

NFHS Topic Proposal: Civil Rights

Respectfully Submitted by:

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with credit to Research and Writing Assistants

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Proposed Resolutions:

1. Resolved: The United States federal government should substantially increase its protection of civil rights for citizens and lawful permanent residents of the United States.
2. Resolved: The United States federal government should substantially increase the civil rights of religious and/or ethnic minorities in the United States.
3. Resolved: The United States federal government should substantially increase its protection of civil rights in the United States for individuals based on one or more of the following classes: race, gender, sexual orientation.
4. Resolved: The United States federal government should substantially increase civil rights protection in one of the following areas: detention, employment, housing, voting rights.
5. Resolved: The United States federal government should substantially increase protection of political rights of United States citizens.
6. Resolved: The United States federal government should substantially strengthen civil rights protections in the United States.
7. Resolved: The United States federal government should substantially strengthen protection of rights granted under the First Amendment to the United States Constitution.

Introduction:

"Injustice anywhere is a threat to justice everywhere."

-- Dr. Martin Luther King, Jr., *Letter from a Birmingham Jail*, 1963.

In his 2003 book *Civil Rights and Civil Liberties in the 21st Century*, John C. Domino remarked that

For more than two centuries civil rights and liberties have been at the center of American political discourse and debate. More than mere words on parchment, rights and liberties are integral elements of our culture and firmly established in the American psyche. Americans possess an atavistic entitlement to liberty – a deeply held belief that rights and liberties are natural and unalienable. Yes, as this book explores, we have struggled to reach a consensus on the definition and scope of these rights and at times have foundered in our commitment to them. Paradoxically, as quickly as we have come to the defense of our freedoms so too have we often been willing to restrict the rights of others, particularly those who are perceived as threats to the prevailing social and political values of the majority. (Domino, 1)

For many, the issue of civil rights represents one of the great pieces of unfinished business in the United States. While legislation like the Civil Rights Act of 1964 addressed matters such as ending segregation in places of public accommodation, other acts such as the Voting Rights Act of 1965 and the Americans with Disabilities Act have seen recent Supreme Court cases work to diminish the effect of those pieces of legislation. Gender issues such as equal pay have remained unresolved for decades, and we are only now fully seeing the fruits of the work that the LGBT community has done to pursue their rights, in a movement that many consider to have started with the Stonewall Riots in 1969. This paper proposes that civil rights should be the debate topic area for the National Federation of High Schools for the 2018-2019 academic year.

Distinguishing Between Civil Rights and Civil Liberties:

In preparing to debate this topic, coaches and competitors alike will find it useful to have a clear understanding of the distinction between the terms "civil rights" and "civil liberties", with the former likely to serve as a term of art should this problem area be selected for the 2018-2019 NFHS Debate Topic. While all resolutions have certain key terms that form the core of what the topic is about, an examination of the last two decade's topics illustrate why a topic focusing on civil rights may be a bit unique. In the past, these terms of art either have been ones where there is significant debate within the academic community about the meaning of these terms ("economic engagement" is perhaps the most notable example) or the words forming the term of art have a commonly understood meaning (for example, "transportation infrastructure investment" is comprised of three terms where there is not significant disagreement or confusion about what those terms mean). In this vein, "civil rights" is a bit different in that many laypeople believe "civil rights" and "civil liberties" to be essentially the same thing, so it is in fact critical to clear up this confusion on the front end.

What, then, are "civil liberties" and "civil rights", beyond the typical themes that are discussed somewhere around the fourth and fifth chapters of most any Advanced Placement United States Government textbook? Domino explains further that

Whereas civil liberties protect individuals *from* governmental intrusions on fundamental freedoms, the term *civil rights* has come to connote a positive act of

government intended to guarantee that each person is treated as an equal member of society. Civil rights, in contrast to individual liberties, guarantee freedom from discrimination, equal access to the polls and the political process, and full citizenship. (Domino, 2)

That being said, there have been times when the government has sought to intrude on a fundamental right of individuals, based on some type of group membership. The 1958 case of *NAACP v. Alabama* is instructive in this regard, where the State of Alabama sought to use state laws requiring foreign corporations to “qualify” in order to do business in Alabama in an attempt to gain access to the NAACP’s membership lists. The Supreme Court, unanimously, rejected Alabama’s efforts, holding that compulsory disclosure would violate the freedom of association that the court treated as a corollary to the freedom of speech articulated in the First Amendment. Thus, while we might consider the right to speech a civil liberties issue, there is the acknowledgement that such speech and protest may be more effective when pursued by a group as opposed to a single individual. It is in this venue that this freedom becomes a civil rights issue.

From a policy debate perspective, the challenge here is a bit similar to what has happened with the word “engagement” in the last two foreign policy resolutions (China and Latin America). There’s just not a bright line between civil rights and civil liberties, except perhaps looking at whether the right in question is gained based on a connection to a fundamental freedom by itself (in which case it’s more likely to be a civil liberty) or whether it comes from a person’s membership as part of some group that has been considered to be historically disadvantaged (where a connection to civil rights is likely to be stronger). Thus, there may be some judge “gut checking” on this question – while that may be the case, it seems that a) this is something that the debaters can hash out over the course of the year and b) the challenges that civil rights might face over the next couple of years make it such that even if unable to be more than imperfectly defined, it remains an issue worth discussing.

Key Issues:

Timeliness, Scope, Range, and Quality

Certain topics and resolutions that have been adopted by the National Federation of High Schools have the disadvantage of potentially possessing a “shelf life” to them. For example, had Congress followed up on President Obama’s opening of diplomatic relations with Cuba by ending the trade embargo, it would have made the 2013-2014 Latin America resolution unviable and would certainly have changed the dynamic of that particular topic area. In the same way, passage of President Trump’s infrastructure package might make it hard for the debate community to adopt a resolution like the 2012-2013 transportation infrastructure wording – at the very least, those debates would likely have been somewhat different in terms of the inherency and plan implementation levels than was the case on that topic. A civil rights topic avoids this deficiency simply because there is always going to be differences of opinion among our population and some of those differences, sadly, include the belief that one has the right to discriminate against another based on race, gender, religion, sexual orientation, or any one of a number of characteristics too innumerable to list in their entirety here. Until every individual makes and acts on a conscious choice not to engage in such categorization, one might argue that a civil rights topic would always be timely. That being said, such a focus on addressing individual-to-individual acts of discrimination might have other structural issues that impugn the ability to be selected as a debate topic.

