UNITED STATES SUPREME COURT

GRADES 9-12

HIGH SCHOOL LESSON PLAN
EQUAL PROTECTION UNDER LAW

14th Amendment to the U.S. Constitution

Brown v. Board of Education

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Great Public Schools for Every Student
High School Lesson Plan

Equal Protection under Law
14th Amendment to the U.S. Constitution

Brown v. Board of Education

Grade level: 9-12

Common Core Standards

English Language Arts Standards » Reading: Informational Text » Grade 11-12 » 8
Delineate and evaluate the reasoning in seminal U.S. texts, including the application of constitutional principles and use of legal reasoning (e.g., in U.S. Supreme Court majority opinions and dissents) and the premises, purposes, and arguments in works of public advocacy (e.g., The Federalist, presidential addresses).

English Language Arts Standards » Reading: Informational Text » Grade 11-12 » 9
Analyze seventeenth-, eighteenth-, and nineteenth-century foundational U.S. documents of historical and literary significance (including the Declaration of Independence, the Preamble to the Constitution, the Bill of Rights, and Lincoln’s Second Inaugural Address) for their themes, purposes, and rhetorical features.

English Language Arts Standards » Writing » Grade 11-12 » 9 » b
Apply grades 11-12 Reading standards to literary nonfiction (e.g., “Delineate and evaluate the reasoning in seminal U.S. texts, including the application of constitutional principles and use of legal reasoning [e.g., in U.S. Supreme Court Case majority opinions and dissents] and the premises, purposes, and arguments in works of public advocacy [e.g., The Federalist, presidential addresses]”).

English Language Arts Standards » History/Social Studies » Grade 9-10

Key Ideas and Details

CCSS.ELA-LITERACY.RH.9-10.3
Analyze in detail a series of events described in a text; determine whether earlier events caused later ones or simply preceded them.

Craft and Structure

CCSS.ELA-LITERACY.RH.9-10.4
Determine the meaning of words and phrases as they are used in a text, including vocabulary describing political, social, or economic aspects of history/social science.

CCSS.ELA-LITERACY.RH.9-10.5
Analyze how a text uses structure to emphasize key points or advance an explanation or analysis.

CCSS.ELA-LITERACY.RH.9-10.6
Compare the point of view of two or more authors for how they treat the same or similar topics, including which details they include and emphasize in their respective accounts.

Integration of Knowledge and Ideas

CCSS.ELA-LITERACY.RH.9-10.7
Integrate quantitative or technical analysis (e.g., charts, research data) with qualitative analysis in print or digital text.

CCSS.ELA-LITERACY.RH.9-10.8
Assess the extent to which the reasoning and evidence in a text support the author’s claims.

CCSS.ELA-LITERACY.RH.9-10.9
Compare and contrast treatments of the same topic in several primary and secondary sources.

Range of Reading and Level of Text Complexity

CCSS.ELA-LITERACY.RH.9-10.10
By the end of grade 10, read and comprehend history/social studies texts in the grades 9-10 text complexity band independently and proficiently.
Part I: Content

[This part of the lesson should be used to go over the basics of the Supreme Court. Students should learn that the Supreme Court was established by Article III of the Constitution, what the Court’s legal role is, how many justices there are, and how those justices get appointed. Where possible, the instructor should elicit the response from the students, but answers to the questions are provided in case no one in the class answers the question or if you have to supplement the answer that is given.]

- Who can tell me the names of the three branches of the U.S. Government? Executive, legislative, and judicial.

- Today we are going to talk about the judicial branch. Does anyone know what the highest court of the judicial branch is? The Supreme Court. The Supreme Court is the highest court in our system.

- Can anyone tell me how the Supreme Court was created? The Supreme Court was created in the U.S. Constitution in Article III, Section I.

- Does anyone know how justices are appointed to the Court? Whenever there is a vacancy on the Supreme Court, it is the President’s job under the Constitution to appoint the next justice. Then it’s the job of the Senate to provide “advice and consent” to the nomination.

