CHAPTER 4 – EQUALITY: ARE WE THERE YET?

RACIAL EQUALITY: SCHOOLS, AFFIRMATIVE ACTION & VOTING

1857 -------- ***Dred Scott v. Sanford* (1857)→** Dred Scott, an enslaved African American, who was taken into free territory by his owners, attempted to sue for his freedom when the party returned home where slavery was permitted. In *Dred Scott v. Sanford*, the Court held that African Americans, free or slave, could not be American citizens and, therefore, could not sue in federal court. Thus Mr. Scott's suit was denied as he was determined not to have standing to sue in federal court.

Dec. 6, 1856 -------- **13th Amendment** to the Constitution is ratified abolishing slavery and involuntary servitude, except as punishment for a crime.

Jul. 9, 1868 -------- **14th Amendment** to the Constitution is ratified with three significant clauses: The Citizenship Clause grants citizenship to "all persons born or naturalized in the United States;" The Due Process Clause requires that no *state* shall deprive any person of life liberty or property without due process of law; and The Equal Protection Clause prevents *states* from denying "any person within its jurisdiction the equal protection of the laws."

Created by Sara Hofeditz Christensen

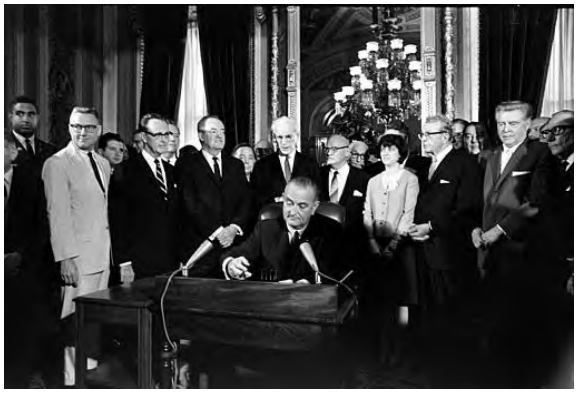
Feb. 3, 1870 --------**15th Amendment** to the Constitution is ratified stating the right to vote cannot be denied based on "race, color, or previous condition of servitude"

May 18, 1896 --------***Plessy v. Ferguson* (1896)** → In response to Louisiana's Separate Car Act, requiring separate accommodations for blacks and whites on railroads. Plessy was chosen because he was born a free man and was seven-eighths white and only one-eighth black. While his appearance made him look white, under Louisiana law he was still considered black. After purchasing a first-class ticket, Plessy boarded the whites-only car and took a seat, and refused to vacate it when asked, being arrested immediately. As planned the train was stopped and Plessy was removed. However, the US Supreme Court in *Plessy v. Ferguson* upheld the Louisiana law stating that so long as the separate accommodations were equivalent in quality that there was no violation; thus establishing the "separate but equal doctrine."

1954 --------***Brown v. Board of Education* (1954)** → Linda Brown, a third grader, had to walk six blocks to her school bus stop to ride to Monroe Elementary, her segregated black school one mile away, while Sumner Elementary school, a white school, was seven blocks from her house. The case *Brown v. Board of Education* combined five different cases from across the country and Washington D.C. The Kansas case was unique because there was no contention of gross inferiority as to the resources, instruction or infrastructure of the black schools as compared to the white schools. A unanimous court found that "separate educational facilities are inherently unequal." Despite this victory, the Supreme Court fell short in its directions to schools across the country to integrate schools "with all deliberate speed," an immeasurable pace which tended to be slower in some areas of the country than others.

Jan. 23, 1964 --------**24th Amendment** is ratified abolishing the use of poll taxes or other taxes to deny the right to vote in any federal election.

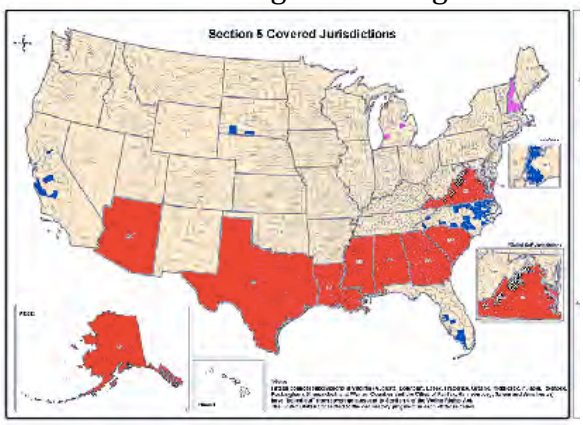
Jul. 2, 1964 --------**Civil Rights Act of 1964** → The Civil Rights Act of 1964, prohibited discrimination based on "race, color, religion, sex or national origin" in employment practices and public accommodations. This encompassed the desegregation of public schools and gave the US Attorney General the authority to file suits to force desegregation; however, it did not authorize busing as a means to force integration. The US Attorney General also had this authority when it came to desegregating certain public facilities. A major loophole that the Civil Rights Act left was the regulation of private facilities and organizations and their definitions.



