Chapter 40: Federal Civil Rights Cases

All of the cases and statutes presented in Chapters 35 through 39 can fairly be described as significant markers in the history of civil rights law impacting African Americans in one of five discrete issue areas of housing, employment, education, political participation, or the legal system. This chapter presents United States Supreme Court cases that did not neatly fit within the subject matter focus of any of those preceding chapters. Thus, while no discussion of civil rights law impacting African Americans is complete without acknowledging the harm of court decisions like *Dred Scott* or *Washington v. Davis* or without noting the advancement in protection afforded by a decision like *Brown v. Board of Education* or statutes such as the Civil Rights Act of 1964, this chapter does not duplicate the presentation of these and other decisions and statutes that appear in preceding chapters.

***United States v. Cruikshank* (1873) 92 U.S. 542**

Summary of Facts and Issues: The United States prosecuted a group of defendants under an 1870 federal statute for conspiring to murder two African American men—Levi Nelson and Alexander Tillman, citizens of the United States—thereby denying them all of their rights under the United States Constitution and federal law.[1] The counts in the indictment state the intent of defendants to "hinder and prevent these citizens in the free exercise and enjoyment of 'every, each, all, and singular' the rights granted them by the Constitution," which include, among others, the right to peaceably assemble under the First Amendment, bear arms under the Second Amendment, life and liberty under the Fourteenth Amendment, and vote.[2] Cruikshank filed a motion in arrest of judgment after he was found guilty of the sixteen counts in the indictment.[3] The case was certified by the United States Circuit Court for the District of Louisiana, which split on the challenge and certified it for consideration by the Supreme Court.

Impact of the Ruling: The Supreme Court held that neither the First nor Second Amendment limited the powers of state governments or individuals, and that the Due Process Clause of the Fourteenth Amendment only limited the actions of state governments, not individuals.[4] The Court further held that the rights to life and liberty and to vote fail because these rights are protected by the states, not the federal government.[5] The Court also vacated the convictions because the counts in the indictment were "too vague and general" and "lack[ed] the certainty and precision required by the established rules of criminal pleading." The Court reasoned that under the Sixth Amendment "the accused has the constitutional right to be informed of the nature and cause of the accusation," which has means that "every ingredient of which the offence is composed must be accurately and clearly alleged."[6]

[1] *United States v. Cruikshank* (1875) 92 U.S. 542, 548.
[2] *Id.* at 552–557.
[3] *Id.* at 548.
[4] *Id.* at 552–555.
[5] *Id.* at 555–557.
[6] *Id.* at 557–559 (internal quotation marks and citations omitted).

This case arose from the 1873 Colfax Massacre, in which a group of armed white people killed more than 100 African American men due to a political dispute.[7] The 1870 federal statute under which the defendants were convicted was a law primarily intended to curb the violence of the Ku Klux Klan and forbade conspiracies to deny the constitutional rights of any citizen.[8] The Supreme Court narrowly interpreted the Fourteenth Amendment in this case, similar to actions taken by other branches and states' waning efforts on Reconstruction.[9] It was only decades after the decision in *Cruikshank* that the Supreme Court began interpreting the 14th Amendment as incorporating and applying provisions of the Bill of Rights to the states.[10]

***Hall v. De Cuir* (1877) 95 U.S. 485**

Summary of Facts and Issues: De Cuir, a person of color, traveled on a steamboat from New Orleans headed to Hermitage, Louisiana.[11] She was refused accommodations, on account of her color, in a cabin that was designated for white people only.[12] De Cuir then filed suit against the owner of the steamboat to recover damages under the provision of the Louisiana Constitution enacted in 1869 that states: "All persons engaged within this State, in the business of common carriers of passengers, shall have the right to refuse to admit any person to their railroad cars . . . *Provided*, said rules and regulations make no discrimination on account of race or color . . . ."[13] The owner, in defense, stated this provision was inoperative and void because it was an attempt to regulate interstate commerce in violation of the U.S. Commerce Clause, which vests the power to regulate such commerce within the federal government.[14]

Impact of the Ruling: The U.S. Supreme Court held that Louisiana's law violated the U.S. Commerce Clause.[15] The Court emphasized the distinction between domestic (or intrastate) and national (or interstate) impacts upon commercial activity.[16] Because the Louisiana provision "seeks to impose a direct burden upon inter-state commerce, or to interfere directly with its freedom, [it] does encroach upon the exclusive power of Congress" because it influences a carrier's conduct in the management of his intrastate business.[17] The Court stated, by way of example: "A passenger in the cabin set apart for the use of whites without the State must, when the boat comes within, share the accommodations of that cabin with such colored persons as may come on board afterwards, if the law is enforced."[18] This ruling was an early legal blow to

[7] *U.S. v. Cruikshank*, Federal Judicial Center (as of Apr. 25, 2023).
[8] *Ibid.*
[9] *Ibid.*
[10] See, e.g., *De Jonge v. Oregon* (1937) 299 U.S. 353 (holding the rights guaranteed by the First Amendment are fundamental personal rights and liberties protected by the Fourteenth Amendment from invasion by state governments); *McDonald v. City of Chicago, Ill.* (2010) 561 U.S. 742 (holding the Second Amendment is fully applicable to state government through the Fourteenth Amendment).
[11] *Hall v. De Cuir* (1877) 95 U.S. 485, 486.
[12] *Ibid.*
[13] *Id.* at 485–486 (emphasis in original).
[14] *Id.* at 486.
[15] *Id.* at 490.
[16] *Id.* at 487–488.
[17] *Id.* at 488–489.
[18] *Id.* at 489.

Reconstruction because it overturned a state law that sought to protect the rights of African American people and set the stage for Jim Crow segregation in public transportation.

***Pace v. Alabama* (1883) 106 U.S. 583**

Summary of Facts and Issues: A couple, an African American man and a white woman, were arrested and convicted of violating an Alabama law that prohibited an African American person and a white person from "intermarry[ing]" or living together in adultery or fornication.[19] Couples who violated the provision faced between two to seven years in prison.[20] Another law prohibited any couple from living together "in adultery or fornication."[21] Those who violated that provision faced up to six months' incarceration.[22] The Supreme Court affirmed their convictions, finding that the difference in penalties that applied to couples of the same race who live together in violation of the law did not violate the Equal Protection Clause of the Fourteenth Amendment because one law generally applied to people of different sexes living together and the other applied where the two sexes were of different races.[23] And where the couple was of different races, they were both treated the same under the statute.[24] "Whatever discrimination is made in the punishment prescribed in the two sections is directed against the offense designated and not against the person of any particular color or race. The punishment of each offending person, whether white or black, is the same."[25]

Impact of the Ruling: The Court ruled that an anti-miscegenation law that prohibited African Americans and white people from intermarrying as well as cohabitating did not violate the Equal Protection Clause of the Fourteenth Amendment because both white and black people were punished equally when they violated the law. The Court's decision validated anti-miscegenation laws.

Subsequent History: The Supreme Court's decision in *Loving v. Virginia* (1967) 388 U.S. 1, which invalidated anti-miscegenation laws, noted that *Pace* was later overruled as having a limited view of Equal Protection, and "represents a limited view of the Equal Protection Clause which has not withstood analysis in the subsequent decisions of this Court." [26]

***Civil Rights Cases* (1883) 109 U.S. 3**

Summary of Facts and Issues: Congress passed the Civil Rights Act of 1875, which provided that "all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement . . . applicable

[19] *Pace v. State* (1883) 106 U.S. 583, 583.
[20] *Ibid.*
[21] *Ibid.*
[22] *Ibid.*
[23] *Id.* at p. 585.
[24] *Ibid*.
[25] *Ibid.*
[26] *Loving v. Virginia* (1967) 388 U.S. 1, 10.

alike to citizens of every race and color, regardless of any previous condition of servitude."[27] A group of African Americans were denied accommodations at inns, theaters, and railroads and sued under this law to recover damages.[28] Defendants, the owners of these establishments, argued Congress did not have the constitutional power to enact the Civil Rights Act.[29]

Impact of the Ruling: The Supreme Court held Congress did not have the constitutional authority under the Fourteenth or Thirteenth Amendments to enact the Civil Rights Act of 1875.[30] The Fourteenth Amendment "nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws."[31] The Court ruled that what is prohibited under the Fourteenth Amendment is state action of a particular character, not "the individual invasion of individual rights" by private actors.[32] Further, even though the Court affirmed that § 2 of the Thirteenth Amendment in theory "clothes Congress with the power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States," it found Congress did not have the authority under this section to enact the Civil Rights Act.[33] The Court ruled that the Thirteenth Amendment is not intended to adjust "the social rights of men and races in the community," but rather the fundamental rights that appertain to citizenship.[34]

Subsequent History: After the decision in this case, the Supreme Court consistently struck down legislation enacted under the Thirteenth Amendment and adopted a highly restrictive interpretation of the "badges and incidents of slavery."[35] There would be no comparable federal civil rights act until 1964—more than 80 years later.

