

Affirmative Action

Terms:

Disparate Impact

Bona Fide Occupational Qualification

Title VII (of 1964 Civil Rights Act)

Goals, Quotas, Set-asides, Preferences

Strict Scrutiny

Assigned Cases:

Regents v. Bakke; *City of Richmond v. J.A. Croson*; *Adarand v. Peña*; *Gratz v. Bollinger*; *Grutter v. Bollinger*.

Questions for Reading Assigned Cases:

In *Richmond v. J.A. Croson* and *Adarand v. Peña*, the Supreme Court applied strict scrutiny to government contracting programs, insisting that race was not the same as disadvantage. What methods of intervention are still available to government to further business development among underrepresented populations?

The *Bakke*, *Gratz* and *Grutter* cases all involve affirmative action in higher education. To what extent did the Supreme Court's decisions in *Gratz* and *Grutter* follow the logic of *Bakke*? To what extent does either *Gratz* or *Grutter* depart from the logic of Justice Powell's approach in *Bakke*?

Additional Cases:

Griggs v. Duke Power (1971). Until 1964, Duke Power had openly restricted blacks to positions as laborers, the lowest-paying positions in the company. After the Civil Rights Act of 1964 was passed, the company changed its policies, adding the requirement of a high school diploma or certain scores on broad aptitude tests for positions outside its Labor department. African-American applicants, less likely to hold a high school diploma and averaging lower scores on the aptitude tests, were selected at a much lower rate for these positions compared to white candidates. The Court found that, under Title VII of the CRA, any job requirements that have a "disparate impact" minority groups must be "reasonably related" to the job, and serve as *bona fide* occupational qualifications.

Washington v. Davis (1976). This case extended the Grigg's approach to governmental employees under the 5th and 14th Amendments. Two African Americans had applied for positions in the Washington, DC police department, and sued after being turned down. They claimed that the department used a test of verbal skills (Test 21), which was failed disproportionately by African Americans and was thus a discriminatory hiring method. The Court ruled against them, finding that "[an] official action will not be held unconstitutional solely because it results in a racially disproportionate impact." Instead, a plaintiff must prove discriminatory motive on the state actor's part. Because the Police Department could show that it was actively recruiting African-Americans and that the test was related to recruits' success at the Police Academy and on the job, the Court found the test to be a *bona fide* occupational qualification.