Constitutional Law Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Affirmative Action in Higher Education: ***The University of California v. Bakke*** Mr. Faulhaber  
  
Directions: Read and highlight the following B**ackground Summary** regarding ***The University of California v. Bakke***

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.*

1. What three important purposes did the University of California say considering race as a factor in the admissions process served?

***University of California v. Bakke:* Classifying Arguments in the Case**

**Directions:** The following is a list of arguments from the *University of California* v. *Bakke* court case. Read through each argument and decide which side it supports. Write UC for the argument supports the University of California's and AB for the argument supports Bakke's side. Write your answer in the space provided.

\_\_\_\_1. UC/AB The Equal Protection Clause of the Fourteenth Amendment of the Constitution states: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

\_\_\_\_2. UC/AB The Fourteenth Amendment does not allow a state to impose distinctions based upon race. The belief that some forms of discrimination based on race might be "benign" is irrelevant to the demands of the Fourteenth Amendment.

\_\_\_\_3. UC/AB The Fourteenth Amendment states that people should be treated equally; it does not state that people should be treated the same. Treating people equally means giving them what they need.

\_\_\_\_4. UC/AB "In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently. We cannot—we dare not—let the Equal Protection Clause perpetuate racial supremacy."

\_\_\_\_5. UC/AB The Fourteenth Amendment gives the right to equal protection to individuals, not groups.

\_\_\_\_6. UC/AB "Benign" discrimination based on race is only valid where an individual can point to specific acts of discrimination that have disadvantaged that person.

\_\_\_\_7. UC/AB Benefits provided to individuals because of alleged group discrimination are not valid under the Fourteenth Amendment.

\_\_\_\_8. UC/AB "It is unnecessary in twentieth-century America to have individual Negroes demonstrate that they have been victims of racial discrimination; the racism of our society has been so pervasive that none, regardless of wealth or position, has managed to escape its impact."

\_\_\_\_9. UC/AB Some candidates admitted in the special admissions program at the University of California at Davis had lower GPAs than those who were rejected in the regular admissions program.

\_\_\_\_10. UC/AB Though there were white applicants who asked to be considered disadvantaged, none were actually admitted through the special admissions program.

\_\_\_\_11. UC/AB Three times as many Asians were admitted through the regular admissions program as were admitted in the special admissions program.   
  
**The Argument(s) above I thought was most persuasive stated….** **because…**  
  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 **If I was a Supreme Court Justice, I would you decide the case for… because…**  
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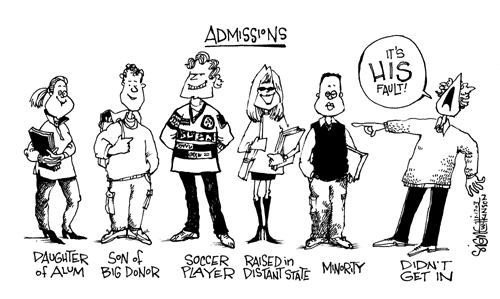
***University of California v. Bakke* Key Excerpts from the Opinion**

**DIRECTIONS:** Read the following excerpt from the Supreme Court's opinion in *Bakke*. As you read, complete the following steps:

1. Underline the three problems the Supreme Court of the United States identifies with UC's medical school admissions preferences.

2. Circle the two standards the Court says preferences must meet to be constitutional.

3. Draw a star next to each of the four purposes the regents of UC—Davis say their preference system serves.   
  
. . . 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.   
....   
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.  
  


College acceptance is often not based solely on merit-grades, extracurricular activities, and ACT scores. There are many preferences given to some applicants that others do not receive including each of the above. Is the cartoonist right that we ignore those other preferences and only seemingly care about racial preferences? Are affirmative action programs a reasonable distinction-similar to the other distinctions in the cartoon- between classes of citizens that serve a legitimate governmental purpose?  
  
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**Read each of the following and choose which best represents your view on the appropriate governmental course of action and explain your decision.**

Choice #1: Prohibiting Discrimination, Enforcing the Laws. Our public commitment is to uphold the principle of equality under the law, for people of ALL races. The government’s obligation is to make sure the rules of the game are the same for everyone. BUT equality of opportunity does not necessarily lead to equal results.

Choice #2: Affirmative Action Strategy: Taking Race into Consideration. Equal opportunity is not enough. Government must take measures to ensure equal RESULTS, even if affirmative action benefits minority groups at the expense of others. Racial equality can be achieved ONLY by allowing preferences for groups that have suffered from discrimination.

Choice #3: Ladder Out of Poverty: Helping the Poor, Closing the racial Gap. Because the obstacles to equality today are chiefly economic, race-specific remedies are no longer the most promising. Poverty MUST be attacked at its roots with aggressive social welfare programs that will help ALL low-income people, even if such programs are costly.

Choice #4: Ensuring Equality Regardless of Place: Because roughly 50% of education funding is based on local taxes (mostly property taxes), there are great disparities in educational funding (based on the taxable value of property). Those that live in low value areas (regardless of socioeconomic or racial makeup) are at a disadvantage. Inequalities are based on place not race and/socioeconomics (poor or wealthy, white or minority in Sidney versus Detroit) and can only be fixed by ensuring the same equitable educational funding creating a level playing field.

