From Street Law Inc. and the Supreme Court Historical Society, on Regents of the University of California v. Bakke

Background

In the early 1970s, the medical school of the University of California at Davis devised a dual admissions program to increase representation of "disadvantaged" students. Under the regular admissions procedure, a screening process was used to evaluate candidates for further consideration. Candidates whose overall undergraduate grade point averages fell below 2.5 on a scale of 4.0 were automatically rejected. Of the remaining candidates, some were selected for interviews. Following an interview, the admissions committee rated candidates who survived the screening process on a scale of 1 to 100. The rating considered the interviewer's evaluation, the candidate's overall and science grade point averages, scores on the Medical College Admissions Test (MCAT), letters of recommendation, extracurricular activities, and other biographical data. The ratings were added together to arrive at each candidate's "benchmark score."

On the application form, candidates could indicate that they were members of a "minority group," which the medical school designated as "Blacks," "Chicanos," "American Indians," or "Asians." Candidates could also choose to be considered "economically and/or educationally disadvantaged." The applications of those who did so were sent to the special admissions committee, where applications were screened to determine whether the candidate met the criteria established for disadvantaged and minority groups. These applicants did not have to meet the 2.5 grade point average cut off used in the regular program, nor were the candidates in the special admissions program compared to the candidates in the regular admissions program. Of the 100 spots in the medical school, 16 spaces were set aside for this program.

From 1971 to 1974 the special program resulted in the admission of 21 black students, 30 Mexican Americans, and 12 Asians, for a total of 63 minority students.* During the same period, the regular admissions program admitted 1 black student, 6 Mexican Americans, and 37 Asians, for a total of 44 minority students. No disadvantaged white candidates received admission through the special program.

Allan Bakke was a white male who applied to and was rejected from the regular admissions program in 1973 and 1974. During those same years, minority applicants with lower grade point averages, MCAT scores, and benchmark scores were admitted to the medical school under the special program.

After his second rejection, Bakke filed suit in the Superior Court of Yolo County, California. He sought to compel the University of California at Davis to admit him to the medical school. He also alleged that the special admissions program violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the *Civil Rights Act of 1964* because it excluded him on the basis of race.

The university argued that their system of admission preferences served several important purposes. It helped counter the effects of discrimination in society. Since historically, minors were discriminated against in medical school admissions and in the medical profession, their special admission program could help reverse that. The university also said that the special program increased the number of physicians who practice in underserved communities. Finally, the university reasoned that there are educational benefits to all students when the student body is ethnically and racially diverse.

The Superior Court of Yolo County, California found that the special admissions program did violate the federal and state constitutions, as well as Title VI, and was therefore illegal. The Court declared that race could not be taken into account when making admissions decisions. However the Court also ruled that Bakke should not be admitted to the medical school because he failed to show that he would have been admitted in the absence of the special admissions program.

The University of California appealed the case to the Supreme Court of California, which also declared the special admissions policy unconstitutional. Furthermore, the Supreme Court of California determined that Bakke should be admitted to the school because the University failed to demonstrate that Bakke would not have been admitted without the special admissions program.

The Regents of the University of California then appealed the case to the Supreme Court of the United States.

***Note:** These were the racial classifications used by the University of California at Davis at the time.*

Summary of Decision

Five members of the Court voted to require the University of California at Davis to admit Bakke to its medical school. Justice Powell wrote an opinion in two parts, each of which received the votes of four other justices. The Court determined that any racial quota system in a state supported university violated both the Civil Rights Act of 1964 and the Equal Protection clause of the Fourteenth Amendment. Justices Burger, Stewart, Rehnquist and Stevens joined this part of Powell's opinion. The Court also ruled that the benign use of race as one of several criteria in admissions decisions did not violate either the Civil Rights Act or the Fourteenth Amendment. Justices Brennan, Marshall, Blackmun and White joined this part of Powell's opinion.

In the first part of the opinion, Justice Powell reasoned that admissions programs that rely on a quota system, in which a specified percentage of spaces in the class is reserved for a particular racial or ethnic group, were always unconstitutional, regardless of the justifications offered for them. Because a certain number of seats were reserved for applicants of a particular racial group, applicants not within that racial group could not compete for those seats, no matter how qualified they were. Justice Powell declared that "preferring members of any one group for no reason other than race or ethnic origin is

discrimination for its own sake. This the Constitution forbids." The specific admissions system used by UC Davis was determined to be unconstitutional because it used racial quotas.

Justice Powell further concluded that even though admissions systems relying solely on racial quotas violate the Constitution, the Constitution does not prohibit any consideration of race in admissions decisions. He acknowledged that a state may have legitimate interests in considering the race of an applicant during the admissions process. These interests included increasing the racial diversity of the student body to increase the proportion of minorities in medical schools and in medical professions, to "counter the effects of societal discrimination," to "increase the number of physicians who will practice in communities currently underserved," and to "obtain the educational benefits that flow from an ethnically diverse student body."

In order to use race as an element in making admissions decisions, a state university must be able to justify the use under the standard of strict scrutiny. This means that admissions programs that consider race must be narrowly tailored to advance a compelling government interest in order to be constitutional.

