



# DIALOGUE ON THE FOURTEENTH AMENDMENT A RESOURCE GUIDE

## OVERVIEW

*The Dialogue on the Fourteenth Amendment: A Resource Guide* is designed for use by lawyers, judges, teachers, and other community leaders to conduct discussions in the classroom and with youth and community groups.

Since its ratification in 1868 following the American Civil War, the Fourteenth Amendment to the U.S. Constitution has been transformative, reshaping American law, society, and individual rights. Through its citizenship, due process and equal protection clauses, the Fourteenth Amendment advanced the rights of all Americans, including playing a pivotal role in extending the reach of the Bill of Rights to the states. The Fourteenth Amendment has served as the cornerstone of landmark civil rights legislation, the foundation for numerous federal court decisions protecting fundamental rights, and a source of inspiration for all those who advocate for equal justice under law. This Dialogue explores the rights guaranteed in the text of the Fourteenth Amendment and how courts have interpreted its meaning and application over time.

Formats for the *Dialogue on the Fourteenth Amendment* may vary according to audience and available time. While there are three parts included in this Resource Guide, each discussion is designed to complement one another or stand independently. Step-by-step directions and discussion prompts throughout this guide are intended to help facilitators engage participants in a robust conversation.

**Part 1, Equal Protection and Civil Rights**, considers the equal protection clause of the Fourteenth Amendment, and how Congress, through federal legislation, has worked to realize its constitutional promise.

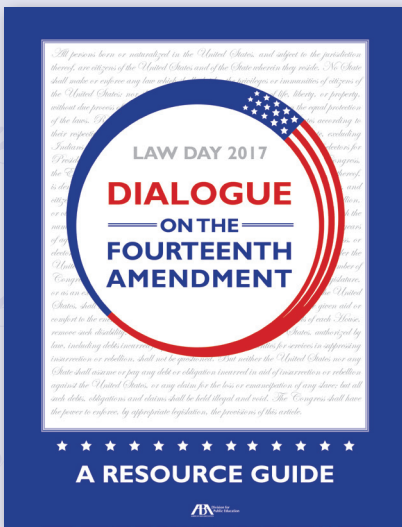
**Part 2, Incorporating the Bill of Rights**, engages participants in a discussion about how courts have applied the Bill of Rights to the states using the Fourteenth Amendment.

**Part 3, Ensuring Equality and Liberty**, explores how the Fourteenth Amendment has been interpreted by courts to protect fundamental freedoms, including individuals' right to marry. Participants will also consider the relationship between equality and liberty under the Fourteenth Amendment and within a democratic society.

At [www.lawday.org](http://www.lawday.org), there are additional resources for conducting the Dialogue. Available for download are ready-to-use PowerPoint presentations for each of the three parts of the Dialogue, which include key graphics and text, as well as a print-ready handout of the chart included in Part 2.

## The ABA Dialogue Program

*Dialogue on the Fourteenth Amendment: A Resource Guide* is the fifteenth annual edition of the ABA Dialogue Resource Guide. The American Bar Association Dialogue Program provides lawyers, judges, teachers, and other civic leaders with the resources they need to engage participants and community members in discussions of fundamental American legal principles and civic traditions. Supreme Court Justice Anthony Kennedy introduced the first Dialogue program, the *Dialogue on Freedom*, in 2002. Subsequent Dialogues have addressed *Brown v. Board of Education*, the American jury, separation of powers, youth and justice, the rule of law, Lincoln and the law, law in the 21st century, the legacy of John Adams, the role of courts, voting, the legacy of Dr. Martin Luther King, Jr., the legacy of Magna Carta, and the *Miranda* warning.



### Harry S. Johnson

Chair, American Bar Association  
Standing Committee on Public  
Education

### Stephanie Parker

National Law Day Chair

## CREDITS

### Editor:

Tiffany Middleton

### Contributors:

Chandra Fitzpatrick  
Catherine Hawke  
Howard Kaplan  
Christine Lucianek

### Designer:

ABA Design

Points of view or opinions in this publication are those of the authors and do not necessarily reflect the official position or policies of the American Bar Association.

This guide may be reproduced for nonprofit education activities but may not be sold.