***Plessy v. Ferguson* (1896) 163 U.S. 537**

Summary of Facts and Issues: Homer Plessy, a Louisiana resident who looked white—but was seven-eighths white and one-eighth African American—bought a first-class ticket on a Louisiana train to sit in a coach for whites only.[36] Plessy was ordered by a conductor to vacate the coach and sit in a coach for non-whites, pursuant to an 1890 Louisiana statute that provided for separate railway cars for whites and non-whites.[37] Plessy refused and was forcibly ejected.[38]

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[27] *Civil Rights Cases* (1883) 109 U.S. 3, 9.
[28] *Id.* at 4–5.
[29] *Id.* at 8–10.
[30] *Id.* at 25–26.
[31] *Ibid.*
[32] *Id.* at 11.
[33] *Id.* at 20–21.
[34] *Id.* at 22.
[35] See *Plessy v. Ferguson* (1896) 163 U.S. 537, 542 (determining that segregation "cannot be justly regarded as imposing any badge of slavery"), *overruled by Brown v. Bd. of Educ.* (1954) 347 U.S. 483; *Hodges v. United States* (1906) 203 U.S. 1, 8 (holding that § 2 only empowers Congress to outlaw private conduct so extreme as to impose "the state of entire subjection of one person to the will of another"), *overruled in part by Jones v. Alfred H. Mayer Co.* (1968) 392 U.S. 409, 438–443.
[36] *Plessy,* 163 U.S. at 538, 541–542.
[37] *Id.* at 540–542.
[38] *Id.* at 542.

Plessy challenged the constitutionality of the statute on the grounds that it conflicts with the Thirteenth and Fourteenth Amendments.[39]

Impact of the Ruling: The Supreme Court held the Louisiana statute did not conflict with the Thirteenth or Fourteenth Amendment.[40] The Court stated the Thirteenth Amendment abolished slavery and involuntary servitude, and "[a] statute which implies merely a legal distinction between the white and colored races . . . has no tendency to destroy the legal equality of the two races, or re-establish a state of involuntary servitude."[41] It cited the *Civil Rights Cases* for the proposition that the act of a private individual could not "be justly regarded as imposing any badge of slavery or servitude."[42]

The Court further held that the object of the Fourteenth Amendment was "undoubtedly" to enforce legal equality but "could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either."[43] The Court also noted that "the enforced separation of the races, as applied to the internal commerce of the state" does not abridge the privileges or immunities of a non-white person, deprive him of property without due process of law, nor deny him the equal protection of the laws.[44] Accordingly, the question before the Court was whether the Louisiana statute was a reasonable regulation; the Court answered the question in the affirmative, noting that "there must necessarily be a large discretion on the part of the legislature."[45]

With this case, the Court formally ratified the legality of racial segregation under the "separate but equal" doctrine, which was to be a feature of Jim Crow laws in the half-century that followed.[46] The ruling maintained racial segregation on trains and buses, and in public facilities such as hotels, theaters, and schools.[47]

Subsequent History: The Supreme Court explicitly overruled *Plessy* in *Brown v. Board of Education* (1955) 349 U.S. 294. There the Court ruled that the "separate but equal" doctrine announced in *Plessy* does not have a place in the field of education, noting that "[s]eparate education facilities are inherently unequal."[48]

***McCabe v. Atchison, T. & S.F. R. Co.* (1914) 235 U.S. 151**

Summary of Facts and Issues: Oklahoma enacted the "separate coach law" in 1907, which required every railway company conducting business in the state to provide separate coaches or

[39] *Ibid.*
[40] *Id.* at 542–552.
[41] *Id.* at 543.
[42] *Id.* at 542–543 (citing *Civil Rights Cases*, 109 U.S. at 3).
[43] *Id.* at 544.
[44] *Id.* at 548–549.
[45] *Id.* at 550.
[46] *Plessy v. Ferguson* (Oct. 29, 2009) History.com (as of Apr. 23, 2023).
[47] Drexler, *Plessy v. Ferguson: Primary Documents in American History* (Nov. 16, 2020) Library of Congress Research Guides (as of Apr. 23, 2023).
[48] *Brown v. Bd. of Educ. of Topeka, Shawnee Cnty., Kan.* (1954) 347 U.S. 483, 495.

compartments for white and non-white people.[49] On February 15, 1908, right before the statute was to become effective, five African American citizens of Oklahoma filed suit against a number of railway companies to restrain them from making any distinction in service on the basis of race.[50] On February 26, 1908, after the law had been effective for a few days, plaintiffs filed an amended bill to enjoin compliance with the provisions of the statute, arguing it was violative of the federal constitution's Commerce Clause, the enabling act under which the state of Oklahoma was admitted to the United States, and the Fourteenth Amendment.

Impact of the Ruling: The Supreme Court ruled that under the enabling act, the state of Oklahoma "had authority to enact such laws, not in conflict with the Federal Constitution, as other states could enact."[51] The Court further held the law was not violative of the Commerce Clause because it must be construed as applying to only intrastate transportation exclusively, in the absence of a different construction by the state court.[52] Finally, with respect to the Fourteenth Amendment argument, the Court affirmed *Plessy v. Ferguson*, noting that, as it had already been decided by the Court, "the question could no longer be considered an open one, that it was not an infraction of the [Fourteenth] Amendment for a state to require separate, but equal, accommodations for the two races."[53] Ultimately, the Court rejected plaintiffs' case because they could not show an injury to themselves, i.e., that they were prevented from using sleeping cars.[54]

***Cincinnati, C. & E. Ry. Co. v. Commonwealth of Kentucky* (1920) 252 U.S. 408**

Summary of Facts and Issues: In this case, which was argued with *South Covington & Cincinnati St. Ry. Co. v. Commonwealth of Kentucky* (1920) 252 U.S. 399, two railroad companies were indicted for violating Kentucky's "separate coach law," which required companies operating railroads in the state to furnish separate coaches for white and non-white passengers.[55] The Cincinnati company was the lessor of the South Covington company and, according to the indictment, allowed it to operate a lease that violated the law, knowing that it would not operate and run separate coaches for white and non-white passengers.[56] The companies' defense to the indictment was that the Kentucky statute unlawfully interfered with interstate commerce.[57] The Court of Appeals found the company violated the statute, and that the statute did not interfere with interstate commerce.[58]

Impact of the Ruling: The Supreme Court rejected the federal Commerce Clause challenge, noting that the even though the railway company operated a railway between Kentucky and

[49] *McCabe v. Atchison, T. & S.F. R. Co.* (1914) 235 U.S. 151, 158.
[50] *Id.* at 158–159.
[51] *Ibid.*
[52] *Ibid.*
[53] *Ibid.* (citing *Plessy*, 163 U.S. at 537).
[54] *Id.* at 163–164.
[55] *Cincinnati, C. & E. Ry. Co. v. Commonwealth of Kentucky* (1920) 252 U.S. 408, 409 (noting that the facts, indictment, defenses, and contentions are stated in the *South Covington* case); *South Covington & Cincinnati St. Ry. Co. v. Commonwealth of Kentucky* (1920) 252 U.S. 399, 400.
[56] *Cincinnati*, 252 U.S. at 409–410.
[57] *Id.*; *South Covington*, 252 U.S. at 401.
[58] *Cincinnati*, 252 U.S. at 410; *South Covington*, 252 U.S. at 401.

