



Operation Protect & Defend – 2018-2019 Program Celebrating the 150th Anniversary of the 14th Amendment to the U.S. Constitution

Teacher Packet

Thank you for participating in Operation Protect and Defend. This packet is a guide for teachers to cover the lessons prior to the visit from the lawyer/judge teams for the Dialogue. While these are guidelines, you are free to work with the material in a way that makes the most sense for your classes. You'll see that in this packet we have added some supplemental cases for background for teachers. Please make every effort to cover the lessons so the Dialogue will be fruitful. *The focus of the curriculum is the protection of the right to vote (both under the 14th and 15th Amendments). This is a timely topic, as the Supreme Court has ruled that parts of the Voting Rights Act are no longer enforceable--and as young people across the country become more vocal and politically active. Leading discussions about the importance of voting and the Constitutional protections for voters should engage the students in real time, as they are soon to be eligible voters.*

Day 1: Background

Introduce the unit by reminding students that this year marks the 150th Anniversary of the ratification of the 14th Amendment to the U.S. Constitution. We have supplied some background readings to distribute to the students, including the text of the 14th Amendment.

Handouts for today:

1. Background on the 14th Amendment
2. Text of 14th Amendment
3. Background and summary of the Voting Rights Act
4. LBJ's speech to Congress supporting the Voting Rights Act

Please have the students read these documents and you can then lead a discussion using the questions provided

Homework: Please distribute the **editorial piece from The New York Times** and the vocabulary list. It makes sense for them to do vocabulary terms 1-8 tonight and then vocabulary terms 9-17 on night two, but certainly the students can do them all at once or work with you in class on those terms.

Day 2: Supreme Court Cases

Warm up exercise (10 minutes): Project (or hand out) the **political cartoon** on voter ID laws. Have students respond to the questions attached and then discuss with the class.

Are voter ID laws an infringement on voters' rights under the Equal Protection Clause of the 14th Amendment?

Do ID laws impact some groups more than others?

Does the Voting Rights Act matter any longer?

Handouts:

- 1. Political Cartoon on voter ID laws (p.10)**
- 2. *Shelby County v. Holder***
- 3. Critical Thinking Questions: *Shelby County v. Holder***
- 4. *Veasey v. Abbott* (“*Veasey I*”) and *Abbott v. Veasey* (“*Veasey II*”)**
- 5. Critical Thinking Questions: *Veasey v. Abbott***

Please have the students read the case summaries and complete the Critical Thinking Questions related to these two cases (20-30 minutes).

Discuss the impact of these court rulings and their connection to the 14th and 15th Amendments in small groups or with the whole class.

Homework: Students should finish the vocabulary terms tonight.

Day 3: Gerrymandering in California

Warm up exercise (10 minutes): Project (or hand out) the **political cartoon** on gerrymandering. Have students respond to the three questions and have a short discussion about the practice of gerrymandering (this could be done at the end of the period or for a minute on a “Day 4”).

Handouts:

- 1. Political Cartoon on gerrymandering (p.15)**
- 2. *Luna v. Kern County***
- 3. Gerrymandering Exercises**

Please have the students read the *Luna v. Kern County* case summary (5-10 minutes).

Distribute the gerrymandering activity. This will take the remainder of the period (at least). If you choose to skip the cartoon, that could be done as a “review” for a few minutes on another day.

Supplemental Cases

South Carolina v. Katzenbach, 383 U.S. 301 (1966)

Background: South Carolina challenged the constitutionality of the Voting Rights Act of 1965 as an encroachment on states' rights. The case was unique in that the Supreme Court exercised Original Jurisdiction, that is, South Carolina filed the case directly in the Supreme Court, bypassing any lower court. South Carolina was joined by many southern states while many northern and western states filed opposition.

Supreme Court Ruling: The Court upheld the VRA as a valid exercise of Congress' power under the enforcement clause of the Fifteenth Amendment.

Husted v. A. Philip Randolph Institute, et al., 138 S. Ct. 1833 (2018)

Background: Ohio removes voters who have lost their residency qualifications from the voter rolls. Under this process, the state mails a voter who has not voted for two years a preaddressed and prepaid return card, asking the voter to verify that he or she still resides at the same address. If the state receives no response, and the voter continues to not vote for the next four years, then the voter is presumed to have moved and is removed from the voter rolls. Advocacy groups and a resident of Ohio brought action against the Ohio Secretary of State alleging this procedure violated the Voting Rights Act's provision prohibiting states from removing registered voters from the voter rolls for failing to vote.