© 2017 American Bar Association

## PART I ★ EQUAL PROTECTION AND CIVIL RIGHTS

In this portion of the Dialogue, participants discuss the equal protection clause of the Fourteenth Amendment, and consider how Congress, through federal legislation, has worked to help realize its constitutional promise. A corresponding downloadable PowerPoint presentation and handouts are available at [www.lawday.org](http://www.lawday.org).

### ★ Ask participants:

#### What do you know about the Fourteenth Amendment to the U.S. Constitution?

Allow participants to share their ideas. The Fourteenth Amendment was ratified in 1868, following the American Civil War (1861–1865). It is one of the “Reconstruction Amendments,” along with the Thirteenth Amendment (1865) and Fifteenth Amendment (1870). It is the Constitution’s longest amendment, with over 200 words. It is one of the most common parts of the Constitution to be debated in American courts, including the U.S. Supreme Court. The Fourteenth Amendment consists of five sections, with the first section guaranteeing American citizenship to anyone born or naturalized in the United States, due process in courts of law, and equal protection under the laws. Explain to participants that they will next be looking at selected text of the Fourteenth Amendment.

### ★ Share with participants:

#### Section 1, Fourteenth Amendment, U.S. Constitution:

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

\*\*\*

#### Section 5, Fourteenth Amendment, U.S. Constitution

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

### ★ Ask participants:

#### What rights do you see contained in section 1 of the Fourteenth Amendment? what prohibitions? What is included in section 5?

Allow participants to read the excerpts of the Fourteenth Amendment, or ask someone to read them aloud. Help participants to identify all of the clauses in section 1 and what they say, including defining any words as needed. Participants should understand that section 1 provides for citizenship, due process, and equal protection. Participants should understand that section 5 authorizes the U.S. Congress to make laws to enforce the provisions promised in the other sections.

#### Why do you think it is important to give Congress power to make laws to enforce the amendment?

Participants should understand that providing Congress with the ability to make laws to enforce the amendment made the amendment more powerful, ensuring that it was more likely to be followed, and any laws passed to enforce it would have national reach. Congress may also use the amendment as a basis for legislation to address new problems as they arise. Help participants to understand that the constitutional amendment alone was not sufficient, in part because its language was general and that legislation helps to address specific issues.

Explain to participants that Congress has been making laws to enforce the Fourteenth Amendment since the amendment’s ratification in 1868, and one example that we can track over time is in the area of civil rights.



**★ Share with participants:**

**Timeline of Selected Civil Rights Legislation in the United States**

(See the timeline on page below)

*Download a printable handout of the timeline at [www.lawday.org](http://www.lawday.org), or use the custom presentation. Discuss the legislation that is chronicled on the timeline. Explain that the timeline shows selected civil rights laws that were passed by Congress, in the United States, with the date that they became law. Highlight that the timeline shows selected civil rights legislation passed by Congress.*

**★ Ask participants:**

**What can you tell me about the Civil Rights Act of 1964? How was it different from civil rights acts that were passed before it? Do you think the Civil Rights Act of 1964 furthered the guarantees contained in the Fourteenth Amendment?**

*Help participants read the timeline and discuss entries. Emphasize that the Civil Rights Act of 1964 was much more comprehensive than the 1866 and 1957 acts in that it outlawed discrimination in more areas (i.e., voting, schools, workplaces, public accommodations) and on the basis of more criteria (i.e., race, color, religion, sex, national origin).*

*Explain to participants that the Civil Rights Act of 1964 was a landmark law, but that more laws have followed to further enforce the promises made in the Fourteenth Amendment. Next, highlight for participants the laws on the timeline that have been passed by Congress since the Civil Rights Act of 1964.*

**TIMELINE OF SELECTED CIVIL RIGHTS LEGISLATION IN THE UNITED STATES**

**Civil Rights Act of 1866**—guaranteed that all persons born in the United States are citizens, and guaranteed that all citizens of “every race and color” would have the same right in every state to make contracts, sue in court, and buy and sell property.

**Civil Rights Act of 1964**—outlawed discrimination based on race, color, religion, sex, or national origin, especially in voting, schools, workplaces, and places that served members of the public, known as “public accommodations.”

