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NAACP STATEMENT ON IMPLICATIONS OF THE BAKKE DECISION FOR COLLEGE/UNIVERSITY ADMISSIONS

The NAACP has carefully reviewed the decision of the U.S. Supreme Court in the case of **Allan Bakke vs. University of California Board of Regents** and has concluded that educational institutions need not be chilled, confused, or deterred in their good-faith efforts to promote equal opportunity in college/university admissions. It is clear that the Court has upheld the use of **race** as an important factor in order to integrate the student body, and the professions. It has therefore, approved explicitly the underpinning of (voluntary) affirmative action plans, that take race into account as a means of insuring opportunity for racial minorities.

The **Bakke** decision itself was very narrow, and limited to voluntary affirmative action plans connected with **admissions** programs of institutions of higher learning. In the Court's decision, the nine Justices could agree on very little, even in this limited field.

Four Justices (Burger, Stevens, Stewart, and Rehnquist) wrote opinions stating that the **constitutionality** of affirmative action or quotas was **not** involved in the **Bakke** case. Their opinion was that Title VI of the 1964 Civil Rights Act required absolute color-blindness, and that Bakke was discriminated against. **Their view of the case was rejected by the majority.**

Four Justices (Marshall, White, Brennan and Blackman) wrote that the statute and its regulations **require** affirmative action plans where minorities have been absent from a program in the past. Their opinion states that not only can race be constitutionally used as a factor, but that the Davis Medical School program of making race a controlling factor was **not** unconstitutional.

Justice Powell wrote the **controlling** opinion, and stated that whenever race **is** used to decide who gets admitted to an educational institution, it must be for a legitimate purpose, (to promote diversity in the student body) and it must be used in such a way so as not to be the sole or controlling factor so as not to exclude others (non-racial minorities) completely. Justice Powell indicated that the applications of racial minorities by virtue of their minority status may be given extra weight in order to integrate the class. He felt that the Davis Medical School's affirmative action plan was too rigid, in that it excluded non-minorities altogether from any consideration and was, in his view, therefore, unconstitutional. Justice Powell therefore joined the four Justices who voted that the Davis Plan should not be approved, but he then joined the other four Justices who voted that race may be used under proper circumstances.

Affirmative Action plans, goals, and timetables and quotas are used in a variety of situations. Some (as was the case at Davis Medical School) are voluntary; some are required by state and federal statutes; and others are ordered by courts. Justice Powell indicated that if there had been any evidence of discrimination prior to the Davis special admissions program that set aside 16 seats for racial minorities, the program **would** have been approved.

The **Bakke** decision of the Supreme Court clearly indicates the following state of the law:

1. If any employer, school system or other public agency is sued in court and the court finds that illegal racial discrimination has existed, the court has the authority to order affirmative action remedies, including goals and timetables, quota hiring and promotions and teacher and pupil assignments based on race.

2. If a racial discrimination lawsuit is **settled** without going to trial, as part of the settlement (consent decree) the court may approve goals or quotas.
3. If a federal, state or local legislative body determines that racial exclusion has existed in some program and passes a law requiring affirmative action plans using race factors, that law will be held constitutional.
4. If an administrative agency (such as HEW, Department of Labor, or HUD) investigates a program or an industry and has reason to believe racial exclusion has taken place, its affirmative action requirements including goals and timetables based on race will be upheld.
5. If an employer, union, or public agency decides to adopt an affirmative action plan for the purpose of bringing racial and cultural diversity to its workforce or program, may base its decisions concerning employment or admissions partly on race provided:
 - a. all qualified applicants have a chance to compete;
 - b. minority race may be considered "a plus" or be given extra weight, but it cannot be the exclusive, controlling factor;
 - c. the use of race must be part of a "flexible" evaluation system;
 - d. race must be used in a way that genuinely includes minorities in, not as a subterfuge for racial exclusion.

It is important to understand that the qualifications

listed above apply only when there is **no** finding or evidence of past racial exclusion. If there is evidence of past exclusion on the basis of race, greater reliance on racial factors to remedy past illegal conduct is appropriate.

While the NAACP argued to the Supreme Court in support of the Davis "special admissions" program and we consider the Court's rejection of that program to be a major disappointment, it was by no means a defeat for effective affirmative action programs. The most serious harm done by the **Bakke** decision lies in the public misconception of the case. People who have never approved of affirmative efforts to integrate our society and those who will attempt to dismantle existing affirmative action plans may seek support in the fact that the Court ordered that the Davis plan be altered. For them, however, the **Bakke** case is more a symbolic victory than an actual one. Actually, minority status as a "plus" factor to be given extra weight in a selection process, in order to produce racial and ethnic diversity, has been held to be constitutionally valid. It is important to understand this central fact concerning the case so that a national misunderstanding of **Bakke** does not take hold.

