Kuhlmeir* (1988), which gives school administrators the right to censor school-sponsored publications and plays; *Bethel School District v Fraser* (1986), which gives school officials the right to discipline students as a result of a speech that was given by a student running for office containing obscenities; and *New Jersey v TLO* (1985), which gives school officials an almost unlimited right to search a student suspected of violating school rules, weaken the *Tinker* doctrine and severely limit the civil rights of young people. In 1995 the Court ruled in *Vernonia v Acton* that random drug testing of student athletes was constitutional. There has been legislation protecting young women and the handicapped.

Title IX of the Civil Rights Act prohibited gender discrimination in such areas as sports and the right to enroll in all classes. The Americans with Disabilities Act applied to students attending school and in fact provided for extensive special education opportunities. State laws also protect young people against child abuse and mandate child support to families who have experienced divorce. Youth today have cried out for protection against violence and drugs in the schools and community. They have expressed the need to have employment opportunities after graduation from high school and college. And they received legislation in 1993 that established a National Service Program, making it easier for high school students to obtain government aid so that they can attend college in return for national service. One of the issues affecting young people that has become very controversial is adoption practices. Cases involving child custody point out the necessity for laws that recognize the needs of the child as well as the natural and adoptive families.

Native Americans

Virtually every segment of American society, including Native Americans and groups who have immigrated to the country and have obtained either citizenship or legal alien status, pursues their right to obtain the "American Dream." In order to accomplish this goal, their quest for civil rights is ongoing and is perhaps even more crucial because these groups have had a very difficult time reaping the benefits of living in this country.

Other minority groups such as Native Americans and "new immigrants" continue to struggle for civil rights.

Native Americans have an official government agency established as part of the Department of Interior. The Bureau of Indian Affairs has the responsibility of seeing that all legislative benefits are administered to Native Americans who by law are American citizens and have the right to vote whether or not they live on reservations. Native Americans living on reservations have a sepa-

rate status and are recognized by treaty as possessing the full characteristics of sovereign nations. They are immune from state and federal laws, and they have the right to govern their reservations as they see fit. Other Native Americans living outside the reservation have faced severe poverty and must seek the assistance of the states they live in. Militant leaders such as Russell Means and related groups have pressured the government for specific aid packages regarding healthcare, educational opportunities, housing, and jobs.

Immigrants

Immigrant groups such as Hispanics and Asians have grown in numbers as problems facing their home countries have increased. The 2010 Census reported that Hispanics were the fastest-growing minority. Cuban and Haitian immigrants have settled in Miami. Puerto Ricans and Jamaicans have made New York City a second home. Mexicans have fled poor economic conditions and have settled in Texas, Arizona, and California. Asians have fled war in Southeast Asia and have left Korea and Japan. Many have become citizens; others have obtained legal status. Unlike natural-born Americans, they are having an extremely difficult time obtaining civil rights. There is a tremendous resentment on the part of the American people to those groups placing an additional burden on America's welfare system. Even though these groups are increasing in numbers, they have yet to achieve complete political equality. There are an increasing number of Hispanic and Asian representatives in Congress. A Congressional Hispanic Caucus has been formed. Governor Bill Richardson became the first Hispanic-American to run for president in 2008. The courts have recognized the problems facing these groups. In the case of *Lau v Nichols*, in 1974, the Supreme Court ruled that Title VI of the Civil Rights Act of 1964 mandates schools to offer English as a second language to non-English-speaking students. A corollary language problem facing these groups arises when cities pass legislation making English the official language of the municipality. States like California have passed referenda abolishing bilingual education programs.

Just as nativist groups turned against immigrants after the first great influx (1880s–1920), Americans during the 1990s reacted in a strong way against immigrants and illegal aliens. From the efforts of California voters, who passed Proposition 187 in 1994, which attempted to deny illegal aliens social services and education, to the attempts of Republicans to deny welfare for legal immigrants, Americans continued to express concerns about the impact of immigration on the country. In 2006, a debate emerged on what to do about the approximately 12 million illegal immigrants in this country. President George W. Bush proposed a comprehensive immigration bill that would have secured the nation's border while giving illegal immigrants a path to citizenship through a guest worker program. Congress rejected this proposal and voted to build a 700-mile fence to prevent illegal immigrants from coming into the country. The debate over illegal immigration intensified after the 2008 election. In 2010, Arizona passed a very controversial immigration law that gave state authorities the right to stop and check the immigration status of people they felt were illegal immigrants. There was an outcry of opposition from immigration groups, and the Obama administration, through the Department of Justice, challenged the law because the administration claimed that the enforcement of immigration policy is a federal prerogative. The Supreme Court ruled that parts of the law were legal, including the controversial requirement that allows the police to stop and check an immigrant's status. In 2012, President Obama signed an executive order that gave legal status to undocumented children who were brought to the United States before they turned 16 years old, are no older than 30, have been in the United States for at least 5 years, have been convicted of no serious crime, and have a high school diploma, a GED, or a stint in the U.S. military. In the 2012 election, 70 percent of Hispanics

voted for President Obama. When Congress was not able to pass comprehensive immigration reform, President Obama then issued a highly controversial executive action in 2014. According to the U.S. Citizenship and Immigration agency the actions:

> *cracked down on illegal immigration at the border, prioritized deporting felons not families, and required certain undocumented immigrants to pass a criminal background check and pay taxes in order to temporarily stay in the U.S. without fear of deportation.*

These initiatives include:

- Expanding the population eligible for the Deferred Action for Childhood Arrivals (DACA) program to people of any current age who entered the United States before the age of 16 and lived in the United States continuously since January 1, 2010, and extending the period of DACA and work authorization from two years to three years.
- Allowing parents of U.S. citizens and lawful permanent residents to request deferred action and employment authorization for three years, in a new Deferred Action for Parents of Americans and Lawful Permanent Residents program, provided they have lived in the United States continuously since January 1, 2010, and pass required background checks.
- Expanding the use of provisional waivers of unlawful presence to include the spouses and sons and daughters of lawful permanent residents and the sons and daughters of U.S. citizens.
- Modernizing, improving, and clarifying immigrant and nonimmigrant visa programs to grow our economy and create jobs.
- Promoting citizenship education and public awareness for lawful permanent residents, and providing an option for naturalization applicants to use credit cards to pay the application fee."

The program was highly controversial and was criticized by the Republican leadership in Congress and was challenged by the Republican Congress, the governor of Texas, and other states attorneys general. In 2015, a federal court of appeals ruled that the President's actions were illegal and until final appeal is made to the U.S. Supreme Court, the executive action will not be implemented. As a result of the 2016 election, after the Republicans took control of all branches of government, President Trump pledged to reverse the executive order.

One of President Trump's first executive orders was a travel ban aimed at immigrants from seven Muslim countries in the Middle East. The ban was halted as a result of a ruling by the Ninth Circuit Appeals Court. The Trump administration issued a revised order as a result of that ruling.