Classifying Arguments Activity—Answer Key

Regents of the University of California v. Bakke (1978)

After reading the **background, facts, issue, constitutional provisions, federal statutes and Supreme Court precedents,** read each of the arguments below. If the argument supports the petitioner, the Regents of the University of California, write **R** on the line after the argument. If the argument supports the respondent, Bakke, write **B** on the line after the argument. Work in groups. When you have finished, determine which argument for each side is the most persuasive and be ready to give your reasons.

Arguments

1. There is an extensive history of **systemic racism** in the United States, which has traditionally given White people greater access to higher education than racial minorities. Policies should encourage and help minorities to join specialized professions like medicine. **R**

2. The 14th Amendment states that people should be treated *equally*. The use of quotas in admissions is an example of unequal treatment based on race because White applicants were treated "less well" than applicants who were racial minorities. **B**

3. Some candidates admitted through the special admissions program at UC Davis had lower GPAs than those who were rejected by the regular admissions program. Since Bakke had a higher GPA than some individuals who were admitted under the special admissions program, he was more qualified to be admitted to UC Davis than they were. **B**

4. The special admissions program at UC Davis did not consider only applications submitted by racial minorities, but it also considered White applicants who had been educationally or economically "disadvantaged." Because White applicants also had access to the special admissions program, it did not violate the Equal Protection Clause. **R**

5. The 14th Amendment does not allow a state to impose distinctions based upon race. The belief that some forms of discrimination based on race (like "reverse discrimination") might be less harmful than others is irrelevant to the Equal Protection Clause. **B**

6. Even if he were considered under a race-neutral admissions program, Bakke still would not have been admitted to UC Davis because of other factors, such as his age. **R**

7. The 14th Amendment states that people should be treated *equally,* not the same. Treating people equally means giving less privileged individuals what they need in order to be on equal footing with their more privileged peers. **R**

8. Even though there were White applicants who asked to be considered educationally or economically "disadvantaged," none were actually admitted through the special admissions program. **B**

Note to Teachers: The full case summary follows including arguments, decision, summaries of the opinions, and impact.

Regents of the University of California v. Bakke (1978)

Argued: October 12, 1977

Decided: June 26, 1978

Background

Following the Supreme Court's decision in *Brown v. Board of Education,* public schools were required to stop discriminating on the basis of race. Although the decision in *Brown* did not specifically apply to universities and colleges, the rationale behind it—ensuring that racial minorities had access to a quality education—applied to publicly funded institutions of higher education as well.

In order to increase diversity, many public (i.e., state) universities adopted **affirmative action** programs. These programs were intended to counteract the negative effects that discrimination has had throughout history. In many cases, affirmative action programs provided an advantage to racial minorities through the creation of quotas, targeted recruitment programs, and additional race-based considerations, among other things.

Affirmative action programs, particularly those that relied on quotas or specific race-based distinctions, quickly became controversial. Opponents argued that they were unconstitutional because they were "reverse discrimination" and violated the idea that an individual's race should not be considered under any circumstances. The courts began to struggle with these issues, and it was inevitable that the Supreme Court would have to confront them.

Facts

In the early 1970s, the University of California Davis School of Medicine (UC Davis)[1] adopted an affirmative action program. Their program created a dual admissions system to increase the number of students admitted who were racial minorities or who were economically or educationally "disadvantaged." Under the regular admissions procedure, a screening process was used to evaluate candidates. Candidates whose overall undergraduate grade point averages (GPAs) fell below 2.5 on a scale of 4.0 were automatically rejected. The admissions committee then selected some of the remaining candidates for interviews. Following an interview, the admissions committee rated candidates who passed 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.

On the UC Davis application, candidates could indicate that they were members of a "minority" group. Candidates could also choose to be considered economically or educationally "disadvantaged." The applications of those who selected one of these options were sent to the

[1] The terms "minority" and "disadvantaged" were used by the University of California in 1978.

special admissions committee, which used different criteria than the requirements for candidates who did not identify as a "minority" or "disadvantaged." These applicants did not have to meet the grade point average cut off used in the regular program, nor were they compared to the candidates in the regular admissions program. Of the 100 spots in the medical school's class, 16 spaces were reserved for this program.

In 1973, Allan Bakke, a 33-year-old White man, applied to 12 medical schools, including UC Davis. Bakke had a strong academic record and earned a high score on the MCAT. After his interview at UC Davis, he was described as a well-qualified and desirable applicant and was recommended for admission. He soon learned that he was rejected from UC Davis.

Following his rejection, Bakke complained to a UC Davis admissions counselor, who encouraged him to reapply. In 1974, Bakke did so but was rejected again. He then filed suit against UC Davis in California state court, arguing that the admissions program was unconstitutional and violated the Civil Rights Act of 1964. In November 1974, the judge agreed that the program was unconstitutional and ordered UC Davis to ignore race when considering applications.

Both Bakke and UC Davis appealed this decision—the school because it believed the special admissions program was constitutional, and Bakke because he believed that the judge should have ordered him to be admitted immediately. The case went directly to the California Supreme Court. That court ordered UC Davis to provide evidence showing that Bakke would have been rejected under an admissions program that did not consider race. When it failed to show that, the court ordered the school to admit Bakke.

Following this order, UC Davis asked the U.S. Supreme Court to review the case and to **stay**, or postpone, Bakke's admission while it did so. The Court agreed.

Issue

Does UC Davis' affirmative action policy violate the 14th Amendment's Equal Protection Clause and Title VI of the Civil Rights Act of 1964?