Dec. 14, 1964 --------***Heart of Atlanta Motel v. United States*** → The Civil Rights Act of 1964 prohibited racial discrimination by places of public accommodation if the operations of the place affected commerce, thereby giving Congress the authority to regulate said place. The Heart of Atlanta Motel refused to rent rooms to black guests. In *Heart of Atlanta Motel v. United States*, the owner of the motel challenged the federal law on the grounds that Congress had exceeded its authority. However, the Supreme Court found that Congress was well within its authority granted by the Commerce Clause. The Court reasoned that the patrons who would use a motel would be those who were traveling and thus affecting interstate commerce which is squarely under Congress' authority.

1965 --------**Voting Rights Act of 1965** → Despite the efforts of the 15th and 24th Amendments, black men and women (as allowed by the 19th Amendment ratified in 1920) were systematically being denied the right to vote. The Civil Rights Act of 1964 prohibited discrimination in federal elections and the Voting Rights Act of 1965 prohibited discrimination in state and local elections, including imposing any voting law that results in discrimination, such as literacy tests. The Voting Rights Act also had special provisions that only applied to some jurisdictions, particularly Section 5. Section 5 required identified jurisdictions that engaged in the most severe voting discrimination and required those locations to receive preclearance of any change that would affect voting within that location, primarily the drawing of districts. These jurisdictions were primarily in the south.

1966 --------***South Carolina v. Katzenbach* (1966)** → The attorney general of South Carolina filed a complaint directly with the Supreme Court challenging the constitutionality of the Voting Rights Act and preventing the U.S. attorney general Katzenbach from enforcing the act. The challenge is on the grounds that the act encroached on states' rights and served as a legislative punishment against the selected jurisdictions subject to Section 5 without due process. In *South Carolina v. Katzenbach*, the Supreme Court found that the Voting Rights Act was a valid exercise of Congress' power under the enforcement clause of the 15th Amendment. Justice Black, agreeing with the majority on every other aspect of its decision, wrote a dissent concerning Section 5, finding that it was a violation of the structure of federalism and that for federalism to mean anything, the states must at least "have power to pass laws and amend their constitutions without first sending their officials hundreds of miles away to beg federal authorities to approve them."



1970 --------Congress extends the **Voting Rights Act of 1965**.

Apr. 20, 1971 --------***Swann v. Charlotte-Mecklenburg Board of Education*** → Some states interpreted *Brown v. Board of Education* to mean integration; other states interpreted *Brown* to mean simply stop segregating. One way school districts would integrate is through busing programs by which black students would be bused to white schools and vice versa. Other states felt that it wasn't their role to integrate and integration should not be forced, through something like a busing program, just as segregation should not be forced. *Swann v. Charlotte-Mecklenburg Board of Education*, focused on the Charlotte consolidated school districts in which most of the black students who lived in central Charlotte still attended mostly black students and most of the white students attended schools further outside of the city that were majority white. Lower courts felt that busing was the only way to fulfill the constitutional requirement of desegregation. Charlotte consolidated school districts drafted several complex plans in the shapes of slices of pies or fingers reaching out, to bussing an additional 300 black students to satellite schools. The appellate court felt that the restructured busing orders, requiring more busing, should be upheld for the older students but that something else should be done for the elementary school age children. After several drafts the Supreme Court, in a 9-0 vote, upholds the original busing program involving extensive busing to achieve integration making Charlotte known across the nation as the city that made desegregation work.

Jul. 25, 1974 --------***Milliken v. Bradley* (1974)** → Detroit was one of the most segregated cities in the United States. The large black population was excluded from white neighborhoods thus created black neighborhoods. In the case *Milliken v. Bradley* the NAACP argued that although schools were not officially segregated that the practices of "excluding" blacks from white neighborhoods - from unfair housing practices such as redlining - denying or charging more for services such as banking, insurance or denying jobs to residents based on race, to direct violence such as destruction of property, including bombings and arson, and assault to people - had in fact increased racial segregation in schools, or *de facto* segregation. In a 5-4 decision the Supreme Court held that the school districts were not obligated to desegregate unless it could be proven that the district lines were drawn with racist intent; officially arbitrary lines which happened to produce segregated districts could not be challenged. The Court noted that desegregation in the sense of integrating did not require "any particular racial balance in each school, grade or classroom," putting the brakes on efforts to integrate across the south.