- What do you think “advice and consent” means? The Constitution doesn’t say what “advice and consent” means, but it has traditionally meant that the individual senators meet with the nominee, the Senate holds hearings looking into the nominee’s judgment and qualifications, and then the Senate takes an up-or-down vote on the nominee.

- Who knows how many justices usually sit on the Supreme Court? Nine.

- Who knows how many justices sit on the Supreme Court today? Eight.

- That seems strange. Does anyone know why there are only eight justices on the Court today? Justice Antonin Scalia passed away in February 2016. President Obama nominated Judge Merrick Garland, one of the most experienced and respected judges in the country, to replace him. So far, the Senate has refused to hold hearings or a vote on Judge Garland, so the Court is left with only eight justices.

- Is this unusual? Yes. This is the first time since 1875 that a nominee for the Supreme Court hasn’t received either a hearing or a vote.
Part II: Reinforcement

[This section of the lesson is designed to get students thinking about the role of the Court and how it might impact their lives. Through class discussion, try to get the students in the room to start thinking about the way that the Court might affect them, even before they graduate from high school or become adults. Where possible, the instructor should elicit the response from the students, but answers to the questions are provided in case no one in the class answers the question or if you have to supplement the answer that is given.]

• So now that we’ve gone over some of the basics, can anyone tell me what the Supreme Court’s job is? *The Supreme Court’s job is to decide disputes between the states and, most importantly, to decide important questions of federal law.*

• Who can tell me what federal law is? Where does it come from? *Federal law mostly comes from two places: laws passed by Congress and the U.S. Constitution.*

• What are some of the rights we have under our Constitution? *Speech, assembly, religion, petition, freedom from unlawful searches and seizures, right to a lawyer, etc.*

• Can anyone think of some ways that the Supreme Court impacts your life right now, as students and teenagers? *Allow for a few minutes of discussion.*
Part III: Equal Protection under Law

[This section of the lesson should be used to help students understand the concept of equal protection under the 14th Amendment of the U.S. Constitution. Students should learn that the government cannot treat people differently for illegitimate reasons.]

During and immediately after the Civil War, Congress passed the three amendments to the U.S. Constitution known as the Reconstruction Amendments. The 13th Amendment abolished slavery, the 14th Amendment guaranteed the rights of due process and equal protection to all citizens, and the 15th Amendment prohibited discrimination in voting rights on the basis of race or color. The 14th Amendment is to this day the source of many of the rights we take for granted as Americans.

- Does anyone know what it means to have equal protection under law? *It means that the government cannot treat you differently for an illegitimate reason.*

- Can anyone think of some legitimate reasons for the government to treat people differently? *What about prisoners? What about people under the age of 18? Under the age of 21? What about requiring college degrees or advanced training for government jobs? What about benefits given to military service-members and their families? What about senior citizens?*

- What are some illegitimate reasons for the government to treat people differently? *Race, color, religion, gender, national origin, LGBT status, etc.*

- Can you think of any examples of a time when our government treated people differently for those reasons? *Jim Crow, disenfranchisement of racial minorities and women, Japanese internment camps.*

The 14th Amendment today protects against discrimination by the government for an illegitimate purpose, such as race, color, ethnicity, national origin, gender, or religion. However, the scope of the 14th Amendment’s protections has changed over time, as the Supreme Court uses it to protect people from discrimination. The next two cases we will examine are two instances of how the Court interpreted the scope of the 14th Amendment to prohibit certain kinds of discrimination.
Part IV: Brown v. Board of Education

In America in the 1950s, despite being almost a century after the end of the Civil War, 17 states and Washington D.C. required that public schools be segregated on the basis of race, and four other states allowed cities and towns to segregate their schools if they wanted to. In these states and localities, white students went to one school and students of color went to another, separate school. Most of the time, the school for the students of color had less funding, worse facilities, and poorly-paid teachers.

