U.S. Government
Affirmative Action
Regents of University of California v. Bakke, 438 U.S. 265 (1978)

In 1969 the medical school at the University of California at Davis instituted an affirmative action plan that would ensure a higher admission of minorities. Allan Paul Bakke a mechanical engineer, who was at the time thirty-two years old, applied in the fall of 1972 to the medical school. He was rejected. Bakke had an excellent G.P.A. while an undergraduate at the University of Minnesota and had achieved distinguished marks on the Medical College Admissions Test. After learning of the special admissions program for minorities at Davis, Bakke felt that he was a victim of reverse discrimination. Allan Bakke reapplied in the fall of 1974; once again he was rejected. After this second rejection Bakke instituted a suit in Yolo County Superior Court accusing the University of California with having discriminated against him based on his race.

A closer look at the special admission program of the University of California at Davis is needed at this time. The admission program was reserving 16 of its 100 slots for this medical school class in question for minorities. The remaining 84 places would be competed for by minority and nonminority applicants on an equal basis. The university had four main reasons for its special admissions program. They were: 1. integrate the medical profession 2. counter discrimination 3. increase the number of physicians willing to work in underserved areas 4. obtain the educational benefits that flow from an ethnically diverse student body.

On June 28, 1978 the Supreme Court ruled five to four that Allan Bakke had been wrongly denied admission to Davis' medical school. There were two major aspects to the decision. One, the Supreme Court gave qualified approval to affirmative action in cases where minority status was not the only consideration. However, the Court rejected the rigid quota used by the medical school to determine admission. Justices Stevens, Rehnquist, Stewart, Burger, and Powell determined that the Davis's medical school special admission violated Title VII of the Civil Rights Act of 1964. (Title VII prohibits employment discrimination based on race, color, religion, sex and national origin.)

Reaction to the Bakke decision fell into three camps. The first group was dismayed by the decision and believed that the Supreme Court had impeded if not halted minority progress by invalidating explicit racial quotas. African-American newspapers like New York City's Amsterdam News fell into this category. Their headline in response to the Bakke decision illustrates this point, it was—"Bakke—We Lost". Peter Cohn(co-counsel for the regional office of the NAACP in Washington), Tyrone Brooks(national field directory for the Southern Christian Leadership Conference), Tom Wicker(of the New York Times), and Jose Medina (of the Chicano political group La Raza) expressed similar strong feelings that the Supreme Court decision had been a blow against affirmative action.

The second group was made up of mostly journalists and legal scholars who considered the decision positive because affirmative action was not found unconstitutional. People

such as A.E. Howard (of the Virginia Law School), Charles Allan Wright(of the Texas Law School), Lawrence Tribe(of the Harvard Law School) and Benno Schmidt (at the time, a faculty member of the Columbia Law School) were a part of this group. Newspapers such as the Washington Post and the New York Times also viewed the Bakke ruling as positive.

The third group was made up of people who were responsible for administering and supervising affirmative action programs. These individuals believed that the Bakke decision would have little effect on what they did or were doing in regards to affirmative action. For example, Eleanor Holmes Norton of the E.E.O.C. commented, "My reading of the decision is that we are not compelled to do anything differently from the way we've done things in the past, and we are not going to ."(Eastland and Bennett 1979. p. 176) President of the American Council on Education, Jack Peltason, at the time felt that the Bakke ruling left options open to affirmative action programs. (ibid)

Work Cited

Eastland, Terry and Bennett, William J. Counting By Race; Equality from the Founding Fathers to Bakke and Weber. New York: Basic Books, Inc., Publishers, 1979

Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on the bases of race and color, as well as national origin, sex, and religion. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

Equal employment opportunity cannot be denied any person because of his/her racial group or perceived racial group, his/her race-linked characteristics (e.g., hair texture, color, facial features), or because of his/her marriage to or association with someone of a particular race or color. Title VII also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups. Title VII's prohibitions apply regardless of whether the discrimination is directed at Whites, Blacks, Asians, Latinos, Arabs, Native Americans, Native Hawaiians and Pacific Islanders, multi-racial individuals, or persons of any other race, color, or ethnicity.

It is unlawful to discriminate against any individual in regard to recruiting, hiring and promotion, transfer, work assignments, performance measurements, the work environment, job training, discipline and discharge, wages and benefits, or any other term, condition, or privilege of employment. Title VII prohibits not only intentional discrimination, but also neutral job policies that disproportionately affect persons of a certain race or color and that are not related to the job and the needs of the business. Employers should adopt "best practices" to reduce the likelihood of discrimination and to address impediments to equal employment opportunity.

Title VII's protections include:

* Recruiting, Hiring, and Advancement

Job requirements must be uniformly and consistently applied to persons of all races and colors. Even if a job requirement is applied consistently, if it is not important for job performance or business needs, the requirement may be found unlawful if it excludes persons of a certain racial group or color significantly more than others. Examples of potentially unlawful practices include: (1) soliciting applications only from sources in which all or most potential workers are of the same race or color; (2) requiring applicants to have a certain educational background that is not important for job performance or business needs; (3) testing applicants for knowledge, skills or abilities that are not important for job performance or business needs.

Employers may legitimately need information about their employees or applicants race for affirmative action purposes and/or to track applicant flow. One way to obtain racial information and simultaneously guard against discriminatory selection is for employers to use separate forms or otherwise keep the information about an applicant's race separate from the application. In that way, the employer can capture the information it needs but ensure that it is not used in the selection decision.

Unless the information is for such a legitimate purpose, pre-employment questions about race can suggest that race will be used as a basis for making selection decisions. If the information is used in the selection decision and members of particular racial groups are excluded from employment, the inquiries can constitute evidence of discrimination.

* Harassment/Hostile Work Environment

Title VII prohibits offensive conduct, such as racial or ethnic slurs, racial "jokes," derogatory comments, or other verbal or physical conduct based on an individual's race/color. The conduct has to be unwelcome and offensive, and has to be severe or pervasive. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.

* Compensation and Other Employment Terms, Conditions, and Privileges

Title VII prohibits discrimination in compensation and other terms, conditions, and privileges of employment. Thus, race or color discrimination may not be the basis for differences in pay or benefits, work assignments, performance evaluations, training, discipline or discharge, or any other area of employment.

* Segregation and Classification of Employees

Title VII is violated where employees who belong to a protected group are segregated by physically isolating them from other employees or from customer contact. In addition, employers may not assign employees according to race or color. For example, Title VII prohibits assigning primarily African-Americans to predominantly African-American establishments or geographic areas. It is also illegal to exclude members of one group from particular positions or to group or categorize employees or jobs so that certain jobs are generally held by members of a certain protected group. Coding applications/resumes to designate an applicant's race, by either an employer or employment agency, constitutes evidence of discrimination where people of a certain race or color are excluded from employment or from certain positions.

* Retaliation

Employees have a right to be free from retaliation for their opposition to discrimination or their participation in an EEOC proceeding by filing a charge, testifying, assisting, or otherwise participating in an agency proceeding.