1975 --------Congress extends **Voting Rights Act of 1965**.

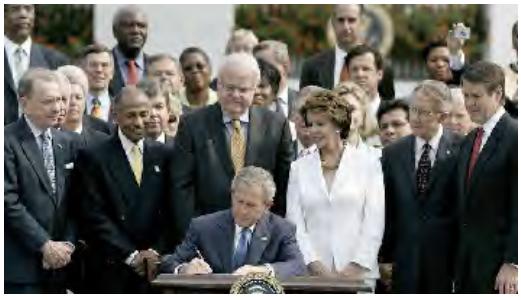
Jun. 28, 1978 --------***Regents of California v. Bakke* (1978)** → Allan Bakke applied to the University of California Medical School at Davis - twice. He was rejected - twice. The medical school reserved sixteen places in each entering class of 100 students for "qualified" minorities in order to increase the number of minority students in accordance with the university's affirmative action program. Bakke's college GPA and test scores exceeded those of any of the minority students admitted in the classes the two times Bakke applied and was rejected. The issue for Bakke was that he was white. In *Regents of California v. Bakke*, Bakke contended that he was rejected solely based on his race, because his qualifications were better than minority students who were admitted. The court was divided over the issue of whether the University's policy of reserving seats for minorities violated the Equal Protection Clause of the Fourteenth Amendment and the Civil Rights Act of 1964. There was no single majority opinion. Four of the justices found that *any* racial quota supported by the government (UC-Davis being a state school) violated the Civil Rights Act of 1964. Justice Powell agreed, casting the vote that resulted in an order for the medical school to admit Bakke. However, Justice Powell also argued that the rigid use of racial quotas as applied at UC-Davis violated the Equal Protection clause. Justice Powell also joined the other four justices in determining that the use of race in the admission criteria was permissible so long as it was one of several factors. The Court struck a careful balance by finding for Bakke but also extending gains for minorities through permitting affirmative action.
Allan Bakke pictured.

1982 --------Congress extends **Voting Rights Act of 1965**.

Jun. 23, 2003 --------***Grutter v. Bollinger/Gratz v. Bollinger* (2003)** → Barbara Grutter applied to the University of Michigan Law School. Despite

an impressive GPA and LSAT score she was denied admission. Grutter claimed that she was denied admission because she is white. The Law School admits that it uses race as a factor in admissions as it served the "compelling interest in achieving diversity among its student body." In a 5-4 decision, the Court found in *Grutter v. Bollinger* that the Equal Protection clause does not prevent the Law School's use of race in making admissions decisions to achieve that compelling interest. No acceptance or rejection was based automatically on race and the review of each application by the Law School was highly individualized. Because of this thorough evaluation of each applicant, the consideration of race does not unduly harm nonminority students. / Jennifer Gratz applied to the University of Michigan's College of Literature, Science and the Arts. She had a high GPA and ACT score. Another student, Patrick Hamacher also applied with a good GPA and high ACT score. Both were rejected and claimed that their rejection was based on the fact that they were white. The University has a policy to admit almost all qualified applicants who are members of one of three racial minority groups - African Americans, Hispanics and Native Americans, as they were considered underrepresented on campus. In *Gratz v. Bollinger*, the Court found that the University's practice of using racial preferences in undergraduate admissions did violate the Equal Protection Clause and the Civil Rights Act of 1964. The University, using a point system to determine qualified applicants, provided applicants of the three minority groups were given one-fifth of the points needed for guaranteed admission based solely on their race. This system, unlike that of the law school, was not narrowly tailored to a compelling interest and did not provide the individual consideration of each applicant. Pictured Barbara Grutter, left, and Jennifer Gratz, right.

2006 --------Congress extends **Voting Rights Act of 1965**.



2007 --------**Resegregation** → In Tuscaloosa, Alabama, white parents complained of overcrowding the their racially mixed school district. The eight member school board, with six white members and two black members, approved a plan moving hundreds of students, only a handful of who were not black. Those students who were moved were moved to essentially all-black, low-performing schools. A 2009 report from the Civil Rights Project at UCLA states that "40 percent of Latinos and 39 percent of blacks now attend intensely segregated schools, in which 90 to 100 percent of students are non-white. The typical Black or Latino student attends a school where nearly 60 percent of the students are low-income, creating a doubly-damaging race and poverty divide." Pictured parents whose children were zoned away from the high-performing University Place elementary school.