**Age Discrimination in Employment Act (1967)**—prohibited employment discrimination against anyone 40 years of age and older.

**Americans with Disabilities Act of 1990**—prohibited discrimination against people with disabilities in employment, transportation, public accommodations, communications, and governmental activities.

**Civil Rights Act of 1957**—prohibited the denial of any citizen’s right to vote on the basis of color, race, religion, or national origin, as well as the coercion or intimidation of any voter.

**Voting Rights Act (1965)**—provided for many areas of federal election administration, prohibited the use of literacy tests, and prohibited states and local authorities from imposing voting laws or procedures that discriminate against language or racial minorities.

**Education Amendments (1972)**—Title IX prohibited discrimination on the basis of sex in educational activities.

**How are these acts different from the Civil Rights Act of 1964? How did they expand the provisions included in the Civil Rights Act of 1964?**

Encourage participants to offer their observations. Discuss each law on the timeline and what it did, and answer any questions as needed. Participants should recognize that the laws since 1964 expanded the protections against discrimination to include, specifically, voters, people over age 40, participants in schools, and persons with disabilities.

**Do you think these laws furthered the guarantees contained in the Fourteenth Amendment? How?**

Encourage participants to recognize that the legislation examples on the timeline prohibited certain forms of discrimination. In doing so, the persons affected by each law might also have equal protection before the law.

Explain to participants that the right to equal protection before the law is still an important matter in Congress. Explain to participants that they will be learning about a proposed federal law, the Equality Act.

**★ Share with participants:**

**Equality Act, introduced in 114th Congress, 2015:**  
The Equality Act would prohibit discrimination on the basis of sex, sexual orientation, and gender identity in public places or locations that provide public accommodations.

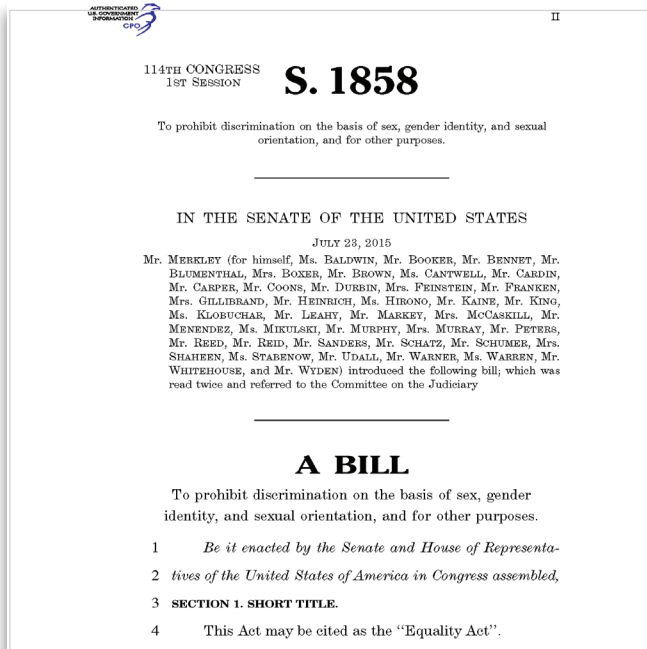
For additional resources to present the Equality Act, please see [www.lawday.org](http://www.lawday.org) for links to press release and video. Help participants to understand that the Equality Act proposes to amend the Civil Rights Act to effectively prohibit discrimination on the basis of sex, sexual orientation, and gender identity in schools, workplaces, and public accommodations.



**★ Ask participants:**

**Do you think the Equality Act would advance the rights mentioned in the Fourteenth Amendment? Do you think Congress should pass the act? Why or why not?**

Allow participants to discuss their thoughts and share their opinions. Emphasize to participants that the Equality Act was introduced in the 114th Congress in 2015 and is not federal law. The Equality Act would need to be reintroduced in the 115th or subsequent sessions of Congress in order to start the process of becoming law. Encourage participants to contact their representatives about the act to express their views about whether or not it should be reintroduced.



