REGENTS OF THE UNIVERSITY OF CALIFORNIA v. *BAKKE* (1978)

ORIGINS OF THE CASE In 1973, Allan Bakke applied to the University of California at Davis medical school. The school had a quota-based affirmative-action plan that reserved 16 out of 100 spots for racial minorities. Bakke, a white male, was not admitted to the school despite his competitive test scores and grades. Bakke sued for admission, arguing that he had been discriminated against on the basis of race. The California Supreme Court agreed with Bakke, but the school appealed the case.

THE RULING **The Court ruled that racial quotas were unconstitutional, but that schools could still consider race as a factor in admissions.**

▲ Allan Bakke receives his degree in medicine from the medical school at U.C. Davis on June 4, 1982.

LEGAL REASONING

The Court was closely divided on whether affirmative-action plans were constitutional. Two different sets of justices formed 5-to-4 majorities on two different issues in *Bakke*.

Five justices agreed the quota was unfair to Bakke. They based their argument on the equal protection clause of the Fourteenth Amendment. Justice Lewis Powell, writing for the majority, explained their reasoning.

> **"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."**

The four justices that joined Powell in this part of the decision said race should *never* play a part in admissions decisions. Powell and the other four justices disagreed. These five justices formed a separate majority, arguing that "the attainment of a diverse student body . . . is a constitutionally permissible goal for an institution of higher education." In other words, schools could have affirmative-action plans that consider race as *one* factor in admission decisions in order to achieve a diverse student body.

LEGAL SOURCES

LEGISLATION

U.S. CONSTITUTION, FOURTEENTH AMENDMENT (1868)

"No state shall . . . 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."

RELATED CASES

***UNITED STEELWORKERS OF AMERICA* v. *WEBER* (1979)**

The Court said a business could have a short-term program for training minority workers as a way of fixing the results of past discrimination.

***ADARAND CONSTRUCTORS* v. *PENA* (1995)**

The Court struck a federal law to set aside 10 percent of highway construction funds for minority-owned businesses. The Court also said that affirmative-action programs must be focused to achieve a compelling government interest.

▲ On October 8, 1977, protestors march in suppport of affirmative action at a park in Oakland, California.

WHY IT MATTERED

Many people have faced discrimination in America. The struggle of African Americans for civil rights in the 1950s and 1960s succeeded in overturning Jim Crow segregation. Even so, social inequality persisted for African Americans, as well as women and other minority groups. In 1965, President Lyndon Johnson explained why more proactive measures needed to be taken to end inequality.

> **"You do not take a person who for years has been hobbled by chains and . . . bring him up to the starting line of a race and then say, 'you are free to compete with all the others' and still justly believe that you have been completely fair."**

As a result, Johnson urged companies to begin to take "affirmative action" to hire and promote African Americans, helping them to overcome generations of inequality. Critics quickly opposed affirmative action plans as unfair to white people and merely a replacement of one form of racial discrimination with another.

University admissions policies became a focus of the debate over affirmative action. The Court's ruling in *Bakke* allowed race to be used as one factor in admissions decisions. Schools could consider a prospective student's race, but they could not use quotas or use race as the *only* factor for admission.

HISTORICAL IMPACT

Since *Bakke,* the Court has ruled on affirmative action several times, usually limiting affirmative-action plans. For example, in *Adarand Constructors* v. *Pena* (1995), the Court struck a federal law to set aside "not less than 10 percent" of highway construction funds for businesses owned by "socially and economically disadvantaged individuals." The Court said that affirmative-action programs must be narrowly focused to achieve a "compelling government interest."

On cases regarding school affirmative-action plans, the Supreme Court has chosen not to act. The Court refused to hear a case challenging a California law banning the consideration of race or gender for admission to the state's universities. Similarly, the Court refused to hear an appeal of a 1996 lower court ruling that outlawed any consideration of race for admission to the University of Texas law school. In December of 2000, however, supporters of affirmative action won a victory in the federal court. A federal judge ruled that a University of Michigan affirmative action plan was constitutional. He noted that *Bakke*—not the Texas case—was the law of the land, and schools still had the right to consider race in admissions decisions.

In recent years, some states have found new ways of helping minority students enter state universities. For instance, California, Florida, and Texas have enacted plans guaranteeing admittance to state universities for top students from each high school graduating class.

THINKING CRITICALLY

CONNECT TO HISTORY

1. **Evaluating** Research articles about *Bakke* in the library or on the Internet. Read the articles and write a paragraph for each one explaining the writer's point of view on the case. Conclude by telling which article gives the best discussion of the case. Cite examples to support your choice.

SEE SKILLBUILDER HANDBOOK, PAGE R16.

CONNECT TO TODAY

2. INTERNET ACTIVITY CLASSZONE.COM

Visit the links for Historic Decisions of the Supreme Court to research and read about Proposition 209, California's 1996 law banning affirmative action at state universities. Prepare arguments for an in-class debate about whether the law will have a positive or negative long-term effect.