Thus, we are left with the question of whether a topic area that focuses on the ways in which the government can change civil rights policies to address harms that it has created or allowed to go unaddressed is timely. Frankly, at the time that this topic was assigned, it seemed that the support for

such a topic was going to be based on an assertion that “it’s always a right time to discuss civil rights.” Then, in a historical twist that seemed ridiculous to the point of being a punch line when introduced in *Back to the Future*, the fall of 2016 brought us both President Trump and a World Series Championship to the Chicago Cubs. While my research has yet to uncover anyone who argues that the Cubbies represent a threat to civil rights, there are those who argue that President Trump, his campaign/early presidential rhetoric, and some within his administration do represent such a threat. Such threats, either made by Trump during the campaign or argued by some to be a logical extension of his proposals, include but is not limited to the following:

- A ban on Muslims traveling to the United States, whether as immigrants or as legal residents returning from trips abroad (ACLU, 4)
- Mass deportations of undocumented immigrants, which to implemented is argued to necessitate mass violations of Fourth Amendment (ACLU, 7)
- The opposition of Attorney General Jeff Sessions to the inclusion of sexual orientation as a protected category to hate crime legislation.
- Education Secretary Betsy DeVos’ support for voucher programs (admittedly, there is literature on both sides of this debate in terms of its implications for preferential treatment of faith-based schools, education access for low-income and minority groups, but it certainly has those who are concerned about civil rights issues fearful that a “right to education” that has been generally accepted though not specifically articulated in the Constitution would be eroded).
- Attorney General Sessions acceptance of a measure of racial profiling in law enforcement practice.
- Attorney General Sessions support for broad use of civil asset forfeiture (Leef)
- Removal of pages on the official internet site for the White House regarding Civil Rights and LGBT issues.
- Candidate Trump’s repeated claims on voter fraud that some consider to be a veiled attempt to pursue disenfranchisement of various minority groups.
- Trump’s calls for surveillance of mosques (though the ACLU alleges that the New York Police Department has been engaging in this practice), along with the creation of a registry of Muslim individuals and a lack of clarity regarding the issue of internment based on religion.
- Attorney General Sessions opposition to the Voting Rights Act.

The above list, it seems, speaks by itself to the question of scope of topic. The quality of literature is such that both novice and varsity debaters should be able to engage this topic in meaningful ways. A simple Yahoo search of “Donald Trump” and “Civil Rights” turned up over 2.7 million hits, while replacing “Donald Trump” with “Jeff Sessions” generated over 4.1 million results. Within Google Scholar, the search “Civil Rights” generated over 30,000 hits even when limited to those articles published in 2016 or 2017. Additionally, a number of universities, including Alabama, George Mason, Harvard, Stanford, Temple, and Washington and Lee all have law journals specifically dedicated to the issues of civil rights and civil liberties. Thus, debaters just entering the activity should be able to easily find foundational literature in national newspapers, advocacy groups such as the ACLU and NAACP, while experienced practitioners of policy debate have a wealth of in-depth of weighty research to keep their interest piqued. Those who approach this topic from a more conservative perspective might begin with organizations like the Manhattan Institute and the Hoover Institution.

Harms Areas:

One aspect about this topic area that I have discovered but was not at all surprised by is that the system of civil rights legislation at the state level is very much a patchwork, particularly when it comes to

LGBT rights. For example, seventeen states provide no protection for LGBT individuals from employment discrimination, while twenty states and the District of Columbia provide such protections on the basis of both LGBT status and sexual identity. Similar results can be found when looking at other issues such as the protections offered under state hate crime legislation, protection from housing discrimination, and the family status of children of those who identify as LGBT. This would seem to advance the idea that legal consistency requires the federal government to take action to ensure equality before the law, though it does inject Washington into areas of public policy where it has not normally intervened.

In thinking about the topic more, at first it seemed that many of the impacts would be very qualitative in nature and thus getting to the terminal impacts that high school debaters find appealing might be very difficult. However, upon further reflection it seems that the internal link chains for a good number of strategic impact scenarios are likely to be available to debaters of all levels of experience. A partial list of impact scenarios would include the following:

- Racism (with connections to genocide and evidence that indicates that racism should be rejected on face)
- Islamophobia – some lines of analysis will be similar to the racism arguments, but there is also the attack that perceptions of Islamophobia in the United States hinders our ability to fight terrorism at home and abroad. For example, Michael Gerson of the Center for Public Justice wrote in the Washington Post on March 24, 2016 that:

Rhetoric that targets “the Muslims” and singles out Americans for suspicion based on nothing more than their faith seriously complicates the war against terrorism, for these reasons: First, anti-Muslim rhetoric strains relations with Sunni Muslim countries, which we are trying to persuade to do more to combat the Islamic State. “The leadership of these countries,” former acting CIA director Mike Morell told me, “understand American politics enough to know that, for now, this is just rhetoric. But their publics do not get that. And it is the perception that acts to limit what these nations can do overtly to support the U.S.” Second, it amplifies Islamic State propaganda that the West is conducting a religious war against the “caliphate,” which is a source of terrorist morale. “It certainly feeds extremist recruitment,” says Morell, “but it also makes even moderate Muslims wonder if the extremists may be right.” Third, anti-Muslim rhetoric needlessly disrupts relationships with American Muslim communities that are often the first to recognize and report radicalization in their midst. “From the perspective of American Muslims,” according to former national security adviser Stephen Hadley, “the rhetoric creates a sense of alienation from their fellow citizens and makes them more susceptible to the [Islamic State] argument that they have no real place in American society — and that their true ‘home’ is in the caliphate.”

