

14th Amendment

Transforming American Democracy

Every year around the first of May, Oklahomans join with all Americans to observe Law Day, a day set aside to celebrate our nation's great heritage of liberty, justice and equality under the law. As Americans, we are proud of our heritage as a free nation and know the law safeguards our rights and freedoms. This year, we are focusing on only one amendment in our Constitution, but it is an amendment that provides a lot of protection to every American and has truly transformed the way people are treated under the law. As we approach the 150th anniversary of the 14th Amendment, we encourage everyone to reflect upon the pivotal role it has played in protecting and advancing the rights of all Americans.

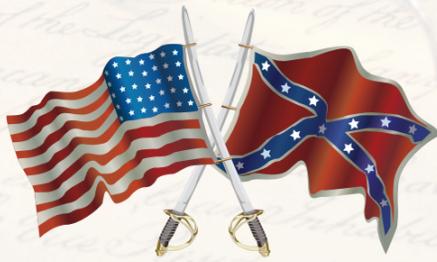
The 14th Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges and 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.

Civil War & Reconstruction: History of the 14th Amendment

Although there had been many debates and tensions building, the road to the 14th Amendment was paved by the Emancipation Proclamation in 1863.

This was an executive order issued by President Abraham Lincoln which freed over 3 million slaves. This happened during the American Civil War, when the Union (northern states) was fighting the Confederacy (southern states) about whether slavery should be legal, especially in the new western territories.



At the end of the Civil War in 1865, during a period called Reconstruction, Congress passed the 13th Amendment, which abolished slavery once and for all, but it did not carve out specific rights for the newly freed men and women. Many questions remained about whether they were citizens, could vote, or if they could own land. Even though they were now free, what would protect them and make sure they were treated fairly? The first Civil Rights Act was passed in 1866, over President Andrew Johnson's veto, and defined citizenship and the idea of equal protection. To make sure that no one could argue whether Congress had the power to pass the act, they adopted the 14th Amendment in 1868. The first state to ratify the 14th Amendment was Connecticut on June 30, 1866, and 35 more states would follow. As to the right to vote, the 15th Amendment definitively bestowed that right to black men when it was adopted in 1870 (women of any race did not get the right to vote until the 19th Amendment passed in 1920).

Citizenship

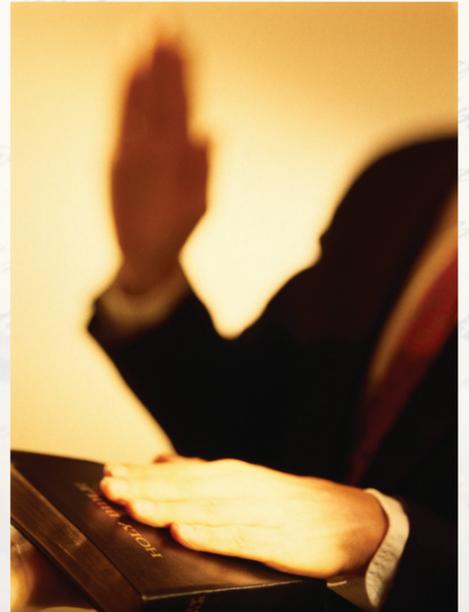
Who is a citizen? This may seem like a simple question now, but it hasn't always been so simple. A citizen is someone who is included as a member of a country under the law. A citizen may have rights that someone who is not a citizen does not. For example, only citizens are able to vote in elections and get U.S. passports. Until the 14th Amendment was ratified after the Civil War, many people who were born in the United States and lived here were not recognized as U.S. citizens. The largest group of people who did not have citizenship due to their race was African Americans.



A Supreme Court decision in 1857 called *Scott v. Sanford* (more commonly known as the Dred Scott Decision) said that a person who was a slave or whose family members had been slaves could not be an American citizen. Many people disagreed with this decision, so when the 14th Amendment was written and added to the Constitution, Congress changed the definition of a citizen to include "all persons born or naturalized in the United States." That means that everyone who is born in any state of the U.S. is automatically a citizen. It does not matter if you were born in Oklahoma, Oregon or Ohio – you are a citizen of the United States. This changed millions of lives of former slaves who were now legally recognized as citizens and entitled to the same rights as everyone else.

Some people who come to the U.S. from other countries can choose to become an American citizen through a process called naturalization. To become a U.S. citizen, a person must meet certain requirements, such as having a green card, living in the U.S. for a certain period of time and being a person of "good moral character," meaning they must not have committed certain crimes or participated in other illegal activities. They also have to be able to speak, read and write English and answer questions about U.S. history and government. If they pass their citizenship test, they take an Oath of Allegiance to the United States where they promise to support the Constitution, renounce or give up any allegiance to other foreign countries, defend the Constitution and laws of the United States against all enemies and, when required by law, bear arms on behalf of the U.S., perform work for the military or help with work of national importance.

Even after the 14th Amendment was ratified, there were still some questions about other groups of people, like Native Americans or the children of immigrants. The courts that decided these cases said these groups of people are U.S. citizens and have the same rights under the law as all other citizens.



Due Process

You are probably asking yourself, "What does due process mean?" A simple way to think about it is that due process is making sure the government is acting fairly. It is a safeguard that protects certain rights like "life, liberty or property." It makes sure the government does not take these rights away unjustly. The 14th Amendment is not the only place in the Constitution where due process appears. It is also mentioned in the Fifth Amendment. So why did Congress decide we needed to include it again when they wrote the 14th Amendment? It's because the Fifth Amendment applies to the federal government and the 14th Amendment applies to the states. So this means there are limitations on the kinds of laws both the federal government and state governments can make when the law will affect a person's rights.