## PART 2 ★ INCORPORATING THE BILL OF RIGHTS

*This section of the Dialogue examines the concept of incorporation. Using a case study of *Gitlow v. New York* (1925), this section will provide a guide to how courts have applied the Bill of Rights, selectively, to the states using the Fourteenth Amendment. This discussion assumes participants have familiarity with the Fourteenth Amendment and its text. A corresponding downloadable PowerPoint presentation and handouts are available at [www.lawday.org](http://www.lawday.org).*

### ★ Ask participants:

**When you hear the words “freedom of speech,” what do you think that means?**

*Participants will likely focus on being able to say what they want with limited to no restrictions. Encourage participants to think about the actions of state and local government actors and the text of First Amendment.*

### ★ Share with participants:

**First Amendment, U.S. Constitution:**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### ★ Ask participants:

**Does the amendment itself say whose actions are restricted? Whose actions are limited by the First Amendment?**

*Help participants focus on the word “Congress”—in this sense, meaning federal legislation and statutes. Encourage participants to think about how the country was structured at the time of the Constitution’s ratification: strong state governments and a federal system that was new and developing.*

**How does the First Amendment apply in your local community when the text doesn’t specifically mention state and local government actors?**

*At this point, participants may start to see that the words of the First Amendment alone do not paint the full picture of our First Amendment rights. Participants may focus on the idea that the local police should be held to the same standard as federal government officials or notions of fairness. Let participants know that this very question has been answered by courts, and that you will explore it together.*

### ★ Share with participants:

**Section 1, Fourteenth Amendment, U.S. Constitution (excerpt):**

...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law...

### ★ Ask participants:

**Let’s compare this text to that of the First Amendment. To whom does the Fourteenth Amendment apply?**

*Participants should note that the Fourteenth Amendment specifically references the states and is not simply limited to Congress or the federal government.*

**Do you think that all aspects of the Bill of Rights should apply to the actions of state and local government actors?**

*Encourage participants to share their thoughts. Ask participants to vote by a show of hands or taking a stand on opposing sides of the room. Invite a few participants to explain their votes. Explain “Bill of Rights” if necessary. Explain that you are going to look at what courts have ruled on the issue.*

### ★ Share with participants:

**From U.S. Supreme Court opinion in *Palko v. Connecticut* (1937):**

[If the Court were to agree with the defendant,] [w]hatever would be a violation of the original bill of rights (Amendments I to VIII) if done by the federal government is now equally unlawful by force of the Fourteenth Amendment if done by a state. There is no such general rule.

*Explain to participants that this case involved the application of double jeopardy to a state court proceeding. The Supreme Court held that the Fifth Amendment protection against double jeopardy did not apply to the states.*

## ★ Ask participants:

### What is the Supreme Court saying in *Palko*?

Participants should see that, according to the Supreme Court, there was no general rule that the Bill of Rights applied to the states through the Fourteenth Amendment.

## ★ Share with participants:

**Incorporation:** The legal framework through which courts apply provisions of the Bill of Rights to the states through the due process clause of the Fourteenth Amendment.

Introduce participants to the concept of incorporation. Remind participants that when the Bill of Rights was added to the Constitution, it only applied to the actions of the federal government. However, through the process of what we call incorporation, certain portions of the Bill of Rights have been determined to apply to state and local officials through the Fourteenth Amendment. Explain to participants that they will next study one of the first U.S. Supreme Court cases dealing with incorporation, *Gitlow v. New York*.

## ★ Share with participants:

### *Gitlow v. New York* (1925)

**Facts:** Between 1919 and 1921, America was deeply worried about the events during the Russian revolution and feared the spread of communism and anarchism to the United States. In response, a number of state laws were enacted to limit the publication and distribution of communist or socialist writings. Benjamin Gitlow, a New York state politician and member of the Socialist Party of America, was convicted of violating New York's Criminal Anarchy law for publishing his "Left Wing Manifesto." Gitlow challenged his conviction.

**Question before the Court:** Does the Fourteenth Amendment prohibit states from infringing on a defendant's right to free speech?

Help participants understand the question before the Supreme Court. Note that before *Gitlow*, it was clear that the First Amendment would have restricted the ability of the federal government to implement such a restriction on free speech, but the question of whether the First Amendment limited a state or local government was unresolved.