Activists filed lawsuits challenging segregation in Kansas, South Carolina, Virginia, Delaware, and the District of Columbia on behalf of black elementary students attending segregated schools. In the lower courts, all five cases failed, and those courts concluded that racial segregation did not violate the Constitution. Some of the plaintiffs lost their jobs, many received threats, and one plaintiff’s house was eventually burnt down. However, they persisted and, in 1952, the Supreme Court combined the cases and agreed to decide whether or not segregation in schools was unconstitutional.

The plaintiffs were represented by Thurgood Marshall. Marshall was the grandchild of slaves who argued 32 cases before the Supreme Court before becoming the first black Supreme Court justice. Marshall argued that separate schools were inherently unequal and that state-imposed segregation was discriminatory and had a negative impact on black students across the country.
The Supreme Court held unanimously that segregated public schools were unconstitutional:

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms ... We conclude that, in the field of public education, the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the 14th Amendment."

Discussion questions

• How different would the country be if this case had been decided differently?

• What are the advantages and disadvantages of the Supreme Court issuing a ruling that many people disagree with? Should Supreme Court justices consider public opinion before they make their rulings?
Part V: Behind the Scenes in *Brown*

*Brown* was first argued in 1952. At that time, the justices of the Court, who had all been appointed by President Franklin Delano Roosevelt and President Harry Truman, were deeply divided over the issue. Four of the justices wanted to rule that segregation was unconstitutional. Two other justices hated segregation but thought that, since it had been considered legal for 75 years, judges should be careful about declaring it unconstitutional. The other three justices were opposed to declaring segregation to be unconstitutional.

- Do you think justices should worry about overturning laws that people have thought were constitutional for a long time? Does the type of law matter?
- Why might it be important for judges to be careful before they overturn laws?
- What would you have said to try to convince the other judges to side with the four who wanted to overturn segregation in schools?

The justices decided to have the lawyers argue the case again in 1953. Before the case could be reargued, Chief Justice Vinson, who did not want to overturn segregation, died of a heart attack. He was replaced by Chief Justice Earl Warren, who wanted to declare segregation unconstitutional. Justice Warren worked tirelessly with the other justices and, eventually, convinced them all to vote to end segregation in schools.

- Do you think it is better that the Court ruled unanimously to end segregation? Why might a unanimous opinion be better than a divided opinion?
- What does this case say tell you about the importance of who sits on the Supreme Court?
- Do you think it would have been better for Congress to pass a law outlawing segregation in public schools? Why?
Part VI: Obergefell v. Hodges

[Use this case primarily as a contrast to Brown.]

In 2015, the Supreme Court ruled that gay and lesbian couples have a right under the Constitution to get married. Unlike Brown, that case was not decided unanimously. Instead, the Supreme Court ruled that the Constitution guarantees the right to gay marriage by a 5-4 vote, meaning that if even one justice was a different person, the case might have come out differently.

- What are some disadvantages of a 5-4 ruling?
- What does this tell you about the decisions about who gets to be a Supreme Court justice?
- Would the Obergefell decision be better if it had been unanimous? Why?
Part VII: Conclusion

- We’ve looked at a unanimous case and a 5-4 case. What would happen if the Court today divides 4-4? Can you think of any bad consequences? A 4-4 decision affirms the ruling of the lower court that heard the case before it was appealed to the Supreme Court. A tied decision does not set binding, nationwide precedent. One result could be that federal law takes on different meanings depending on how the law is interpreted by federal courts in each state or region.

- What kind of people do you think should serve on the Supreme Court?

- What should the President take into account before appointing a justice?

- What should the Senate consider before confirming a justice?

Resources

National Constitution Center: www.constitutioncenter.org

U.S. Constitution and related documents:
www.archives.gov/exhibits/charters/charters_downloads.html

Brown v. Board of Education historic site: www.nps.gov/brvb/index.htm

National Education Association: www.nea.org/lac