Ohio, "there are other considerations."[59] The Court noted the railway companies were a "distinct operation" in Kentucky, authorized by their charters, and it was this operation that the "separate coach law" regulated, and nothing more.[60] The Court emphasized: "The regulation of the act affects interstate business incidentally and does not subject it to unreasonable demands."[61] The Court maintained it was not concerned with the railway companies' attempt to distinguish "between street railways and other railways, and between urban and interurban road."[62]

***Screws v. United States* (1945) 325 U.S. 91**

Summary of Facts and Issues: The defendant police officers arrested Robert Hall, a 30-year old African American man, for the theft of a tire.[63] The officers took Hall to the courthouse and beat him with their fists and "a solid-bar blackjack."[64] The officers claimed Hall reached for a gun and used insulting language, and he was beaten for fifteen to thirty minutes until he was unconscious.[65] Hall was taken to a hospital but died within the hour.[66] The officers were indicted for violating a federal criminal statute that prohibits "willfully" depriving an individual of his rights under the due process clause of the Constitution based on the individual's race (18 U.S.C. § 52) and conspiracy to commit the same crime (18 U.S.C. § 88).[67]

The trial judge instructed the jury that due process of law gave Hall the right to be tried by a jury and sentenced by a court, and that the jury should find defendants guilty if they "without its being necessary to make the arrest effectual or necessary for their own personal protection, beat this man, assaulted him or killed him while he was under arrest."[68] The jury returned a guilty verdict and the Court of Appeals affirmed.[69] Defendants appealed, contending that title 18 United States Code section 52 was unconstitutional because it applied criminal penalties to acts in violation of the Due Process Clause of the Fourteenth Amendment.

Impact of the Ruling: A plurality of the Supreme Court held the statute was not unconstitutionally vague, so its enforcement did not turn all torts of state officials into federal crimes.[70] The Court clarified that only specific acts done willfully, under color of state law, and which deprived a person of a right secured by the Constitution or federal law were prescribed by title 18 United States Code section 52.[71] The Court noted the specific intent requirement gives "fair warning" that certain conduct is within its prohibition because a person who acts "with such specific intent is aware that what he does is precisely that which the statute forbids."[72] The Court

[59] *South Covington*, 252 U.S. at 403.
[60] *Ibid.*
[61] *Ibid.*
[62] *Cincinnati*, 252 U.S. at 410.
[63] *Screws v. United States* (1945) 325 U.S. 91, 92.
[64] *Ibid.*
[65] *Id.* at 92–93.
[66] *Id.* at 93.
[67] *Ibid.* (citing 18 U.S.C. § 52; 18 U.S.C. § 88).
[68] *Id.* at 94.
[69] *Ibid.*
[70] *Id.* at 103.
[71] *Id.* at 107–108.
[72] *Id.* at 104–105.

still reversed the judgment and ordered a new trial because the jury instructions did not convey a finding of willfulness was necessary to find someone guilty under the statute.[73] The Court noted review of this error was required because the essential elements of the offense on which the convictions rested were not submitted to the jury.[74]

In this ruling, the Court imposed significant mental state limitations on a provision of the Civil Rights Act of 1866, codified at title 18 United States Code section 52, which made it a federal crime to discriminate on the basis of color, race, or previous slave status by depriving them of legal rights established by the U.S. Constitution, and in particular, the Thirteenth, Fourteenth, and Fifteenth Amendments. However, the Court required that the federal government prove the discriminatory conduct was "willful," and adopted a narrow interpretation of that mental state. This standard set a very high burden of proof for federal prosecutors because it required that an individual intended to interfere with some specific civil right, not simply that he intended to do something bad and ended up interfering with a civil right (often referred to as the "general intent" standard). The Court's interpretation of "willfully" made it much harder for the federal government to prosecute criminal violations of state laws motivated by racial bias.

Subsequent History: The Supreme Court held in *United States v. Lanier* (1997) that, in order to satisfy the "fair warning" requirement in prosecuting actions under this statute, it is not necessary that the right in question has been identified in a Supreme Court decision and has been held to apply in a factual situation "fundamentally similar" to the case at issue.[75] Instead, criminal liability under the statute may be imposed for a deprivation of a constitutional right, if and only if, in light of preexisting law the unlawfulness under the Constitution is apparent.[76]

***Morgan v. Commonwealth of Virginia* (1946) 328 U.S. 373**

Summary of Facts and Issues: Irene Morgan, an African American woman, was traveling on a bus from Gloucester County, Virginia, to Baltimore, Maryland, and she was asked by the driver of the bus to move a back seat, partially occupied by other "colored passengers," so her seat could be used by white passengers.[77] Morgan refused, and she was arrested, tried, and convicted under a Virginia statute for failure to comply with the requirement for "white and colored passengers" to be seated separately on all passenger buses traveling in the state and between states.[78] Morgan challenged the law as violative of the Commerce Clause to the United States Constitution.[79]

Impact of the Ruling: The Supreme Court held the Virginia statute was unconstitutional under the Commerce Clause because the statute "materially affects interstate commerce" and Congress, not the states, has the ultimate power to regulate commerce.[80] The Court noted that the statute

[73] *Id.* at 107, 113.
[74] *Id.* at 107.
[75] *United States v. Lanier* (1997) 520 U.S. 259, 268.
[76] *Id.* at 271–272.
[77] *Morgan v. Commonwealth of Virginia* (1946) 328 U.S. 373, 374–375.
[78] *Id.* at 375.
[79] *Id.* at 376.
[80] *Id.* at 379–380.

"imposes undue burdens on interstate commerce," as "[a]n interstate passenger must if necessary repeatedly shift seats while moving in Virginia to meet the seating requirements of the changing passenger group," but "[o]n arrival at the [D.C.] line, [she] would have had freedom to occupy any available seat and so to the end of her journey."[81] The Court stated that the facts of this case highlight "the soundness of this Court's early conclusion in *Hall v. De Cuir*," as "the transportation difficulties arising from a statute that requires commingling of the races, as in the De Cuir case, are increased by one that requires separation, as here."[82]

***Bob-Lo Excursion Co. v. People of State of Michigan* (1948) 333 U.S. 28**

Summary of Facts and Issues: In June 1945, an African American girl named Sarah Elizabeth Ray intended to travel with twelve other girls and their teacher (who were all white) from Detroit to Bois Blanc Island, Canada (stated by the Court as Detroit's Coney Island).[83] After they all boarded the steamship, appellant's assistant manager and steward told Miss Ray that she "could not go along because she was colored"; when it appeared that she would be forcibly removed, Miss Ray left voluntarily.[84] Due to this incident of discrimination against Miss Ray, the company was criminally prosecuted for violation of the Michigan civil rights act, which provided that any owner or employee of a place of public accommodation who withholds any accommodation secured by the law on the basis "of race, creed or color" becomes guilty of a misdemeanor.[85] The question before the Court was "whether the state courts correctly held that the commerce clause, Art. I, § 8 of the Federal Constitution does not forbid applying the Michigan civil rights act to sustain appellant's conviction."[86]

Impact of the Ruling: The Supreme Court held that application of Michigan's civil rights law to appellant did not violate the Commerce Clause.[87] In a very fact-specific holding, the Court stated that unique features of the island and its relationship to Detroit (and the manner in which the Canadian government treated the island) rendered the island and its trade with Detroit local rather than national or international.[88] The Court rejected appellant's contention that Canada might adopt regulations that conflict with Michigan's law, and said it was as remote a possibility as Congress taking conflicting action.[89] The Court also rejected appellant's argument that the holding from *Hall v. De Cuir*, supplemented by *Morgan v. Virginia*, controls in this case, as the decisions of these cases are not comparable in facts, in attenuating effects, or "in any actual possibility of conflict regulations by different sovereignties."[90] The Court stated that neither of the cases "so completely or locally insulated a segment of foreign or interstate commerce."[91]

[81] *Id.* at 381.
[82] *Id.* at 384–385 (citing *De Cuir*, 95 U.S. at 487).
[83] *Bob-Lo Excursion Co. v. People of State of Michigan* (1948) 333 U.S. 28, 30.
[84] *Id.* at 31.
[85] *Ibid.*
[86] *Id.* at 34.
[87] *Id.* at 40.
[88] *Id.* at 35–36.
[89] *Id.* at 37.
[90] *Id.* at 39.
[91] *Ibid.*