Jun. 28, 2007 --------***Parents Involved in Community Schools v. Seattle*** **(2007)** → Seattle high school students applied to any high school in the district and often certain schools would be in higher demand. When too many students applied to a school, the district used tiebreakers to determine which students would be admitted to the popular schools. The second most important tiebreaker was a racial factor to maintain racial diversity in the schools. Seattle's total student population was approximately 40 percent white and 60 percent nonwhite. Depending on which race would bring a particular school into racial balance, either whites or non-whites could be favored for admissions. Suing on the grounds that the racial tiebreaker violates the Equal Protection Clause and the Civil Rights Act, a non-profit organization, Parents Involved in Community Schools, the Supreme Court had to address three issues: 1) Do the decisions in *Grutter v. Bollinger* and *Gratz v. Bollinger* apply to public high schools in the same way they applied to the state university? 2) Is racial diversity a compelling interest that justifies using race in selecting students for admission to

public high schools? 3) Does a school district that permits a student to attend the high school of his or her choice violate the Equal Protection Clause by denying admission to a student because of his or her race? In answering, the Supreme Court, in *Parents Involved in Community Schools v. Seattle*, found that the precedent decisions do NOT apply to public high schools, racial diversity is NOT a compelling interest which justifies use of race for admissions in public high schools and the school districts use of race DOES violate the Equal Protection Clause when students are otherwise allowed to choose which school to attend. The 5-4 court wrote several opinions on the issue. Chief Justice Roberts believed that "the way to stop discrimination on the basis of race is to stop discriminating on the basis of race." The present case, unlike the precedents, did not give individual consideration to each applicant but used a narrow notion of diversity - non-white and white - to determine an applicant's acceptance or rejection. In a concurring decision, Justice Kennedy wrote that this particular use of race was unconstitutional but that public schools may sometimes consider race to ensure equal educational opportunity. Pictured are supporters of Seattle's efforts to racially balance its schools.

2009 --------***Northwest Austin Municipal Utility District No. 1 v. Holder* (2009)** → In 1965, Texas was deemed one of the jurisdictions subject to preclearance under Section 5 of the Voting Rights Act, requiring any changes to rules and laws concerning voting to first be approved by the federal government before enactment. However, Section 4(a) of the Voting Rights Act provided criteria to move out of "Section 5" status. A district in Austin, Texas, Northwest Austin Municipal Utility District No. 1, filed to be released of the Section 5 preclearance requirements based on no history or claims of racial discrimination in any of its elections; if it could not be removed from Section 5 status, the District challenged the constitutionality of Section 5. The District Court rejected both claims in that only "counties, parishes and subunits that register voters" is eligible to be removed from Section 5 status; because the District did not

register its own voters it was not eligible. The Supreme Court found in *Northwest Austin Municipal Utility District No. 1 v. Holder* that while Section 5 was of particular need at the time the Voting Rights Act was enacted, it currently interferes with the principle of federalism due to the federal intrusion into state affairs and authority. The Act imposes burdens that must be justified by current needs and the selected jurisdictions which make differentiations between states may no longer be justified. However, invoking the principle of "Constitutional avoidance," that a federal court should refuse to rule on a constitutional issue if the case can be decided on a nonconsitutional basis, the court examines the case under the lens of the statutory argument that the District should be able to use the provisions of Section 4 and be removed or "bail out" of Section 5 status and its preclearance requirements. The Court found that the District qualifies as a political subdivision under Section 4 and should be able to bail out if it meets Section 4's requirements. The issue of Section 5's constitutionality is left to another case.

2013 --------***Calhoun v. United States* (2013)** → Bongani Charles Calhoun was on trial in a drug conspiracy. The prosecutor was trying to prove that Calhoun knew the friend with whom he took a road trip, and his friend's friends, were engaged in a drug transaction which ultimately resulted in the purchase of cocaine from undercover Drug Enforcement Agency (DEA) agents. Calhoun's friends plead guilty and testified against him along with the DEA agents, who also suspected him of knowing because he carried a gun. Calhoun testified that he did not know of the plan to purchase drugs, that he did not understand the DEA agents as they only spoke to him in Spanish, and that he always carries a concealed firearm, and that he had a license to do so. On cross examination the prosecutor pressed Calhoun as to why he did not want to be in the hotel room with the other two involved. When the judge instructed the prosecutor to move on, the prosecutor asked, "You've got African-Americans, you've got Hispanics, you've got a bag full of money. Does that tell you - a light bulb doesn't go off in your head and say, This is a drug deal?" Calhoun, who is African-American, claims that the prosecutor's racially charged question violated his constitutional rights, however, Calhoun's counsel did not object to the question at trial. In *Calhoun v.*