- Vote Suppression – again, this is likely to link into some of the arguments on race (Ari Berman’s book *Give Us the Ballot* has a number of anecdotes on various vote suppression tactics), but there will also be ample evidence that strong access to the right to vote is key to democracy (also providing links to advantages connected to democracy promotion. Berman writes:

The Supreme Court’s ruling overturning Section 4 of the VRA, issued eight months after Obama’s reelection, underscored the fact that what should be the most settled right in American democracy – the right to vote – remains the most contested. For a country that is famous for exporting democracy across the globe and has branded itself as the shining city on the hill, the United States has a shameful history when it comes to embracing one of its most basic rights at home. (Berman 11)

- New Social Movements – this term emerged in the 1960s to describe the rise of emerging interest groups (mainly not as well organized as their predecessors) who were campaigning not for “bread and butter” issues (e.g. the labor movement of the late 19th and most of the 20th century) but for issues that were typically more based on harder to quantify measures such as rights or the quality of life. The Civil Rights Movement of the second half of the 20th century and the LGBT Movement beginning in the latter third of the previous century and both continuing to this day would be exemplars of this phenomenon.
- Education – Ask any high school student who has completed a course in either United States History or political science to name a civil rights case, and you’re likely to hear *Brown v. Board of Education*. While neither the first case to address the issue of segregation within the context of the education system (*Missouri ex rel Gaines v. Canada* and *Sweatt v. Painter* precede *Brown*, though both dealt with post-secondary education) nor the last word (the most well-known of such cases post-*Brown* probably being *Swann v. Charlotte-Mecklenburg Board of Education* in 1971), scholars have noted their belief that a resegregation has been in effect. John Domino writes:

But as the years passed and new, mostly white suburbs developed, schools became resegregated as a result of population patterns, not governmental action. Indeed, this trend has extended into the twenty-first century. Many contend that modern resegregation is not purely a result of persons deciding to move to the suburbs; the paucity of economic opportunities for African Americans and discriminatory real estate practices (author’s note – these practices, particularly redlining were debated as part of the September/October 2015 Public Forum topic on reparations to African Americans) have contributed to these new patterns of segregation. (Domino 280)

While a good portion of this is likely to be addressed in the upcoming education reform topic, there are definitely civil rights implications, not just related to resegregation but also school funding and school choice, among others, that may make this area one for continued exploration. That being said, there are also LGBT issues in education that have made a real emergence in the last few years, most visibly in “bathroom bills” and “safe spaces”. The National Conference of State Legislatures noted that sixteen states have considered legislation to restrict access to multiuser bathrooms and locker rooms on the basis of biological sex at birth, six states have considered legislation to pre-empt local anti-discrimination laws, and fourteen states have considered legislation to limit the educational rights of transgendered students (National Conference of State Legislatures). While this also is likely to be a core area of next year’s education reform topic, it also seems likely that this will not be resolved anytime in the immediate future and is likely to be a viable part of a civil rights topic.

As said at the beginning, this is not intended to be an exhaustive list. Creative debaters and coaches will certainly find other areas within civil rights policy that will make for fruitful argumentative ground. A concern expressed by one of the reviewers was the lack of affirmative ground for teams that wished to approach this topic from a more politically conservative perspective. While it is certainly true that civil rights policy has recently been considered to be the province of the left, there are some areas of this topic area that teams should be able to access or at the very least, find solutions that achieve what are considered to be conservative goals or even find a sort of Nirvana where goals of both the right and left can be achieved in unison (for example, many nations, including Switzerland and Mexico, take it upon themselves to provide for voters the documentation needed to vote in elections – this could solve for both the suppression of vote claims made by voter-ID opponents and voter fraud claims made by those who support the use of voter identification, along with avoiding 24th Amendment claims that requiring voters to procure their own identification effectively becomes a poll tax, which would run afoul of

Amendment XXIV). While perhaps not as expansive as left-leaning affirmative ground, the political right does appear to have a number of policy solutions available to it that a team consisting of conservatives or with a more conservative judge pool is not going to be reduced to running one of three affirmatives for the course of the topic year.

Affirmative Case Areas:

As with harms areas, there is no delusion on the part of the author that this is intended to be a comprehensive list of affirmative plans, but merely a list from which to begin examination of the topic.

- Overturn *Shelby County v. Holder* to reinstate the coverage formula in Section 5 of the Voting Rights Act of 1965.
- Increase enforcement of Section 2 of the Voting Rights Act of 1965.
- Have the Supreme Court issue a ruling finding “bathroom bills” to violate the Equal Protection Clause of the Fourteenth Amendment.
- Ban employment discrimination based on sexual orientation and/or gender status.
- Equal pay legislation (this was proposed in the 110th Congress and passed the House, but failed in the Senate)
- Provide National Voter Identification (such documents are provided in a number of countries, including Argentina, Canada, and Germany)
- Adopt Australian model for voter qualification (In Australia, where voting is compulsory, voters are asked three questions to assert their eligibility to vote in elections)
- Ban racial profiling at United States airports
- Religious exemptions from particular federal laws (*Burwell v. Hobby Lobby* can be instructive on the rationale for such exemptions)
- Adopt biometric identification for voter eligibility (Brazil is in the process of implementing the use of fingerprints as a means to determine eligibility)
- Overturn *Board of Trustees of the University of Alabama v. Garrett* (a 2001 case that limited the ability of disabled people who suffer employment discrimination at the hands of state governments to recover monetary damages)
- Ban the use of racial profiling by state and local police departments (Department of Justice guidance to federal law enforcement officials officially banned racial profiling in 2003, and was expanded to include gender, sexual orientation, religion, national origin and gender identity in 2014 by Attorney General Holder)
- Overturn *Schuette v. Coalition to Defend Affirmative Action* (2014 case where the Supreme Court refused to strike down a state constitutional amendment banning affirmative action except where mandated by federal law)
- Overturn *Board of Education of Oklahoma City Public Schools v. Dowell* (1991 case that made it easier for school districts to be able to vacate school desegregation orders)
- Protection of political rights for various religious groups (the ACLU has been involved in a number of these sorts of cases, involving Christian, Jewish, Muslim and other religious denominations – a partial list can be found at <https://www.aclu.org/aclu-defense-religious-practice-and-expression>)
- Protection of various acts of free speech, assembly, and expression (this one has a litany of potential claims on all points of the political spectrum, and one may refer to a May 16, 2017 article in the *Atlantic Monthly* referencing the joining together of Cornel West and Robert P. George in a movement to provide a bipartisan defense of free speech rights as it relates to genuine academic and political discussion).

