

DOCUMENT A

Section of the Fourteenth Amendment, 1868

No state shall ... deny to any person within its jurisdiction the equal protection of the laws.

- ▶ **Why was this amendment passed in 1868?**

DOCUMENT B

Executive Order 10925, 1961

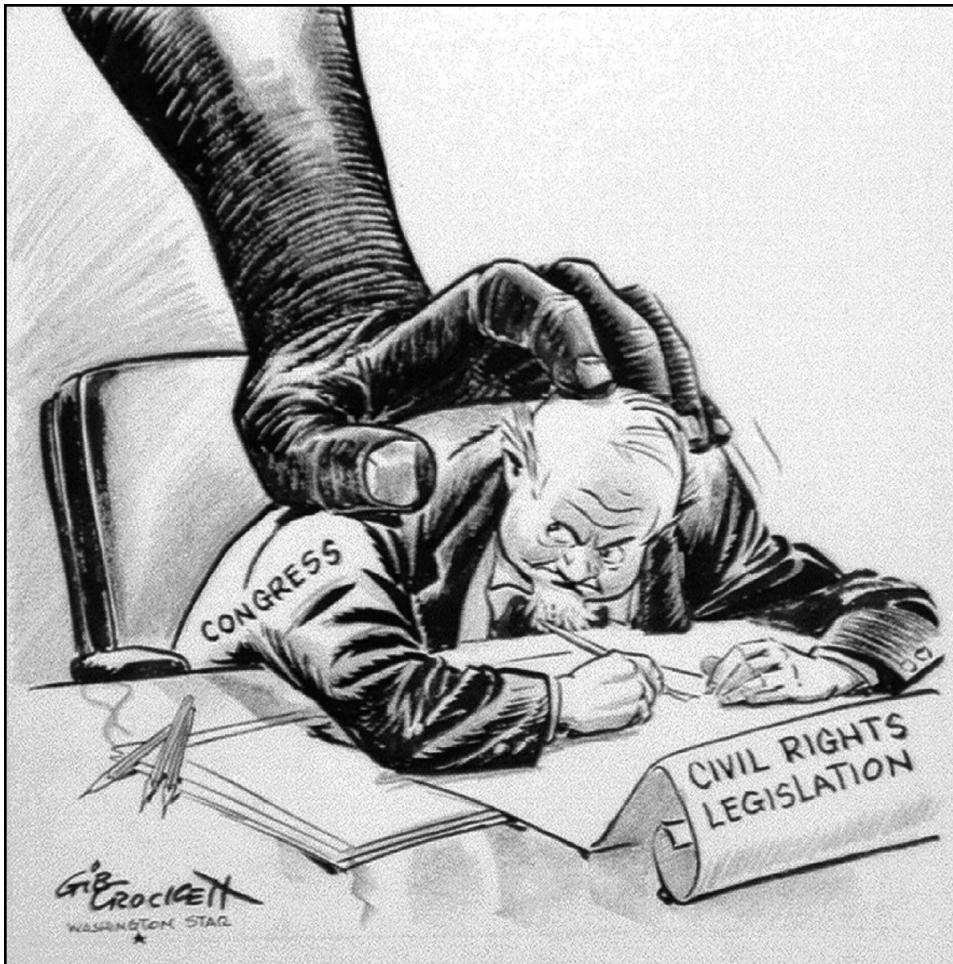
Establishing The President's Committee On Equal Employment Opportunity

[Federal government contractors] will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin.

- ▶ **What does “affirmative action” mean?**
- ▶ **What does “without regard to” mean?**

DOCUMENT C

“Civil Rights Legislation,” 1963



- What is the point of view of the cartoonist?

DOCUMENT D

Title VI of the Civil Rights Act of 1964

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.

- ▶ **Does the policy stated in this document differ from that in Document B? If so, how?**

DOCUMENT E

President Lyndon Johnson, Speech at Howard University, 1965

You do not wipe away the scars of centuries by saying: “Now, you are free to go where you want, do as you desire, and choose the leaders you please.” You do not take a man who for years has been hobbled by chains, liberate him, bring him to the starting line of a race, saying, “You are free to compete with all the others,” and still justly believe you have been completely fair. ...This is the next and more profound stage of the battle for civil rights. We seek not just freedom but opportunity—not just legal equity but human ability—not just equality as a right and a theory, but equality as a fact and as a result.

- ▶ **Restate this excerpt from Johnson’s speech in your own words.**
- ▶ **How does this understanding of equality differ from that expressed in Documents B and D?**

DOCUMENT F

UC-Davis Medical School Program Demographics, 1970-1974

Number of minority students
accepted under **special programs**,
1970-1974

Black	21
Mexican American	30
Asian	12

Number of minority students
accepted under **general program**,
1970-1974

Black	1
Mexican American	6
Asian	37

Minority student enrollment in medical school, 1972

Total number of minority students enrolled in medical schools in the United States	800
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Number of minority students enrolled in medical schools outside traditionally African American colleges	160
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Source: Bakke Record 210, 223, 231, 234

- **Summarize the chart data in one or two sentences.**

DOCUMENT G

Education by Race Statistics, 1940-1980

		1940	1950	1960	1970	1980
WHITES	Less than five years elementary school	10.9%	8.9%	6.7%	4.2%	1.9%
	High School Diploma	26.1%	36.3%	43.2%	57.4%	71.9%
	Four or more years of college	4.9%	6.6%	8.1%	11.6%	18.4%
BLACKS	Less than five years elementary school	41.8%	32.6%	23.5%	14.7%	9.1%
	High School Diploma	7.7%	13.7%	21.7%	36.1%	51.4%
	Four or more years of college	1.3%	2.2%	3.5%	6.1%	7.9%

- Summarize the chart data in one or two sentences.