***Henderson v. United States* (1950) 339 U.S. 816**

Summary of Facts and Issues: On May 17, 1942, Elmer W. Henderson, an African American passenger, was traveling on a first-class ticket on the Southern Railway from Washington, D.C., to Birmingham, Alabama, and was denied service at the dining car.[92] The practice of the dining car was to conditionally reserve the two tables closest to the kitchen for African Americans, but deny them seats if the other tables in the car were occupied by white passengers or put up a curtain between white passengers if African Americans are already seated.[93] When Henderson first arrived at the dining car, the end tables were occupied by white passengers but one seat at them was unoccupied.[94] The steward declined to serve him in the car and offered to serve him at his Pullman seat; Henderson declined, and even though the steward said he would send notice when space was available, Henderson received no notice and was declined service twice more when he returned to the dining car.[95] In October 1942, Henderson filed a complaint with the Interstate Commerce Commission alleging this conduct violated section 3(1) of the Interstate Commerce Act, which provides that it is unlawful for any common carrier to subject a person "to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."[96]

Impact of the Ruling: The Supreme Court held that the railway's conduct was in violation of section 3(1) of the Interstate Commerce Act and declined to reach any constitutional issues.[97] The Court held *Mitchell v. United States* controlled in this case.[98] In *Mitchell*, an African American passenger with a first-class ticket was denied a Pullman seat even though such a seat was unoccupied and would have been available to him had he been white; the railroad rules limited the amount of Pullman space available to African American passengers.[99] The Court held the passenger in *Mitchell* had been subjected to an unreasonable disadvantage in violation of section 3(1).[100] The Court called the similarity between the two cases "inescapable" and the denial of existing and unoccupied dining facilities to passengers, combined with the curtains, partitions, and signs, "emphasize the artificiality of a difference which serves only to call attention to a racial classification of passengers holding identical tickets and using the same public dining facility."[101]

***Burton v. Wilmington Parking Authority* (1961) 365 U.S. 715**

Summary of Facts and Issues: Wilmington Parking Authority, an agency of the state of Delaware, owned and operated a parking garage.[102] The Parking Authority leased a portion of the parking garage to Eagle Coffee Shoppe, Inc., which refused to serve William Burton, an

[92] *Henderson v. United States* (1950) 339 U.S. 816, 818–819.
[93] *Ibid.*
[94] *Id.* at 819.
[95] *Ibid.*
[96] *Id.* at 820.
[97] *Id.* at 825.
[98] *Id.* at 823 (citing *Mitchell v. United States* (YEAR) 313 U.S. 80, 92–93).
[99] *Id.* at 823–824.
[100] *Id.* at 824.
[101] *Id.* at 824–825.
[102] *Burton v. Wilmington Parking Authority* (1961) 365 U.S. 715, 716.

African American man, solely on the basis of his race.[103] Burton then brought an action against Eagle and the Parking Authority, alleging Eagle's refusal to serve him violated his rights under the Equal Protection Clause of the Fourteenth Amendment.[104] The Supreme Court of Delaware held that Eagle was acting in a purely private capacity and as such was not state action in violation of the Fourteenth Amendment.[105] The Supreme Court granted writ of certiorari.

Impact of the Ruling: The Supreme Court held that Eagle's exclusion of Burton was discriminatory state action in violation of the Equal Protection Clause of the Fourteenth Amendment.[106] The Court reasoned the state of Delaware "has so far insinuated itself into a position of interdependence with Eagle that it must be recognized as a joint participant in the challenged activity, which . . . cannot be considered to have been so 'purely private' as to fall [outside] the scope of the Fourteenth Amendment."[107] The Court emphasized, "By its inaction, the Authority, and through it the State, has not only made itself a party to the refusal of service, but has elected to place its power, property and prestige behind the admitted discrimination."[108] The Court noted that the Parking Authority in its lease with Eagle could have affirmatively required the coffee shop "to discharge the responsibilities under the Fourteenth Amendment imposed upon the private enterprise as a consequence of state participation."[109] The Court cautioned against using any kind of "readily applicable formulae" as the conclusions drawn from the specific facts of this case cannot be "declared as universal truths" for each state leasing agreement.[110]

***Taylor v. State of Louisiana* (1962) 370 U.S. 154**

Summary of Facts and Issues: Six African American men were convicted of violating Louisiana's breach of peace statue after four of them waited in a waiting room reserved for white people at a bus stop in Louisiana for a bus to Mississippi and two others sat nearby in the car that had brought them to the station.[111] A police officer arrested the men after they communicated they were interstate passengers, had rights under federal law, and refused to leave.[112] The trial court held that the *mere presence* of the African American men in the waiting room was a breach of the peace, despite the men having been "quiet, orderly, and polite."[113]

Impact of the Ruling: The Supreme Court held that the only evidence of a breach of peace was the upsetting of the customary segregation of the bus waiting room, and that this segregation was prohibited in interstate transportation facilities under federal law.[114] As such, the Court reversed

[103] *Ibid.*
[104] *Ibid.*
[105] *Id.* at 721.
[106] *Id.* at 717.
[107] *Id.* at 725.
[108] *Ibid.*
[109] *Ibid.*
[110] *Id.* at 725–726.
[111] *Taylor v. State of Louisiana* (1962) 370 U.S. 154, 154–155.
[112] *Id.* at 155.
[113] *Ibid.*
[114] *Id.* at 156.

the judgments of the convictions of the six men.[115]

***Turner v. City of Memphis, Tenn.* (1962) 369 U.S. 350**

Summary of Facts and Issues: Jesse Turner, an African American man, was refused non-segregated service at a Memphis Municipal Airport restaurant operated by Dobbs Houses, Inc., under a lease from the City of Memphis.[116] The Tennessee Division of Hotel and Restaurant Inspection issued a regulation that required restaurants to segregate white and African American patrons; a violation of the regulation was a misdemeanor.[117] Turner thereafter sought an injunction against the discrimination on the basis of race under 42 U.S.C. § 1983.[118] Turner argued the restaurant and City had acted under color of state law.[119] Dobbs House said in its answer that its lease would be forfeited if it desegregated due to a provision that limits the leased premises to be used "only and exclusively for lawful purposes," while the City argued it was bound to object to desegregation as a violation of Tennessee law and the lease.[120] The district court initially declined to hear this case and directed Turner to file his action in state court to have it interpret the state statutes on segregation, and Turner then appealed to the Sixth Circuit and the Supreme Court.[121]

Impact of the Ruling: The Supreme Court vacated and remanded the case to the district court to grant Turner injunctive relief, holding that pursuant to *Burton v. Wilmington Parking Authority* (1961) 365 U.S. 715, not only is the restaurant subject to the Fourteenth Amendment because it is operated within a state airport, but also that the regulations upholding segregation in Tennessee were inconsistent with the Fourteenth Amendment.[122] The Court cited cases striking down racial segregation as a violation of the Equal Protection Clause: *Brown v. Board of Education* (1954) 347 U.S. 483 (education); *Mayor & City Council v. Dawson* (1955) 350 U.S. 877 (beaches); *Holmes v. City of Atlanta* (1955) 350 U.S. 879 (golf courses); *Gayle v. Browder* (1956) 352 U.S. 903 (city buses); and *New Orleans City Park Improvement Ass'n v. Detiege* (1958) 358 U.S. 54 (parks).[123]

***Edwards v. South Carolina* (1963) 372 U.S. 229**

Summary of Facts and Issues: 187 African American high school and college students walked in groups of fifteen on the South Carolina State House grounds to peacefully protest the discrimination against the African American citizens of South Carolina.[124] There were already 30 or more law enforcement officers present when the students arrived and were told by the officers that they had a right to go through the grounds as long as they were peaceful.[125] After

[115] *Ibid.*
[116] *Turner v. City of Memphis, Tenn.* (1962) 369 U.S. 350, 351.
[117] *Ibid.*
[118] *Ibid.*
[119] *Ibid.*
[120] *Id.* at 351–352.
[121] *Id.* at 352.
[122] *Ibid.*
[123] *Id.* at 353.
[124] *Edwards v. South Carolina* (1963) 372 U.S. 229, 230.
[125] *Ibid.*

about an hour and 45 minutes, a crowd of 200 to 300 people had collected in the area; although there was no basis to suggest the onlookers were anything but curious (as there was no evidence of threatening remarks, hostile gestures, or offensive language from the crowd), the students were threatened with arrest if they did not disperse within 15 minutes.[126] The students responded with singing, clapping and praying, in what the City Manager described as "boisterous, loud, and flamboyant" conduct.[127] The students were arrested and convicted of breach of the peace, and the Supreme Court of South Carolina affirmed.[128]