Negative Core Arguments:

Negative teams should find a good range of argumentation on this topic, ranging from very straightforward positions to complex ones, including a host related to various postmodern and post-structural criticisms of the legal system. This discussion is certainly not intended to be a comprehensive list but is intended to be a starting point for negative teams as they begin to craft base strategies for the 2018-2019 academic year.

For disadvantages, a number of the options available to negative teams will have almost as much to do with who does the plan as opposed to what specifically is being done. A list of “core” disadvantages is likely to include the following:

- Judicial activism/Judicial deference – not surprisingly, this portion of the topic ground will inherently be bidirectional, in that teams opposing plans where courts are the agent of action will argue that such activism on the part of the courts is inherently bad, while those running court-based counterplans will likely claim judicial activism as a net benefit to the counterplan. While Erwin Chemerinsky’s book *Closing the Courthouse Door* will be a good place to begin, there are a host of articles that can be found in places like Google Scholar. While a large number of conservatives like to decry judicial activism as being a creation of legal liberals to circumvent the will of a conservative majority, the following passage from *The Economist* in 2015 can be instructive:

By pressing so hard on the formal point that five justices should never dictate terms to 320m Americans, the conservatives have constructed a self-defeating argument. Dictating terms to 320m Americans is exactly what the Supreme Court does and has done ever since it gave itself the power of judicial review in the *Marbury v. Madison* decision of 1803. When a majority off the court reads the Constitution as protecting a right that a state or federal law contravenes, it strikes that law down. That is the justices’ job. Justice Elena Kagan explained as much in the *Obergefell* oral argument. “We don’t live in a pure democracy,” she said, “we live in a constitutional democracy. And the Constitution imposes limits on what people can do and this is one of those cases...where we have to decide...whether the Constitution...prevents the democratic processes from operating purely independently.”

Many of the liberal decisions this spring, including the Obamacare, gerrymandering, Confederate flag and fair-housing rulings, were not “activist” at all. In fact, they were examples of judicial restraint since they deferred to the determinations of other branches of government. But is *Obergefell* an example of judicial activism? Absolutely, if by “activism” we mean striking down laws that a majority of the justices construe as running afoul of the Constitution.

But it is misleading to describe this instinct as inherently or predominantly liberal. In recent years, the right wing of the court has exceeded the left in its willingness to use judicial power to counter the will of the people as expressed in state or federal legislation. Last year, in *Burwell v. Hobby Lobby*, the conservatives voted to carve out an exception to a provision in the Affordable Care Act for certain religiously owned corporations. Two years ago in *Shelby County v. Holder*, they struck down the heart of the Voting Rights Act, a law that Congress had re-approved overwhelmingly in a bipartisan vote in 2006. In 2010, a provision of another bipartisan act of Congress, the McCain-Feingold campaign-finance law, came on the conservatives’ chopping block in the highly controversial

Citizens United v. Federal Election Commission. Again last year, in *McCutcheon v. Federal Election Commission*, some campaign-donation limits were found to violate the First Amendment. All of these are clear and bold attempts of justices exercising judicial power. Whether correctly or incorrectly decided, the rulings are, objectively, “activist”.

Critiques of judicial activism are, in the end, rarely critiques of judicial activism. They are cries of despair masked as principled stances against unelected judges deciding major questions for hundreds of millions of Americans. Everyone favours some of those decisions and objects to others. (And everyone seems to forget, when using “unelected” as a term of abuse, that judicial independence was seen by the founders as “the citadel of the public justice and the public security.”) If, come next spring, affirmative-action admissions policies are found to contravene the 14th Amendment’s equal-protection guarantee, or mandatory union dues are struck down as a violation of free speech, it will be the liberals’ turn to decry the court’s judicial activism while conservatives nod solemnly and announce that the Constitution has been vindicated. (*The Economist*, “*Those Activist Judges*”)

- Federalism – Historically, there is ample evidence of the federal government acting either through the legislature or the courts to counter attempts on the part of the state governments to deprive various groups of their fundamental rights – the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Supreme Court decisions in *Obergefell v. Hodges* and *Tennessee v. Lane* all serving as examples of this practice. However, there does remain a very critical principle in American government that we as a body politic seek to maintain a balance between the national and state power, with people wanting greater emphasis on localized approaches to political issues. Republican pollster Frank Luntz commented on this in May of 2017:

Americans are demanding a new relationship with their government: one that prioritizes local leadership and targeted solutions, instead of trying to force a one-size-fits-all national approach. The numbers – rooted in a poll my firm conducted on behalf of the National Governors Association – are as clear as they are compelling.

A full 71 percent of voters say that state government is doing a “better job of serving its citizens and delivering results” than the federal government (29 percent). America’s governors and state governments received a relatively high 45 percent favorability rating, compared to just 27 percent for the federal government as a whole. And state government enjoys higher trust on many – though not all – issues related to social and economic leadership, from budgeting to education to infrastructure. (Luntz, “*Commentary*”)

The disadvantage can, of course, stand alone or serve as the net benefit to a States Counterplan. Negatives also will have the opportunity to claim the modeling scenarios sometimes seen in the federalism position.

Other viable positions that may be available for negative teams include:

- Circumvention Disadvantage
- Court Legitimacy Disadvantage
- Right-Wing/Left-Wing Backlash Disadvantage
- Court Capital Disadvantage
- New Social Movements Disadvantage

- Presidential Powers Disadvantage
- Hollow Hope Disadvantage
- Politics Disadvantage
- Afropessimism Kritik
- Critical Race Theory Kritik
- Critical Legal Studies Kritik
- Feminism Kritik
- Intersectionality Kritik
- States Counterplan
- Courts Counterplan
- Executive Order Counterplan

Again, this is not intended to be an exhaustive list, but is intended to illustrate the range of approaches available to satisfy teams of all different styles and argumentative preferences.

Conclusion:

The events of the November election served to change the dynamic of this topic fundamentally, particularly at the federal level. Had Hillary Clinton won the presidency, it is likely that most of the debate on this topic would have been very much geared towards the federal government blocking efforts by state and local governments to deprive various groups of their civil rights or looking at ways in which civil rights enforcement could be improved. President Trump's unpredictability and Attorney General Sessions' apparent hostility to at least some pieces of civil rights law, along with a Congress that doesn't appear entirely sure what to do with President Trump has made it such that there may well be significant changes in what civil rights are understood to mean today and what they might mean at the beginning of the 2018-2019 academic year.

