



Law Day is May 1.

The 2022 Law Day theme — ***Toward a More Perfect Union: The Constitution in Times of Change*** — reminds all of us that the Constitution is a dynamic document, as it not only outlines a blueprint for government, but also delegates power, articulates rights, and offers mechanisms for change.

The framers of the Constitution realized that change and reform would be necessary over time, and in Article V they spelled out several processes for amending it. Since the adoption of the Bill of Rights, there have only been 17 additional Amendments to the Constitution.

However, change also occurs when the actions and voices of ordinary citizens fighting through the courts have helped to ensure that the Constitution lives up to its fullest potential — providing equal rights and justice for all.

Join us over the next five days as we dig a little deeper into the historic background, civic principles, and rights and protections associated with a few examples of those who have stood up and helped make changes necessary to move our nation toward a more perfect union.



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# Separate is Not Equal

The 14th Amendment to the U.S. Constitution, ratified in 1868, granted citizenship to all persons born or naturalized in the U.S. — including former enslaved people — and guaranteed all citizens “equal protection of the laws.”

Shortly after its ratification, however, state and local laws enforcing racial segregation, also known as Jim Crow laws, were created in many locations across the country. The following case, involving Mexican-American plaintiffs, was an important step toward ensuring equal protection.

## Mendez v. Westminster (1946)

By the 1940s, while not a law, it was a long-standing practice to segregate Mexican Americans from the Anglo population in southern California. This included Mexican American sections in movie theaters, “Mexican Mondays” at the public pools, and separate schools. The educational argument was that the children needed specialized English instruction. However, children were placed in the schools regardless of language ability.

These schools were supposed to be “separate but equal” — a measure first created in the 1896 landmark case of *Plessy v. Ferguson*. But this was not the case. The “Mexican schools” started sessions late and seasonally shortened the school day to allow for their student population to work alongside their parents to harvest fruits and nuts. Their school buildings, books and supplies, and equipment were second-rate.

Several fathers, including Gonzalo Mendez, represented by a civil rights attorney, David Marcus, took four school districts to court seeking equal treatment for their children and the other 5,000 children in the area of Mexican descent. The group won their case. In his ruling on Feb. 18, 1946, U.S. District Court Judge McCormick wrote that the segregation of Mexican students to separate schools was unenforceable under California law, and violated the equal protection clause of the 14th Amendment to the Constitution. The schools unsuccessfully appealed the case to the U.S. Court of Appeals for the Ninth Circuit.

In June 1947, Governor Earl Warren signed a bill ending school segregation in California. Later, as Chief Justice of the Supreme Court, Warren wrote the majority opinion in the landmark case *Brown v. Board* (1954), ending legalized school segregation throughout the United States.

**Newspaper Activity:** People make their voices known to government officials in a variety of direct ways, such as speaking at congressional hearings or town meetings or sending letters. People also attempt to sway others through newspapers and other media with a variety of methods, such as letters to the editor, political cartoons, press releases and even advertising. For this activity, each student should find examples in which the newspaper was used to sway opinions about a specific issue. Note the issue, how the arguments were made, and whether you found it credible and persuasive.

Next installment: **Equal Protection — A Jury of One’s Peers**

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# Equal Protection – A Jury of One’s Peers

The U.S. Constitution was ratified in 1788 and first amended in 1791 with the adoption of 10 amendments known as The Bill of Rights. The 6th Amendment in the Bill of Rights guarantees that anyone accused of a crime, “shall enjoy the right to a speedy and public trial, by an impartial jury.” This concept dates back to 1215 in England’s Magna Carta, which refers to a jury trial with a “judgment of his peers.” The following case was taken to the U.S. Supreme Court not to prove guilt or innocence but to ensure due process of and equal treatment under the law.

## Hernandez v. Texas (1954)

Peter Hernandez, a Mexican American agricultural worker, was indicted, convicted and given a sentence of life in prison for murder. In both cases, Hernandez was tried before an all-Anglo (white) jury. His defense attorneys attempted to stop the proceedings because persons of Mexican descent were excluded from jury service. Hernandez’s legal team claimed that Mexican Americans, although white, were treated as a class apart and subject to social discrimination. An example of this discrimination was found in the Jackson County (Texas) Courthouse where there were two men’s restrooms, one unmarked and one with a sign reading “Colored Men and Hombres Aqui.”

Hernandez’s attorneys appealed his conviction arguing that without a jury of his peers Hernandez was denied equal protection under the 14th Amendment. They showed evidence that Mexican Americans made up 14 percent of the population, yet no one with a Hispanic surname had served on any jury in the county in the prior 25 years. The Texas Court of Criminal Appeals denied their claim stating that, “Mexicans are ... members of and within the classification of the white race as distinguished from members of the Negro Race,” indicating their belief that the 14th Amendment applied only to Black and white populations.

