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MR. POGREBA, PARKER SCHOOL

# Unit 6: Civil Rights

## WHICH STUDENT SHOULD HARVARD ADMIT?

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- **30 ACT**
- **4.43 GPA**
- **12 AP classes**
- **11 co-curricular activities**
- **Glowing letters of rec**

- **27 ACT**
- **3.9 GPA**
- **No AP classes**
- **11 co-curricular activities**
- **Glowing letters of rec**

## WHICH STUDENT SHOULD HARVARD ADMIT?

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- 30 ACT
- 4.43 GPA
- 12 AP classes
- 11 co-curricular activities
- Glowing letters of rec

**White kid from suburban CT**

- 27 ACT
- 3.9 GPA
- No AP classes
- 11 co-curricular activities
- Glowing letters of rec

**Native kid from rural Montana**

# CIVIL LIBERTIES AND CIVIL RIGHTS

- ▶ **Civil liberties** concern the actual basic freedoms; civil rights concern the treatment of an individual regarding certain rights.
  - ▶ **Civil liberties** are the articulation of the natural rights enjoyed by all and articulated in the Bill of Rights.
  - ▶ **Civil rights** concern efforts to ensure that those liberties are applied equally and that people don't face **discrimination** from **unequal treatment**.
- ▶ Enforcement of civil rights most often rests on the **Equal Protection Clause of the 14th Amendment**.

**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.**

## DISCRIMINATION AND THE LAW: SCRUTINY

- ▶ Some forms of discrimination are permitted by the law. Courts use the **rational basis test** to determine whether the discrimination is permissible.
- ▶ **Intermediate scrutiny** means the government must only show an **important interest**.
- ▶ The **strict scrutiny test** applies
  - ▶ when the discrimination is targeted at a race, religion, immigration status
  - ▶ Or denies a fundamental right.
  - ▶ The government must show **compelling state interest**.