Supreme Court Ruling: At issue were two provisions of the Voting Rights Act, one of which allows for the process Ohio implemented to purge voters who do not meet residency requirements. (52 U.S.C. § 20507, subd. (d)(1)(B).) The other provision forbids states from removing voters from the voter rolls "by reason of the person's failure to vote." (52 U.S.C. § 20507, subs. (b)(2).) Justice Alito, writing for the majority of the court held that the failure-to-vote provision, simply forbids the use of nonvoting as the *sole reason* for removing a voter from the voter rolls. Because another provision of the Voting Rights Act allows for removal of nonvoters following the process Ohio used, the failure-to-vote provision cannot be read to invalidate the proscribed process simply because failing to vote is one component of that process. Because Ohio's process for purging voter rolls relies on a nonvoter's failure to return a change of residence card in addition to a voter's failure to vote, it does not violate the Voting Rights Act. Ohio's process is reasonable because it relies on evidence Congress has indicated reliable -- nonvoting for at least four years and failure to return a change of residence notice -- to purge nonvoters from the voter rolls.

Dissents: Justice Breyer dissented stating Ohio's process for removing voters from the voter rolls did violate the Voting Rights Act's failure-to-vote provision because the law purges voter rolls based on a person's inaction -- failing to vote and failing to return a change of residence notice.

Justice Sotomayor joined Justice Breyer’s dissent and dissented herself to bring attention to the purpose of the Voting Rights Act, which is to increase registration and participation in federal elections. She noted Ohio’s process for purging voter rolls puts too much of an onus on registered voters that disproportionately affects minority, low-income, disabled, and veteran voters.

Gill v. Whitford, 138 S. Ct. 1916 (2018)

Background: Act 43 was passed in conjunction with the Wisconsin Constitution, which requires the legislature to redraw the boundaries of each district following each census. Twelve Democratic voters in Wisconsin alleged that Act 43 harms the Democratic Party’s ability to convert the Democratic vote into Democratic seats in the legislature. The plaintiffs assert that Act 43 does this by “cracking” certain Democratic voters among different districts in which those voters fail to achieve electoral majorities and “packing” other Democratic voter in a few districts in which Democratic candidates win by large margins. Essentially the plaintiff argument is that this cracking and packing method has led to an efficiency gap resulted in a higher percentage of wasted votes across all legislative districts. The plaintiff claimed that Act 43 violated their First Amendment right to association and their Fourteenth Amendment right to equal protection.

District Court Ruling (218 F. Supp. 3d 837 (W.D. Wis. 2016)): The three-panel District Court allowed the case to proceed to trial, and in a 2-1 decision declared that the map as drawn was unconstitutional. To assess whether the districting plan violates the Constitution and identify excessive partisanship, the panel developed a three-prong test that asked if the plan intended to place a severe impediment on the effectiveness of the votes of individual citizen on the basis of their political affiliation, (2) has that effect, and (3) cannot be justified on other, legitimate legislative grounds. In using this test, the panel determined whether the plan created an entrenchment of power—making a particular political party impervious to the interests of citizens affiliated with other political parties—which has been held unconstitutional in the past. They found that Act 43 allocated votes and created districts in a way that the number of Republican seats would not drop below 50% in any electoral scenario. They also considered the Efficiency Gap measure which relates the number of votes for each party across the state, with a gap of 0% as a fair distribution. Any efficiency gap of more than 7% would allow for the Republicans to retain a complete advantage with Act 43. The panel found that in the past two elections 2012 and 2014, the efficiency gap was 13% and 10%, respectively, which exceeds 7%.

Supreme Court Ruling: While many thought that the case would center on whether the efficiency gap principles met the judicially manageable standards for gerrymandering, the Supreme Court unanimously held that the plaintiffs failed to demonstrate Article III standing. In order to proceed with this case, the plaintiffs needed to show they had an individualized injury, and the plaintiffs in this case could not prove individual harms. Instead of arguing particularized harms, the plaintiffs were arguing a case about group political interests and that does not demonstrate standing. The court remanded the case back to the District Court to allow the plaintiffs to prove individual injuries that could show a burden on their individual votes and not that of the group vote.

Concurrences: Justice Thomas concurred, joined by Justice Gorsuch, and did not agree with the Court’s ruling to remand to allow the plaintiffs to prove their individual votes were burdened. Justice Thomas believed the plaintiffs had more than enough time to prove their standing and failed to do so.

