

SIXTH AMENDMENT: CASES THAT OPENED THE JURY BOX

In this activity participants will focus on jury service by examining two Supreme Court cases dealing with jury selection.

About these Resources

- Review facts and case summaries for:
 - [Batson v. Kentucky](#) (race and jury selection)
 - [J.E.B. v. Alabama](#) (gender and jury selection)
- Review the [discussion questions](#) to check for understanding.

How to Use These Resources

The resources are designed for use in the classroom or courtroom.

In Advance

1. Teachers/lawyers and students read the Case Summaries and Questions.
2. Participants prepare presentations of the facts and summaries the cases in the classroom or courtroom.
3. Complete the discussion questions and open the floor for further debate.

Courthouse Venue: If the teacher would like to have a federal judge preside over the presentations, use the [court locator](#) to find the nearest local courthouse.

FACTS AND CASE SUMMARIES

Facts and case summaries for *Batson v. Kentucky* and *J.E.B. v. Alabama*

Batson v. Kentucky J.E.B. v. Alabama

Summary of a Fourteenth Amendment Landmark case:

Batson v. Kentucky [476 U.S. 79 \(1986\)](#)

FACTS:

When selecting a jury, both parties may remove potential jurors using an unlimited number of challenges for cause (e.g., stated reasons such as bias) and a limited number of peremptory challenges (i.e., do not need to state a reason).

At the trial of James Kirkland Batson for burglary and receipt of stolen goods, the prosecutor used his peremptory challenges to remove all four African Americans from the jury pool. Batson challenged the removal of these jurors as violating his [Sixth Amendment](#) right to an impartial jury and the [Equal Protection Clause of the Fourteenth Amendment](#). The jury convicted petitioner on both counts.

On appeal, the Supreme Court of Kentucky affirmed the convictions. The Supreme Court agreed to hear the case.

ISSUE:

Whether the use of peremptory challenges to remove a potential juror from the jury pool based on race violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution?

RULING:

Yes.

REASONING:

(Powell, J.): In a 7–2 decision, the Court held that, while a defendant is not entitled to have a jury completely or partially composed of people of his own race, the state is not permitted to use its peremptory challenges to automatically exclude potential members of the jury because of their race. "The Equal Protection Clause guarantees the defendant that the state will not exclude members of his race from the jury venire on account of race or on the false assumption that members of his race as a group are not qualified to serve as jurors."

"The harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community. Selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice."

A defendant in a criminal case can make an Equal Protection claim based on the discriminatory use of peremptory challenges at a defendant's trial. Once the defendant makes a showing that race was the reason potential jurors were excluded, the burden shifts to the state to come forward with a race-neutral explanation for the exclusion.

CONCURRENCE:

(White, J.) Justice White wrote that although the Court's prior precedent should have warned prosecutors that using peremptory challenges to exclude people based solely on race violates the Equal Protection Clause, the widespread practice of discriminatory elimination of jurors justifies the opportunity to inquire into the basis of the peremptory challenge.

(Marshall, J.) Justice Thurgood Marshall agreed with the decision in the case, but asserted that the Court should eliminate the use of peremptory challenges in all criminal proceedings so that they could not be used as a front for impermissible racial considerations. Justice Marshall asserted that under the current system, prosecutors are still free to discriminate so long as it is not blatant, and trial courts face a difficult burden of assessing a prosecutor's

motive.

(Stevens, J) Justice Stevens asserted that the Equal Protection claim was properly before the Court even though it was not initially presented by the petitioner because the party defending the judgment expressly relied on the issue as a basis for affirming the state court decision.

(O'Connor, J) Justice O'Connor wrote to agree that the rule announced does not apply retroactively.

DISSENT:

(Burger, C.J.) Chief Justice Warren Burger noted that the Equal Protection Clause issue should not have been decided because the petitioner did not properly raise that type of challenge. The Chief Justice also noted that reargument and further briefing on the issue should have been ordered given the importance and tradition of peremptory challenges in the legal system. Peremptory challenges had a long history in both England and America before the Revolution, and the purpose of peremptory challenges was to allow elimination of a particular juror without reason. The Chief Justice also noted that the Court did not apply the conventional Equal Protection Clause framework to the claims before it because the state's interest in preserving peremptory challenges might be so compelling as to allow the types of challenges that happened in this case. In sum, the Chief Justice asserted that "[a]n institution like the peremptory challenge that is part of the fabric of our jury system should not be casually cast aside, especially on a basis not raised or argued by the petitioner."

