

JOHN BINGHAM AND THE FOURTEENTH AMENDMENT

Senior Counsel Section

Co-Chairs: Thomas Newcomb Hyde, Attorney at Law; and David Rieth - Rieth & Ritchie, P.A.



In 1866, Ohio Congressman John A. Bingham realized he had a new mission. He had been an ardent abolitionist before the Civil War. Now the war was over. The Thirteenth Amendment had abolished slavery. But Bingham knew that legal action must be taken to protect the freed slaves in the former Confederate states. His mission was the adoption of the Fourteenth Amendment to the Constitution of the United States.

It was Bingham who drafted the Fourteenth Amendment's crucial language: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."¹

In March, the Hillsborough County Bar Association invited lawyers to volunteer in classrooms across the county to speak to the students about the 2017 Law Week theme, "The 14th Amendment: Transforming American Democracy." Approximately 70 lawyers volunteered to speak at about two dozen middle schools and high schools throughout Hillsborough County.

The Fourteenth Amendment truly transformed the Constitution by applying all of the Bill of Rights'

protections to the states. Specifically, Section 1 of the amendment includes the citizenship clause, the privileges or immunities clause, the due process clause, and the equal protection clause.

Under the citizenship clause, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

The privileges or immunities clause declares that, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" The due process clause, echoing the Declaration of Independence and the Fifth Amendment, states, "nor shall any State deprive any person of life, liberty, or property, without due process of law." Finally, in the equal protection clause we find, "nor [shall any State] deny to any person within its jurisdiction the equal protection of the laws."

Attorney and historian Richard K. Fuego contends that the emphasis in the Fourteenth Amendment is clearly on persons and citizens. It confers citizenship on all persons, both of the United States and of the state in which they live. With the adoption of the Fourteenth Amendment, none of these persons could be deprived of the Bill of Rights' protections by any state



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without due process of law. Every person is guaranteed equal protection under the law.

Congressman Bingham believed that the privileges and immunities of citizens were chiefly defined in the first eight amendments to the

Constitution. But these eight amendments never were limitations on the power of the states until made so by the Fourteenth Amendment.²

The Fourteenth Amendment serves as the cornerstone of landmark civil rights legislation, the foundation for numerous federal court decisions protecting fundamental rights, and a source of inspiration for all those who advocate for equal justice under law.³

The Fourteenth Amendment was ratified on July 9, 1868.

¹ *The Father of the 14th Amendment*, Gerard N. Magliocca, *The New York Times* (September 17, 2012), <https://opinionator.blogs.nytimes.com/2013/09/17/the-father-of-the-14th-amendment/>

² *Privileges or Immunities*, *The Heritage Guide to the Constitution* (2012), <http://www.heritage.org/constitution/#/amendments/14/essays/169/privileges-or-immunities>

³ *The 14th Amendment: Transforming American Democracy*, American Bar Association, (2017), http://www.americanbar.org/groups/public_education/initiatives_awards/law-day.html

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