The Court found that UC Davis's admissions policy was not narrowly tailored to a compelling government interest. Basing admissions decisions solely on race, as in UC Davis's quota system, was not an effective way of furthering their interest in a diverse student body. The majority opinion said "the diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single … element." Other elements include "exceptional personal talents, unique work or service experience, leadership potential, maturity, demonstrated compassion, [and] a history of overcoming disadvantage," among others. Race can only be considered a "plus factor" in a particular applicant's file, along with these other factors. Only then would an admissions program be deemed narrowly tailored to the compelling state interest of achieving diversity in the admitted class.

Because UC Davis's admissions program relied solely on racial quotas, a majority of the Court ruled that it violated both the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. A majority of the Court also agreed, however, that race could be considered in admissions decisions, but only as a "plus factor" among other factors, rather than as the determinative element. The Court thus ruled that Bakke must be admitted to medical school at UC Davis.

Key Excerpts from Decision

(Writing for a divided Court, Justice Powell rendered a judgment. Four justices agreed with part of it and another four justices agreed with another part of his opinion. The lack of consensus among the justices has kept the Bakke case from having the impact on American law that it might have had otherwise. The issue is still a controversial one.)

Justice Powell delivered the opinion of the Court.

. . . The special admissions program is undeniably a classification based on race and ethnic background.

....

The guarantees of the Fourteenth Amendment extend to all persons. Its language is explicit: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." . . . The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal.

....

Petitioner urges us to adopt . . . more restrictive view of the Equal Protection Clause and hold that discrimination against members of the white "majority" cannot be suspect if its purpose can be characterized as "benign."

....

. . . [T]here are serious problems of justice connected with the idea of preference. . . . First, it may not always be clear that a so-called preference is in fact benign. Courts may be asked to validate burdens imposed upon individual members of a particular group in order to advance the group's general interest. . . . Nothing in the Constitution supports the notion that individuals may be asked to suffer otherwise impermissible burdens in order to enhance the societal standing of their ethnic groups. Second, preferential programs may only reinforce common stereotypes holding that certain groups are unable to achieve success without special protection based on a factor having no relationship to individual worth. . . . Third, there is a measure of inequity in forcing innocent persons in respondent's position to bear the burdens of redressing grievances not of their making.

....

We have held that in "order to justify the use of a suspect classification [i.e. in order to discriminate on the basis of race], a State must show that its purpose . . . is both constitutionally permissible and substantial, and that its use of the classification is 'necessary . . . to the accomplishment' of its purpose. . . . The special admissions program purports to serve the purposes of: (i) "reducing the historic deficit of traditionally disfavored minorities in medical schools and in the medical profession," . . . (ii) countering the effects of societal discrimination; (iii) increasing the number of physicians who will practice in communities currently underserved; and (iv) obtaining the educational benefits that flow from an ethnically diverse student body. It is necessary to decide which, if any, of these purposes is substantial enough to support the use of a suspect classification.

If petitioner's purpose is to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin, such a preferential purpose must be rejected not as insubstantial but as facially invalid. Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids.

....

Petitioner identifies, as another purpose of its program, improving the delivery of health-care services to communities currently underserved. It may be assumed that in some situations a State's interest in facilitating the health care of its citizens is sufficiently

compelling to support the use of a suspect classification. But there is virtually no evidence in the record indicating that petitioner's special admissions program is either needed or geared to promote that goal.

....

The fourth goal asserted by petitioner is the attainment of a diverse student body. This clearly is a constitutionally permissible goal for an institution of higher education. . . . The freedom of a university to make its own judgments as to education includes the selection of its student body. . . .

....

It may be assumed that the reservation of a specified number of seats in each class for individuals from the preferred ethnic groups would contribute to the attainment of considerable ethnic diversity in the student body. But petitioner's argument that this is the only effective means of serving the interest of diversity is seriously flawed. . . . The diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element. Petitioner's special admissions program, focused solely on ethnic diversity, would hinder rather than further attainment of genuine diversity.

....

. . . [R]ace or ethnic background may be deemed a "plus" in a particular applicant's file, yet it does not insulate the individual from comparison with all other candidates for the available seats. The file of a particular black applicant may be examined for his potential contribution to diversity without the factor of race being decisive when compared, for example, with that of an applicant identified as an Italian-American if the latter is thought to exhibit qualities more likely to promote beneficial educational pluralism. Such qualities could include exceptional personal talents, unique work or service experience, leadership potential, maturity, demonstrated compassion, a history of overcoming disadvantage, ability to communicate with the poor, or other qualifications deemed important.

....

In summary, it is evident that the Davis special admissions program involves the use of an explicit racial classification never before countenanced by this Court. It tells applicants who are not Negro, Asian, or Chicano that they are totally excluded from a specific percentage of the seats in an entering class. No matter how strong their qualifications, quantitative and extracurricular, including their own potential for contribution to educational diversity, they are never afforded the chance to compete with applicants from the preferred groups for the special admissions seats. At the same time, the preferred applicants have the opportunity to compete for every seat in the class.

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With respect to respondent's entitlement to an injunction directing his admission to the Medical School, petitioner has conceded that it could not carry its burden of proving that, but for the existence of its unlawful special admissions program, respondent still would not have been admitted. Hence, respondent is entitled to the injunction, and that portion of the judgment must be affirmed.