Hernandez’s pro-bono legal team didn’t stop there and appealed to the U.S. Supreme Court. Writing in the unanimous decision, Chief Justice Earl Warren wrote that the 14th Amendment “is not directed solely against discrimination due to a ‘two-class theory’” but extends to cover any national or ethnic groups for which discrimination could be proved. The Court required Hernandez to be retried by a jury composed without discrimination against Mexican Americans.

Hernandez was retried with a jury including two members of Mexican descent. He was found guilty and given a 20-year sentence.

**Newspaper Activity:** In print or online, look for examples of people fighting for the equality of others. What group of people are they working for? How and why are they doing it?

Next installment: **Equal Opportunity to Vote**

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# Equal Opportunity to Vote

The Voting Rights Act of 1965 was signed into law on August 6, by President Lyndon Johnson. It outlawed the discriminatory voting practices adopted in many states, including literacy tests, as a prerequisite to voting. Primarily thought of as part of the Civil Rights Movement fighting for the rights of African Americans, the act enforced the 15th Amendment to the Constitution, helping to secure the vote for others who were also disenfranchised. The following case challenged the constitutionality of part of that law.

## Katzenbach v. Morgan (1966)

A 1921 amendment to the New York State Constitution determined that all new voters should be able to read and write English. The legislature gave the Board of Regents the sole power to determine literacy for voting.

Specifically addressing literacy tests, Section 4(e) of the Voting Rights Act of 1965 “provides that no person who has completed the sixth grade in a public school, or an accredited private school, in Puerto Rico in which the language of instruction was other than English shall be disfranchised for inability to read or write English.” This provision was in direct conflict with New York’s existing law.

Two registered voters, John and Christine Morgan challenged this section of the Voting Rights Act. They sued U.S. Attorney General Nicholas Katzenbach and the New York City Board of Elections alleging Section 4(e) infringed on the rights reserved to the states by the 10th Amendment. A three-judge district court ruled in favor of the Morgans by declaring Section 4(e) of the Voting Rights Act unconstitutional.

Attorney General Katzenbach appealed the district court’s decision to the U.S. Supreme Court. On June 13, 1966, Justice William J. Brennan in delivering the 7-2 majority opinion held, “Section 4(e) is a proper exercise of the powers under Section 5 of the Fourteenth Amendment, and, by virtue of the Supremacy Clause, New York’s English literacy requirement cannot be enforced.”

The Voting Rights Act of 1975 recognized barriers to voting due to language still existed. The amended VRA required states and local governments to provide translated voting documents where a single-language minority group made up more than 5% of the voting-age population based on U.S. Census figures. In the 2006 reauthorization of the VRA signed by President George W. Bush, those language provisions were extended through 2032 and the Census Bureau was instructed to use the American Community Survey and assess determinations every five years rather than every ten years as done in the past.

**Newspaper Activity:** Look through the news, in print or online, for examples of current voting rights issues. Select one and prepare a summary of the who, what, where, when and why to share with your class.

Next installment: **Toward a More Perfect Union**

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# Toward a More Perfect Union

As noted in the preamble of the U.S. Constitution, the founders aimed to form “a more perfect union.” They understood the document was merely a starting point in establishing justice, tranquility, welfare, liberty and prosperity for the nation and its people.

Our democracy has never progressed in a straight line. From before the adoption of the U.S. Constitution to today, we have been a country full of controversy and debate. In fact, our form of government is dependent on a public forum of open ideas and debate. We also have a history of fighting for acceptance and working toward compromise.

The three cases in this series highlight key democratic principles that are necessary to be full participants in our government: access to free public education, the right to an impartial jury as well as the right to serve as a juror, and the right to vote.

The events and judicial decisions very briefly reviewed in this series are in no way comprehensive but merely a few highlights from U.S. history. As a nation formed by “we the people,” it is fitting that the action of an ordinary citizen or group standing up for what they believed to be right has sparked positive change.

Change is constant and inevitable. But, if we are to continue to move toward a more perfect union, it is vital that we adhere to the rule of law. We must seek to include the voices and participation of all people and continue to protect and defend their rights as well.

**Newspaper Activities:** Look for current examples in the news of inequality under the law. What, if anything, is being done to change the situation and move us toward a more perfect union?

Look for news reports of individuals or groups of people standing up for what they believe is fair. Select one. Do you agree or disagree with them and why?

If interested, this series has a corresponding teaching guide with graphic organizers, audio podcasts, related videos and a Spanish translation version available online at <https://nynpa.com/nie/lawday.html>.

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