

## Modern Civil Rights Issues



### Affirmative Action

*This is a policy designed to address the consequences of previous discrimination by providing special consideration to individuals based upon characteristics such as race, ethnic origin, gender, disability, and age.*

Affirmative action benefits individuals who are members of groups that faced discrimination in the past. An example of such action has been seen at some colleges and universities who sought to boost enrollment of racial and ethnic minorities, who were underrepresented on their campuses.

**Opponents** believe that affirmative action creates reverse discrimination against majority groups and that it harms minorities by tainting the admission process.

**Proponents** believe that affirmative action programs are necessary to ensure equality for those who have faced discrimination and come from economically marginalized backgrounds.

Over the last few decades, the Supreme Court has considered these arguments under the equal protection clause of the Fourteenth Amendment.

In 1978, the case of ***Regents of the University of California v. Bakke*** concerned the use of quotas, a form of affirmative action that set aside a number of places at a school, contracts with the government, or job opportunities for groups that have experienced past discrimination. Alan Bakke, who is white, sued the regents of the University of California at Davis after he was denied admission to its medical school. He argued that his academic record was much better than sixteen minority students whose places had already been reserved. His argument was based on the equal protection clause of the Fourteenth Amendment. The Court agreed that the quota system violated Bakke's rights and those of other white applicants and instructed the school to admit him. However, the Court also affirmed the worthiness of the goal of increasing minority student enrollment, leaving open the possibility for affirmative action plans that did not involve strict quotas.

In the years after *Bakke*, several rulings were made that attempted to define the limits of permissible affirmative action. In 2003, the Court made two rulings on the same day that tried to draw a clearer distinction between acceptable and unacceptable affirmative action programs.

In ***Gratz v. Bollinger***, the Court considered the use of a points system in undergraduate admissions decisions. The university ranked applicants on a 100-point scale, where points were awarded in a variety of areas such as academics, residency, public service, sports, and legacy status (having a parent or family member who was an alumni). First-year and transfer students were automatically given 20 points, enough to guarantee admission to any minimally-qualified member of those groups. In the ***Gratz*** case, the Court ruled that the points system was unconstitutional because it was not “narrowly tailored” and made race the decisive factor for admitting students from underrepresented groups. However, the Court did not strike down the use of race or ethnicity as one of the many factors in admissions decisions.

In ***Grutter v. Bollinger***, also in 2003, the Court affirmed the possibility of using race and ethnicity in admissions decisions. Unlike the admissions system at the undergraduate level, the law school did not use a points system, but it did include race as a factor to be considered in admission decisions. By a 5-4 vote, the Court ruled that the university could use race as a factor as long as it could show that it had a “compelling interest” to do so. They further stated that ensuring a diverse student population demonstrates such an interest.

Twenty years, later, in 2023, the Supreme Court ruled that affirmative action programs were unconstitutional. In the cases of ***Students for Fair Admissions v. University of North Carolina*** and ***Students for Fair Admission v. President and Fellows of Harvard College***, it was stated that both universities used race as one of the many factors in their college admissions process. The Court ruled that racially based affirmative action programs violated the equal protection clause of the Fourteenth Amendment, as it provided that the law applied to everyone, regardless of race. The opinion of the Court stated:

*“Because Harvard’s and UNC’s admissions programs lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping and lack meaningful end points, those admissions programs cannot be reconciled with the guarantee of the Equal Protection Clause.”*

However, the decision does allow a discussion of race in a student’s letter of application.

Also, the decisions of overturning race for admissions has created an argument to also end legacy admissions, the preferential admission status given to children and grandchildren of alumni. The argument is that legacy admissions decrease diversity and give an unfair advantage to applicants related to alumni.



### **The Fight for the Rights of Women and Other Groups**

The **Women’s Rights Movement** took place in two waves. The first, in the nineteenth century, focused on the right to vote. The second wave, which started in the middle of the twentieth century, focused on equality in the classroom and the workplace.

The **Nineteenth Amendment** from 1919 and ratified in 1920, gave women the right to vote nationwide. **“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation.”**

The second wave of the women’s rights movement began in the 1960’s. The key issues were inequalities at work and in the home, as well protection from violence and sexual harassment.

The **Civil Rights Act of 1964** was crucial to these legislative and legal efforts. **Title VII** of the act prohibits discrimination in employment based on race, color, religion, national origin, or sex. In 1966, the **National Organization for Women (NOW)** put pressure on the federal government to enforce national antidiscrimination laws and along with other advocacy groups, women secured protections against discrimination based on gender, pregnancy, and childbirth. Many of these laws contain language making it illegal to retaliate against employees who file discrimination claims. Protections against gender discrimination apply not just to the workplace but also to schools, and to state and local governments.



## Title IX – Women’s Rights and Public Policy

Part of the **Education Act**, passed in 1972, created provisions that protect women’s equality in education. **Title IX of the Education Amendment of 1972** created legislation prohibiting sex discrimination in schools receiving federal aid, which had the impact of increasing female participation in sports programs. It is to be noted that the provisions also apply equally to curriculum, health care, and residential life.

Of note is that fewer than 300,000 girls played high school sports in 1974 yet by the 2023-24 school year, more than 3.24 million girls played high school sports.



The lady with the white hat is “Battling Bella,” Bella Abzug, a famous Bronx, New York female activist and lawyer.

### The Equal Rights Amendment (ERA)

The women’s rights movement **failed** to secure ratification of the Equal Frights Amendment (ERA). The proposed amendment read:

**“Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.”**

The amendment easily cleared both the House of Representatives and the Senate by 1972 and by 1977, thirty-five of the required thirty-eight states had ratified the ERA. However, no more states would ratify the amendment so it failed. Congress even extended the ratification deadline until 1982 but the necessary votes never came and in 1982, the amendment died. Despite not being passed, the debate over its ratification increased awareness for women’s rights.