## ★ Ask participants:

### If you were a justice considering this question, how would you rule? Why?

Participants should offer ideas about how they would rule in the case. Answers may harken back to the earlier answers dealing with fairness and state and local government actors being held to the same standard as federal government officials.

## ★ Share with participants:

### Court's holding in *Gitlow v. New York*:

The Fourteenth Amendment makes the First Amendment applicable to the states and limits their abilities to restrict individuals' First Amendment free speech rights.

### From the opinion in *Gitlow v. New York*, written by Justice Edward T. Sanford:

For present purposes, we may and do assume that freedom of speech and of the press which are protected by the First Amendment from abridgment by Congress are among the fundamental personal rights and "liberties" protected by the due process clause of the Fourteenth Amendment from impairment by the States.

Note to participants that ultimately, *Gitlow's* conviction was allowed to stand. The Court decided that New York's Criminal Anarchy law was acceptable, given the ongoing threats to the United States. Make sure that participants understand that even though *Gitlow's* conviction was upheld, this case was a watershed moment in the incorporation of the Bill of Rights.

## ★ Ask participants:

### Why do you think Justice Sanford identified freedom of speech as "among the fundamental personal rights" that should be incorporated to state and local governments?

Focus participants on the words "fundamental personal rights," and allow them to offer ideas about why they think freedom of speech qualifies. Explain to participants that freedom of speech is not the only right that courts have incorporated to the states.



Left: Mug shot of Benjamin Gitlow; right: cover of Gitlow's "Left Wing Manifesto." Source: Clarence Darrow Digital Collection at the University of Minnesota.

## ★ Share with participants:

### Bill of Rights and Incorporation

*Note—this chart includes selected freedoms included in the Bill of Rights.*

Amendment	Right or Freedom	Incorporated?
First	Freedom of speech	Yes—1925
	Establishment of religion	Yes—1947
	Exercise of religion	Yes—1940
	Freedom of the press	Yes—1931
	Freedom of assembly	Yes—1937
Second	Right to keep and bear arms	Yes—2010
Third	Freedom from quartering soldiers	<b>Unresolved</b>
Fourth	Unreasonable search and seizure	Yes—1961
	Right to a grand jury	<b>Unresolved</b>
Fifth	Freedom from double jeopardy	Yes—1969
	Right to avoid self-incrimination	Yes—1964
	Right to a speedy trial	Yes—1967
Sixth	Right to jury trial in civil cases	<b>Unresolved</b>
Seventh	Freedom from cruel and unusual punishment	Yes—1962

## ★ Ask participants:

We now know that in *Gitlow*, the Court assumed that freedom of speech was among the personal rights and liberties protected by the Fourteenth Amendment. Looking at this chart detailing other freedoms protected by the Bill of Rights, which ones do you think the Fourteenth Amendment incorporated to the states? Why?

*Download a printable handout of the chart at [www.lawday.org](http://www.lawday.org), or use the custom presentation. Depending on the time for this discussion, tailor the chart to focus on those amendments with which the participants are likely to be most familiar (most likely First, Second, Fourth, and Fifth) or most relevant in your community.*

**Would you have thought that all the freedoms of the Bill of Rights would have been incorporated at the same time? Why?**

*Allow participants to share their ideas. Note for participants that incorporation happened slowly, mostly beginning in the 20th century with the most recent decision occurring in 2010. Incorporation, even after it started, occurred on a case-by-case basis as each right came before the Supreme Court.*



**Three entries on the chart have not yet been incorporated. Why do you think this is?**

*Encourage participants to share their ideas. Rights that have not yet been incorporated might concern issues that courts have not determined to be fundamental to individual freedoms or may not have yet appeared before the Court.*

**Do you think the Fourteenth Amendment might have been written so as to automatically incorporate all provisions of the Bill of Rights to the states? Why? Should the decision to incorporate the Bill of Rights have been left to the courts or Congress?**

*Wrap up the discussion by having participants think about whether the Fourteenth Amendment should have been written so as to apply to the entire Bill of Rights immediately. Encourage participants to think about the balance between protecting fundamental rights and expecting states to govern themselves under our federalist system of government.*



## PART 3 ★ ENSURING EQUALITY AND LIBERTY

This section explores how the Fourteenth Amendment has been interpreted by courts to protect fundamental freedoms, including individuals' right to marry. Participants will also consider the relationship between equality and liberty under the Fourteenth Amendment and within a democratic society. A corresponding PowerPoint presentation and handouts are available for download at [www.lawday.org](http://www.lawday.org).