Impact of the Ruling: The Supreme Court reversed the judgment, holding that South Carolina's vague definition of breach of peace and the lack of evidence proving the students were actually disruptive pointed to the wrongful conviction of the students.[129] Specifically, the Court noted the students were convicted of an offense the South Carolina Supreme Court defined as "not susceptible of exact definition" with evidence that "showed no more than that the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the community to attracted a crowd and necessitate police protection."[130] The Court emphasized that the Fourteenth Amendment does not allow a state "to make criminal the peaceful expression of unpopular views," which is what occurred in this case.[131]

***Peterson v. City of Greenville, S.C.* (1963) 373 U.S. 244**

Summary of Facts and Issues: Ten African American children were arrested for trespassing at the S. H. Kress store in Greenville, South Carolina because they sat at a lunch counter to be served.[132] The manager of the store had one of his employees call the police, turn off the lights, and state the lunch counter was closed, and then he asked everyone to leave the area; the children remained seated and were arrested.[133] The manager stated that he asked the students to leave because integrated service was "contrary to local customs" and in violation of a Greenville City ordinance requiring segregation in restaurants.[134] The children argued they had been deprived of equal protection under the law as guaranteed by the Fourteenth Amendment.[135]

Impact of the Ruling: The Supreme Court agreed and reversed their prior convictions.[136] The Court cited *Burton v. Wilmington Parking Authority* (1961) 365 U.S. 715, 722, for the proposition that it cannot be disputed that "private conduct abridging individual rights does no violence to the Equal Protection Clause unless to some significant extent the State in any of its

[126] *Id.* at 230–232.
[127] *Id.* at 233.
[128] *Id.* at 234.
[129] *Id.* at 235–237.
[130] *Id.* at 237.
[131] *Ibid.*
[132] *Peterson v. City of Greenville, S.C.* (1963) 373 U.S. 244, 245.
[133] *Id.* at 245–246.
[134] *Id.* at 246.
[135] *Id.* at 274; They also argued their activity was protected by the First Amendment because the trespass statute did not require a showing that the manager gave them notice of his authority when he asked them to leave, but the Court declined to consider this argument.
[136] *Id.* at 248.

manifestations has been found to have become involved in it."[137] Accordingly, the Court held the Fourteenth Amendment was violated because the City of Greenville, a "state agency," passed a law compelling persons to discriminate based on race and the State's criminal processes were employed in a way to enforce the discrimination mandated by that law.[138]

***Lombard v. State of Louisiana* (1963) 373 U.S. 267**

Summary of Facts and Issues: A group of three African American and one white college students were arrested by Louisiana police on the grounds that they were in violation of the Louisiana criminal mischief statute.[139] On September 17, 1960, they entered the McCrory Five and Ten Cent Store in New Orleans and refused to leave until they were served.[140] The students were convicted and on appeal to the Supreme Court of Louisiana their convictions were affirmed.[141]

Prior to this incident, New Orleans city officials determined that attempts to receive desegregated service at restaurants and stores, termed "sit-in demonstrations," would not be permitted.[142] One week earlier, on September 10, 1960, a similar occurrence took place in a Woolworth store, also in New Orleans.[143] In response, the Superintendent of Police and Mayor issued widely publicized statements that were printed in the local newspaper.[144] Both were similar in content, and the Mayor's statement noted in part: "It is my determination that the community interest, the public safety, and the economic welfare of this city require that such demonstrations cease and that henceforth they be prohibited by the police department."[145] Additionally, there was evidence indicating the manager of the McCrory Five and Ten Cent Store asked the group to leave at the direction of city officials.[146]

Impact of the Ruling: The Supreme Court reversed the students' convictions.[147] It interpreted the New Orleans city officials' statements as though the city had an ordinance prohibiting desegregated service in restaurants.[148] It noted that it just held in *Peterson v. City of Greenville* (1963) 373 U.S. 244, that where an ordinance makes it unlawful for restaurants owners and managers to seat whites and African Americans together, a criminal conviction that enforces the discrimination mandated by the ordinance cannot stand.[149] The Court stated "The official command here was to direct continuance of segregated service in restaurants," and not "to

[137] *Id.* at 247.
[138] *Ibid.*
[139] *Lombard v. State of Louisiana* (1963) 373 U.S. 267, 269.
[140] *Id.* at 268.
[141] *Id.* at 269.
[142] *Ibid.*
[143] *Id.* at 270.
[144] *Id.* at 271–272.
[145] *Id.* at 271.
[146] *Id.* at 272.
[147] *Id.* at 274.
[148] *Id.* at 273.
[149] *Ibid.*

preserve the public peace in a nondiscriminatory fashion in a situation where violence was present or imminent by reason of public demonstrations."[150]

***Hamm v. City of Rock Hill* (1964) 379 U.S. 306**

Summary of Facts and Issues: The highest courts of South Carolina and Arkansas affirmed convictions under state trespass statutes, against African American petitioners, for participating in "sit-in" demonstrations in luncheon facilities of retail stores where they were refused service.[151] The two cases, *Hamm v. City of Rock Hill* and *Lupper v. State of Arkansas*, were consolidated for argument before the United States Supreme Court.

Impact of the Ruling: The Supreme Court held the convictions must be vacated and the prosecutions dismissed because the "Civil Rights Act of 1964 forbids discrimination in place of public accommodation and removes peaceful attempts to be served on an equal basis from the category of punishable activities."[152] The Court held the Act covered the lunch counter operations in South Carolina and in Arkansas because both establishments were places of public accommodation.[153] The Court concluded that section 203(c) of the Act explicitly immunized from prosecution "nonforcible attempts to gain admittance to or remain in establishments covered by the Act" and the Act generally "prohibits the application of state laws in a way that would deprive any person of the rights granted under the Act."[154] The Court specified the convictions should be vacated even though they occurred before the enactment of the Act; the Court stated that in cases involving "great national concerns," it "must decide according to existing laws, and if it be necessary to set aside a judgment, rightful when entered, but which cannot be affirmed but in violation of law, the judgment must be set aside."[155]

This case was the culmination of a number of "sit-in" cases in which African American defendants were convicted for trespassing when they participated in demonstrations at lunch counters that refused them service. However, upon the passage of the Civil Rights Act of 1964, the Court found that discrimination on the basis of race was no longer allowed. The Supreme Court declared that the public policy of the country is to prohibit such discrimination and no public interest would be served to convict the petitioners. This decision came more than 80 years after the Court in the *Civil Rights Cases*, discussed above, interpreted the Thirteenth and Fourteenth Amendments as not affording the government authority to bar race discrimination by private actors.

***Heart of Atlanta Motel, Inc., v United States* (1964) 379 U.S. 241**

Summary of Facts and Issues: The appellant owned the Heart of Atlanta Motel, which had 216 rooms available to guests, was located near interstate highways, was advertised in national

[150] *Id.* at 273–274.
[151] *Hamm v. City of Rock Hill* (1964) 379 U.S. 306, 307–308.
[152] *Id.* at 308.
[153] *Id.* at 309–310.
[154] *Id.* at 311.
[155] *Id.* at 311–312, 317.

media, and served approximately 75 percent out-of-state clientele.[156] Prior to passage of the Civil Rights Act of 1964, the motel refused to rent rooms to African Americans, and it took the position that it would continue to do so, leading to this case.[157] Petitioner contended, among other things, that Congress in passing this Act exceeded its power to regulate commerce under the Commerce Clause.[158]

Impact of the Ruling: The Supreme Court held that Title II of the Civil Rights Act of 1964, which prevents discrimination in public accommodations based on race, color, religion, or national origin, was constitutional.[159] The Court discussed the disruptive effect of racial discrimination on interstate commerce and noted that "the voluminous testimony" before the Senate and the House of Representatives "present[ed] overwhelming evidence that discrimination by hotels and motels impedes interstate travel."[160] The Court even noted conditions for African Americans "had become so acute" that a special guidebook had been created to list available lodgings for them, "which was itself dramatic testimony to the difficulties [African Americans] encounter in travel."[161]

