

The 14th Amendment

Transforming American Democracy

2017 Law Week Presentation



Lesson Overview

During this presentation, participants will learn about the history and impact of the 14th Amendment through a discussion of scenarios and cases. Participants will also learn about the role of the courts in protecting the rights of the people.

Objectives: Participants will –

- Identify and name the clauses found within the 14th Amendment
- Examine the purpose of the 14th Amendment
- Apply the 14th Amendment to scenarios based on court cases
- Examine the role of the courts and judicial decision making
- Differentiate between the judicial branch and other branches of government

Time: 30 - 45 minutes

Materials:

- Computer
- Projector
- 14th Amendment PowerPoint
- Handout A: The 14th Amendment
- Optional IVP Handout: Defending Justice. Protecting Citizens.
- Optional IVP Handout: Politics and Special Interests Have No Place in Our Courtrooms



Defending Justice. Protecting Citizens.

Fair and Impartial Courts play a critical, stabilizing role in our democracy

In America, courts exist to protect people and their rights, to guarantee fairness and justice for all. The prosecution of justice through the nation's courts reflects the essential role of our courts, from the smallest traffic offense to the most serious criminal case. Unlike legislators, judges must stand apart from politics and provide fair and impartial resolution of disputes.

Let's face it – life isn't always fair

A courtroom is the place to go to fight a wrong or address an injustice. The peaceful resolution of differences depends on fair judges. When we are involved in a lawsuit, we need to have confidence that judges will decide our case on the basis of the law and the evidence presented – with no consideration of the political affiliation of the individuals involved or who their support or oppose a particular outcome. We want judges dedicated to fair and impartial, not fair friends who win and those who lose know they received a fair hearing and can trust the process.

We must not take the rule of law for granted

In some countries, judges cannot be trusted to decide cases fairly and impartially. They are subject to outside pressures from those the government. Our Constitution creates the judicial branch separate from the other branches of government, so that the courts can provide decisions free from politics and special interests.

Judicial selection systems must guard against those seeking to tip the scales

While federal judges are appointed to life, state judges are selected differently. In some states, judges are chosen by direct election. In others, they are appointed through a judicial selection process and voters decide whether they will be retained in office. To make sure they are selected, a judge's ability to make fair and impartial decisions should not be threatened by the politics of the moment or influenced by special interests.



Because our courts must protect the poor, the minority and the unpopular, as well as the rich and powerful, we must defend the courts from improper political interference and pressure from special interests.

Voters play a critical role

The judicial process is threatened when large amounts of money and political pressure are applied to influence how cases are decided in the courts. Voters play a critical role in ensuring the courts from those attacks and pressures by determining the best judicial selection process, especially when it pertains to the courts, and participating in and choosing fair and impartial state court judges. To do this, voters must be fully informed about the value and importance of fair and impartial courts and the role of the courts in our system of government.

Voters who know that special interest attacks and political interference or pressures have no place in the courts will reject efforts to politicize judicial races. When we, as voters, understand what judges do and how the courts are supposed to work, we are more likely to vote based on a judge's character, integrity and willingness to decide cases based on the law and the evidence.



POLITICS AND SPECIAL INTERESTS HAVE NO PLACE IN OUR COURTROOMS

The rule of law is the cornerstone of democracy and we rely on our courts to uphold it. So it is no exaggeration to say that the future of democracy is at stake when partisan or political interests seek to seize control of our courts. And they are doing precisely that!

The threat is all too real. Our courts and judges are under siege for doing their job—deciding cases based on the evidence and the law, and not on the basis of some preconceived political agenda or ideology. And the politicians and special interests don't like it. They would have you believe any ruling that doesn't go their way is "judicial activism."

Unlike our representatives in the legislature, we depend on our judges to stand apart from politics and partisan ideas, and to focus on the fair resolution of our problems and disputes under the Constitution and laws. Judges should not be subject to influence by special interests, or fear losing their job because powerful outside groups dislike a particular decision.



IT IS TIME FOR US TO STAND UP FOR FAIR AND IMPARTIAL COURTS

Our courts have demonstrated the ability to uphold our basic rights with fair and impartial rulings based solely on the Constitution and laws. It is up to you as a voter to help keep it that way.

- Inform yourself about your state's courts and judges.
- Vote for judges based on their character, integrity, fairness and willingness to decide cases based on the law.

OUR DEMOCRACY DEPENDS ON IT



Preparation

- Print and review all presentation materials
- Print the PowerPoint in “Notes View” as there are presentation notes included in the presentation
- Read/review the American Bar Association’s resources on the 14th Amendment:
 - http://www.americanbar.org/groups/public_education/initiatives_awards/law-day/law_day_guide_2017.html
- View Iowa Supreme Court Justices removal campaign ad:
<https://www.youtube.com/watch?v=zOrUi0HEqgk>
- View summary video of the Loving v. Virginia case (may want to show to the audience, time permitting)
https://search.aol.com/aol/video?q=video+clips+and+loving+US+Supreme+court+decision+case+study+interracial&s_it=video-ans&sfVid=true&videoId=088DF888A63A3E764E47088DF888A63A3E764E47&v_t=webmail-searchbox

Procedures

Divide the larger group into small groups of 2-3. Provide Handout A: The 14th Amendment. Working in their pair/group, participants should read the 14th amendment and circle/underline/highlight the different sections/clauses of the text that address specific components. Once they have identified the different sections, participants should name each section with an appropriate title or subtitle to designate the main theme/idea. Note: Audience may highlight citizen definition and privileges and immunities clause; due process clause; and equal protection clause.)

