



Racial Discrimination

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Background

Citizens of the United States are protected against racial [DISCRIMINATION](#) by many laws, including Constitutional protections, [CIVIL RIGHTS](#) statutes, and civil rights regulations. The Fourteenth Amendment, which provides all citizens with [EQUAL PROTECTION](#) of the laws, was ratified in 1868; however, the most significant changes in the law with respect to racial discrimination have occurred in the last fifty years. In this time, a number of landmark events have occurred and a number of landmark laws have been passed that prevent discrimination on the basis of race in many circumstances.

- In 1954, the United States Supreme Court ruled in *Brown v. Board of Education* that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibited [SEGREGATION](#) in public schools on the basis of race. The Court then required public school districts to begin the process of integration "with all deliberate speed."
- The Civil Rights Act of 1964 brought about the most significant changes in civil rights protection in the history of the country. It prohibited racial and other discrimination in employment, education, and use of public accommodations and facilities.
- The **VOTING RIGHTS ACT OF 1965** prevented racial and other forms of discrimination with respect to access to the ballots.
- The Fair Housing Act, part of the Civil Rights Act of 1968, prohibited discrimination in the sale and renting of housing. It also extended these prohibitions to lending and other financial institutions.
- The Civil Rights Act of 1991 was designed to strengthen and improve previous civil rights legislation.

Civil rights laws do not render every form of racial discrimination unlawful. For example, laws do not proscribe general notions of racial prejudice by private individuals in most circumstances. However, when racial prejudices or preferences interfere with the rights of others, then the law is more likely to provide protection. This distinction applies to government entities or business entities engaged in interstate commerce.

Constitutional Protection Against Racial Discrimination

Supreme Court's Involvement in Protections Against Racial Discrimination

The U. S. Supreme Court has been called upon on numerous occasions to address the constitutionality of state actions that may involve racial discrimination. Prior to the enactment of the Thirteenth, Fourteenth, and Fifteenth Amendments to the U. S. Constitution, the Court rendered several decisions on the issue of slavery,

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many of which affected the future of the United States regarding the Civil War. The most significant of these decisions occurred in 1857, when the Court in *Scott v. Sanford* decided that slaves were not "citizens" as the term was used in the Constitution. The Court also determined Congress could not constitutionally prohibit slavery in the territories.

After the enactment of the Constitutional Amendments during the reconstruction period after the Civil War, the Court was called upon to decide a number of issues related to these amendments and civil rights legislation passed during this period. The most significant of these cases was called the **CIVIL RIGHTS CASES**, in which the court restricted considerably the power of Congress to proscribe discrimination by operators of public accommodations. In 1896, the Court ruled in *Plessy v. Ferguson* that the Constitution did not prohibit states from enacting laws that distinguished people of different races. In the fifty years after *Plessy v. Ferguson*, states could constitutionally segregate members of different races under the "separate-but-equal" doctrine. The Court reversed its position in 1954 with the decision in *Brown v. Board of Education*, which also led to the enactment of the civil rights legislation by Congress.

State Action

The Supreme Court has long held that the Constitution applies only to the actions of government, not to the actions of private individuals or entities. This restriction traditionally enabled private individuals to circumvent the rights provided in the Constitution. The first **CASUALTY** was the civil rights statutes passed during Reconstruction after the Civil War. Subsequent cases involved such efforts as those by private individuals to prevent blacks from voting. Since these actions were not officially considered "state actions," the Court held that the Constitution did not apply.

The Court in more modern times has taken a more liberal view of which actions constitute state actions. In some circumstances, a state's approval of private action may constitute state action. Even if an action is not considered a state action, however, modern civil rights legislation may provide protection against private actions that is equivalent to constitutional protection.

Thirteenth Amendment Protections

The United States abolished slavery in the United States when it ratified the Thirteenth Amendment in 1865. Under this amendment, slavery and involuntary servitude, except as punishment for crimes, were outlawed. The amendment also permitted Congress to enact legislation to enforce this amendment. The Supreme Court restricted Congressional power to enforce the act in the Civil Rights Cases in 1883, and relatively little **LITIGATION** occurred over the next eighty years. However, the Court held in the 1968 case of *Jones v. Alfred H. Mayer Co.* that Congressional authority to proscribe private discrimination was granted by the Thirteenth Amendment. Since that time, the Thirteenth Amendment has served as part of the basis of authority under which Congress may enact civil rights legislation.