### ★ Ask participants:

**Would it surprise you to learn that the Fourteenth Amendment is cited and argued about in United States courts more than any other amendment to the U.S. Constitution? Do you have an idea why?**

Allow participants to express their thoughts about why the Fourteenth Amendment might be cited so much in court. Participants might suggest that the Fourteenth Amendment contains several guarantees and applies to both the federal government and the states. Emphasize that the Fourteenth Amendment includes several complex constitutional guarantees that touch many areas of everyday life for individuals and broad freedoms in our society. Explain to participants that they will be looking at a U.S. Supreme Court case that illustrates this connection.

If participants discussed Part 2 of the Dialogue, use the discussion following this question to segue into Part 3. For example: "In Part 2 of the Dialogue, we looked at the case of Mr. Gitlow and how the Fourteenth Amendment incorporated the First Amendment to the states. In Part 3, we will be looking at another case that discusses the Fourteenth Amendment in a different way."

### ★ Share with participants:

Introduce the family in the photo, Richard and Mildred Loving and their children. Download a printable handout of the photo at [www.lawday.org](http://www.lawday.org) or use the custom presentation. The Lovings lived in Virginia, and this photo was taken in approximately 1966. Note that the Lovings are the subjects of a 2016 film, "Loving," and numerous documentaries that participants may recognize. If participants are familiar with these films, let them discuss what they learned about the Lovings' story.

### ★ Ask participants:

**What do you see in this photo? What are some observations that you make about the Loving family, based on this photo?**

Participants might observe that there are two adults and three children sitting on the porch of what might be their home, the family appears very close, the clothing and expressions of the family members, or the different races of the family members.

Explain to participants that Richard and Mildred Loving were married in Washington, D.C. in 1958. They were from Virginia, and returned there after their wedding. Interracial marriage or "miscegenation", like that of Richard and Mildred Loving, was illegal in Virginia. Upon returning to Virginia, the Lovings were charged with "unlawful cohabitation" and jailed for violating Virginia's anti-miscegenation law. The Lovings pled guilty, and were sentenced to one year in prison that would be suspended if they agreed to leave Virginia for 25 years. The couple contacted the American Civil Liberties Union for help, and two lawyers took their case. After appeals, the case went to the U.S. Supreme Court. The Court would consider whether Virginia's law prohibiting interracial marriage violated both the equal protection and due process clauses of the Fourteenth Amendment.



Richard and Mildred Loving, and their children, 1966. Photo by Grey Villet. Source: Estate of Grey Villet.

**★ Share with participants:**

“The End of Laws banning interracial marriage” map  
(see map below)

Explain to participants that Virginia was not the only state that banned interracial marriage when the Lovings married. Highlight the colors on the map, and discuss the map so that participants understand what it represents. When the Lovings’ case reached the U.S. Supreme Court, there were sixteen states that banned interracial marriage.

**★ Ask participants:**

Does anything about the Lovings’ story surprise you?  
What about the map?

