

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; *Adarand v. Pena*; *Grutter v. Bollinger*; *Washington v. Davis*; *United Steelworkers v. Weber*; *Johnson v. Transportation Agency*

Questions for Reading Assigned Cases:

United Steelworkers v. Weber and *Johnson v. Transportation Agency* concern the introduction of new classes of workers – minorities and women – into settings which had previously been closed to them. How do these cases differ from such later cases as *Adarand v. Pena* and *Grutter v. Bollinger*?

In *Adarand v. Pena*, 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* and *Grutter* cases involve affirmative action in higher education. To what extent did the Supreme Court's decisions in *Gratz v. Bollinger* (*see below*) and *Grutter* follow the logic of *Bakke*? To what extent does the decision in *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.

Gratz v. Bollinger (2003) was a companion case to *Grutter v. Bollinger* which concerned undergraduate admissions. The University of Michigan used race as a factor in making admissions decisions by adding 20 points, or one-fifth of the points needed to guarantee admission, to the admission score of every single "underrepresented minority" applicant (African Americans, Hispanics, and Native Americans), virtually assuring admittance to every qualified minority, while excluding many whites and Asians with better academic credentials. The Court held that the automatic granting of this racial preference differed significantly from the individualized consideration foreseen in *Bakke* and supported by the majority in *Grutter*.