Fourteenth Amendment Protections

One of the more controversial laws in the history of the United States is the Fourteenth Amendment to the United States. This amendment prohibits government from denying equal protection of the laws or **DUE PROCESS OF LAW** to the citizens of the United States. Defining "equal protection" and "due process," however, has perplexed the U. S. Supreme Court, lower federal courts, and state courts since the **RATIFICATION** of the amendment in 1868. Though ironically the Equal Protection Clause was the basis for such historic doctrines as "separate-but-equal" in *Plessy v. Ferguson*, it has also served as the basic constitutional protection against racial discrimination by government entities in modern civil rights **JURISPRUDENCE**.

Laws designed to give preferences to whites to the detriment of members of the minority races are clearly unconstitutional. More difficult questions are raised with respect to [AFFIRMATIVE ACTION](#) programs designed to give minorities opportunities they may lack due to a history of discrimination. In the past fifteen years, the Supreme Court has struck down several of these programs as unconstitutional. Similar problems have been raised with respect to efforts to [GERRYMANDER](#) voting districts in order to ensure that minority (or nonminority) political candidates have a better chance to win seats. Unless such efforts have been designed to remedy specific instances of discrimination, they are most likely in violation of the Equal Protection Clause.

Fifteenth Amendment Protection

All citizens are guaranteed the right to vote through the Fifteenth Amendment. This amendment, ratified in 1870, was designed to eradicate efforts to disenfranchise blacks during Reconstruction following the Civil War. The Supreme Court limited the application of this amendment in several cases decided between 1876 and 1903, and the Court has traditionally placed much more weight on the Fourteenth Amendment than the Fifteenth Amendment with respect to racial discrimination. This tendency applies even in cases involving allegations of [INFRINGEMENT](#) on the right to vote. The most significant exception was the case of *Smith v. Allwright* in 1944, in which the Supreme Court invalidated an election on the basis of Fifteenth Amendment protections.

State Protections Against Racial Discrimination

The Thirteenth, Fourteenth, and Fifteenth Amendments, by their own terms, apply to the state governments. The Fourteenth Amendment, for example, states, "No State shall . . . deny to any person within its [JURISDICTION](#) the equal protection of the laws." State constitutions and state laws can provide greater protection to prevent racial discrimination than federal constitution guarantees. Since the U. S. Constitution is the supreme law of the land, no state constitution or [STATUTE](#) can restrict the rights granted to all citizens of the United States. In other words, the federal Constitution provides the minimum level of rights to citizens in this country, and states may only raise this level rather than reduce it.

Judicial Review of Constitutional Violations

Supreme Court jurisprudence in the area of racial discrimination is often very confusing due to the terminology used when the Court reviews these cases. When the government classifies people differently, courts will employ various levels of scrutiny to determine whether that classification is constitutionally permissible. Many classifications are generally permissible, such as those classifications that differentiate on the basis of income for tax purposes. These classifications are presumed constitutional and will be upheld unless a party can prove that the government has no rational basis for its decision.

If a government entity makes a classification based on race, courts employ a heightened standard of review. These classifications are presumed to be unconstitutional and will be upheld only if the government can prove that the program is narrowly tailored to address a compelling government interest. Very few government programs that make racial classifications can satisfy strict scrutiny, including many affirmative action programs. The Court's position in this area can shift as new justices join the Court.

Civil Rights Acts and their Applications

History of Civil Rights Acts

Congress attempted to provide a number of rights to members of minority races in the Civil Rights Act of 1875. However, the Supreme Court in the Civil Rights Cases in 1883 significantly curtailed this effort by ruling that Congress did not have the authority to restrict segregation in public accommodations and public conveyances. Only state governments had the power to address racial discrimination by private actors. After the decision in *Plessy v. Ferguson*, states were able to enact legislation segregating the different races, and Congress was powerless to restrict these laws.

Beginning primarily with the Supreme Court's decision in *Brown v. Board of Education* in 1954, the Court established a more expansive view of congressional authority in the area of racial discrimination. Congress enacted a number of statutes between 1957 and 1968 that granted equal rights to all races in education, employment, voting, and many other areas relevant to interstate commerce.

Employment

Employers are prohibited from discriminating on the basis of race, sex, religion, or national origin by the provisions of Title VII of the Civil Rights Act of 1964. To enforce this Act, which neither defines discrimination nor sets forth mechanisms for enforcement, Congress established the Equal Employment Opportunity Commission (**EEOC**). The EEOC views discrimination on a broad level, considering "discrimination" to include not only blatant acts of [BIAS](#) but also programs that have a disparate impact on minorities. The EEOC has enacted numerous regulations that give guidance to employers regarding employment discrimination.