Admittedly, some issues at the core of a civil rights topic may have been discussed in previous topic years, at least in some form of high school debate. To this end, the education subarea was removed from the proposed list of resolutions as that is the 2017-2018 policy topic. However, one can argue that there is some overlap with other topic areas over the last dozen years. That being said, there are a few observations to make. First, none of these areas will be a complete overlap with any resolution likely to come out of this meeting, so there will be plenty of virgin case ground for teams to explore. Second, there is always some level of case recycling that occurs on most topics, as one might see this coming year with the possibility that the education topic will include cases run on the mental health topic (2002-2003) or the social services topic (2009-2010). Third, while our civil rights record is certainly better than what it was in the 1960s or even the 1990s, this discussion is likely to be central to our politics for some time to come and is uniquely so given the current incumbents of the White House and certain positions on the Cabinet, particularly the Attorney General. Debate about how to best ensure that all persons are given proper equality before the law, wherever those disparities emerge, is always likely to be a debate worth having.

Definitions:

citizen

“a native or naturalized member of a state or nation who owes allegiance to its government and is entitled to its protection” Dictionary.com

“In general, a member of a free city or a jural society, possessing all the rights and privileges which can be enjoyed by any person under its constitution and government, and subject to the corresponding duties” Black’s Law Dictionary Online

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside.” Amendment XIV to the United States Constitution

civil rights

“These are the rights that are granted to every citizen of the United States by the constitution and all of its amendments. Equal protection is guaranteed to every one regardless of race, colour and creed.” The Law Dictionary Featuring Black’s Law Dictionary Online

“In contemporary political thought, the term ‘civil rights’ is indissolubly linked to the struggle for equality of American blacks during the 1950s and 60s. The aim of that struggle was to secure the status of equal citizenship in a liberal democratic state. Civil rights are the basic legal rights a person must possess in order to have such a status. They are the rights that constitute free and equal citizenship and include personal, political, and economic rights. No contemporary thinker of significance holds that such rights can be legitimately denied to a person on the basis of race, color, sex, religion, national origin, or disability.” Stanford Encyclopedia of Philosophy

“guarantees of equal social opportunities and equal protection under the law, regardless of race, religion, or other personal characteristics. Civil rights laws attempt to guarantee full and equal citizenship for people who have traditionally been discriminated against on the basis of some group characteristic. Unlike other rights concepts, such as human rights or natural rights, in which people acquire rights inherently, perhaps from God or nature, civil rights must be given and guaranteed by the power of the state.” Encyclopedia Britannica Online

detention

“Detention occurs whenever a police officer accosts an individual and restrains his or her freedom to walk away, or approaches and questions an individual, or stops an individual suspected of being personally involved in criminal activity.” The Free Dictionary

“The act of keeping back or withholding, either accidentally or by design, a person or thing.” Black’s Law Dictionary Online

“Detain generally means to prevent from proceeding, to restrict freedom of movement.” USLegal.com

economic rights

Note – Many of the definitions of economic rights integrate cultural and social rights – teams may have some difficulty isolating this particular term as a term of art. Additionally, this was a term included in the first draft of the paper but has been removed from the final draft at the suggestion of one reviewer for fear of topic breadth. The definition remains in the event that the Wording Committee chooses to reexamine this term.

“Economic, social and cultural rights include the rights to adequate food, to adequate housing, to education, to health, to social security, to take part in cultural life, to water and sanitation, and to work.”
United Nations Office of the High Commissioner on Human Rights

education

“the process of receiving or giving systematic instruction, especially at a school or university” – Oxford Dictionary Online

“the act of imparting or acquiring general knowledge, developing the powers of reasoning and judgement, and generally of preparing oneself or others intellectually for mature life” Dictionary.com

employment

“an occupation by which someone earns a living; work; business” Dictionary.com

“the state of having paid work” Oxford Dictionary Online

ethnic minority

“a group within a community which has different national or cultural traditions from the main population”
Oxford Dictionary Online

“a group of people of a particular race or nationality living in a country or area where most people are from a different race or nationality” Cambridge Dictionary Online

gender

“Either of the two sexes (male and female), especially when considered with reference to social and cultural differences rather than biological ones.” Oxford Dictionary Online

“Gender refers to the socially constructed characteristics of women and men – such as norms, roles and relationships of and between groups of women and men.” World Health Organization

“the behavioral, cultural, or psychological traits typically associated with one sex” Merriam-Webster Online

“the male or female sex, or the state of being either male or female” Cambridge Dictionary Online

lawful permanent resident

Note: The term “lawful permanent resident” was chosen as it most accurately depicts the author’s intent to focus on those individuals who have migrated to the United States and begun the process of seeking naturalization. While we use the term “legal resident” colloquially, that term is also used extensively in the context of determining the state in which someone is considered to live for the purpose of things like in-state tuition or scholarship eligibility for postsecondary education. In fact, the search term “legal resident” generates results on the latter definition.

“Lawful permanent residents (LPRs), also known as “green card” holders, are non-citizens who are lawfully authorized to live permanently within the United States. LPRs may accept an offer of employment without special restrictions, own property, receive financial assistance at public colleges and universities, and join the Armed Forces. They also may apply to become U.S. citizens if they meet certain eligibility requirements. The Immigration and Nationality Act (INA) provides several broad classes of admission for foreign nationals to gain LPR status, the largest of which focuses on admitting immigrants for the purpose of family reunification. Other major categories include economic and humanitarian immigrants, as well as immigrants from countries with relatively low levels of immigration to the United States.” United States Department of Homeland Security

“A lawful permanent resident is someone who has been granted the right to stay in the United States indefinitely.” Alllaw.com

“A lawful permanent resident is a non-citizen who has been granted authorization to live and work in the United States on a permanent basis.” Legal Information Institute

political rights

“the rights that involve participation in the establishment or administration of a government and are usually held to entitle the adult citizen to exercise of the franchise, the holding of public office, and other political activities” Merriam-Webster Online

“Political rights are the rights exercised in the formation and administration of a government. They are given to citizen by the constitution. These rights give the citizen power to participate directly or indirectly in the administration.