FACTS AND CASE SUMMARIES

Facts and case summaries for *Batson v. Kentucky* and *J.E.B. v. Alabama*

Batson v. Kentucky *J.E.B. v. Alabama*

Summary of a Fourteenth Amendment Landmark case:

J.E.B. v. Alabama [511 U.S. 127 \(1994\)](#)

FACTS:

The State of Alabama, acting on behalf of the child, J.T., filed a complaint for paternity and child support against J.E.B. The state used its peremptory challenges to strike nine of 10 potential male jurors from the jury. J.E.B., the defendant, used one challenge to strike the remaining male juror. As a result, all the selected jurors were female. J.E.B. claimed that the state's use of the peremptory challenge to exclude nearly all male jurors violated the Equal Protection Clause of the Fourteenth Amendment. The court rejected petitioner's claim. The jury found petitioner to be the father of the child, and the court entered an order directing him to pay child support.

The Alabama Court of Civil Appeals affirmed, and the Supreme Court of Alabama refused to hear the case. The Supreme Court agreed to hear the case.

ISSUE:

Whether the use of peremptory challenges to remove a potential juror from the jury pool because of the potential juror's gender violates the [Equal Protection Clause of the Fourteenth Amendment](#) to the Constitution?

RULING:

Yes.

REASONING:

(Blackmun, J.) In a 6–3 decision, the Court ruled that the Equal Protection Clause prohibits striking potential jurors not only because of their race or ethnicity, but also because of their gender. The Court concluded that discrimination on the basis of gender in jury selection does not substantially further the state's legitimate interest in achieving a fair and impartial trial.

The Court noted that "[w]hile the prejudicial attitudes toward women in this country have not been identical to those held toward racial minorities, the similarities between the experiences of racial minorities and women, in some contexts, overpower those differences."

"Discrimination in jury selection, whether based on race or on gender, causes harm to the litigants, the community, and the individual jurors who are wrongfully excluded from participation in the judicial process." Moreover, the Court held that when a state exercises peremptory challenges based on gender stereotypes, it ratifies and reinforces prejudicial views of the relative abilities of men and women. Finally, the Court noted that its holding does not imply the elimination of all peremptory challenges, but simply concludes that gender cannot serve as a proxy for bias.

CONCURRENCE:

(O'Connor, J) Justice O'Connor agreed with the Court's conclusion that the state's reasons for excluding jurors based on gender were far from "exceedingly persuasive," but asserted that the Court's conclusion should be limited to the government's use of gender-based peremptory strikes. Justice O'Connor noted the increased burden posed by additional constitutional restraints on the use of peremptory challenges. In light of the importance of peremptory challenge and the increased burden imposed by the majority's holding, Justice O'Connor argues that the Equal Protection Clause analysis should only apply to discrimination by state actors, namely the prosecution.

(Kennedy, J.) Justice Kennedy agreed with the Court's conclusion and noted that an individual who is denied jury service because of a peremptory challenge on the basis of sex is not less

injured than the individual who is denied jury service because of a law banning members of the sex from serving as jurors. Justice Kennedy also wrote that "it is important to recognize that a juror sits not as a representative of a racial or sexual group but as an individual citizen. Nothing would be more pernicious to the jury system than for society to presume that persons of different backgrounds go to the jury room to voice prejudice."

DISSENT:

(Rehnquist, C.J.) Chief Rehnquist asserted that there are sufficient differences between race and gender discrimination such that the principle of *Batson* should not be extended to peremptory challenges to potential jurors based on sex. Specifically, the Chief Justice noted that racial groups comprise numerical minorities in society, whereas the population is almost equally divided between men and women. He also contends that racial equality has proved a more challenging goal to achieve on many fronts than gender equality. Finally, he asserts that the two sexes differ, both biologically and in experience; as such, "it is not merely 'stereotyping' to say that these differences may produce a difference in outlook which is brought to the jury room. Accordingly, use of a peremptory challenge based on sex is "not the sort of derogatory and invidious act which peremptory challenges directed at black jurors may be."

(Scalia, J) Justice Scalia contends that much of the majority's discussion regarding prejudice against women is irrelevant because the case involves state action against men. Further, he asserts that the conclusion damages the whole character of the peremptory challenge system as well as the entire justice system due to the need for explanation and the increased potential for collateral review of the jury selection process.

DISCUSSION QUESTIONS

What is Your Opinion?

1. Why is it important not to exclude different races from jury service?
2. Why is it important not to exclude potential jurors on the basis of their gender?

Related Resources:

- [Sixth Amendment - National Archives](#)
- [Jury Service in Federal Courts](#)