United States, the Supreme Court denied Calhoun's petition for a writ of certiorari, on the basis that the petition failed to show that the error "affected the outcome of the district court proceedings," but not without a lashing from Justice Sotomayor as to the prosecutor's conduct. Justice Sotomayor writes that the prosecutor's question never should have been posed and such an argument is "an affront to the Constitution's guarantee of equal protection of the laws." The prosecutor was playing to the prejudices of the jury, thus invading the defendant's right to an impartial jury. The prosecutor was playing into "a deep and sorry vein of racial prejudice that has run through the history of the criminal justice of our Nation." Justice Sotomayor also scolds the government for failing to recognize the prosecutor's error on appeal, arguing that "even assuming the question crossed the line, it did not prejudice the outcome." She ends with "I hope never to see a case like this again." Pictured Justice Sotomayor.

2013 --------***Fisher v. University of Texas at Austin* (2013)** → In 1997, the Texas legislature passed a law requiring the University of Texas to admit all high school seniors who were in the top ten percent of their high school classes. Once in practice and discovering the racial makeup on the university's undergraduate class versus the state's population the University modified its admissions policy, which did not originally consider race. In addition to admitting all in-state high school seniors who graduated in the top ten percent of their high school classes, to fill the remainder of the incoming freshman class the University would consider race as a faction in admission. Abigail Fisher did not graduate in the top ten percent of her class and, therefore, applied for undergraduate admission with the other non-top ten percent in-state applicants. Fisher's admission was denied. Fisher sued the University claiming that use of race as a consideration in admission violated the Equal Protection Clause of the Fourteenth Amendment and denied her admissions because she was white, using *Gratz v. Bollinger* for support. In *Fisher v. University of Texas at Austin*, the Supreme Court found that the lower court failed to apply strict scrutiny when deciding to uphold the policy. The lower court erred because it presumed that the school had acted in good faith whereas *Grutter v. Bollinger* required the university "to prove that

its admissions program is narrowly tailored to obtain the educational benefits of diversity." The court remanded the case to the lower courts to be examined using strict scrutiny and placing the burden on the university to show that the admissions policy is narrowly tailored to achieve the goal of diversity.
UPDATE: In July 2014, the Fifth Circuit Court of Appeals, in a 2-1 decision, upheld UT Austin's admissions policy, permitting race to be considered in admissions for the non-top ten percent applicants. The court held that "It is equally settled that universities may use race as part of a holistic admissions program where it cannot otherwise achieve diversity...This interest is compelled by the reality that university education is more the shaping of lives than the filling of heads with facts - the classic assertion of the humanities." Pictured Abigail Fisher.

Jun. 25, 2013 --------***Shelby County v. Holder* (2013)** → Section 5 of the Voting Rights Act of 1965 comes under scrutiny again in *Shelby County v. Holder*. Shelby County, Alabama, was in the jurisdiction covered by Section 5 which required preclearance for any changes in voting laws by the federal government before being enacted by the jurisdiction. Shelby County challenged Section 5 and Section 4(b), that provides the formula for determining jurisdictions subjected to preclearance, unconstitutional. Both lower courts upheld the sections as constitutional and deferred to Congress' finding that litigation on the subject, under Section 2 of the act, was inadequate in the covered jurisdictions to protect the rights of minority voters and that Section 5 was still necessary and justifiable. The Supreme Court was finally facing the constitutionality of the Voting Rights Act that it had avoided in *Northwest Austin Municipal Utility District No. 1 v. Holder* (2009), and the Court, in a 5-4 decision, found it unconstitutional. The Court held that Section 4(b) exceeded Congress' power to enforce the 14th and 15th Amendments in that the coverage of Section 5 conflicts with the principles of federalism. The Court was concerned that the formula used to determine subjected jurisdictions was last modified in 1975 and that the racial discrimination in the country has changed, successfully due to the Voting Rights Act. The Court found that Section 4(b) was unconstitutional and while the Court did not determine the constitutionality of Section 5, since Section 5 only applied to the jurisdictions prescribed by Section 4(b) and Section 4(b) was unconstitutional, there are no jurisdictions to which Section 5 is to be applied.

SEXUAL ORIENTATION EQUALITY: SCHOOLS, AFFIRMATIVE ACTION & VOTING

Apr. 27, 1951 --------**Executive Order 10450** is signed by President Eisenhower, banning homosexuals from working for the federal government or any of its private contractors, listing homosexuals as security risks, along with alcoholics and neurotics.

