Applying Precedents Activity

Comparison case: *Fisher v. University of Texas* (2016)
Precedent case: *Regents of the University of California v. Bakke* (1978)

What you need to know before you begin: When the Supreme Court decides a case, it clarifies the law and serves as guidance for how future cases should be decided. Before the Supreme Court makes a decision, it always looks to precedents—past Supreme Court decisions about the same topic—to help make the decision. A principle called *stare decisis* (literally "let the decision stand") requires that the precedent be followed. If the case being decided is legally identical to a past decision, then the precedent is considered binding and the Supreme Court must decide the matter the same way. However, cases that make it to the Supreme Court are typically not completely identical to past cases, and justices must consider the similarities and differences when deciding a case.

The process of comparing past decisions to new cases is called applying precedent. Lawyers often argue for their side by showing how previous decisions would support the Supreme Court deciding in their favor. This might mean showing how a previous decision that supports their side is analogous (similar) to the case at hand. It can also involve showing that a previous decision that does not support their side is distinguishable (different) from the case they are arguing.

How it's done: In this exercise, you will analyze a precedent and compare it to *Regents of the University of California v. Bakke.* You have been provided with information about two cases: **1)** the background, facts, issue, and constitutional provisions/precedents of the comparison case *(Fisher v. University of Texas)* and **2)** a full summary of a precedent case *(Regents of the University of California v. Bakke).*

After reading about the cases, you will look for evidence that *Fisher v. University of Texas* is analogous (similar) to the precedent case and evidence that the cases are distinguished (different) from each other. After considering both possibilities, you must decide whether the precedent is analogous enough to command the same outcome in the comparison case, or whether the comparison case is different enough to distinguish itself from the precedent.

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1. Using factual and legal similarities, show how *Fisher v. University of Texas* is **analogous** (similar) to the precedent case *(Regents of the University of California v. Bakke)*:

2. Show how *Fisher v. University of Texas* is **distinguished** (different) from the precedent case *(Regents of the University of California v. Bakke)* by pointing out factual and legal differences:

3. We found that *Fisher v. University of Texas* is _____ (**analogous to** or **distinguished from**) the precedent case *(Regents of the University of California v. Bakke)* because (choose the most convincing similarities or differences from questions 1 and 2):

4. Based on the application of the precedent, how should *Fisher v. University of Texas* be decided?

   _____ Decision for Fisher

   _____ Decision for University of Texas

Comparison Case: *Fisher v. University of Texas at Austin* (2016)

Argued: December 9, 2015

Decided: June 23, 2016

Background

Public colleges and universities in the United States use a variety of factors to determine which students will be accepted. Universities often want a student body with diverse academic interests, talents, and backgrounds. They consider factors such as applicants' grades, standardized test scores, community service, athletic or musical ability, and geographic location. Sometimes universities also consider an applicant's race or ethnicity.

Americans disagree whether it is acceptable to consider race in the application process. The practice of making a conscious effort to enroll more minority applicants is called "affirmative action." Some people think that it violates the U.S. Constitution. The 14th Amendment says, in part, that states cannot "deny to any person … the equal protection of the laws." Therefore, any government action—such as the admissions process at public colleges and universities—that treats people differently based on their race may violate the Equal Protection Clause.

Some supporters of affirmative action argue that such programs are necessary because they help to correct a long history of racism and discrimination in America. Opponents often argue that the best way to correct a history of discrimination is to make all admissions decisions without looking at race. The Supreme Court has said that some affirmative action programs are acceptable, but only because public universities gain very important educational benefits by creating a diverse student body.

When ruling on laws that treat people differently because of their race, courts require the government to justify the use of race. To be acceptable, the racial classification must:

- serve a compelling (very important) government interest; and
- be "narrowly tailored" to achieve that interest. "Narrowly tailored" means that the law or policy must be extremely well designed to achieve a specific goal and must minimize any interference with the rights of others. Typically, it is difficult for the government to justify using a racial classification.

Facts

This case is about whether the University of Texas at Austin's admissions policies violate the 14th Amendment and its guarantee of equal protection.

The majority of freshmen applicants at UT Austin are admitted under the state's Top 10% Law. This law automatically admits all Texas high school students who finish at the top of their class. In 2008, 80% of the freshman class was admitted through the law; 25% of this group was African American or Latino.

The rest of the spots in the freshman class went to general applicants: students from Texas who were not in the top 10% of their high schools and students from outside Texas. These "general" applicants are each given scores based on academics and personal achievement. The score for personal achievement is based on two essays and six additional factors (including leadership potential, extracurricular activities, and special circumstances). The "special circumstances" factor breaks down into seven attributes, including language spoken at home, socio-economic status, and race. None of these factors are given any numerical value. Rather, they are all viewed together to see the totality of the applicant.

Abigail Fisher, a White student who was denied admission to UT Austin in 2008, sued the school. She argued that this admissions program discriminated against White students. Fisher argued that the school got enough diversity from the Top 10% Law; therefore, additional affirmative action measures were unconstitutional.

The U.S. District Court ruled against Fisher. The Fifth Circuit Court of Appeals upheld the District Court's decision that there was no Equal Protection Clause violation. Fisher appealed to the U.S. Supreme Court in 2012. In 2013, the Supreme Court sent the case back to the Fifth Circuit for additional consideration. The Supreme Court said that the Fifth Circuit must look to whether UT Austin's admissions program was "narrowly tailored" to obtain the educational benefits of diversity. The Fifth Circuit still decided there was no constitutional violation and affirmed UT Austin's policy. Fisher appealed again to the U.S. Supreme Court in 2015. The Supreme Court agreed to hear the case. Justice Kagan recused herself, meaning she would not hear the case, because she was involved in the lower court case when she was U.S. Solicitor General.

Issue

Does the University of Texas at Austin's consideration of race in undergraduate admissions violate the Equal Protection Clause of the 14th Amendment?

Constitutional Provisions 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."

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

  The University of California at Davis Medical School had an admissions procedure that reserved 16 spots for minority applicants. Minority applicants were placed on a special admissions track and scored only against each other rather than the entire pool. The U.S. Supreme Court ruled that this program violated the Equal Protection Clause of the 14th Amendment because it set a specific quota of minority applicants to be admitted. However, it said that the attainment of a diverse student body is considered a compelling interest to

justify the use of race in admissions, but only if race is used merely as a "plus" factor that might tip the scales in a close case.

- ***Gratz v. Bollinger* (2003)**

  The University of Michigan used a 150-point ranking system that considered grades, high school reputation, high school curriculum difficulty, alumni relationships, and "unusual circumstances" factors such as race and socio-economic status. Being part of a racial minority group was worth 20 points. The Court decided that giving applicants a specific number of points due to their race alone was not narrowly tailored, and, therefore, violated the Constitution.

- ***Grutter v. Bollinger* (2003)**

  The University of Michigan Law School considered a student's race as part of a holistic (whole-person) application process. The U.S. Supreme Court said the policy was Constitutional because the law school had a compelling interest in attaining a diverse student body. In addition, the policy was specifically written to serve that interest by including race merely as a "potential 'plus' factor."

Precedent Case: *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

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

"disadvantaged." The applications of those who selected one of these options were sent to the 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 person, 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.