Select a few groups to report on the sections identified and provide the title they assigned. The PowerPoint will go on to outline each clause and the text contained therein.

The 14th Amendment told the states they, too, must observe due process and afford all people equal protection under the law. It also defined citizen for the first time.

Citizenship Clause/Privileges and Immunities: Following the Civil War, there was much debate about the citizenship status of former slaves (Amendment 13). This was remedied with the Fourteenth Amendment, providing a definition of a citizen of the United States.

- Provided for a definition of citizenship
- Granted citizenship to former slaves
- Prohibited states from infringing on rights

Due Process Clause: Highlight that the 14th Amendment clarifies “nor shall any state deprive any person...”

- Impact: Requires state and local governments to administer fair and just legal proceedings
- Due process can be classified as substantive due process (is the substance of the law fair?) or procedural due process (are the processes and procedures being applied fairly?)

Equal Protection Clause: The Equal Protection clause requires states to treat every person within their territory equal before the law.

Group Discussion Ask the audience who the Constitution protects you from. Using the scenarios provided in the PowerPoint, have the audience work in small groups or as a full group to determine if the scenarios are fair and to apply the 14th Amendment to these situations. You can add others as well (present or historical) that may be applicable. Examples found in the PowerPoint presentation:

Are separate educational facilities for different races a violation of the 14th Amendment equal protection clause? (*Brown v. Board of Education*)

How about segregation in prisons? (*Lee v. Washington*)

What if a state law or code gave preference to a male relative serving as administrator of an estate over a female relative? (*Reed v. Reed*)

Can students be expelled from school without a hearing or notification? (*Goss v. Lopez*)

Follow up questions for discussion: How can we ensure equal protection under the law? If you think a law is unfair or unconstitutional what can you do? If you think a governmental process is unfair what can you do?

Continue with the PowerPoint. Discuss the role of the courts as the protector of rights outlined in the U.S. Constitution. The judicial branch was created to be insulated (protected) from external pressures that exist on the other branches of government – public opinion, influence of special interest groups and politics, etc. It was not structured to be a political or representative branch. The judicial branch resolves disputes through a legal process, interprets and applies the law, determines if a law is unconstitutional, and protects the rights of the people.

Ask the audience how judges make decisions. Judges make decisions based on the facts and the law and must be fair and impartial in interpreting and applying the law. Judges must follow: U.S. and State Constitutions, case law/precedent, statutory law, sentencing guidelines, court procedures/rules, and the Code of Judicial Conduct.

Group Discussion Ask the audience what would be some characteristics and considerations for selecting a judge in their state. The PowerPoint will provide some of the top answers; record other responses from the group.

Ask the audience what may happen if judges decided cases based solely on what the public, special interest groups, or politicians wanted? The PowerPoint will provide examples through the cases of *Brown v. Board of Education* and *Loving v. Virginia* (video clip is provided in presenter notes should the presenter wish to show the audience a brief video clip - Video clip describing case:

https://search.aol.com/aol/video?q=video+clips+and+loving+US+Supreme+court+decision+case+study+interracial&s_it=video-

[ans&sfVid=true&videoId=088DF888A63A3E764E47088DF888A63A3E764E47&v_t=webmail-searchbox](https://search.aol.com/aol/video?q=video+clips+and+loving+US+Supreme+court+decision+case+study+interracial&s_it=video-ans&sfVid=true&videoId=088DF888A63A3E764E47088DF888A63A3E764E47&v_t=webmail-searchbox)). Highlight how judges faced backlash from the rulings in those cases, including

advertisements calling for the impeachment of Justice Earl Warren. In a contemporary example, highlight the 2010 Iowa Merit Retention Campaign where judges faced a removal campaign after a controversial same-sex marriage ruling. All three Iowa Supreme Court justices who were facing merit retention were removed from office. See presentation notes in PowerPoint.

Continuing with the presentation, discuss the quote provided about constitutional questions being decided by “public political bargaining” and the impact that could have. Discuss the quote from Justice Antonin Scalia about judicial decision making. Emphasize that it is the role of judges to make decisions based on the law, insulated from outside pressures such as public opinion, media, and political influence. Briefly discuss some challenges faced by the judiciary including civic illiteracy (lack of knowledge about the role of the judicial branch), labeling judges, politicizing judicial decisions, and dark money spending in judicial elections.

Conclude by providing information on the Informed Voters Project and where the audience can find accurate, nonpartisan information on fair and impartial courts.

Presentation Sources/Resources:

http://www.americanbar.org/groups/public_education/initiatives_awards/law-day/law_day_guide_2017.html

http://www.americanbar.org/groups/public_education/initiatives_awards/law-day/law_day_dialogue_2017.html

347 U.S. 483 *Brown v. Board of Education of Topeka* (No. 1.)

"*Loving v. Virginia*." *Oyez*, <https://www.oyez.org/cases/1966/395>. Accessed 7 Mar. 2017.

For additional information on presenting this Law Week presentation, contact Annette Boyd Pitts at info@ivp.nawj.org or staff@flrea.org.

14th Amendment to the U.S. Constitution

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.