Voting

Despite the enactment of the Fifteenth Amendment, governments and private individuals used a variety of tactics to prevent blacks from exercising their right to vote. Such tactics included poll taxes, property requirements, intimidation, and other mechanisms designed to discourage blacks from voting. To address these inequities, Congress in 1965 passed the Voting Rights Act. Among other provisions, this Act prohibited requirements that voters take literacy tests or pay poll taxes prior to receiving the right to vote. Provisions in other statutes further enhanced voting rights. The Equal Protection Clause of the Fourteenth Amendment provides additional protection against discrimination in voting.

Education

School segregation and desegregation were among the most controversial topics in the civil rights movement in the 1950s and 1960s. The Supreme Court's decision in *Brown v. Board of Education* outlawed segregation of blacks and whites in public schools, though studies have shown that the educational levels of white students and minority students remains unequal. The Civil Rights Act of 1964 prohibits discrimination in education on the basis of race but does not contain mechanisms to ensure that education of all students, minority or nonminority, remains entirely equal.

Initial efforts to ensure educational equality focused on forced integration of students of different races. This effort involved the process of busing students from areas with a largely black population to schools in traditionally white areas. Many of these efforts have been found to be unconstitutional. Schools in higher education sought to provide some level of equality by mandating that a certain number of minorities fill positions in entering classes. However, the Supreme Court in *Bakke v. Board of Regents* ruled that such a requirement violated the Equal Protection Clause. Though some schools continue to consider race as a factor in college admissions, the legality of such considerations are progressively becoming more questionable. For example, in 1996, the Fifth Circuit Court of Appeals ruled in the 1996 case of *Hopwood v. Texas* that the

University of Texas School of Law could not consider race as a factor in the admission of law students, even though the law school traditionally did not admit many minorities.

Housing

Many studies have shown a relationship between school segregation and residential segregation. If whites and minorities are segregated in the areas in which they live, the schools in these areas are more likely to be segregated as well. As noted above, some efforts to desegregate schools focused on busing students from proportionately black areas to proportionately white areas. Even these efforts, however, do not address the problem with segregation in housing. Congress passed the Fair Housing Act in 1968 to prohibit real estate sellers, landlords, and others from discriminating on the basis of race. However, this Act was not enforced or applied routinely for several years, and proving discrimination in housing can be difficult. Though the legal mechanisms to prevent discrimination are in place, societal changes are likely to be necessary to eradicate discrimination in this area.

Remedies for Civil Rights Violations

The Civil Rights Act of 1991 and other federal statutes permit civil actions for a deprivation of civil rights, including violations of constitutional protections, violations of civil rights legislation, or any other antidiscrimination law. Victims of racial discrimination may recover monetary damages, including [PUNITIVE DAMAGES](#) and attorney's fees in appropriate circumstances. Victims may also seek an injunction or other equitable remedy.

State Provisions Regarding Racial Discrimination

Many states have established their own rights related to protection of civil rights, including racial discrimination. Several of these states have established agencies or delegated authority to existing agencies to handle civil rights claims. In some states, civil rights law preempts other ordinary tort actions and in many cases limits the amount of recovery available to litigants with complaints related to violations of civil rights.

ALABAMA: Alabama has not enacted legislation dealing specifically with civil rights.

ALASKA: Complaints for relevant civil rights violations are submitted to the Commission for **HUMAN RIGHTS**. Private actions are permitted, and causes of action are not preempted by administrative action. The [STATUTE OF LIMITATIONS](#) for a civil rights action is one year.

ARIZONA: Complaints for relevant civil rights violations are submitted to the Civil Rights Advisory Board. Private actions are permitted, and causes of action are not preempted by administrative action. The statute of limitations for a civil rights action is generally two years.

ARKANSAS: Private actions are permitted, except for those related to discrimination in public employment. Causes of action are not preempted by administrative action.

CALIFORNIA: Complaints for relevant civil rights violations are submitted to the Department of Employment and Housing. Private actions are permitted, and causes of action are not preempted by administrative action. The statute of limitations for a civil rights action is three years.

COLORADO: Complaints for relevant civil rights violations are submitted to the Civil Rights Commission. Private actions are permitted for some causes of action, but causes of action are preempted by administrative

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action. The statute of limitations for a civil rights action is sixty days.

CONNECTICUT: Complaints for relevant civil rights violations are submitted to the Commission on Human Rights and Opportunities. Private actions are permitted, and only certain causes of action are preempted by administrative action.

DELAWARE: Complaints for relevant civil rights violations are submitted to the Human Relations Commission or Department of Labor. Some private actions are permitted, but causes of action are preempted by administrative action. The statutes of limitations vary depending on the complaint.

