

Race, the 14th Amendment, and Equal Protection

Interdisciplinary Subject: Social Studies

Grade Level: 9-12

Duration: 80-100 minutes

Lesson Overview: In this lesson, students explore the application of the 14th Amendment's equal protection clause to issues of racial discrimination in higher education in the United States. In Part I, students closely read an excerpt from an NAACP pamphlet on the case of *Regents of the University of California v. Bakke* (1978), which invalidated quotas in affirmative action for medical school under the 14th Amendment's equal protection clause. In Part II, students read and discuss a background briefing on affirmative action in higher education and decide the best admissions policy to ensure equal protection. In Part III, students write a short essay.

Essential Question

How has the 14th Amendment's equal protection clause affected racial discrimination in the United States?

Lesson Objectives

Students will be able to:

- Analyze in detail a primary source text to determine the central ideas and the meaning of key words and phrases (e.g., "affirmative action").
- Make inferences about the content, context, and relevance of the primary source to the development of equal protection of the laws under the 14th Amendment to the U.S. Constitution.
- Develop evidence-based claims and arguments about the connection between university admissions policies and equal protection of the laws under the 14th Amendment to the U.S. Constitution.
- Defend claims based upon text of primary and secondary sources in making policy-based arguments.

Materials Needed

- Slide pack for Parts I, II, and III
- Handout A: Close Reading of the NAACP Statement (1 per student)
- Handout B: "NAACP Statement on the Implications of the Bakke Decision for College/University Admissions. Pamphlet. Baltimore: NAACP, [1978]." (1 per student)
- Handout C: *Fisher v. University of Texas* and Affirmative Action in American Colleges (1 per student)
- Handout D: The Board of Trustees (1 per student)

Library of Congress Resources

"NAACP Statement on the Implications of the Bakke Decision for College /University Admissions. Pamphlet. Baltimore: NAACP, [1978]." <http://www.loc.gov/exhibits/naACP/a-renewal-of-the-struggle.html#obj8>

Standards

C3 Indicators

D2.Civ.9.9-12 Use appropriate deliberative processes in multiple settings.

D2.Civ.13.9-12 Evaluate public policies in terms of intended and unintended outcomes, and related consequences.

D2.His.3.9-12 Use questions generated about individuals and groups to assess how the significance of their actions changes over time and is shaped by the historical context.

D2.His.5.9-12 Analyze how historical contexts shaped and continue to shape people's perspectives.

D2.His.16.9-12. Integrate evidence from multiple relevant historical sources and interpretations into a reasoned argument about the past.

D4.1.9-12 Construct arguments using precise and knowledgeable claims, with evidence from multiple sources, while acknowledging counterclaims and evidentiary weaknesses.

Teacher's Guide

Preparation Tips

Part I

- Copy for each student: Handouts A (close reading instructions) and B (the NAACP Statement)
- Alternatively, students can read the statement at the URL provided above.

Part II

- Copy for each student: Handouts C (*Fisher v. Texas* and Affirmative Action in American Colleges) and D (The Board of Trustees)

Part I: Introduction & Building Background Knowledge

A. Focus Discussion

1. Explain to students that they are going to explore and answer the following question:

How has the 14th Amendment's equal protection clause affected racial discrimination in the United States?

NOTE: This question is listed on slide 1 of the slide pack provided for this lesson.

2. Write on the board, or project onto a screen, the following:

14th Amendment to the United States Constitution (ratified 1868)

(Section 1) . . . No state shall . . . 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.

NOTE: This is on slide 2 of the slide pack provided for this lesson.

3. Tell students that these are the "due process of law" and "equal protection of the laws" clauses. Congress added them to the Constitution to protect freed slaves from discrimination in state laws after the Civil War. They have been used ever since to challenge state laws that might unfairly discriminate based on race or ethnicity. Tell students that in this lesson, they will focus on how the equal protection clause has been interpreted and applied in the context of higher education.

4. Tell students they are going to work individually and in small groups to examine a primary source that will help them answer the Essential Question.