1955 --------***Naim v. Naim* (1955)** → In North Carolina, Miss Ruby Elaine Naim, a white Virginia resident, and Han Say Naim, a Chinese man who was not a resident of Virginia, got married. They got married in North Carolina because Virginia had a statute banning interracial marriage whereas North Carolina only banned marriages between blacks and whites. A year later Ruby sought to annul the marriage, as a divorce would not have been available as their wedding was not recognized in Virginia. Han argued that because the marriage was valid in North Carolina it was valid throughout the United States and, therefore, cannot be annulled. The circuit court, based on the statute, granted the annulment on the grounds that Virginia never recognized their marriage in the first place. The Virginia Supreme Court upheld the circuit court and the annulment. The Supreme Court denied hearing the case.

1967 --------***Loving v. Virginia* (1967)** → Virginia had an anti-miscegenation statute which made interracial marriages criminal. Mildred, a black woman, and Richard, a white man, traveled to D.C. to get married when Mildred became pregnant. When they returned to the small town of Central Post, Virginia, the police raided their home at night and

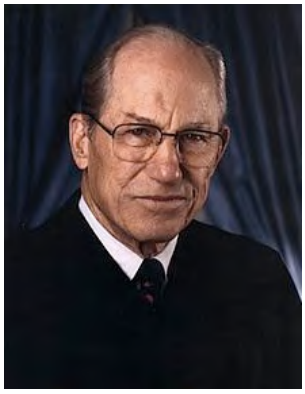
when Mildred showed the officers their marriage certificate hanging on the wall the couple was charged with the felony of miscegenation, punishable by a prison sentence of between one and five years. The couple plead guilty and were sentenced to one year in prison, which was suspended for 25 years on the condition that the couple leave Virginia. Frustrated by not being able to visit their families in Virginia, Mildred reached out to Attorney General Robert F. Kennedy, who referred her to the American Civil Liberties Union (ACLU). Filing a motion to vacate the judgment of the criminal court on the grounds that the statute violated the 14th Amendment, the case ultimately reached the Supreme Court. Richard's only message to the Supreme Court, given by their lawyer: "Mr. Cohen, tell the Court I love my wife, and it is just unfair that I can't live with her in Virginia." The Supreme Court overturned the Loving's convictions and found that Virginia's anti-miscegenation statute violated the 14th Amendment Due Process and Equal Protection Clauses. The Supreme Court could not agree with Virginia's claim that their law was not racially discriminatory. Pictured the Lovings.

Jun. 28, 1969 --------**Stonewall Raid** → Patrons of the Stonewall Inn in Greenwich Village riot when police officers attempt to raid the popular gay bar around 1am. Since its opening in 1967, the bar had been frequently raided by police trying to clean up the neighborhood of "sexual deviants." The raid on June 18 continued for 3 days in which thousands of protestors only received minimal local news coverage. However, the riot is credited with reigniting the fire behind America's modern LGBT rights movement.

Dec. 15 1973 --------The **American Psychiatric Association Board** votes to remove homosexuality from its list of mental illnesses.

Nov. 8, 1977 --------**Harvey Milk** wins a seat on San Francisco's Board of Supervisors. In his position he introduces a gay rights ordinance protecting gays and lesbians from being fired from their jobs as well as a campaign against an initiative forbidding homosexual teachers.

1986 --------***Bowers v. Hardwick* (1986)** → When attempting to serve a recalled warrant, a police officer found a guest of Michael Hardwick, staying on his couch, whether the guest opened the door or the door was ajar is unclear. When the guest told the officer he didn't know if Hardwick was home, the officer searched the apartment where he found Hardwick's bedroom door slightly ajar. When he entered Hardwick's room he observed Hardwick and another male engaging in mutual, consensual sexual acts. The officer arrested both the men for sodomy, which was criminalized by Georgia law and defined as both oral sex and anal sex between members of the same or opposite sex. The Supreme Court in *Bowers v. Hardwick* was determining whether the right to privacy that was implicit in the Due Process Clause of the Fourteenth Amendment extended to Hardwick's situation. The Court found, 5-4, that the right to privacy, as found in *Griswold v. Connecticut* (1965), did not extend to private, consensual sexual conduct, at least as far as homosexual sex. The Court framed the question as to whether the constitution grants "a fundamental right upon homosexuals to engage in sodomy;" the court found it did not. "To claim that a right to engage in such conduct is 'deeply rooted in this Nation's history and tradition' or 'implicit in the concept of ordered liberty,' is, at best, facetious." - Justice Byron White, pictured.