DISTRICT OF COLUMBIA: Complaints for relevant civil rights violations are submitted to the Commission on Human Rights. Private actions are permitted, and causes of action are not preempted by administrative action. The statute of limitations for a civil rights action is one year.

FLORIDA: Complaints for relevant civil rights violations are submitted to the Commission for Human Relations. Private actions are not permitted, and causes of action are preempted by administrative action. The statute of limitations for a civil rights action is eighty days.

GEORGIA: Some private causes of action are permitted, but none is preempted by administrative action.

HAWAII: Complaints for relevant civil rights violations are submitted to the Civil Rights Commission or Department of Commerce and Consumer Affairs. Private actions are not permitted, and causes of action are preempted by administrative action. The statute of limitations for a civil rights action is ninety days.

IDAHO: Complaints for relevant civil rights violations are submitted to the Commission on Human Rights. Private actions are permitted, and causes of action are not preempted by administrative action. The statute of limitations for a civil rights action is two years.

ILLINOIS: Complaints for relevant civil rights violations are submitted to the Human Rights Commission and Department of Human Rights. Some private actions are permitted, but causes of action are preempted by administrative action. The statute of limitations for a civil rights action is 180 days.

INDIANA: Complaints for relevant civil rights violations are submitted to the Civil Rights Commission. Private actions are permitted, and causes of action are not preempted by administrative action.

IOWA: Complaints for relevant civil rights violations are submitted to the Civil Rights Commission. Private actions are permitted, but causes of action are preempted by administrative action. The statute of limitations for a civil rights action is 180 days.

KANSAS: Complaints for relevant civil rights violations are submitted to the Commission on Human Rights. Some private actions are permitted, but causes of action are preempted by administrative action. The statutes of limitations for civil rights actions vary depending on the complaint.

KENTUCKY: Complaints for relevant civil rights violations are submitted to the Commission on Human Rights. Private actions are permitted, but causes of action are preempted by administrative action. The statute of limitations for a civil rights action is 180 days.

LOUISIANA: Louisiana civil rights statutes are limited to those regarding the handicapped.

MAINE: Complaints for relevant civil rights violations are submitted to the Human Rights Commission. Private actions are permitted, but causes of action are preempted by administrative action. The statute of

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limitations for a civil rights action is six months.

MARYLAND: Complaints for relevant civil rights violations are submitted to the Commission on Human Relations. Private actions are not permitted, and causes of action are preempted by administrative action. The statute of limitations for a civil rights action is six months.

MASSACHUSETTS: Complaints for relevant civil rights violations are submitted to the Commission Against Discrimination. Some private actions are permitted, and some causes of action are preempted by administrative action. The statutes of limitations vary depending on the complaint.

MICHIGAN: Complaints for relevant civil rights violations are submitted to the Civil Rights Commission. Private actions are permitted, and causes of action are not preempted by administrative action.

MINNESOTA: Complaints for relevant civil rights violations are submitted to the Department of Human Rights. Private actions are permitted, and causes of action are not preempted by administrative action. The statute of limitations for a civil rights action is one year.

MISSISSIPPI: Complaints for relevant civil rights violations are submitted to the Home Corporation Oversight Committee. Private actions are not permitted, and causes of action are preempted by administrative action.

MISSOURI: Complaints for relevant civil rights violations are submitted to the Commission on Human Rights. Some private actions are permitted, and some causes of action are preempted by administrative action. The statutes of limitations vary depending on the complaint.

MONTANA: Complaints for relevant civil rights violations are submitted to the Commission for Human Rights. Some private actions are permitted, and some causes of action are preempted by administrative action. The statutes of limitations vary depending on the complaint.

NEBRASKA: Complaints for relevant civil rights violations are submitted to the Equal Opportunity Commission. Private actions are permitted, but some causes of action are preempted by administrative action. The statute of limitations for a civil rights action is 180 days.

NEVADA: Complaints for relevant civil rights violations are submitted to the Equal Rights Commission, Labor Commission, or Banking Division. Private actions are permitted, but some causes of action are preempted by administrative action. The statutes of limitations vary depending on the complaint.

NEW HAMPSHIRE: Complaints for relevant civil rights violations are submitted to the Commission for Human Rights. Private actions are permitted, and causes of action are not preempted by administrative action. The statute of limitations for a civil rights action is 180 days.

NEW JERSEY: Complaints for relevant civil rights violations are submitted to the Division on Human Rights. Private actions are permitted, and causes of action are not preempted by administrative action. The statute of limitations for a civil rights action is 180 days.

NEW MEXICO: Complaints for relevant civil rights violations are submitted to the Human Rights Commission. Private actions are permitted, but causes of action are preempted by administrative action. The statute of limitations for a civil rights action is 180 days.