DOCUMENT H

Alan Bakke's Credentials, 1973-1974

	Science GPA	Overall GPA	MCAT percentile
Alan Bakke	3.44	3.46	96
Average of regular admittees, 1973	3.51	3.49	81
Average of special admittees, 1973	2.62	2.88	46
Average of regular admittees, 1974	3.36	3.29	69
Average of special admittees, 1974	2.42	2.62	34

Source: Bakke Record 210, 223, 231, 234

- **How did Bakke's GPA and MCAT scores compare to those of students accepted from both the regular and special programs?**

DOCUMENT I

UC-Davis's Reply to Bakke's Query on Age, 1972

Note: By 1971, Alan Bakke had served four years as a United States Marine, including one tour in Vietnam. He had also completed a Master's Degree in mechanical engineering, was a father of two, and was 32 years old. When he decided to apply to medical school, he wrote to more than ten medical schools, including UC-Davis, asking about their policy on considering applicants' ages.

[Dear Mr. Bakke:]

When an applicant is over thirty, his age is a serious factor which must be considered. ...The Committee believes that an older applicant must be unusually highly qualified if he is to be seriously considered....

- ▶ **Does this information change your assessment of Bakke's credentials from Document H?**

DOCUMENT J

Oral Arguments, 1978

Colvin [representing Bakke]: Race is an improper classification in this system... we believe it to be unconstitutional.

Justice Burger: Why? Because it is rigidly limited to sixteen [spots set aside in each class for minorities]?

Colvin: No, because the concept of race itself as a classification becomes in our history and in our understanding an unjust and improper basis on which to judge people.

Justice Marshall: Would it be constitutional if it was one [space that was set aside for minority students]?

Colvin: No. Whether it is one, one hundred, two—

Justice Marshall: You are talking about your client [Bakke's] rights. Don't these underprivileged people have rights?

Colvin: They certainly have the right to compete—

Marshall: To eat cake.

Colvin: They have the right to compete. They have the right to equal competition.

Marshall: So the numbers are just unimportant?

Colvin: The numbers are unimportant. It is the principle of keeping a man out because of his race that is important.

Marshall: You're arguing about keeping someone out, and the other side is arguing about getting somebody in.

Colvin: That's right.

- ▶ **Contrast Bakke's lawyer's argument with President Johnson's assertion in Document E.**

DOCUMENT K

Justice Thurgood Marshall's Memo, 1978

Note: This memo was circulated while the Justices were considering the case.

The decision in this case depends on whether you consider the action of [UCD Medical School] as admitting certain students or excluding certain other students.

- ▶ **What two approaches to the Bakke case does Justice Marshall identify?**

DOCUMENT L

MAJORITY OPINION



Plurality Decision (5-4), *Regents of the University of California v. Bakke*, 1978

The guarantees of the Fourteenth Amendment extend to all persons. Its language is explicit. ...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. ...Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake....

Hence, the purpose of helping certain groups whom the faculty of the Davis Medical School perceived as victims of “societal discrimination” does not justify a classification that imposes disadvantages upon persons like [Bakke], who bear no responsibility for whatever harm the beneficiaries of the special admissions program are thought to have suffered....

[A] diverse student body ... clearly is a constitutionally permissible goal for an institution of higher education. ...Ethnic diversity, however, is only one element in a range of factors a university properly may consider in attaining the goal of a heterogeneous student body....

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.

In enjoining petitioner [UC-Davis] from ever considering the race of any applicant, however, the courts below failed to recognize that the State has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin. For this reason, so much of the California court’s judgment as enjoins petitioner from any consideration of the race of any applicant must be reversed.

DOCUMENT L

MAJORITY OPINION



- ▶ **Of the two approaches identified by Marshall in Document K, which does the Court appear to have adopted?**
- ▶ **How does the Court define terms such as “equal” and “protection” in this ruling?**

DOCUMENT M

Justice Thurgood Marshall's Separate Opinion, *Regents of the University of California v. Bakke*, 1978

I agree with the judgment of the Court only insofar as it permits a university to consider the race of an applicant in making admissions decisions. I do not agree that petitioner's admissions program violates the Constitution. For it must be remembered that, during most of the past 200 years, the Constitution, as interpreted by this Court, did not prohibit the most ingenious and pervasive forms of discrimination against the Negro. Now, when a State acts to remedy the effects of that legacy of discrimination, I cannot believe that this same Constitution stands as a barrier....

The position of the Negro today in America is the tragic but inevitable consequence of centuries of unequal treatment. Measured by any benchmark of comfort or achievement, meaningful equality remains a distant dream for the Negro....

It is because of a legacy of unequal treatment that we now must permit the institutions of this society to give consideration to race in making decisions about who will hold the positions of influence, affluence, and prestige in America. For far too long, the doors to those positions have been shut to Negroes. If we are ever to become a fully integrated society, one in which the color of a person's skin will not determine the opportunities available to him or her, we must be willing to take steps to open those doors....

- **In what way does Marshall agree with the majority decision? How does he depart from it?**

DIRECTIONS

Answer the Key Question in a well-organized essay that incorporates your interpretations of Documents A-M, as well as your own knowledge of history.

KEY QUESTION

Appraise the claim that the University of California at Davis special admissions program resulted in unconstitutional reverse discrimination.