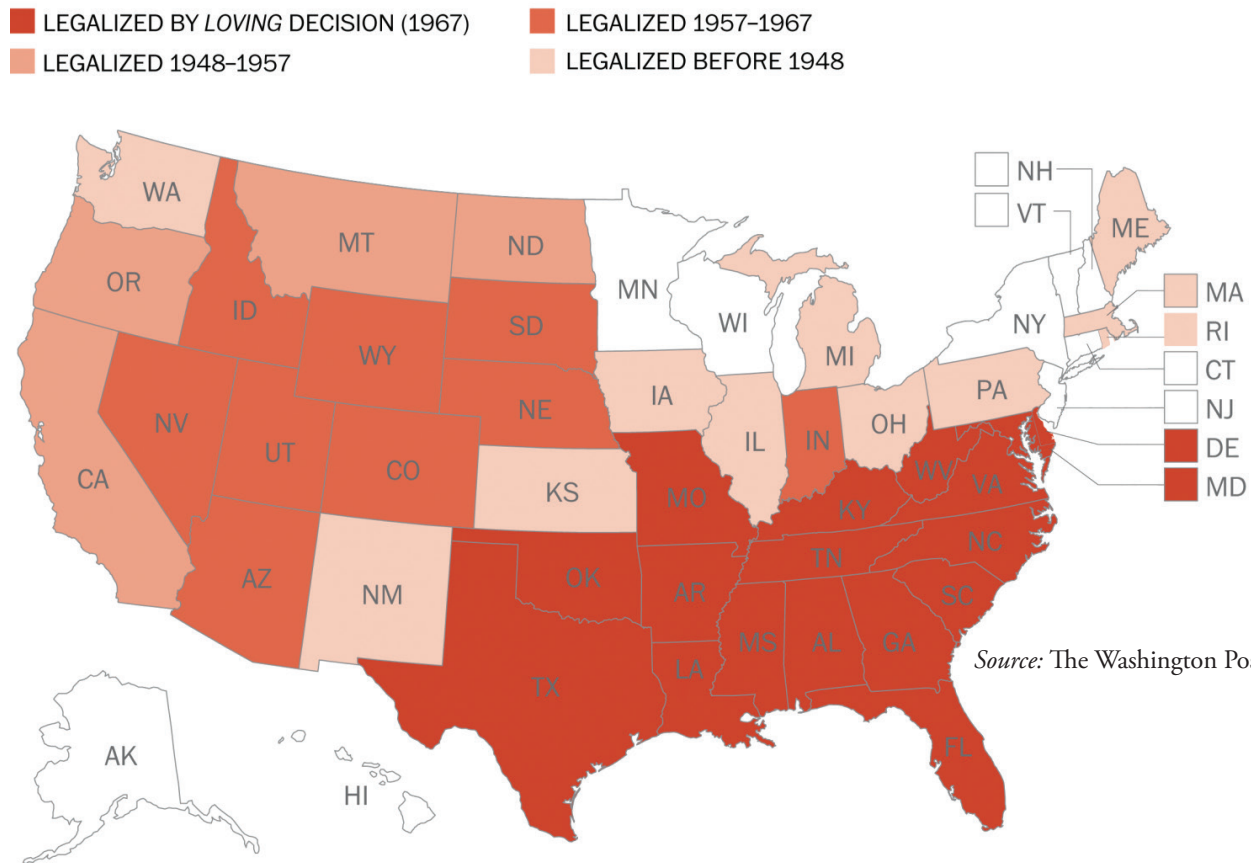
Encourage participants to share their ideas. Participants might express surprise at the interracial marriage laws in the United States.

**How might the law in Virginia have violated the Lovings’ right to equal protection under the Fourteenth Amendment? Due process?**

Participants should recognize that the law, in only applying to certain races, violated the equal protection clause of the Fourteenth Amendment. The law also immediately criminalized the act of interracial marriage, which led to imprisonment. Participants might also discuss how the Virginia law, in criminalizing the Lovings’ entrance into the state as a married couple, affected their ability to travel.

## The End of Laws Banning Interracial Marriage

Shortly before the Supreme Court acted, a flurry of states overturned the laws on their own.



## ★ Share with participants:

**Excerpt of the opinion in *Loving v. Virginia* (1967):** Marriage is one of the “basic civil rights of man,” fundamental to our very existence and survival. To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State’s citizens of liberty without due process of law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. 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.

*Read the excerpt with participants. Clarify any words or phrases as needed. Encourage participants to focus on key terms in the excerpt, such as “fundamental freedom,” “deprive . . . of liberty,” and “due process of law.”*

## ★ Ask participants:

**What do you think the Court meant by “the principle of equality at the heart of the Fourteenth Amendment”?**

*Allow participants to share their ideas. They might recognize that the equal protection clause of the Fourteenth Amendment guarantees equal application of laws, which might connect to a “principle of equality.”*

**According to the Court, who was depriving the Lovings of liberty without due process? Why did the Supreme Court think it was necessary to step in on a matter typically regulated by the states?**

