



Center for Education in Law and Democracy
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**Guest Presentations: 2007 Colorado We the People Summer Institute
University of Denver, June 12-15, 2007**

The Fourteenth Amendment: Historical and Contemporary Perspectives

Reshaping Democracy: The Fourteenth Amendment

Scholars often describe the adoption of the 14th Amendment as fulfilling the promise of equality stated in the Declaration of Independence. Ratified with the purpose to assure political rights for newly-freed slaves, early Court interpretations of this amendment actually expanded constitutional protections to corporations invoking this amendment as shield against government regulation. Cited in more litigation than any other amendment to our Constitution, the Fourteenth Amendment greatly expanded protections of civil rights to all Americans. A historian will provide insight into the historical context for the creation and early impact of the 14th Amendment.

Susan Schulten, Associate Professor of History, University of Denver

A Colorblind Constitution and the Continuing Significance of Race

"Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." Justice Harlan's words in his 1896 *Plessy* dissent are often cited by those who offer competing arguments on issues of race in our society today, including high profile issues of affirmative action in university admissions and racial diversity as a compelling education goal. Is color-blindness an achievable ideal? Under what circumstances should governmental decision makers consider race? Why, if at all, is race relevant as a characteristic beyond class? If it is relevant, should it be relevant in all contexts, or particularly so in education?

Phil Weiser, Constitutional Law Professor, University of Colorado, School of Law

Due Process: Balancing Personal Liberties and National Security

Protecting individuals from unfair treatment by government is among the most important protections in the Constitution. Traditionally, in times of war the Supreme Court has given much deference to the powers of the executive branch (*Korematsu, v. U.S., 1944*). In the War on Terror, the US government has detained numerous individuals. The Court has held that enemy combatants can challenge their detention in court—perhaps the most important statement made in decades about balancing personal liberties and national security. Writing for the majority in *Hamdi v. Rumsfeld (2004)*, Justice O'Connor wrote, "...a state of war is not a blank check for the president when it comes to the rights of the nation's citizens..."

Mark Silverstein, Legal Director, Colorado American Civil Liberties Union

Cases and Controversies:

How Has the Equal Protection Clause Amendment Changed the Constitution?

The Supreme Court uses three levels of scrutiny to analyze whether government actions violate the guarantee of equal protection of the laws. Discrimination and claims of inequality continue to raise many difficult issues, including whether the middle level--intermediate scrutiny--is appropriate for analyzing classifications based on gender, and whether the lowest level--rationality review--is sufficient for cases involving individuals who are mentally disabled, elderly, or gay or lesbian. This session will explore these continuing difficulties and also consider whether future societal developments involving scientific advances in genetics, reproductive technologies, stem cell research, and the like may raise new equal protection challenges.

Julie Nice, Delaney Chair and Professor of Law, University of Denver, Sturm College of Law

Non Citizens and the Fourteenth Amendment

The original intent of the 14th amendment citizenship clause was to guarantee citizenship to former slaves and their descendants. How have courts interpreted the meaning of the citizenship clause of the 14th Amendment? Does the equal protection clause require equal treatment for those who are not citizens or who have entered the United States illegally? Lacking citizenship, undocumented non-citizens raise difficult questions about the differences between the rights of citizens and the rights of all persons in our country – particularly regarding government services.

Clare Huntington, Associate Professor, University of Colorado, School of Law

May It Please the Court: Romer v. Evans

In 1992 by a margin of 53.4% to 46.6% Colorado voters, using the initiative process, approved Amendment 2 to the state constitution which would have made all existing antidiscrimination ordinances, laws, regulations, and policies in Colorado unenforceable and prohibit any entity from enacting future laws. Amendment 2 would also prohibits any branch or level of state government, including the state judiciary, from enforcing a claim of discrimination on the basis of homosexual, lesbian, or bisexual orientation

Lead Counsel for Respondents: Jean E. Dubofsky, former Colorado Supreme Court Justice;
Chief Lawyer for the Petitioner: Timothy M. Tymkovich, Judge, 10th Circuit Court of Appeals and former Solicitor General, State of Colorado Attorney General's Office.