***Evans v. Newton* (1966) 382 U.S. 296**

Summary of Facts and Issues: In 1911, Senator Augustus Bacon executed a will that left land he owned to the Mayor and City Council of Macon, Georgia.[162] The will stated that, after the death of his wife and daughters, it was to be used as a park for white people only and managed by a Board of Managers, all of whom were to be white.[163] The City of Macon managed the park according to these terms, but eventually opened it up to African Americans when it believed it could no longer constitutionally exclude them.[164] Evans, a member of the Board of Managers, and other members filed suit against the City and several trustees of Bacon's estate, asking the City be removed as a trustee and the and new trustees be appointed.[165] Several African American residents of Macon intervened on behalf of the City as well as heirs of Bacon's estate asking for a reversion of the trust property back to the estate if the petition was denied.[166] The City resigned as trustee, which the George state court accepted, and the Supreme Court of Georgia affirmed.[167]

Impact of the Ruling: The Supreme Court reversed the decisions of the lower courts accepting resignation of the City as a trustee.[168] The Court notes that two complementary principles must be reconciled—the freedom of association and the constitutional ban against state-sponsored

[156] *Heart of Atlanta Motel, Inc. v. United States* (1964) 379 U.S. 241, 243.
[157] *Ibid.*
[158] *Id.* at 243–244.
[159] *Id.* at 247, 261.
[160] *Id.* at 252–255.
[161] *Id.* at 253 (internal quotation marks omitted).
[162] *Evans v. Newton* (1966) 382 U.S. 296, 297.
[163] *Ibid.*
[164] *Id.* at 297–298.
[165] *Ibid.*
[166] *Id.* at 298.
[167] *Ibid.*
[168] *Id.* at 302.

racial inequality.[169] It noted that private conduct "may become so intertwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action."[170] The Court reasoned that the park for years "was an integral part of the City of Macon's activities" and was taken care of by the city as a public facility such that "the tradition of municipal control had become firmly established."[171] The Court's conclusion was further supported "by the nature of the service rendered the community by a park," which is municipal in nature and in the public domain.[172]

***Loving v. Virginia* (1967) 388 U.S. 1**

Summary of Facts and Issues: Mildred Jeter, an African American woman, and Richard Loving, a white man, got married in Washington, D.C., and when they returned to Virginia they were indicted for violating Virginia's bans on interracial marriage.[173] They pleaded guilty to the charge in 1959 and were sentenced to one year in jail, but the trial judge suspended the sentence for a period of 25 years on the condition that the Lovings leave Virginia and not return for 25 years.[174] The Lovings moved to Washington, D.C., and then filed a motion in state trial court to vacate the judgment and sent aside the sentence on the ground that the statutes they violated were inconsistent with the Fourteenth Amendment.[175] The trial court denied their motion, the Virginia Supreme Court affirmed, and the Lovings appealed to the Supreme Court.[176]

Impact of the Ruling: The Supreme Court held that state bans on interracial marriage violate the Equal Protection Clause of the Fourteenth Amendment, the "clear and central purpose" of which "was to eliminate all official state sources of invidious racial discrimination in the States."[177] The Court stated, "There is patently no legitimate overriding purpose independent of invidious racial discrimination" to justify these laws, [and t]he fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy."[178] The Court also held the statutes deprives the Lovings of liberty without due process of law in violation of the Due Process Clause of the Fourteenth Amendment as the "freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men."[179]

***United States v. Johnson* (1968) 390 U.S. 563**

Summary of Facts and Issues: Three African American people in Georgia were patrons at a restaurant when "outside hoodlums" (not affiliated with the restaurant) assaulted them for the

[169] *Id.* at 298.
[170] *Id.* at 299.
[171] *Id.* at 301.
[172] *Id.* at 302.
[173] *Loving v. Virginia* (1967) 388 U.S. 1, 2–3.
[174] *Id.* at 3.
[175] *Ibid.*
[176] *Ibid.*
[177] *Id.* at 11–12.
[178] *Id.* at 11.
[179] *Id.* at 12.

purpose of discouraging them and other African Americans from seeking service there on the same basis as white people.[180] The individuals accused of the attack were indicted on conspiracy charges to injure and intimidate the three African American people in the exercise of their right to patronize a restaurant.[181]

Impact of the Ruling: The Supreme Court held that conspiracies by individuals to assault African American people for exercising their right to equality in public accommodations are subject not only to civil suits, but also to criminal prosecution for "conspiracy to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution of law of the United States."[182] The Court noted that even though section 207(b) of the Civil Rights Act of 1964 states that an injunction could be obtained by a party aggrieved under the law and is "the exclusive means of enforcing the rights based on this title," there is a further provision stating that nothing in the law shall preclude a State or local agency "from pursing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right."[183]

***Lee v. Washington* (1968) 390 U.S. 333**

Summary of Facts and Issues: African Americans confined in various Alabama jails filed an action for declaratory and injunctive relief regarding racial segregation in Alabama's state penal system and in county, city, and town jails. A three-judge district court panel found certain state statutes violate the Fourteenth Amendment to the extent they require racial segregation in prisons and jails.[184]

Impact of the Ruling: The Supreme Court held the statutes requiring racial segregation in prisons and jails were unconstitutional and violated the Fourteenth Amendment, though further orders directing desegregation could make an allowance for prison security and discipline.[185] This decision reaffirmed the Court's determination to end segregation, not only in schools, but in other public institutions.

***Adickes v. S. H. Kress & Co.* (1970) 398 U.S. 144**

Summary of Facts and Issues: This case arises out of S. H. Kress & Co.'s refusal to serve lunch to Sandra Adickes, a white school teacher from New York, at its restaurant facilities in its Hattiesburg, Mississippi store on August 14, 1964.[186] Adickes was with six African American children, who were her students in a Mississippi "Freedom School" where she was teaching that summer.[187] After Adickes left the store, she was arrested on a vagrancy charge.[188] Adickes filed

[180] *United States v. Johnson* (1968) 390 U.S. 563, 563–564.
[181] *Id.* at 564.
[182] *Id.* at 563, 566 (citing 18 U.S.C. § 241).
[183] *Id.* at 566.
[184] *Lee v. Washington* (1968) 390 U.S. 333, 333.
[185] *Ibid.*
[186] *Adickes v. S. H. Kress & Co.* (1970) 398 U.S. 144, 146.
[187] *Id.*at 146–147.
[188] *Id.* at 147.

suit against Kress, alleging a violation of her right under the Equal Protection Clause not to be discriminated against on the basis of race.[189] She advanced two claims: (1) she was refused service because there was a custom of refusing service to white people in the company of African Americans; and (2) the refusal of service and arrest were the result of a conspiracy between Kress and the Hattiesburg police.[190] At trial, Adickes failed to prove there were other instances of a white person refused service for being with African Americans and therefore Adickes did not establish a custom; accordingly, the District Court directed a verdict in favor of Kress on the first count.[191] The second count was dismissed on summary judgment before trial.[192] The Court of Appeals affirmed on both counts and Adickes appealed.[193]

Impact of the Ruling: The Supreme Court held the District Court erred in granting summary judgment. The Supreme Court concluded that Adickes could advance an equal protection claim under 42 U.S.C. § 1983 (which applies to the deprivation of rights "under color of" law) if she proved she was refused service by Kress because of a state-enforced custom requiring racial segregation in Hattiesburg restaurants.[194] Specifically, the Court noted it was error to grant Kress's motion for summary judgment on the second count because Kress did not meet its burden of proving there was no conspiracy between Kress and the Hattiesburg police.[195] Kress would have had to show there was no dispute of material fact as to whether there was a policeman in the store at the time of the incident and that the policeman did not have an understanding with Kress employees that Adickes should not be served.[196] Because Kress failed to prove there was no policeman in the store during this incident, the Court reversed summary judgment.[197]

***Griffin v. Breckenridge* (1971) 403 U.S. 88**

Summary of Facts and Issues: A group of African American citizens of Mississippi filed an action under 42 U.S.C. § 1985(3), which provides:

> If two or more persons . . . conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving . . . any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws [and] in any case of conspiracy set forth under this section, if one or more persons engaged therein do . . . any act in furtherance of the object of such conspiracy, whereby another is injured . . . or deprived of . . . any right or privilege of a citizen of the United States, the party so injured or deprived may have an action

[189] *Id.* at 147–148.
[190] *Ibid.*
[191] *Ibid.*
[192] *Id.* at 148.
[193] *Ibid.*
[194] *Ibid.*
[195] *Id.* at 157.
[196] *Id.* at 157–158.
[197] *Id.* at 157.