*Participants should recognize that the State of Virginia was cited as depriving the Lovings of liberty without due process. It was necessary for the Supreme Court to step in at a national level, as other states had similar laws, and that they, too, violated the Fourteenth Amendment in the same way as the Virginia law, so it was important for the Court to issue a decision that would have a national impact.*

**Whose job is it to “step in” during these moments? Courts? Congress? The public?**

*Allow participants to express their thoughts about each of these groups influencing national and state law and policy. Emphasize that, at times, the Supreme Court has been “ahead” of both state laws and public opinion on issues, but other times, the Court has been behind and catching up to state laws or public opinion.*



**From the excerpt, what did the court mean by “deprive all the state’s citizens of liberty without due process of law? What relationship did the Court outline between equality and liberty?”**

*The Court suggested that denying equality to the Lovings, by infringing their right to marry, in effect, deprived “all the State’s citizens of liberty without due process of law.” Encourage participants to think about this portion of the quote and why the court would say it in that way. Participants may identify a relationship between the “part” and the “whole,” or the application of individual rights to a society or larger culture.*

## ★ Share with participants:

**Excerpt of the opinion in *Obergefell v. Hodges* (2015):**

The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning. . . . [I]n interpreting the Equal Protection Clause, the Court has recognized that new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged. . .

*Wrap up discussion by asking participants for their reactions to this quote from the 2015 U.S Supreme Court decision in *Obergefell v. Hodges*, which extended the right of marriage to same-sex couples. Participants might suggest that the quote adds a “time” element to freedom, that freedoms evolve under the Fourteenth Amendment, that the Fourteenth Amendment ensures both liberty and equality, and it is up to “future generations” to make these determinations when appropriate.*

# HOW TO DO A DIALOGUE IN THE CLASSROOM OR COMMUNITY

If you are a lawyer, judge, or other leader interested in conducting a Dialogue on the Fourteenth Amendment at a school in your community, follow these steps to help ensure a meaningful experience for the participants and you.

A note to teachers or community group leaders: If you are initiating the program, please review these steps with legal professionals whom you have asked to conduct a Dialogue.

**Step 1. Identify a school or community group.** Contact a school where your or your friends' children are participants, a school in your neighborhood, or a school where you know members of the teaching staff. You might also contact community groups for youth and adults, such as the YMCA, Girl Scouts, Kiwanis Club, or League of Women Voters. Friends and coworkers might also recommend a school or community group that would like to participate in the Dialogue program.

**Step 2. Set up an appointment for your visit.** Contact the school principal, department head (social studies, history, government, or civics), teacher, or community group leader. Explain the program to them, and offer them a copy of the *Dialogue on the Fourteenth Amendment: A Resource Guide*. Ask if they would be willing to schedule a date and time to conduct the Dialogue. They should set aside somewhere between 45–90 minutes.

**Step 3. Discuss your visit with the teacher or community group leader.** Discuss the ages and experiences of

the participants. Determine what part of the Dialogue you would like to focus on, and provide the teacher with a copy of the *Dialogue on the Fourteenth Amendment: A Resource Guide*, indicating the parts you wish to discuss. In addition, consult with the teacher or community leader about additional background materials that might help participants. Request that name tags or tent cards be printed with the participants' names. Request equipment you will need (e.g. LCD projector, screen, flip chart, or microphones).

**Step 4. Prepare participants for your visit.** Ask the teacher or community leader to distribute any materials or assign any background readings you want participants to discuss at least one day before your visit.

**Step 5. Prepare and review.** Know your subject. Review the *Dialogue on the Fourteenth Amendment: A Resource Guide* beforehand and think of additional follow-up questions that may help participants explore the issues raised. Using the step-by-step directions and questions in the guide, map out where you would like the discussion to go, but be prepared to respond to participants' questions and provide background information, if needed. As appropriate, personalize the topic by referring to your own experiences or issues in your community.

**Step 6. Follow up after the Dialogue.** Write a thank-you note to the teacher or community leader. Make yourself available to answer questions participants may raise following the Dialogue on the Fourteenth Amendment.



[www.americanbar.org/publiced](http://www.americanbar.org/publiced)