Age, disability, gender, sexual orientation

Some gender-based cases

Race, ethnicity, immigration status or restriction of fundamental civil right

# MILLIKEN V. BRADLEY (1974)

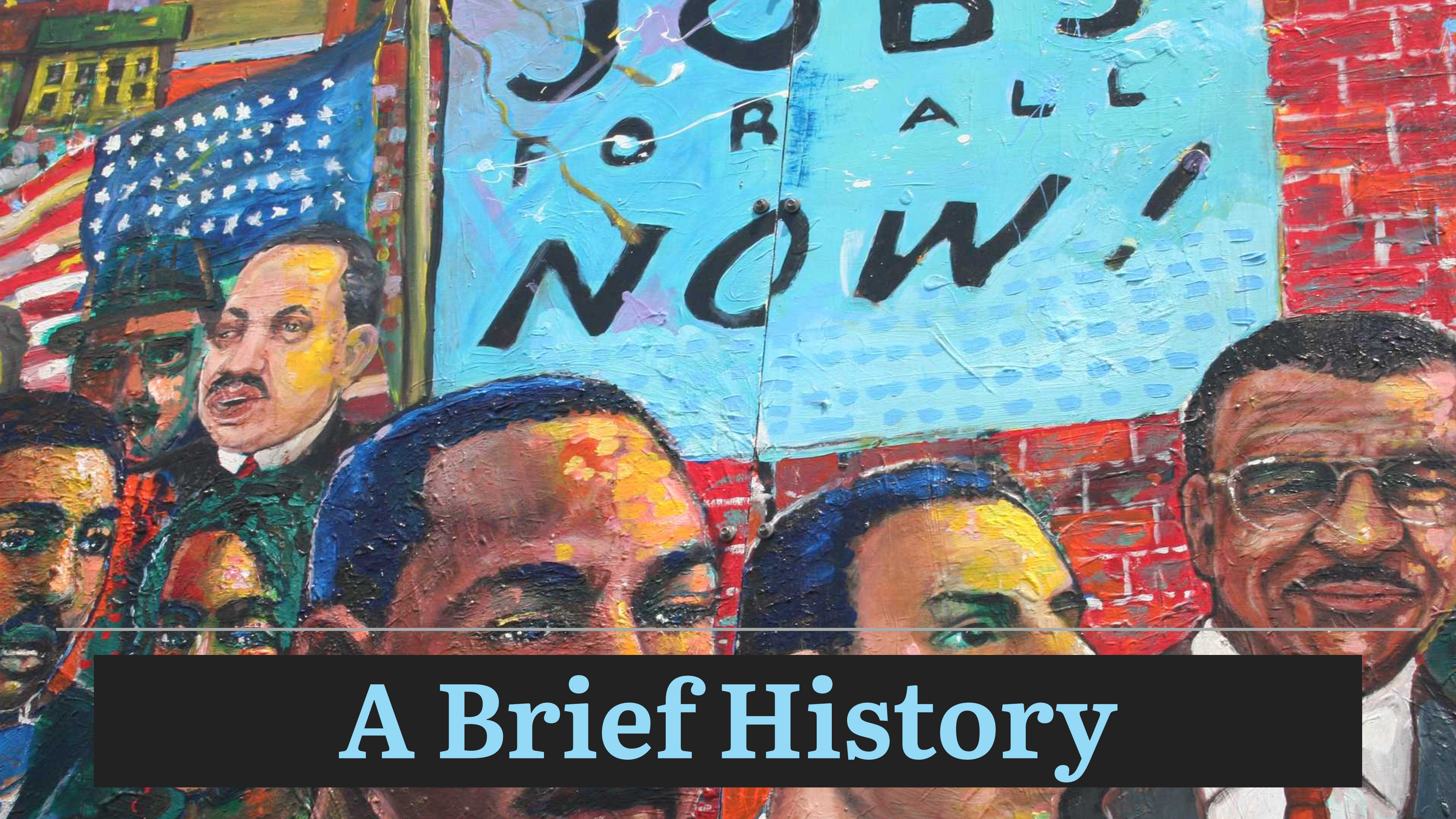
- ▶ Education officials created new school districts outside of Detroit for predominantly white populations. As a result, Detroit schools were 70% Black students.
- ▶ In 1974, the Supreme Court ruled in **Milliken v. Bradley** that segregation was permitted if it was not the explicit intent of school systems. This encouraged **white flight**.
- ▶ Today, 8.9 million public school kids live on the disadvantaged side of a particularly divisive school district boundary.
- ▶ Today, 2% of the students in the Detroit school district are white and they receive \$4,000 less per student than students in predominantly white districts.



### APPLICATION: MILLIKEN V. BRADLEY

Brown sought to tie the fates of white and minority students together by declaring that "separate educational facilities are inherently unequal," but the promise of Brown has never fully been realized. Milliken, by contrast, limited the reach of Brown by making clear that desegregation would not touch the suburbs. As a result, the education of urban and suburban students remains a world apart.

**JAMES RYAN, HARVARD LAW**



# A Brief History



# KEY CONSTITUTIONAL AMENDMENTS

- ▶ The **13th Amendment** abolished slavery or involuntary servitude except as a punishment for a crime.
  - ▶ Mass incarceration
- ▶ **The 14th Amendment**
  - ▶ made former slaves and all people born in the United States citizens
  - ▶ Guaranteed due process of law for all
- ▶ **The 15th Amendment** made it illegal to use race as a reason to block voting rights.
- ▶ **The 19th Amendment** gave women the right to vote.
- ▶ **The 24th Amendment** outlawed poll taxes.