Political rights are the right to political participation. Political participation can take many forms; the most notable form is the right to vote. The right also covers the right to join a political party; the right to stand as a candidate in an election; the right to participate in a demonstration; and freedom of association.” U.S. Legal.com

“These rights guarantee the positive liberty to contribute to the process of governing the affairs of society in which one lives. Political rights presume that the government processes should be structured so as to provide opportunities for political participation of all eligible citizens.” – Lincoln University (from a course website)

religious minority

Note: In the author's initial search for the term "religious minority", there is a distinct lack of definitions that look at "religious minority" as a term of art. Thus, the definitions here are from other nations with admittedly different demographics than what exists in the United States.

"Religious minority is a group of common set of religious beliefs distinct from majority group." Defined by Ashek Mahmud in his article "Poverty of Religious Minority of Hindu Community in Dhaka, Bangladesh.

"a minority, whether linguistic or religious, is determinable only by reference to demography of the State and not by taking into consideration the population of the country as a whole" Found in the Government of India National Commission for Minority Educational Institutions

"A group whose religious obligations result in patterns of behavior among its members that result in discriminatory treatment by the mainstream society" Defined by Md. Rajib Hasnat Shakil in "Systematic Persecution of Religious Minorities: Bangladesh Perspective

sexual orientation

"An inherent or immutable enduring emotional, romantic, or sexual attraction to other people." Human Rights Campaign

"Sexual orientation is about who you're attracted to and want to have relationships with. Sexual orientations include gay, lesbian, straight, bisexual, and asexual." Planned Parenthood.

"Sexual orientation is a term used to describe our patterns of emotional, romantic, and sexual attraction – and our sense of personal and social identity based on those attractions. A person's sexual orientation is not a black or white matter; sexual orientation exists along a continuum, with exclusive attraction to the opposite sex on one end of the continuum and exclusive attraction to the same sex at the other." Psychology Today

should

"used to indicate obligation, duty, or correctness, typically when criticizing someone's actions". Oxford Online Dictionary

"used to express obligation or duty". American Heritage Online Dictionary

substantially

Author's note – as anyone who has coached or debated will know, several legal definitions exist that assign a precise percentage to this term. However, those definitions are often, by their context, limited to addressing the issue that was at bar in that particular case. Thus, while a list of cases could cite substantially as meaning anything from 10 percent up to 90 percent, I will refrain from listing them here. Debaters historically have proven themselves plenty capable of finding these interpretations.

"to a great or significant extent". Oxford Online Dictionary

"considerable in importance, value, degree, amount, or extent". American Heritage Online Dictionary

United States federal government

“The United States Federal Government is established by the US Constitution. The Federal Government shares sovereignty over the United States with the individual governments of the States of US. The Federal government has three branches: i) the legislature, which is the US Congress, ii) Executive, comprised of the President and Vice president of the US and iii) Judiciary.” US Legal.com Definitions

“The government of the United States, established by the Constitution, is a federal republic of 50 states, a few territories and some protectorates. The national government consists of the executive, legislative, and judicial branches.” Word IQ.com

voting rights

“the entitlement of an individual to vote” Collins Dictionary Online

“rights of participation in especially public elections” Merriam-Webster Dictionary Online

Note – some definitions of voting rights look at this concept within the context of the rights of shareholders to vote at the meetings of corporations.

Key Civil Rights Legislation and Cases

Age Discrimination Act of 1975

This legislation states that no person can be discriminated against on the basis of their age in any program that receives federal financial aid. People participating in any federally aided activity must be allowed to participate and receive benefits regardless of their age. If a program discriminates based on age, they could lose their federal funding or be taken to court. The legislation also says that this law only applies to programs or activities where age does not allow a person to complete the objective of the federally funded program or activity.

Age Discrimination in Employment Act of 1967

This law prohibits an employer from refusing to hire or firing an employee over the age of 40 based solely on his or her age. Employees over 40 must receive the same benefits and the same promotion opportunities as those under 40. To fall under this law, an employer must have 20 or more employees and be involved with commerce in some way. All apprenticeships must not discriminate based on the age of the applicant either. It is also unlawful to include age requirements on an application. The only exceptions to this law come when age can be shown to be a genuine occupational hazard. This law also allows for policy makers or executives to be forced to retire at 65, as long as they have a pension of \$44,000 a year or more. A person is entitled to waive these rights if they so choose.

Older Workers Benefit Protection Act

This act protects the employee benefits of older workers. It also ensures that workers cannot be forced to waive their rights to the Age Discrimination in Employment Act, which cut down on “golden handshakes” that became popular in the 1990s. The only time an employer may scale back the benefits for an older employee is if these benefits are costing more than they would for a younger employee, in which case the business must pay the same for the benefits of the old employee and the young employee. This act created a required waiting period of 21 days for one employee or 45 days for two or more employees before their decision to accept a severance package and wave their right to sue for wrongful termination becomes final. It also created a checklist that must be completed for an employee to waive their rights.

Americans with Disabilities Act

Among other provisions, the Americans with Disabilities Act provided that employers were banned from engaging in discrimination against employees or applicants based on any disability as long as they were otherwise qualified for the job and that employers were to make reasonable accommodations to allow such an employee to perform their job duties. This part of the legislation was ruled unconstitutional as it applied to the states in *Board of Trustees of the University of Alabama v. Garrett* (2001); however, since that decision was based on the doctrine of sovereign immunity, this finding is not applicable to private employers. Additionally, the legislation prohibits public entities from engaging in discrimination in terms of access to services that local and state governments provide, along with requiring places of public accommodation to provide reasonable accommodations to allow disabled individuals to be able to access such places. Regarding the provision of accommodations to allow disabled people to access their fundamental rights, the Supreme Court ruled in the 2004 case of *Tennessee v. Lane* that the sovereign immunity provision it granted in *Alabama v. Garrett* did not apply, since the issue in

Tennessee v. Lane was that because courtrooms were located on the upper floors of the courthouse in question, Tennessee's failure to install ramps or elevators deprived disabled citizens of their fundamental right to seek legal redress for issues that they wanted to bring before the courts or the ability to present themselves in court to defend themselves against charges brought forth by the state.