Dec. 21, 1993 --------Department of Defense enacts the "**Don't Ask, Don't Tell**" policy, which forbids applicants from engaging in homosexual acts or making a statement that he or she is a homosexual, but gets around the bar against homosexuals from serving in the military.

May 20, 1996 --------***Romer v. Evans* (1996)** → Colorado passed Amendment 2, which prevented any city, town, or country in the state from taking any legislative, executive, or judicial action to recognize gay and lesbian individuals as a protected class with a claim of discrimination. In *Romer* v. *Evans*, the Supreme Court strikes down Colorado's Amendment 2, on the grounds that it targeted homosexuals due to animosity and the amendment lacked "a rational relation to any legitimate governmental purpose." According to Justice Anthony Kennedy, pictured, "We find nothing special in the protections Amendment 2 withholds. These protections . . . constitute ordinary civil life in a free society."

Sep. 21, 1996 --------**Defense of Marriage Act** is enacted defining marriage as a legal union between one man and one woman and that no state is required to recognize a same-sex marriage from out of state. This goes against the Full Faith and Credit Clause of the Constitution, requiring states to give equal recognition of the legal acts of another state.

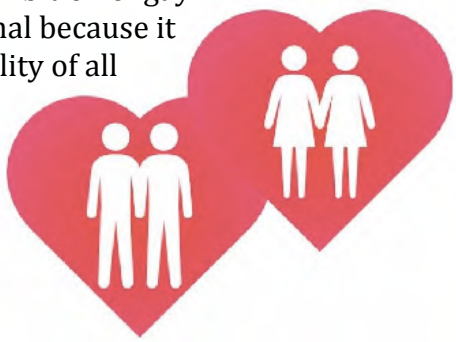
Apr. 26, 2000 --------Vermont becomes the first state to legalize civil unions and registered partnerships between same-sex couples.

2000 -------- ***Boy Scouts of America v. Dale* (2000)** → As a student at Rutgers University, James Dale was co-president of the Lesbian/Gay student alliance and was interviewed after attending a seminar on the health needs of lesbian and gay teenagers in which he stated he was gay himself. This interview was published in a local interview that was seen by Boy Scouts of America's officials. Dale, an Eagle Scout himself, was removed from his position as assistant scoutmaster. In *Boy Scouts of America v. Dale*, Dale challenged the actions of the Boys Scouts on the grounds that they had violated the state statute prohibiting discrimination on the basis of sexual orientation in places of public accommodation. While the New Jersey Supreme Court held that the Boy Scouts had violated the State's law, that applying New Jersey's anti-discrimination law to the Boy Scouts did not violate their First Amendment Right of Association, that New Jersey had a compelling interest in eliminating discrimination based on sexual orientation and that Dale's reinstatement by the Boy Scouts did not force the Boy Scouts to express any message. The Supreme Court determined that the Boy Scouts of America is a private organization and not and does not engage in expressive conduct. The goal of the Boy Scouts is "to instill values in young people," with leaders leading both expressly and by example. Merely because the Boy Scouts are expressing views that are not popular to many, does not mean that their views do not receive First Amendment protection to associate with whom they choose. Pictured James Dale

2003 -------- ***Lawrence v. Texas* (2003)** → As of 1960, every state had an anti-sodomy law. By 2003, ten states still banned consensual sodomy without respect to the sex of those involved and four states prohibited same-sex couples from engaging in anal and oral sex; Texas was one of the four states. On a false tip that there was a person waving a gun at John Lawrence's apartment, police respond and enter Lawrence's unlocked apartment with weapons drawn. The accounts of the four responding officers vary but two claimed to see Lawrence and another man, Garner, engaged in consensual sexual acts. Lawrence and Garner were charged under Texas' anti-sodomy statute. Originally only fined for the offense, and fined too little to appeal, the fine was raised and Lawrence and Garner appealed their convictions. In Texas Criminal Court, their counsel asked for the charges to be dismissed claiming that the law was unconstitutional on the grounds that it singled out same-

sex couples and did not apply to heterosexual couples. Losing based on the finding in *Bowers v. Hardwick* that consensual homosexual sexual relations had no privacy protection, *Lawrence v. Texas was* appealed to the Texas Fourteenth Circuit Court of Appeals who found the law unconstitutional. The Texas Court of Criminal Appeals, the highest court for criminal matters, declined to hear the case. The Supreme Court granted certiorari and hear the case considering issues of 14th Amendment Equal Protection and the discriminatory nature of the law itself and the possible violation of liberty and privacy which is found in the Due Process Clause of the 14th Amendment. Both of these issues would overturn *Bowers v. Hardwick*. In a 6-3 decision, the Court held that homosexuals had a protected liberty interest to engage in private sexual activity, entitled to constitutional protection and moral disapproval is not grounds to criminalize an act. Justice Anthony Kennedy wrote, "Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct." Pictured John Lawrence, left, and Tyron Garner, right.