> for the recovery of damages, occasioned by such injury or deprivation, against one or more of the conspirators.[198]

Plaintiffs alleged a group of white citizens conspired to assault them as they travelled on the federal, state, and local highways in a car driven by Grady, a citizen of Tennessee, for the purpose of preventing them and other African Americans through "force, violence and intimidation, from seeking the equal protection of the laws and from enjoying the equal rights, privileges, and immunities under the laws of the United States and the State of Mississippi."[199] Petitioners identified these rights as the rights to free speech, assembly, association, and movement, and the right not to be enslaved.[200] Plaintiffs alleged that pursuant to this conspiracy and believing Grady to be a civil rights worker, defendants blocked their passage on public highways, forced them from the car, held them with firearms, and with threats of murder clubbed them and inflicted severe physical injury.[201] The District Court dismissed the complaint for failure to state a claim, relying on *Collins v. Hardyman* (1951) 341 U.S. 651, in which the Court construed 42 U.S.C. § 1985(3) to only reach conspiracies under color of state law.[202]

Impact of the Ruling: The Supreme Court reversed the lower court's judgment and held 42 U.S.C. § 1985(3) covered private conspiracies.[203] The Court concluded the statute on its face fully covered the conduct of private persons.[204] The Court further concluded plaintiffs' complaint stated a claim under § 1985(3) and determined Congress had the constitutional authority to enact the statute imposing liability under federal law for the conduct alleged.[205] The Court specified Congress had the power under section two of the Thirteenth Amendment to create a statutory cause of action for African American citizens who had been victims of conspiratorial, racially discriminatory private action aimed at depriving them of their basic rights.[206]

This decision had important implications for the African American community, which had long been subjected to discrimination and violence at the hands of private organizations and private individuals acting in concert with one another. The Court provided a means for African American people to hold these organizations or individuals accountable for their actions and seek redress for the harms they had suffered.

***Palmer v. Thompson* (1971) 403 U.S. 217**

Summary of Facts and Issues: In prior litigation, courts held the operation of segregated swimming pools and other public attractions by the City of Jackson, Mississippi, was

[198] *Griffin v. Breckenridge* (1971) 403 U.S. 88, 92.
[199] *Id.* at 88.
[200] *Id.* at 90.
[201] *Id.* at 90–91.
[202] *Id.* at 92–93.
[203] *Id.* at 107.
[204] *Id.* at 101–102.
[205] *Id.* at 103.
[206] *Id.* at 105.

unconstitutional as a violation of equal protection under the Fourteenth Amendment.[207] After this, the City desegregated some attractions but closed all of its public pools.[208] A group of African American citizens filed suit to force the City to reopen the pools and operate them in a desegregated manner.[209] The District Court found the closure was justified "to preserve peace and order and because the pools could not be operated economically on an integrated basis."[210] The Court of Appeals affirmed.[211]

Impact of the Ruling: The Supreme Court affirmed, holding the City's closure of the swimming pools did not deny equal protection in violation of the Fourteenth Amendment because there was substantial evidence to support the City's contention that it was not safe to operate integrated pools nor was it economically feasible to do so.[212] There was also no evidence to show the City was covertly helping maintain and operate pools that were private in name only.[213] The Court ruled the record did not contain evidence of state action treating races differently. The Court also dismissed the claim that the City's actions violated the Thirteenth Amendment.[214]

***Moose Lodge No. 107 v. Irvis* (1972) 407 U.S. 163**

Summary of Facts and Issues: Irvis, an African American man, was denied service by Moose Lodge in Harrisburg, Pennsylvania, despite being invited to its private dining room by a white member.[215] All Moose Lodge clubs were limited to white members only.[216] Irvis subsequently filed a 42 U.S.C. § 1983 action for injunctive relief against Moose Lodge and the Pennsylvania Liquor Control Board, claiming that because the Board issued Moose Lodge a private club license, the refusal of service was "state action" for the purposes of the Equal Protection Clause of the Fourteenth Amendment.[217]

Impact of the Ruling: The Supreme Court disagreed with Irvis, finding "the regulatory scheme enforced by the Pennsylvania Liquor Control Board does not sufficiently implicate the State in the discriminatory guest policies of Moose Lodge to make the latter 'state action' within the ambit of the Equal Protection Clause of the Fourteenth Amendment.[218] The Court conceded that whether particular discriminatory conduct is private or amounts to state action "frequently admits of no easy answer," and "only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance."[219] The Court concluded that there was nothing in the facts here to suggest Moose Lodge had any symbiotic

[207] *Palmer v. Thompson* (1971) 403 U.S. 217, 218–219.
[208] *Id.* at 219.
[209] *Ibid.*
[210] *Ibid.*
[211] *Ibid.*
[212] *Id.* at 224–225.
[213] *Id.* at 225.
[214] *Id.* at 226–227.
[215] *Moose Lodge No. 107 v. Irvis* (1972) 407 U.S. 163, 164–166.
[216] *Id.* at 166.
[217] *Id.* at 165.
[218] *Id.* at 177.
[219] *Id.* at 172 (citing *Burton v. Wilmington Parking Authority* (1961) 365 U.S. 715, 722).

relationship with the State like there was in *Burton*, discussed above, nor is the State "in any realistic sense a partner or even a joint venture in the club's enterprise."[220]

***Tillman v. Wheaton-Haven Recreation Ass'n, Inc.* (1973) 410 U.S. 431**

Summary of Facts and Issues: The Wheaton-Haven Recreation Association, Inc. was organized in 1958 as a recreational club to operate a swimming pool near Silver Spring, Maryland, that was limited to members and their guests.[221] Membership to the pool was determined by a geographic area within a three-quarter mile radius of the pool.[222] A resident did not require a recommendation to apply for membership and received preference on the waiting list if it was full; further, a resident-member who sold his home and turned in his membership conferred on the purchaser of his home an option on the vacancy in the club.[223] In the spring of 1968, Harry C. Press, an African American man, purchased from a nonmember a home in the geographic area and inquired about membership in the club; at that time the club had not had African American members.[224] In November 1986, the general membership rejected a resolution that would have allowed African American members.[225] Additionally, in July 1968, Murray and Rosalind N. Tillman, who were members in good standing, brought Grace Rosner, an African American woman, to the pool as their guest.[226] Mrs. Rosner was admitted, but a special meeting of the board of directors limited guests to relatives of members; respondents concede the reason for the policy's adoption was to prevent members bringing African American guests.[227]

In October 1969, petitioners (Mr. and Mrs. Tillman, Dr. and Mrs. Press, and Mrs. Rosner) filed an action against the Association and its officers and directors, seeking damages and declaratory and injunctive relief under the Civil Rights Act of 1866 (42 U.S.C. § 1982), the Civil Rights Act of 1870 (42 U.S.C. § 1981), and Title II of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000a et seq.).[228] The District Court held Wheaton-Haven was a private club and exempt from the nondiscrimination provisions of the statutes, and the Court of Appeals affirmed.[229]

Impact of the Ruling: The Supreme Court held the provisions of 42 U.S.C. § 1982 applied because Wheaton-Haven was not a private club.[230] The Court agreed the Presses' § 1982 claim was controlled by a prior decision, *Sullivan v. Little Hunting Park, Inc.*, in which the Court applied § 1982 "to private discrimination practiced by a nonstock corporation organized to operate a community park and playground facilities, including a swimming pool, for residents of a designated area."[231] The Court noted in this case that the structure and practices of Wheaton-Haven were "indistinguishable" from the park in *Sullivan*—namely, membership was open to