B. Spark Inquiry: Close Reading of NAACP Statement

1. Distribute Handouts A and B. Read through the instructions on Handout A and answer any questions students may have.
2. Instruct students to complete steps 1 and 2 individually.
3. Review with students the answers to steps 1 and 2, including the definitions of key terms. Check for understanding before continuing to step 3.
4. Instruct students to complete step 3 individually, noting that they will then have the opportunity to discuss their answers in a small group.

5. Divide students into small groups. Instruct students to share their answers to step 3 in their small groups. Each student should have a chance to speak and be heard in their small groups.

6. After students have had time to discuss their individual answers in their small groups, ask the groups to discuss the following summary questions and to be prepared to report back to the rest of the class:

- What was the most interesting fact you learned from the NAACP Statement?
- What did the Statement tell you about racial equality in the United States in 1978?
- How does “equal protection of the laws” in the 14th Amendment apply in this case?

NOTE: These questions are listed on slide 3 of the slide pack provided for this lesson.

7. Lead students in a whole-class discussion of the summary questions, making sure to get input from each group.

8. Optional: Have students complete a 3-2-1 inquiry exit slip. They should respond briefly to the following prompts, written on the board or projected:

- *What are three things you learned?*
- *What are two things you found interesting?*
- *What is one thing you still have a question about?*

NOTE: Answers to the first and second prompts may overlap.

Part II: Deepen Inquiry

A. Introduction

Explain to students that they will look more closely at the history of affirmative action since the *Bakke* decision.

B. Additional Background on Affirmative Action and the 14th Amendment

1. Distribute Handout C and instruct students to read it on their own.

2. Once all students have read Handout C, check for understanding by asking factual questions based on the text. Specifically:

- How did the University of Texas at Austin’s two-tiered admissions policy work?
- What was Abigail Fisher’s argument against this policy?
- Why did the university argue this policy was still necessary?
- How did the Supreme Court rule in this case in 2013?
- What were the implications for universities and the lower courts of this ruling?
- How did the Supreme Court rule in *Fisher* when it heard the case again in 2016?

NOTE: These questions are listed on slides 4 and 5 of the slide pack provided for this lesson.

C. Board of Trustees Role Play

1. Divide students into groups of five (groups of odd numbers of students work best for this activity). Each group is a board of trustees.

2. Tell students they are now trustees of a public university charged with setting, among other things, the admissions policy for the university. They need to decide on the goal of the admissions policy and address the question of affirmative action at the school.

3. Each group should do the following:

- a. Discuss and answer this question: What should be the goal of the admissions policy at your university?
- b. Look at each of the proposed policies on affirmative action and discuss the pros and cons of each.
- c. Decide which policy your university should adopt. If none of the listed policies are attractive, combine policies or create your own.
- d. Be prepared to report on your decisions and the reasons for them.

NOTE: These instructions are listed on slide 6 of the slide pack provided for this lesson.

4. Each group should report its decision, and the class should discuss the conclusions reached by the different groups.

5. Debrief the activity with the class. Walk them through the following questions.

- Which policy proposal seems most aligned to the 14th Amendment's equal protection of the laws? Why?
- Which seems least aligned to the 14th Amendment's equal protection of the laws? Why?
- Did your board create a new proposal? If so, how well does it align with the 14th Amendment?
- How has the 14th Amendment's equal protection clause affected racial discrimination in the United States?

NOTE: These debriefing questions are listed on slide 7 of the slide pack provided for this lesson.

Part III: Connection and Action

A. Written Assessment

1. Have students write a three-paragraph essay answering the Essential Question: *How has the 14th Amendment's equal protection clause affected racial discrimination in the United States?*

2. Their answer to the question should maintain a clear focus on the equal protection clause and include specific examples. Students should use evidence from the primary source, the background piece on *Fisher*, and, if applicable, the policy proposals they discussed.

NOTE: These instructions are listed on slide 8 of the slide pack provided for this lesson.