## A BRIEF HISTORY

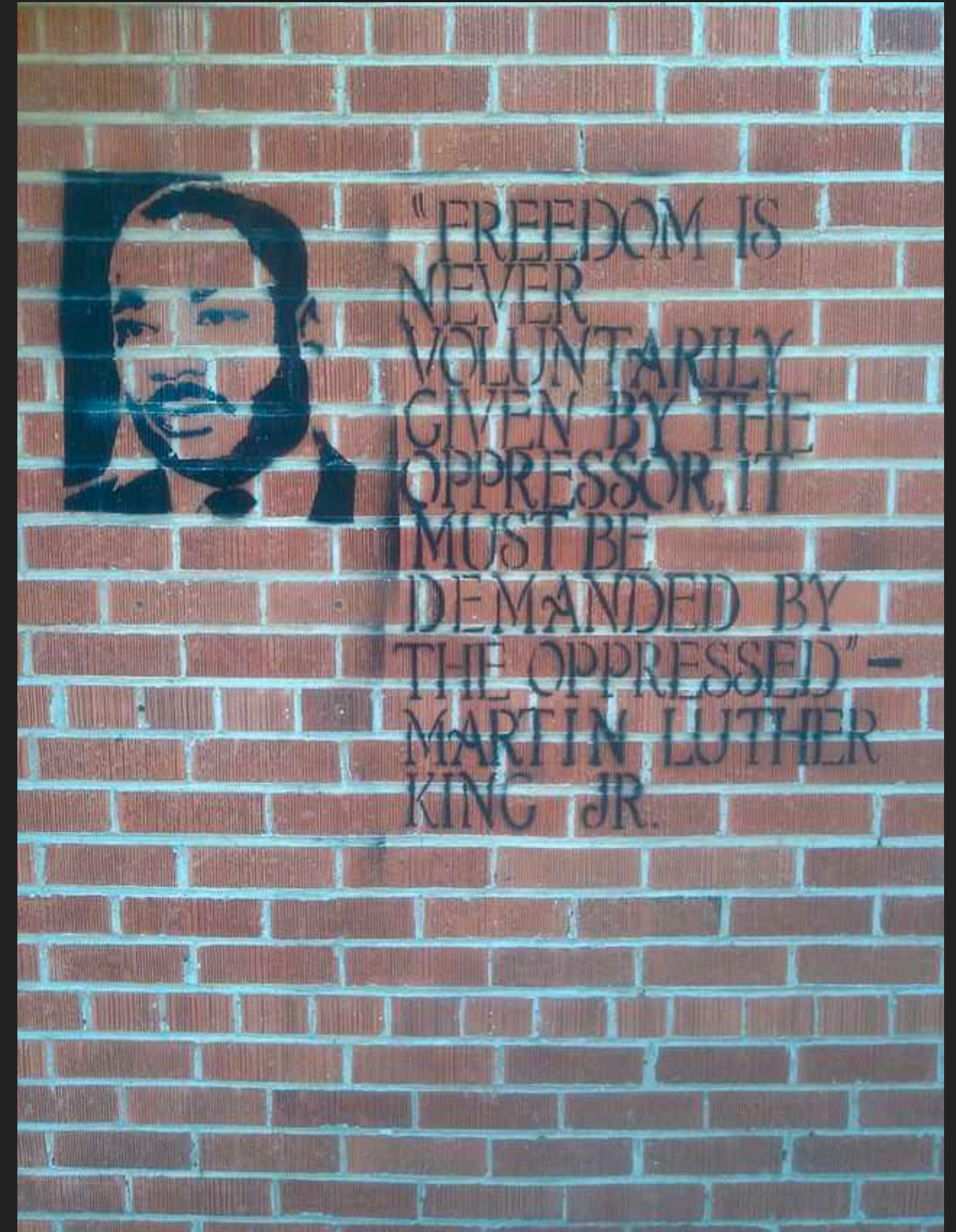
# CIVIL RIGHTS FOR AFRICAN AMERICANS

- ▶ **Brown v. Board of Education** (1954) struck down “separate but equal” in schools and overturned **Plessy v. Ferguson**.
- ▶ The **Civil Rights Act of 1964**
  - ▶ protection of voting rights for all Americans
  - ▶ opening of public facilities (restaurants, hotels, stores, restrooms) to people of all races
  - ▶ a commission to protect equal job opportunities for all Americans.
- ▶ The **Voting Rights Act of 1965**
  - ▶ Put an end to literacy tests
  - ▶ Authorized federal examiners to register voters in areas suspected of denying Black Americans the right to vote
  - ▶ Directed the attorney general to take legal action against states that continued to use poll taxes in state elections
- ▶ Important note: while **de jure** segregation is forbidden by law in the United States, **de facto** segregation endures.