There are two kinds of due process. The first type is concerned with the process the government must follow. It says that if a government passes a law that takes away or affects one of your rights, it must provide you with certain information. The courts have decided the government must at least tell you about their plan and then give you a chance to say what you think about the law. Depending on some factors, the government may also have to provide other safeguards, like representation by an attorney, the right to present evidence and a hearing in front of an impartial judge or jury.

The second kind of due process is a bit more complicated. It looks at the reasons the government made the law and the kind of right affected. If the right is a fundamental right, then it is very difficult for the government to make the law. For example, if a law affects your freedom of speech (a right granted to you by the First Amendment), then the government must have a very important reason for making the law. If there is not a good reason, then the court will not let the government enact the law. Due process protects everyone's rights, makes sure actions are being taken fairly and that justice is being upheld.

14th Amendment

Equal Protection Clause

Equality in the 14th Amendment means the same as it does in your math homework. In a math problem, you have to solve numbers being added together, subtracted, multiplied or divided. What is on one side of the equal sign has the same value as the other side. The Equal Protection Clause is the same, it makes sure that every person is treated the same as everyone else under the law.

The 14th Amendment says the government cannot “deny any person within its jurisdiction equal protection of the laws.” This means the government could not decide to treat one person differently from another person just because it wants to. If the government decides to treat some people differently than others, it must first have a very important reason or goal. Then, the government must explain to the court why treating some people differently is necessary to achieve that goal.

Do people in Oklahoma have the same rights as people in other states?

Yes! Every citizen has certain rights as an American. These rights are called “privileges and immunities.” These are special rights and protections that the Constitution gives to U.S. citizens. Some examples of these rights are the right to run for federal office, the right to have protection from the U.S. government if you are in another country and the right to peaceably assemble and petition the government. People also have rights

that are given to them by the state they live in, such as the right to get a driver’s license. These state rights were already protected in Article IV of the Constitution. When Congress wrote the 14th Amendment, they wanted to make sure that states did not take away the rights given



to the people from the national government. To make sure these rights were protected, Congress wrote, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”

Legacy of the 14th Amendment

Today, the 14th Amendment stands among the most often cited and the most litigated of any constitutional provision. Rarely does a Supreme Court term go by without a landmark ruling that has its roots in the 14th Amendment. To truly appreciate the effect the 14th Amendment has had in transforming American democracy, it is important to learn about some of these seminal decisions.

Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)

Many schools in the United States used to be segregated, which means that there were separate schools for black students and white students. Seventeen states required segregation and some states made it optional, like Kansas. Thirteen parents of black students sued the Topeka Board of Education after their children were denied enrollment to the closest school in the neighborhood because it was a white school. They asked the board to stop segregating schools based on race. The district court agreed with the board, stating that it was in line with the idea of “separate but equal” that had been decided in an 1896 Supreme Court case (*Plessy v. Ferguson*, 163 U.S. 537). However, after the case was appealed, all nine members of the Supreme Court said that segregation of public schools was “inherently unequal” and violated the Equal Protection Clause of the 14th Amendment and is therefore unconstitutional.

Gideon v. Wainwright, 372 U.S. 335 (1963)

If you’ve ever watched a crime show on TV, you may have heard the police tell the criminal, “You have the right to an attorney. If you cannot afford an attorney, one may be appointed to you.” The right to have an attorney in criminal cases where the accused cannot afford one was established by this case. A man was convicted of stealing money from a hotel in Florida and was sentenced to five years in prison because he could not pay for an attorney. Florida had a law that said only people who were charged with a capital offense, which is a very serious crime, were entitled to have a lawyer provided by the state. The Supreme Court held that the assistance of an attorney is a fundamental right under the Constitution, applies to all the states, and is an important part to making sure the person gets a fair trial and due process.



Loving v. Virginia, 388 U.S. 1 (1967)

The state of Virginia and 15 other states had laws that said people who were different races could not get married to each other. If they did get married, they could go to prison. In 1958 a black woman named Mildred and a white man named Richard decided to get married in Washington, D.C. When they went back to their home in Virginia, they were arrested and sentenced to one year in prison. The couple decided to sue the state because they believed it violated the 14th Amendment. The Supreme Court unanimously agreed and ruled the law violated the Due Process Clause and the Equal Protection Clause. Chief Justice Warren said, “Marriage is one of the ‘basic civil rights of man,’ fundamental to our very existence and survival . . . The Fourteenth Amendment requires that the freedom of choice to marry may not be restricted by invidious discrimination. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State.”

History of Law Day

Law Day was conceived by the late Hicks Epton, a lawyer from Wewoka, Oklahoma, and a past president of the Oklahoma Bar Association. President Dwight D. Eisenhower established Law Day nationally by presidential proclamation in 1958. On this occasion, he said, “It is fitting that the American people should remember with pride and vigilantly guard the great heritage of liberty, justice and quality under law. It is our moral and civil obligation as free men and as Americans to preserve and strengthen that great heritage.”

The first of May was set aside in 1961 by a Joint Resolution of Congress as a “special day of celebration by the American people in appreciation of their liberties and the reaffirmation of their loyalty to the United States of America” and as an occasion for “rededication to the ideals of equality and justice under the laws.”

Since the first observance, the American Bar Association, the national voluntary organization of the legal profession, has acted as the national sponsor of Law Day. State, county and local bar associations organize individual projects throughout the country.

The Oklahoma Bar Association encourages teachers and students to learn more about Law Day and its contest, lesson plans and activities at www.okbar.org/public/Outreach/LawDay.