[220] *Id.* at 175.
[221] *Tillman v. Wheaton-Haven Recreation Ass'n, Inc.* (1973) 410 U.S. 431, 432–433.
[222] *Id.* at 433.
[223] *Ibid.*
[224] *Id.* at 433–434.
[225] *Id.* at 434.
[226] *Ibid.*
[227] *Ibid.*
[228] *Ibid.*
[229] *Id.* at 434–435.
[230] *Id.* at 438.
[231] *Id.* at 436, 438 (citing *Sullivan v. Little Hunting Park, Inc.* (1969) 396 U.S. 229, 234, *abrogated on other grounds by Ziglar v. Abbasi* (2017) 582 U.S. 120).

every white person within the geographic area, there was no selective element other than race, and members required formal board or membership approval.[232] The Court declined to consider respondents' contention that 42 U.S.C. § 2000a(e) limited "the sweep of [§] 1982."[233]

***Gilmore v. City of Montgomery, Ala.* (1974) 417 U.S. 556**

Summary of Facts and Issues: In December 1958, a group of African American citizens of Montgomery, Alabama, sought an injunction to desegregate public parks in the city.[234] The District Court granted the injunction, and the Court of Appeals affirmed. Petitioners alleged that a Montgomery ordinance which made it a misdemeanor "for white and colored persons to enter upon, visit, use or in any way occupy public parks or other public houses or public places" violated their Fourteenth Amendment due process and equal protection rights.[235] The District Court entered judgment that the ordinance was unconstitutional and enjoined defendants (the City of Montgomery and various city officials) from enforcing the ordinance "or any custom, practice, policy or usage" that would require African Americans to submit to segregation in public parks; the Court of Appeals affirmed.[236]

Petitioners subsequently filed a motion for supplemental relief, which argued the City was allowing racially segregated schools, private groups, and clubs to use city parks and recreational facilities.[237] The District Court granted petitioners' request for relief and enjoined the city and its officials from allowing racially segregated school and non-school groups from using city-owned or -operated recreational facilities.[238] The Court of Appeals affirmed the part of the injunction that enjoined exclusive use of city facilities by segregated private schools; however, it also directed the District Court to modify its order to allow nonexclusive use by segregated school groups or school-affiliated groups.[239]

Impact of the Ruling: The Supreme Court affirmed the prohibition on exclusive use by segregated school groups and reversed the Court of Appeals' allowance for nonexclusive use by segregated school and private groups.[240] The Court concluded "the exclusive use and control of city recreational facilities . . . by private segregated schools" in effect ran a segregated recreational program and "operated directly to contravene an outstanding school desegregation order."[241] The Court reasoned that the city's assistance to improve "the attractiveness of segregated private schools . . . by enabling them to offer complete athletic programs" undermined a federal court order requiring "the establishment and maintenance of a unitary school system in Montgomery."[242] The Court therefore concluded that it "was wholly proper for the city to be enjoined from permitting exclusive access to public recreational facilities by

[232] *Id.* at 438.
[233] *Ibid.*
[234] *Gilmore v. City of Montgomery, Ala.* (1974) 417 U.S. 556, 558.
[235] *Id.* at 558–559.
[236] *Id.* at 559.
[237] *Id.* at 562.
[238] *Id.* at 563.
[239] *Id.* at 564–65.
[240] *Id.* at 566, 569, 573–575.
[241] *Id.* at 567–568.
[242] *Id.* at 569.

segregated private schools and by groups affiliated with such schools."[243] The Court determined that the factual scenario in this case was more like *Burton* than *Moose Lodge* because "the city ma[de] city property available for use by private entities."[244] Regarding the matter of nonexclusive use of public facilities by a segregated private group, the Court focused on the question of whether there was significant state action involved in the private discrimination alleged. Because the lower court had not predicated this part of its order upon a proper finding of state action, the Court directed the District Court to reconsider that question on remand and determine whether there was significant state involvement in the private discrimination alleged.[245] In doing so, the Court observed that it had not previously "attempted to formulate he Court has never attempted to formulate 'an infallible test for determining whether the State . . . has become significantly involved in private discriminations' so as to constitute state action, [and 'o]nly by sifting facts and weighing circumstances' on a case-by-case basis can a 'nonobvious involvement of the State in private conduct be attributed its true significance.'"[246]

***Rizzo v. Goode* (1976) 423 U.S. 362**

Summary of Facts and Issues: Plaintiffs, African American citizens of Philadelphia, brought two class action suits against Philadelphia Mayor Frank Rizzo, the city managing director, and the police commissioner, seeking equitable relief and "alleging a pervasive pattern of illegal and unconstitutional police treatment of minority citizens in particular and Philadelphia residents in general."[247] The District Court heard about 250 witnesses and "was faced with a staggering amount of evidence" involving incidents of police brutality—"each of the 40-odd incidents might alone have been the piece de resistance of a short, separate trial."[248] After parallel trials of the two suits, the District Court found the evidence showed an unacceptably high number of police misconduct incidents, for which defendants should be held responsible due to their failure to act in the face of the statistical "pattern" of misconduct.[249] The District Court then entered an order to require the defendants to submit for the court's approval a program to improve the handling of citizen complaints alleging misconduct in accordance with the guidelines in the opinion.[250] A proposed program was then negotiated and incorporated into a final judgment by the District Court and the Court of Appeals affirmed pertinent parts.[251].

Impact of the Ruling: The Supreme Court reversed the District Court's decision, holding that it exceeded its authority under the Civil Rights Act of 1871.[252] The Court noted the District Court improperly interfered with defendants' latitude in the dispatch of internal affairs and departed from principles of federalism which prohibit federal court interference with state agencies and officials.[253] The Court noted the evidence established only a few individual police officers, not

[243] *Ibid.*
[244] *Id.* at 573 (citing *Burton*, 365 U.S. at 725; *Moose Lodge*, 407 U.S. 163.)
[245] *Id.* at 573–574.
[246] *Id.* (citations omitted).
[247] *Rizzo v. Goode* (1976) 423 U.S. 362, 362, 365–367.
[248] *Id.* at 367.
[249] *Id.* at 364–365.
[250] *Id.* at 365.
[251] *Id.* at 365–366.
[252] *Id.* at 380.
[253] *Id.* at 379–380.

named as parties, had violated the constitutional rights of particular individuals.[254] Further, the Court found no affirmative link between various incidents of police misconduct and the adoption of any plan or policy by defendants showing their authorization or approval of the misconduct.[255] The evidence established only some 20 incidents of police misconduct in 12 months in the City of three million inhabitants with 7,500 policemen, which did not establish a "pattern" of misconduct.[256]

California Proposition 209, California Civil Rights Initiative (1996), Cal. Const., art. I, § 31

Result of the Proposition Vote: Approved, which created a constitutional amendment to end affirmative action programs in California. Proposition 209 added Section 31 to the Constitution: "the state shall not grant preferential treatment to any individual group on the basis of race, sex, color, ethnicity, or national origin the operation of public employment, public education, or public contracting."

Impact of the Law: The constitutional amendment approved by California voters on November 5, 1996 ended affirmative action programs in California. By voting in favor of Proposition 209, California voters essentially removed decision-making authority on affirmative action from government agencies and public schools

***Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537**

Summary of Facts and Issues: After Proposition 209 passed, the City of San Jose adopted a program that required contractors bidding on city projects to utilize a specified percentage of non-white and women subcontractors or to document efforts to include non-white and women subcontractors in their bids. The trial court granted the plaintiff general contracting firm's motion challenging the program as a violation of Proposition 209.

Impact of the Ruling: The California Supreme Court affirmed the judgment, holding that the city's program violated Proposition 209: "[v]iewing the provisions of article I, section 31 from this perspective, it is clear the voters intended to adopt the original construction of the Civil Rights Act and prohibit the kind of preferential treatment accorded by this program."[257] This case clarified the definition of "discriminate," which is "to make distinctions in treatment; show partiality in favor of or prejudice against," and "preferential," which is "a giving of priority or advantage to one person or group over others."[258] As such, the Court ruled that the City of San Jose's program was unconstitutional because the outreach option afforded preferential treatment to non-white minority and women subcontractors on the basis of race or sex, and discriminated on the same bases against white and male subcontractors as well as general contractors that fail to fulfill either of the options when submitting their bids.

[254] *Id.* at 371, 373–376.
[255] *Id.* at 371.
[256] *Id.* at 373–374.
[257] *Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537, 542.
[258] *Id*. at p. 559.