Justice Kagan agreed with the Court, but suggested that the plaintiffs present an infringement of their 1st Amendment right of association which would not require the plaintiffs to show individualized injury because the claim would be statewide in nature.

Benisek v. Mack (Lamone), 138 S. Ct. 1942 (2018)

Background: A companion case to *Gill v. Whitford*, *Benisek* focuses on a Maryland redistricting plan. The Maryland legislature drew the 6th congressional District to dilute the voting strength of Republican voters, seeking to flip the district from Republican to Democratic and thereby create a seventh seat in the Democratic congressional delegation. To achieve this end, the mapmakers shuffled hundreds of thousands of citizens either out of or into the 6th District, using sophisticated political data to produce an additional Democratic seat.

District Court Ruling (266 F. Supp. 3d 799 (D. Md. 2017)): The three-panel District Court held that the claim that districts violated rights guaranteed under the constitution and the 14th Amendment was not justiciable—could not be determined by the Court; and the claim alleging an infringement on plaintiffs’ 1st Amendment rights of political association was not one for which relief could be granted. The court refused to grant an injunction which would have prevented the use of the redistricting map in anticipation on the 2018 election, and stayed the case until the Supreme Court reached a decision in *Gill*.

Supreme Court Ruling: The Supreme Court issued a *per curiam* decision on June 18, 2018, finding that the District Court’s denial of the injunction was not improper. The Supreme Court, however, did not reach the merits of the potential gerrymandering issues.

North Carolina v. Covington, 585 U.S. ____ (2018)

Background: This case arises from a remedial redistricting order based on a previous case where North Carolina residents sued the state legislative redistricting committee and the state board of elections contending that Republican legislators racially gerrymandered their districts when they drew 28 State Senate and State House of Representatives districts comprising majorities of black voters. The District Court in the initial case granted judgment, and the Supreme Court affirmed but vacated the District Court’s remedial order and remanded the case for further remedial proceedings.

On remand, the District Court ordered the General Assembly to draw remedial maps, which avoided pairing incumbent members of the House and Senate and that did not use data identifying race of individual voter, and submit to the Court for approval. The

plaintiffs objected to the newly drawn maps because four legislative districts still segregated voters on the basis of race. The District Court then appointed a Special Master to redraw the lines of the districts that the plaintiffs objected, along with any nonadjacent districts to the extent that it complied with the above criteria given to the General Assembly. The District Court further instructed the Special Master to make reasonable efforts to create relatively compact districts and avoid split municipalities and precincts. The District Court also permitted the Special Master to “adjust district lines to avoid pairing any incumbents who have not publicly announced their intention not to run in 2018” and to “consider data identifying the race of individuals or voters to the extent necessary to ensure that his plan cures the unconstitutional racial gerrymanders.”

The District Court adopted the Special Master’s recommended replacement plans for the districts and credited the Special Master’s submission that his “remedial districts were drawn not with any racial target in mind, but in order to maximize compactness, preserve precinct boundaries, and respect political subdivision lines,” and that the remedial map was the product of “explicitly race-neutral criteria.” The District Court directed the defendants to implement the Special Master’s recommended district lines and to conduct elections accordingly.

Supreme Court Ruling: The Supreme Court affirmed in part and reversed in part the order of the District Court. The Court addressed defendants’ arguments regarding mootness, the General Assembly’s failure to consider race, and appointment of a Special Master to redraw the districts.

The Supreme Court explained that the plaintiffs’ claims that they were organized into legislative districts on the basis of race did not become moot simply because the General Assembly drew new district lines, and because the plaintiffs asserted that they remained segregated, their claims remained the subject of a live dispute. The Court also explained that regardless of whether the legislature looked at race or not, the districts unconstitutionally sorted voters on the basis of race. The Court rejected the argument that the District Court abused its discretion by appointing a Special Master because the District Court had a duty to cure illegally gerrymandered districts through an orderly process before the election season. The Court also found that the District Court’s decision to adopt the Special Master’s recommended remedy for the racially gerrymandered districts was not an abuse of discretion. They found that allowing the Special Master to consider data identifying race of to the extent necessary to ensure that the plan cures the gerrymandering does not amount to a warrant for “racial quotas.” The Supreme Court affirmed on those grounds.

The Supreme Court reversed on the redrawing of districts in Wake and Mecklenburg counties based on the fact that the North Carolina constitution bans mid-decade redistricting. The District Court understood that ban to apply unless such redistricting was “required by federal law or judicial order.” The Court held that the District Court’s decision to override the legislature’s remedial map on that basis was clear error.