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Constitutional Law Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
The Court revisits Bakke 25 Years Later: The Michigan Affirmative Action Cases Mr. Faulhaber  
  
**Directions:** **Read and highlight the following Background Summaries and their decisions of the next page.**

#### Gratz v. Bollinger

Jennifer Gratz, a white resident of Michigan, applied to the University of Michigan as a high school senior in 1995. Her standardized test score (25) on the ACT placed her in the top quarter of applicants, and she had a GPA of 3.8. In addition, Gratz participated in student council and various other extra-curricular activities. Nevertheless, the university denied Gratz admission. The University of Michigan’s admissions guidelines in effect in 1995 called for the acceptance of all underrepresented minority applicants with academic credentials similar to Gratz’s. Both parties agree that Gratz would have been admitted to the university had she been a minority applicant.

From 1995 through 1997 the university admissions officers used guideline tables or grids that reflected a combination of the applicant’s adjusted high school GPA and ACT or SAT score. To promote diversity, the university utilized different grids and admissions criteria for applicants who were members of preferred minority groups as compared to other candidates. Michigan also set aside a prescribed number of seats in the entering class for minorities in order to meet its numerical target.

In 1998, the university dropped its admissions grid system and replaced it with a 150-point “selection index.” Admissions officers assign applicants points based on various factors, including test scores, “legacy” status, geographic origin, athletic ability, socioeconomic level, and race/ethnicity. The more points an applicant accumulates, the higher the chance of admission. Applicants from "underrepresented" racial and ethnic groups (African Americans, Latinos, and Native Americans) are assigned 20 points. Scholarship athletes and students who are economically disadvantaged also receive an automatic 20-point bonus. Geographic origin could earn 6 points, the child of an alumnus 4 points, and an “outstanding” admissions essay 3 points.

Gratz, and another unsuccessful white applicant, Patrick Hamacher, brought suit challenging the legality of the University of Michigan’s admission’s policy. The federal district court ruled that the school’s undergraduate admissions policy in place before 1999, which maintained a set-aside for minorities, violated the Fourteenth Amendment, but the court upheld the current system, which does not use quotas and utilizes race as a “plus.”

#### Grutter v. Bollinger

In 1997, Barbara Grutter, a resident of Michigan, applied for admission to the University of Michigan law school. Grutter, who is white, had a 3.8 undergraduate GPA and scored 161 on the LSAT. She was denied admission and subsequently filed suit, claiming that her rights to equal protection under the Fourteenth Amendment had been violated.

At the time, the law school had an admissions policy that used race as a factor in the admissions process. In selecting students, the law school considered the applicant's academic ability, including undergraduate GPA, LSAT scores, the applicant's personal statement, and letters of recommendation. The school also considered factors such as the applicant's experience, the quality of the undergraduate institution he/she had attended, and the degree to which the applicant would contribute to law school life and the diversity of the community. The admissions policy did not define the types of diversity that would receive special consideration, but did make reference to the inclusion of African-American, Hispanic, and Native-American students, who might otherwise be under-represented.

The school thought this policy complied with Bakke, on the grounds that it served a "compelling interest in achieving diversity among its student body." The District Court ruled that the goal of achieving a diverse student body was not a compelling one. In reversing this decision, the Court of Appeals said that Justice Powell's opinion in Regents of the University of California v. Bakke, constituted a binding precedent establishing diversity as a compelling governmental interest sufficient under strict scrutiny review to justify the use of racial preferences in admissions. Furthermore, the attempt to enroll a "critical mass" of minorities was not comparable to a quota system.

### The Two Cases Decided

Because the issues of diversity and affirmative action in higher education are so important and because federal courts of appeal had issued conflicting decisions, the Supreme Court granted certiorari and agreed to hear both Michigan cases in 2003. In analyzing both cases, a majority of the justices agreed that racial discrimination was involved and that the Court had to apply strict judicial scrutiny. This meant that the state had to show a compelling state interest in support of the use of race and that race could only be used to further that interest if it did not unduly burden disfavored groups. For example, a race-conscious admission program cannot use a quota system which sets aside a certain number of places in the entering class for members of selected minority groups, although race or ethnicity could be considered a "plus" in a particular applicant's file.

A majority of the justices agreed that student body diversity is a compelling state interest that can justify using race in university admissions. In a 5-to-4 opinion, the Court found that Michigan's law school admission policy did not violate Barbara Grutter's rights. Having a critical mass (essential number) of students from underrepresented groups can enrich classroom discussion, produce cross-racial understanding, and break down racial stereotypes.

Rather than emphasizing diversity as justified by past or present discrimination, the Court's opinion in the law school case looked to the future and related diversity to the challenges the nation faces: ".because universities, and in particular, law schools, represent the training ground for a large number of the Nation's leaders, the path to leadership must be visibly open to talented and qualified individuals of every race and ethnicity." The Court also noted that "the Law School engaged in highly individualized, holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment."

Four justices dissented in the law school case, believing that the "critical mass" notion was simply a disguise for an illegal quota. To the dissenters, the Constitution's prohibition against racial discrimination protects whites as well as minorities. They also believed there were nondiscriminatory ways to achieve diversity.

In contrast, Michigan's undergraduate admissions policy was found unconstitutional by a vote of 6 to 3. The majority objected to the program's failure to consider applicants on an individual basis as required by the Court's decision in the Bakke case. While the undergraduate admissions program could use race-conscious affirmative action, it had to be in a form that was individualized and not mechanical.

The dissenters in the undergraduate case would have allowed the use of automatic points to achieve diversity because it was an honest, open approach to the role race plays in the admissions process.

1. Which admissions program was ruled unconstitutional? Why did the Court rule the program unconstitutional?

2. Which admissions program was ruled constitutional? Why did the Court rule the program constitutional?

3. Does the Court see affirmative action programs continuing in perpetuity? Explain?

4. What precedent or guidance does the Court seem to send on how to decide whether race can/cannot be used as a factor in a school’s admission’s policy?

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