# FOUNDATIONAL DOCUMENT: LETTER FROM A BIRMINGHAM JAIL

- ▶ While in jail for violating an Alabama law against public protest, Martin Luther King Jr. wrote the **Letter from a Birmingham Jail**. If you haven't read it, do so. It's a towering work of genius.
- ▶ As it relates to AP Government, the Letter:
  - ▶ illustrates the critical role of **social movements** to advocate for civil rights progress.
  - ▶ articulates a defense of **civil disobedience** to break unjust laws.
  - ▶ argues that the **arc of history will move towards justice**, but only if people of good will act.



# AFFIRMATIVE ACTION

- ▶ One of the most contentious civil rights issues today is **affirmative action**.
- ▶ Proponents argue that affirmative action is a necessary **corrective for the legacy of racism**; opponents argue that it amounts to **reverse discrimination** and we need to live in a **color blind** society.
- ▶ The standard in the United States today is that institutions like schools can use race as a **plus factor** when making admissions decisions, but cannot have **quotas**.
- ▶ Many states have explicitly outlawed race as a factor in hiring and educational practices.
- ▶ Ironically, most of the challenges to affirmative action today are rooted in the 14th Amendment and 1964 Civil Rights Act.

The Supreme Court just (January '22) took two cases arguing that race cannot be a factor in college admissions.



# CIVIL RIGHTS FOR WOMEN

- ▶ **Title VII of the Civil Rights Act (1964)** barred job discrimination based on sex.
- ▶ **The Equal Employment Opportunity Act (1972)** prohibited gender discrimination in hiring, firing, promotions, pay and working conditions
- ▶ **The Equal Credit Opportunity Act (1972)** prohibited discrimination against women seeking credit from banks, finance agencies, or the government and made it illegal to ask about a person's gender or marital status on a credit application.
- ▶ **Title IX of the Education Amendments of 1972** protects people from sex discrimination in educational settings.
- ▶ **The Equal Rights Amendment** was passed by Congress in 1972, but a strong conservative pushback stopped ratification.



# CIVIL RIGHTS FOR AMERICANS WITH DISABILITIES

- ▶ The Rehabilitation Act (1973) prohibited discrimination against people with disabilities in federal programs.
- ▶ **The Education for All Handicapped Children Act (1975)** guarantees that children with disabilities will receive an "appropriate" education in the "least restrictive environment."
- ▶ **The Americans with Disabilities Act (1990)** forbids government agencies and owners of public accommodations from discriminating against people with disabilities.



## A BRIEF HISTORY

# CIVIL RIGHTS FOR LGBTQ+ AMERICANS

- ▶ The *Lawrence v. Texas* decision struck down laws forbidding “deviate sexual intercourse with an individual of the same sex.”
- ▶ LGBTQ+ in the Military
  - ▶ 1994: **Don't Ask, Don't Tell**
  - ▶ 2010: LGBTQ+ individuals can openly serve
- ▶ Gay Marriage
  - ▶ In 1993, Hawaii was the first state to legalize.
  - ▶ The 1996 **Defense of Marriage Act** defined marriage at federal level and said states did not have to recognize gay marriage
  - ▶ In 2015, **Obergefell v. Hodges** recognized a right to same sex marriage
- ▶ In 2020, the Supreme Court outlawed workplace discrimination against people who are LGBTQ+.
- ▶ Current controversies include LGBTQ+ athletes and **RFRA laws**.



Let's talk about full faith and credit here.



