Legacy: Public Perception and the Equal Protection Clause

The Equal Protection Clause

The Equal Protection Clause of the Constitution is intended to protect both citizens and non-citizens from discriminatory practices by state and federal governments (U.S. Const. amend. XIV, § 1). Historically, however, the existence of statutes like the Equal Protection Clause has never guaranteed that said classes were free from such practices by the federal government. Consequentially, Americans feel that democracy is on the decline because of the Supreme Court's failure to put the proper restraints on the executive body. The unwillingness of the U.S. Supreme Court to enforce the Equal Protection Clause of the Constitution has caused a shift in the public's opinion of the clause and of the Court. The perception of democracy in America has changed dramatically for the worse because of public skepticism of the Supreme Court's rulings on cases involving the Equal Protection Clause.

Korematsu v. United States

On February 19, 1942, President Franklin Roosevelt signed Executive Order 9066. The order directed the Secretary of War to forcibly place individuals who were deemed a national security threat into internment camps across the country (Roosevelt, 1942). Across the West Coast, the federal government posted notices directing "all persons of Japanese ancestry" to report to facilities to be processed and shipped to one of ten internment camps across the country. Despite the Equal Protection Clause, over 120,000 Japanese Americans—the majority of whom were American citizens—were interned without trial.

The constitutionality of President Roosevelt's Order 9066 was challenged in the 1944 Supreme Court case *Korematsu v. United States.* Fred Korematsu, an American citizen of Japanese descent, intentionally ignored Executive Order 9066. In doing so, he violated Civilian Exclusion Order No. 34, which mandated that "all persons of Japanese ancestry, both alien and non-alien," leave Alameda County, California, and report to assembly centers to be sent to internment camps (U.S. Department of War, 1942). Korematsu appealed his conviction up to the Supreme Court on the grounds that Executive Order 9066 violated the Fifth and the Fourteenth Amendments.

The Supreme Court delivered a 6-3 decision upholding President Roosevelt's executive order and Korematsu's conviction. Justice William Douglas was a part of the majority which found

that “Pressing public necessity may sometimes justify the existence of such restrictions,” (Korematsu v. U.S., 1944, p. 216). In deferring to the executive branch, the Court failed to uphold the Equal Protection Clause, directly subjecting over 120,000 Japanese Americans to unconstitutional treatment.

Years after the *Korematsu* decision, Justice Douglas statedly regretted his vote. In defense of his vote, Douglas wrote, “the state of public opinion will often make the Court cautious when it should be bold. That is usually reflected in what the Court does not do, rather than in what it creates,” (Douglas, 1980, p. 28). Douglas admitted that the Court often falls victim to political polarization. When the Supreme Court votes based on public opinion rather than the writing of the Constitution, it is evident that Americans will eventually become disillusioned with the Court and the functions of democracy.

Noem v. Vasquez Perdomo

The term ‘Kavanaugh Stop’ was coined by Drexel University law professor Anil Kalhan (Geidner, 2025) in reference to Justice Brett Kavanaugh’s opinion in the Supreme Court case *Noem v. Vasquez Perdomo (2025)*. The case revolves around undocumented field worker Pedro Vasquez Perdomo who, represented by the American Civil Liberties Union (ACLU), sued Department of Homeland Security Secretary Kristi Noem. In their lawsuit, the ACLU claimed that Immigration and Customs Enforcement (ICE) violated the Vasquez Perdomo's constitutional rights by failing to provide reasonable suspicion for his detainment. DHS and ICE argued that individual characteristics like race, ethnicity, spoken language, and occupation could provide enough reasonable suspicion to justify the detainment of an individual.

In a 6-3 decision, the Supreme Court agreed that these personal characteristics could give the DHS and ICE enough suspicion to question and detain individuals. In his concurrence, Justice Kavanaugh wrote, “Apparent ethnicity alone cannot furnish reasonable suspicion; under this Court's case law regarding immigration stops, however, it can be a ‘relevant factor’ when considered along with other salient factors,” (Noem v. Vasquez Perdomo, 2025, p. 6). Americans across the country saw this ruling as a slap in the face to the Equal Protection Clause. Kavanaugh defended his decision to rule in favor of Secretary Noem and ICE by saying, “The questioning in those circumstances is typically brief, and those individuals may promptly go free after making clear to the immigration officers that they are U.S. citizens or otherwise legally in the United

States." Americans know, however, that Justice Kavanaugh's statement has not stopped ICE from detaining American citizens for several weeks in some cases (Foy, 2025). In fact, the decision in *Noem* has emboldened ICE to continue with their reckless approach to achieving their deportation quotas.

Legacy

The Supreme Court is not necessarily concerned with protecting individuals using the Equal Protection Clause: this is evident from the contradicting nature of the clause and the decisions in *Korematsu* and *Noem*. Furthermore, there are clear similarities between the rulings of *Korematsu* and *Noem.* Both framed their rulings as a necessity for public safety while failing to challenge the executive branch's power. It is also apparent that, despite its legacy as a supposed unbiased and nonpartisan institution, the Supreme Court is a slave to public approval just as much as the president or Congress is. While Justice Douglas attempted to make his decision in *Korematsu* appear simply as a symptom of public opinion, Justice Kavanaugh tried to reassure the public that only "wrongdoers" needed to be worried.

As the Court continues to ignore the demands of the Equal Protection Clause, Americans will grow increasingly weary of the Court's legitimacy and its ability to defend democracy. Justices may continue to defer the powers of detention and exclusion to the executive branch; however, they will find that the legacy which they fight to protect on a case-by-case basis will soon crumble just as it did for the majority in *Korematsu.*

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