Architectural Barriers Act

Requires all buildings that are built, altered, or leased with federal money to be accessible to disabled people. Enacted in 1967 under President Johnson, this was one of the first bills concerning handicap accessibility. This bill created an Access Board that is responsible for setting up Uniform Federal Accessibility Standards. The Board enforces the law by investigating complaints and deciding whether a building is or is not in compliance. This law only applies to buildings that have used federal money and also only to buildings being built or leased after the bill was passed.

Rehabilitation Act of 1973

This act prohibits discrimination based on disability in any program paid for by the federal government or conducted by the federal government. It requires federal agencies to take affirmative action and do their best to give disabled people an opportunity to be hired. The bill also strictly prohibits wage discrimination towards the disabled by federal programs. Also, this bill requires that any electronic technology used by the federal government or a program funded by the federal government must be accessible, as well.

Individuals with Disabilities Education Act

This act was passed to provide children who are disabled with the same opportunities to learn as non-disabled children. It was passed by the government in 1975 to ensure that public education would be open to all students. This law was passed to ensure that students with disabilities would have access to an education that is uniquely suited to their special need, which was not happening in the public school system prior to its passage. To get funding, the act says that schools must make sure that students are tested if the school believes that the student has a disability that affects learning. The school must also craft an individualized education plan for that child and take into account the input of the parent and child. The act says that children should be put in a normal setting if at all possible and that if a parent does not like the way a child is being educated, they have the right to challenge in court.

Air Carrier Access Act

This act prevents airlines from discriminating against disabled people. An airline must allow people with disabilities to travel on their flights and may only refuse to carry a disabled person if it threatens the safety of the plane. Disabled persons cannot be required to give advanced notice that they are flying and they may not be forced to sit in certain seats or to not sit in certain seats. Airlines also cannot put a cap on the number of disabled people that can fly on a certain plane. This act also requires that airlines provide all assistance needed to individuals who are disabled and must not charge extra for these services. They must also provide storage space for collapsible wheelchairs and equip their new planes to fit disabled standards set by this act.

Title IX of the Education Amendments of 1972

Title IX prevents discrimination on the basis of sex in federally funded education. According to Title IX, there must be equal opportunity for both sexes to participate in sports and school activities and classes. The school must also work to prohibit and root out sexual harassment. There may be no educational discrimination based on pregnancy, either. Title IX is fairly short, and most of the enforcement has been left up to the Office for Civil Rights. Enforcement of this law has been extremely difficult and controversial, especially for sports. In collegiate athletics, to avoid having to eliminate big money sports like men's basketball and football, colleges have justified giving more money to these sports because they have large crowds, which cost more money.

13th, 14th, 15th, 24th Amendments

The 13th Amendment states that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." It was passed on January 31st, 1865, and was ratified on December 6th of the same year. Such words formally abolished slavery in the United States, ushering in the end of the Civil War. Abraham Lincoln, president of the US at the time, pushed for the amendment to be passed against all odds, for most legislators from the North believed slavery should continue to exist so that the South and North could come together once more. The passage of the 13th Amendment transformed the Civil War into a fight for and against human freedom, and it was the first glimmer of hope for Black Americans wishing to achieve a better life.

The 14th Amendment took the 13th a step further by asserting the rights of citizens in the United States, a group which now included Black Americans. It was featured in a variety of notable court cases later in history, including but not limited to *Brown v. Board of Education*, *Roe v. Wade*, and *University of California v. Bakke*.

The 15th Amendment addressed the right to vote. It was ratified on February 3rd, 1870, but didn't truly take effect until 1965 under the Voting Rights Act. White people in Southern States were able to continue to disenfranchise potential Black voters, despite the revised constitution, through methods such as poll taxes and literacy tests.

The 24th Amendment was ratified in response to the poll taxes adopted by Southern states in the years leading up to 1964. Until such an amendment, a number of court cases, including *Breedlove v. Suttles*, actually upheld the use of discriminatory poll taxes. The *Breedlove* decision was justified by the argument that because the poll taxes applied to all voters, they did not violate the Fourteenth amendment, which prohibits violations of privileges and immunities held by US citizens. The 24th Amendment cited poll taxes specifically as something it banned, taking a much-needed step toward more equal voting rights.

National Voter Registration Act

This act was adopted in 1993 for the purpose of simplifying the voter registration process and making it easier for voters to maintain said registration. It effectively imparts the responsibility of implementation upon the Federal Election Commission (FEC), mandating that the group must create a national mail voter registration form and consistently draw up reports on the Act's overall effectiveness. There have been roughly 22 cases raising claims under the National Voter Registration Act since 1994 in states from Michigan to Mississippi. Most of these cases dealt with specific, minor inadequacies of the voter registration systems in certain states. For example, in *United States v. State of Tennessee* (2002), the state did not ensure that driver's license applications also functioned as voter registration

applications, and the federal government was forced to intervene under the requirements of the NVRA. In this particular case and in the majority of the others, the two parties settled upon a consent decree which basically allowed the federal government to establish precautionary measures so that the same oversights would not be made again. Cases such as *United States v. Cibola County* (2007) addressed much more complex issues. In this court case, the county failed to process a large number of voter registration applications from a specific area called the Laguna Pueblo, where a large number of American Indians lived. The county also removed many names from the voter registration list without any cause. Such violations are much more significant, and the National Voter Registration Act gives cause for the government to investigate these serious acts of discrimination.

Pregnancy Discrimination Act

This act mandates that any form of discrimination based on pregnancy, childbirth, or related medical conditions is illegal. It functions as an amendment of Title VII of the Civil Rights Act of 1964, covering both state and local governments. Specifically, the act addresses hiring conditions, pregnancy and maternity leave, health insurance policies, and fringe benefits.

In May of 2015, the Pregnancy Discrimination Act was cited in *Young v. United Parcel Service, Inc.* in defense of Peggy Young, a woman denied a lighter shift when her doctor directly ordered her to avoid carrying heavy objects. The court sided with Ms. Young on a 6-3 decision. According to Young, the company offered lighter shifts to employees with injuries and illnesses covered by the American Disabilities Act, but refused to extend such privileges to a pregnant woman. She was then forced to go on unpaid leave due to her inability to perform fully, and during such time she lost her medical coverage. Two lower courts actually ruled against Ms. Young on the grounds that the UPS had established a “pregnancy-blind” policy, but, as mentioned before, the Supreme Court ultimately determined that the UPS did engage in discrimination.