**Application Today**



## AFFIRMATIVE ACTION

- ▶ **Nearly** half of the students who graduate from high school in Mississippi are Black, but in 2019, Black students made up just 10 percent of the University of Mississippi's freshman class.
- ▶ Over the past two decades, the percentage of Black students has fallen at almost 60 percent of the "101 most selective public colleges and universities. —Education Trust
- ▶ In one study of top law schools, more than 50 percent of African-American law students were in the bottom 10 percent of their class. And the dropout rate among African-American students was more than twice that of their white peers.
- ▶ [There] are not enough [academically-gifted African-American or Hispanic students] at the very top tiers to satisfy the demand, and efforts to change that have had a pernicious effect on admissions up and down the academic pecking order, creating a **serious credentials gap at every competitive level.** —Heritage Foundation

**How do affirmative action policies represent a conflict between civil liberties and civil rights? Should colleges consider race in admissions?**

## AMERICANS WITH DISABILITIES

**“The ADA represents the most comprehensive civil rights law in a generation. Based on Congress’ finding that people with disabilities have been ‘subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness,’ its purpose is to extend to people with disabilities the same legal protections against discrimination available to women and racial and religious minorities under the 1964 Civil Rights Act.**

**96% of a sample of disabled Americans surveyed said the ADA had made a positive difference in their lives.”—ACLU**

**“Never mind that the ADA was nothing less than another nail in the coffin of U.S. employers’ real right to control their workplace... Obviously no decent person could fail to empathize with someone with a physical or mental handicap... what right does one person have, simply by virtue of any impairment, to lay claim, enforceable by law, over the life, property, and conscience of another?” —Scott McPherson Freedom Foundation, 2005**

**What civil liberties does the ADA limit?  
How should courts balance these claims?**

## RELIGIOUS FREEDOM RESTORATION ACTS

**“The bills are problematic because they are so broad that “any individual, association, partnership, corporation, church, religious assembly or institution or other business organization” can cite their religion as a tool to refuse service to someone who identifies as LGBT or exhibits some other trait “objectionable” to the owner, like pregnancy outside of wedlock or sporting tattoos.” —National LGBTQ Task Force**

**“Countries that protect religious freedom through laws like RFRA are linked to vibrant democracies, gender empowerment, robust freedom of the press, and economic freedom. Countries without religious freedom, on the other hand, often face more poverty, war, suppression of minorities, and violent extremism.” —Alliance Defending Freedom**

**How do RFRAs relate to strict scrutiny, federalism, and the conflict between civil liberties and civil rights?**

## VIOLENCE AGAINST WOMEN ACT

“The passage of VAWA in 1994 and its reauthorization in 2000, 2005, and 2013 have changed the landscape for victims who once suffered in silence. Survivors of domestic violence, dating violence, sexual assault, and stalking have been able to access services, and a new generation of families, professionals, and politicians have come to understand that domestic violence, dating violence, sexual assault, and stalking require immediate intervention.” —National Domestic Violence Hotline

“The House bill would expand the disqualification to ex parte orders, which are issued without a hearing, can last a few weeks, and may be renewable after that. That change should trouble anyone who cares about due process, since it takes away people’s constitutional rights based on allegations they have had no chance to rebut.

Another provision of the House bill would permanently deprive someone of his Second Amendment rights if he has been convicted of misdemeanor stalking, a crime that need not involve violence, threats, or even a victim the offender knows.” —Reason Magazine

**Should protection of women from violence be considered a civil rights issue? How should the court balance the rights of domestic violence survivors and gun rights?**

# Essential Ideas



### Core Questions

- ▶ Hows does the Bill of Rights protect **civil liberties as individual rights**?
- ▶ What is the difference between **civil liberties and civil rights**?
- ▶ How have **civil rights protections grown**, and how are both **dependent on changing social and legal norms**?
- ▶ How **did civil liberties and rights expand in the era between 1865-2022**? What are some of the major shifts in constitutional thinking, government action, and social movements that led the change?
- ▶ How are some of these expansions being challenged today?
- ▶ What are the challenges of balancing civil rights and liberties? Civil rights and society? How do courts **balance these competing interests**?
- ▶ How has the **14th Amendment** played a vital role in debates about civil rights?

### Application

- ▶ Be able to apply these concepts to real-world questions.