Constitutional Provisions, Federal Statutes, and Supreme Court Precedents

- **14th Amendment to the U.S. Constitution**

  > "No State shall…deny to any person within its jurisdiction the equal protection of the laws."

  This is known as the **Equal Protection Clause**, and it is commonly used to guarantee that individuals are treated equally by states regardless of their race, gender, religion, or nationality.

- **Title VI of the Civil Rights Act of 1964**

  "§2000d Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color or national origin

  No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

  This section is commonly applied to all universities and colleges, including private ones, as most receive significant federal funding through direct grants or student financial aid.

- *Brown v. Board of Education (Brown I)* **(1954)**

  In a unanimous decision, the Supreme Court ruled that racial segregation in public schools (K–12) violated the 14th Amendment's Equal Protection Clause. The justices found that access to a good education was "a right which must be made available to all on equal terms." The justices argued that separating children solely on the basis of race created a feeling of inferiority in the "hearts and minds" of African American children. Segregating children in public education thus created and perpetuated the idea that Black children held a lower status in the community than White children, even if their separate educational facilities were substantially equal in "tangible" factors.

Arguments for Regents of the University of California (petitioner)

- The 14th Amendment states that people should be treated *equally*, not the *same*. Treating people equally means giving less privileged individuals what they need in order to be on equal footing with their more privileged peers.
- There is an extensive history of **systemic racism** in the United States, which has traditionally given White people greater access to higher education than racial minorities. Policies should encourage and help people of color join specialized professions like medicine.
- The special admissions program at UC Davis did not consider only applications submitted by racial minorities, but it also considered White applicants who had been educationally or economically "disadvantaged." Because White applicants also had access to the special admissions program, it did not violate the Equal Protection Clause.
- Even if he were considered under a race-neutral admissions program, Bakke still would not have been admitted to UC Davis because of other factors, such as his age.

Arguments for Bakke (respondent)

- The 14th Amendment does not allow a state to impose distinctions based upon race. The belief that some forms of discrimination based on race (like "reverse discrimination") might be less harmful than others is irrelevant to the Equal Protection Clause.
- The 14th Amendment states that people should be treated *equally*. The use of quotas in admissions is an example of unequal treatment based on race because White applicants were treated "less well" than applicants who were racial minorities.
- Even though there were White applicants who asked to be considered educationally or economically "disadvantaged," none were actually admitted through the special admissions program.
- Some candidates admitted through the special admissions program at UC Davis had lower grade point averages (GPAs) than those who were rejected by the regular admissions program. Since Bakke had a higher GPA than some individuals who were admitted under the special admissions program, he was more qualified to be admitted to UC Davis than they were.

Decision

In a 5–4 decision, the Supreme Court struck down UC Davis' special admissions program and ordered the school to admit Bakke. However, no single opinion got the majority of the justices' votes (5), so there was no majority opinion on the constitutional issues. Six different justices wrote opinions, but the plurality opinion of Justice Powell has received the most attention and stood the test of time.

Plurality

Writing for the plurality, Justice Powell found that UC Davis' special admissions program did discriminate against Bakke on the basis of his race. The school's quota system reserved 16 out of the 100 available seats in the class for racial minorities. Therefore, White applicants were able to compete for only 84 of the seats, while candidates who were racial minorities could compete for all 100 seats. Because the policy treated White applicants differently from candidates of other races, the quota system violated the 14th Amendment's Equal Protection Clause.

At the same time, Justice Powell found that the objective of increased diversity in the medical school was a permissible government interest. The state was permitted to consider race as one of several factors when deciding whether to admit applicants; however, it could not be the only factor considered in the special admissions program. Many other characteristics—such as religion, regional differences, educational background, and socioeconomic status—could also increase diversity on campuses and could appropriately be considered along with race.

Impact

Bakke attended medical school at UC Davis and graduated in 1982. Following medical school, he completed a residency and fellowship at the Mayo Clinic. He worked as an anesthesiologist in Minnesota until retiring in 2008. He has always been reluctant to talk about the events giving rise to *Regents of the University of California v. Bakke*.

In 1996, the state of California banned the use of race as a factor in admissions decisions after a ballot initiative. Other states created similar bans. The University of California later adopted other policies to attempt to increase diversity, such as automatically admitting the top 4% of all California high school students.

The decision in *Bakke* did not end the debate over affirmative action in higher education or stop legal challenges, which continue to this day. In 2003, two cases arose out of the University of Michigan. In a 5–4 decision *Grutter v. Bollinger* (2003) reaffirmed Justice Powell's opinion that admissions policies (this time to a law school) that consider race are constitutional as long as many factors are considered together. On the same day, the Court decided *Gratz v. Bollinger* (2003) by a 6–3 vote. The Court ruled that a points-based admission process that automatically granted additional points to all undergraduate applicants who were racial minorities was unconstitutional because it functioned essentially the same as a quota, which the Court determined to be unlawful.

More recently, in 2013 and 2016, the Supreme Court decided two cases involving the University of Texas (*Fisher I* and *Fisher II).* These cases again challenged whether the 14th Amendment permits the consideration of race in college admissions. In 2013, the Court found that race was a permissible consideration but that university policies must be "precisely tailored." Three years later in *Fisher II,* the policy was challenged again, and the Court reaffirmed the constitutionality of the University's program.

The Court remains deeply divided on the constitutional issues, however, and litigation continues in the lower courts against other affirmative action programs. As recently as 2019 a lower court rejected a challenge by Asian American students to Harvard's admissions policies, and this case could raise the issues before the Supreme Court once again.