## **The Violence Against Women Act**

This was passed in 1994 and it strengthened tougher penalties for domestic violence and created programs to assist victims of domestic violence, dating violence, sexual assault, and stalking. The act also stated that victims did not have to pay for rape kits or for services necessary to obtain a protective order and that protective orders will be recognized by every state and tribal jurisdiction within the United States.

The bill also allocated funds for the training of police, prosecutors, victim advocates, and judges so that they could better handle domestic violence cases and support services for victims. To better assist victims, a **National Domestic Violence Hotline** was created. The Violence Against Women Act was reauthorized in 2023, with new protections against online abuse and harassment and also added more protections for Indigenous communities.

## **Supreme Court Decisions on Gender Discrimination and Sexual Harassment**

The court system has helped women protect their civil rights. The Supreme Court uses three different standards to determine the constitutionality of laws that treat people differently based on their characteristics.

In cases involving race discrimination, the Court applies a standard of **strict scrutiny**, the same standard applied in overturning affirmative action.

At the other end of the spectrum, the Court uses the **rational basis standard**, where differential treatment must be shown to be reasonable and not arbitrary. An example covers air traffic controllers who must retire by age 56 because it is reasonably argued that that is the age where their focusing diminishes and it affects the demands of the job.

Cases involving gender discrimination fall somewhere between these two standards. Here, the Court uses **intermediate scrutiny**. Gender is not placed on the same level as race but cases of gender discrimination are judged on a higher standard than cases of age or disability. In general, the Court has found that most forms of differential treatment for men and women to be unconstitutional, except where such treatment can be justified as serving important governmental objectives. Such an issue is that the law requires men, and not women, to register for the draft.

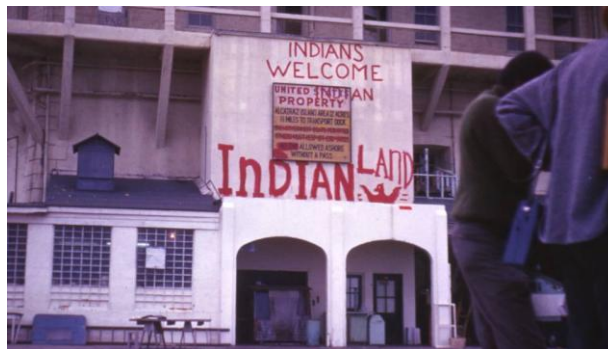
Title VII of the Civil Rights Act of 1964 does not specifically mention sexual harassment but the Court has ruled in several cases that sexual or gender-based harassment violates the act's antidiscrimination provisions. The Court has identified two types of harassment:

**Quid Pro Quo Harassment** – occurs when an employer requests or demands sexual favors in return for employment or advancement of position within the company.

**Hostile Working Environment** is used to describe actions, statements, or conditions that unreasonably interfere with an employee's ability to do their job.

### **Civil Rights and Other Minorities**

Since the arrival of Europeans, **Native Americans** have fought to preserve their traditions and identities. Protesting that American policies took away tribal lands and attempted to force them to assimilate, Native American protestors took over Alcatraz Island in 1969. The last protestor was finally removed nineteen months after the protest began but the protest was somewhat successful as it helped create national attention to their grievances against the national government.



In 2022, the federal government released a report about deaths at Indian boarding schools that started back in the 1800's. Hundreds of Native American, Alaska Native, and Native Hawaiian children died at boarding schools run or supported by the United States government. The same report also acknowledged that this figure maybe too low and that thousands or tens of thousands of children may have actually died.

**Latinos** have also fought to challenge discrimination through the use of protests, organizations, education and mobilization. One of their major issues is immigration and permanent resident status for noncitizens brought to the United States as children, as well as for issues of education and labor policy. Many Latino activists are driven by shared experiences involving discrimination by law enforcement, including the use of excessive force. Latinos are one of the fastest growing and most diverse ethnic groups in the United States and this helps them gain more attention by politicians of both political parties.

**Asian Americans** are another group that has faced discrimination. Their anti-immigrant status began with the **Chinese Exclusion Act** in 1882 and the Act was extended several times until it finally ended in 1943. However, once ended, it only allowed for a quota of 105 people each year. The National Origins Quota System was eliminated in 1968.

**Japanese Americans** were the subject of **Executive Order 9066** during World War II, after the attack on Pearl Harbor, where more than 130,000 Japanese Americans were forced to move to relocation camps and give up their homes, businesses, and personal belongings. Decades later, President Ronald Reagan signed the **Civil Liberties Act of 1988** which authorized a payment of \$20,000 to each living former detainee.

A Pew Research Center report in 2024 stated that Asian Americans were the fastest growing racial or ethnic group and their population was likely to exceed 35 million by 2060.

### **LGBTQ - Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning Rights.**

The 2020 case, *Bostock v. Clayton County, Georgia*, saw the Supreme Court rule that an employer who fires someone merely because of their sexual orientation or transgender identity violates Title VII of the Civil Rights Act of 1964. *Bostock*, and two other cases, were about the plaintiffs being fired when their employers learned of their gay orientation or transgender identity. The defendants admitted that sexual orientation and identity was the only basis for their termination.

Like other groups of Americans, LGBTQ persons continue to assert their civil rights, based on the Fourteenth Amendment's guarantee of equal protection of the laws and Title VII of the Civil Rights Act of 1964.

Achieving equality is still a struggle for many, but gaining civil rights must use the issues of the past and look towards the future with courage and conviction to achieve these goals.