Family and Medical Leave Act

This specific act states that most Federal employees are able to receive up to 12 weeks of paid leave under certain familial conditions. These include the recent birth of a child for which the employee must give care, the need to care for a close family member who has fallen seriously ill, the personal illness of said employee, and a few more. The granted leave can also be applied intermittently, depending on the circumstances of the employee in question. The Act was recently extended by the Supreme Court to apply to the spouses of employees in same-sex marriages.

In the case *Escriba v. Poultry Farms*, an employee asserted her right to refuse paid leave under FMLA, choosing to instead take time off under her vacation days. The court ruled that employees are allowed to refuse to take official FMLA leave, even if their absences would be legally acceptable. In another case, *Vess v. Select Medical Corp.*, an employee felt that their leave was exploited as a result of the employer asking them to do too much work on their off days. The case was taken to trial, and the court once again sided with the disgruntled employee, declaring that FMLA benefits included the right to not have to work while enjoying the act’s paid leave. Included in the decision was a specific breakdown of the only tasks an employer is legally permitted to ask of an employee while they take advantage of the FMLA. In *Tillman v. Ohio Bell Telephone*, the employer had sufficient evidence to believe that the employee was abusing FMLA’s benefits while on leave, and filed for termination. This time, the court ruled with the company, designating the limits of the act’s benefits.

Equal Pay Act of 1963

This act bars employers from paying men and women different wages for working the same job. Perhaps the most notable of court cases citing this particular act is *Ledbetter v. Goodyear Tire & Rubber, Inc.* in which Ledbetter asserted that she had been given poor work evaluations because of her sex, and such evaluations ruined her chances of obtaining significant pay raises. The court sided with Goodyear because of a failure to comply to the statute of limitations. Essentially, the act of discrimination had to have been reported within 180 days of its first instance for it to have been considered in court. The decision was later amended in the Lilly Ledbetter Fair Pay Restoration Act, since the discrimination continued beyond its first instance, and the Equal Pay Act of 1963 was cited to help eventually side with Ledbetter. In another case, *Corning Glass Works v. Brennan*, the Supreme Court outlined specifically the proof needed to determine that pay discrimination did, indeed, occur. In *County of Washington v. Gunther*, the court's decision upheld the expansions to the EPA mandated by Title VII. Such expansions took the Equal Pay Act of 1963 further, so as to meet the demands of a more progressive America.

Religious Land Use and Institutionalized Persons Act

The Religious Land Use and Institutionalized Persons Act of 2000 mandated that individuals, places of worship, and other religious groups were not to face discrimination under government land use regulations. Additionally, the act prevents state institutions from restricting the religious practices of institutionalized persons. For example, in *Limbaugh et. al v. Alabama Dept. of Corrections* (2011), an Alabama correctional facility was requiring prisoners to cut their hair at a certain length regardless of how their religious beliefs directed them. The court ruled against the correctional facility, for their defense did not comply with the common interpretation of the RLUIPA. They argued that the hair-length rule did not significantly burden the inmates, but such an argument did not justify what was essentially discrimination. A case in the Texas Dept. of Corrections, *Ali v. Thaler* (2012), dealt with a similar issue. An inmate wished to grow a half-inch beard because it was an element of his religious practices, but the Texas department had required that beards not exceed a quarter of an inch. The court again sided against the correctional facility on similar grounds. *Heard v. Finco* showcased another issue violating the RLUIPA. In this case, the government wished to investigate whether Michigan prison facilities were providing enough nutrition for Muslim inmates observing Ramadan. The court found that the Michigan Department of Corrections did indeed fail to provide sufficient nourishment, and the facility was fined for not adhering to the Act.

Fair Housing Act

This act offers protection from discrimination individuals may face while renting or purchasing housing. Originally, the Act, passed in 1968, only addressed acts of discrimination based on race, color, religion, and national origin. Discrimination based on sex was added to those types in 1974, and discrimination based on disability and familial status became part of the Act in 1988. In terms of racial discrimination, literature on cases concerning the Fair Housing Act is mostly limited to the decades of the early and mid-twentieth century. For example, the case *Shelley v. Kraemer* (1948) concerned a party of homeowners that signed an agreement to not sell their homes to non-Caucasian buyers for a period of at least fifty years. A black family by the name of Shelley had owned one of the fifty-seven parcels of land for at least thirty years prior to the signing of the agreement by thirty white families, and when the land was purchased by the Shelleys, there was no indication that any such agreement would be drawn up. The court ruled in favor of the Shelleys, for the respondents had failed to obtain the signatures of all property owners and therefore the petition in question was never officially completed. In another case, *Jones v. Mayer Co.* (1968), Jones brought to court that he had been denied the right to buy a particular house

because he was black. The Court decided that the Fair Housing Act, passed in the same year, only prevented discrimination from federal authorities, but did not protect citizens from private discrimination.

Disaster Relief and Emergency Assistance Act

This act became law in 1988 as an amendment of the Disaster Relief Act of 1974. In essence, it requires that the federal government provide assistance to states within the Union experiencing widespread suffering caused by a disaster. Such efforts include funding for disaster relief programs, encouraging individuals to purchase insurance preemptive to disaster, and encouraging construction legislation to potentially lessen the chances of certain disasters occurring. In the case *La Union del Pueblo Entero v. Federal Emergency Management Agency* (2010), a group of homeowners from the Rio Grande Valley alleged that FEMA did not provide adequate relief assistance after Hurricane Dolly destroyed many of their homes and was declared by President Bush to be a major natural disaster. FEMA's argument in defense was, essentially, that the hurricane had not done so much damage that their homes were collectively unsafe to live in. The plaintiffs cited FEMA's insufficient aid as cause for multiple sustained injuries to the plaintiff's families. The court rejected the plaintiff's framing of the issue, but did, in its decision, require that FEMA draft and propose specific guidelines for determining what circumstances of disaster necessitate direct aid. Such is the most common type of court case to cite the Disaster Relief Act of 1974.

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The Civil Rights Act of 1964 (Pub.L. 88â€“352, 78 Stat. 241, enacted July 2, 1964) is a landmark civil rights and labor law in the United States that outlaws discrimination based on race, color, religion, sex, or national origin. It prohibits unequal application of voter registration requirements, and racial segregation in schools, employment, and public accommodations.