May 18, 2004 --------Massachusetts becomes the first state to legalize gay marriage. The court finds the prohibition of gay marriage unconstitutional because it denies dignity and equality of all individuals.



2004-2010 --------New Hampshire, Vermont, Connecticut, Iowa and Washington D.C. legalize Gay Marriage

Oct. 28, 2009 --------**Matthew Shepard Act** is passed and signed into law expanding the 1969 Federal Hate Crime Law to include crimes motivated by a victim's actual or perceived gender, sexual orientation, gender identity or disability. Named for Matthew Shepard, who at age 21 was tortured and killed near Laramie, Wyoming on October 7, 1998, because of his sexual orientation.

Dec. 18, 2010 --------US Senate votes 65-31 to repeal "**Don't Ask, Don't Tell**" policy, allowing gays and lesbians to serve openly in the military.

Feb. 23, 2011 -------

President Obama states his administration will no longer enforce DOMA

Feb. 7, 2012 --------**Prop 8** → The Ninth Circuit Court of Appeals in California rules 2–1 that Proposition 8, the 2008 referendum that banned same-sex marriage in state, is unconstitutional because it violates the Equal Protection Clause of the 14th Amendment. In the ruling, the court says, the law "operates with no apparent purpose but to impose on gays and lesbians, through the public law, a majority's private disapproval of them and their relationships."

Jun. 26, 2013 --------***United States v. Windsor*** → Edith Windsor and Thea Spyer were in a romantic relationships for 40 years. In 2007 the couple left their home in New York for Toronto where they were married under the Canadian Civil Marriage Act. The two had been engaged since 1965. Spyer died in 2009 and Windsor was required to pay

over $300,000 in federal estate taxes on the inheritance on Spyer's estate. If Windsor was seen as Spyer's spouse under the law, Windsor would have qualified for an unlimited spousal deduction and would pay no federal estate taxes. Windsor claimed for a refund when New York's state agencies were instructed to recognize same-sex marriages performed in other jurisdictions. The Obama administration had decided not to support the Defense of Marriage Act as it viewed DOMA as unconstitutional. Therefore, Attorney General Eric Holder stated that it would not be defending DOMA against in two claimants, one of who was Windsor. Therefore the Bipartisan Legal Advisory Group of the House of Representatives filed a motion to intervene and defend the constitutionality of DOMA, which the Department of Justice did not oppose as it was not interested in defending the constitutionality of DOMA. A lower court found that DOMA was unconstitutional under the 5th Amendment's Due Process Clause and order that Windsor receive the tax refund from Spyer's estate. The Court of appeals held that laws that classify people based on sexual orientation should reviewed with heightened scrutiny. It too found the Spyer-Windsor marriage valid under New York law. The Supreme Court held that DOMA was a "deprivation of the library of the person protected by the 5th Amendment." The constitution does not permit the federal government to treat heterosexual marriages differently than same-sex marriages and by doing so demeans the couple whom the Constitution protects. In a 5-4 vote, Chief Justice John G. Roberts, Jr. votes against striking it down as does Antonin Scalia, Samuel Alito and Clarence Thomas. However, conservative-leaning Justice Anthony M. Kennedy votes with his liberal colleagues to overturn DOMA. Pictured Thea Spyer, left, and Edie Windsor, right.

Name_____

Date ____/____/____ Period____

CHAPTER 1 – EQUALITY: ARE WE THERE YET?

Guided Reading

Terms *Terms I've seen before but I'm not sure of the definition/Terms I haven't seen before:*	**History & Notes** *Background about Chapter topic*
Cases *Concurring or Disagreeing thoughts on how the Court decided on Chapter cases*	**Follow Up** *Topics on which I'd like to know more and discuss further*

CHAPTER 1 – EQUALITY: ARE WE THERE YET?

For more information:

Civil Rights Act of 1964
- http://www.congresslink.org/print_basics_histmats_civilrights64text.htm

Resegregation
- http://www.nytimes.com/2007/09/17/education/17schools.html?pagewanted=all
- http://www.civilrights.org/archives/2009/01/030-school-segregation.html

LBGT Rights Timeline:
- http://www.infoplease.com/ipa/A0933870.html

Edie Windsor & Thea Spyer
- http://www.cnn.com/2014/06/25/opinion/kaplan-doma-edie-windsor/