NEW YORK: Complaints for relevant civil rights violations are submitted to the Division of Human Rights, Banking Department, or State Human Rights Appeal Board. Private actions are permitted, and causes of

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action are not preempted by administrative action. The statute of limitations for a civil rights action is usually one year.

NORTH CAROLINA: Complaints for relevant civil rights violations are submitted to the Human Relations Commission. Private actions are not permitted, and causes of action are not preempted by administrative action.

NORTH DAKOTA: Complaints for relevant civil rights violations are submitted to the Department of Labor. Private actions are permitted, and causes of action are not preempted by administrative action. The statutes of limitations vary depending on the complaint.

OHIO: Complaints for relevant civil rights violations are submitted to the Civil Rights Commission. Some private actions are permitted, and causes of action are preempted by administrative action. The statutes of limitations vary depending on the complaint.

OKLAHOMA: Complaints for relevant civil rights violations are submitted to the Human Rights Commission. Private actions are not permitted, and causes of action are preempted by administrative action. The statute of limitations for a civil rights action is 180 days.

OREGON: Complaints for relevant civil rights violations are submitted to the Bureau of Labor and Industries. Private actions are permitted, and causes of action are not preempted by administrative action. The statute of limitations for a civil rights action is one year.

PENNSYLVANIA: Complaints for relevant civil rights violations are submitted to the Human Rights Commission. Private actions are permitted, and causes of action are not preempted by administrative action. The statute of limitations for a civil rights action is 180 days.

RHODE ISLAND: Complaints for relevant civil rights violations are submitted to the Commission for Human Rights or the Department of Labor. Some private actions are permitted, and some causes of action are preempted by administrative action. The statutes of limitations vary depending on the complaint.

SOUTH CAROLINA: Complaints for relevant civil rights violations are submitted to the Human Affairs Commission. Private actions are permitted, and causes of action are not preempted by administrative action. The statute of limitations for a civil rights action is 180 days.

SOUTH DAKOTA: Complaints for relevant civil rights violations are submitted to the Commission of Humanities. Private actions are permitted, and causes of action are not preempted by administrative action. The statutes of limitations vary depending on the complaint.

TENNESSEE: Complaints for relevant civil rights violations are submitted to the Human Rights Commission. Private actions are permitted, and causes of action are not preempted by administrative action. The statutes of limitations vary depending on the complaint.

TEXAS: Complaints for relevant civil rights violations are submitted to the Department of Human Resources. Private actions are permitted, and causes of action are not preempted by administrative action.

UTAH: Complaints for relevant civil rights violations are submitted to the Antidiscrimination Division. Some private actions are permitted, and some causes of action are preempted by administrative action. The statutes of limitations vary depending on the complaint.

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VERMONT: Complaints for relevant civil rights violations are submitted to the Human Rights Commission. Private actions are permitted, and causes of action are not preempted by administrative action. The statutes of limitations vary depending on the complaint.

VIRGINIA: Private actions are permitted, and causes of action are not preempted by administrative action. The statutes of limitations vary depending on the complaint.

WASHINGTON: Complaints for relevant civil rights violations are submitted to the Washington State Human Rights Commission. Private actions are permitted, and causes of action are not preempted by administrative action. The statute of limitations for a civil rights action is six months

WEST VIRGINIA: Complaints for relevant civil rights violations are submitted to the Human Rights Commission. Private actions are permitted, and causes of action are not preempted by administrative action. The statute of limitations for a civil rights action is 180 days.

WISCONSIN: Complaints for relevant civil rights violations are submitted to the Department of Industry, Labor, and Human Relations. Some private actions are permitted, and some causes of action are preempted by administrative action. The statutes of limitations vary depending on the complaint.

WYOMING: Complaints for relevant civil rights violations are submitted to the Fair Employment Commission. Private actions are permitted, and causes of action are not preempted by administrative action. The statute of limitations for a civil rights action is two years.

Additional Resources

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Organizations

American Civil Liberties Union (ACLU)

125 Broad Street, 18th Floor
New York, NY 10004 USA
Phone: (212) 344-3005

URL: <http://www.aclu.org/>

Center for Equal Opportunity (CEO)

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0 Sterling, VA> 20165 USA
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Fax: (703) 421-6401
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URL: <http://www.ceousa.org/>

Primary Contact: Linda Chavez, President

Equal Employment Opportunity Commission (EEOC)

1801 L Street, N.W.
Washington, DC 20507
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URL: <http://www.eeoc.gov/>

National Association for the Advancement of Colored People (NAACP)

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