We encourage all educational institutions to renew their commitment to affirmative action and to indicate that commitment through public announcements, and by stepping up efforts to increase the representation of racial minorities in their student bodies, faculties, and administration.

A dual track admissions program which sets aside a specific number of positions for minority applicants is not unlawful where there **has** been past discrimination.

The NAACP recognizes that there are some new colleges and universities on the horizon which will claim that they have not practiced racial discrimination, and that low,

if any, representation of minorities in their classes is due entirely to neutral or racially unbiased decision making. However, the NAACP believes that societal discrimination against blacks is as much at issue, and to be corrected, as much as any single institution's past behavior. The U.S. Supreme Court, in the **Bakke** decision, overlooked this important consideration, mainly that the California State University system had long discriminated against blacks and other racial minorities.

At the Davis Medical School, only one black was admitted since it opened its doors, before the special admissions program. With the Minority Student Program that set aside 16 seats for racial minorities only 4 blacks were admitted in 1971, 5 in 1972, 6 in 1973, and 6 in 1974. No black students were admitted through regular admissions during these years.

This pervasive pattern of exclusion and discrimination was as much "state action" as it was the practice of any one educational institution in the State.

In the same context, when the State could have offered aid, support, and inducements to promote racial integration at its educational units, it instead created and established new units. In lieu of providing proper resources to enroll substantial numbers of black and brown students, there surfaced in California the incredulous assertion that these "new" institutions -- such as Davis Medical School -- have not existed long enough to have a discernible record of past discrimination to justify an affirmative action (race-conscious) remedy. Evidence is overwhelming and convincing that blacks have been excluded from professional schools and careers as a consequence of state-actions.

Moreover, because of the documented failure of most public school systems across the nation to efficiently and

properly educate black students, the need for recognizing extraordinary and superior effort on the part of black youth to overcome educational deficiencies is compelling for affirmative action. In this regard, admission to the college or professional school is not enough, but only the first step. Schools must be prepared and committed to providing supportive services for each student who desires it, including adequate financial aid, counseling, and tutorial assistance, in a non-segregated, unstigmatizing manner. This does **not** contemplate a lowering of standards at all, - but a commitment to eliminating artificial and arbitrary barriers to equal opportunity for all.

An affirmative action program in education that seeks to increase the representation of racial minorities must set goals and timetables to measure the effectiveness of its recruitment, admissions, and retention efforts. The NAACP supports the use of goals and timetables appropriate for the school and community that insure fair representation of racial minorities, and moves beyond the tokenism which aggravates racial isolation on campus.

A properly functioning affirmative action program does not treat all black students alike. All minority or black students should not be placed in "special admissions" categories or programs and, thereby, viewed as economically or educationally disadvantaged "because" they happen to be black. Such policies are the door to a dungeon, and are likely to lead to the segregation and stigmatizing of black students.

The NAACP has long been concerned about this practice of educational institutions to stigmatize all black students, regardless of their qualifications, by placing them in so-called "special admission" categories. It is curious that at a time the nation and media have concentrated their attention on so-called "reverse discrimination," -- code words for

making out a case that whites are being deprived of some right -- no one has addressed the **double-wrong** done to blacks who are automatically placed in so-called special categories, and thereby systematically deprived of their rights to enjoy a reputation as scholars, and persons unquestionably qualified for admission to professional schools.

For example, the black student who graduated from Davis Medical School with highest honors was a graduate of Stanford University after only three years of matriculation -- a feat which required exceptional talent and performance in and of itself. She had also taken a master's degree, before going to medical school. Yet this exceptionally qualified scholar, because she was black, was admitted as a "special student" at Davis Medical School. This is a further indication, that white institutions continue to raise their standards for blacks and view blacks differently from white applicants, irrespective of qualifications.

Programs designed to reach the high potential underachiever have been used instead to admit the best qualified of the minority applicants, and the brightest black students are then stigmatized as "special-admittees." That is, at best, a deceitful and harmful practice, depriving a student who should be given "special consideration" of that opportunity because the highly qualified black is admitted in his place. It is a double-wrong, because the high-potential underachiever of whatever race is denied equal opportunity, and the black high-achiever is denied his justified place among scholars.

In no case, should the route of a student's admission to the school attach a stigma, or follow him throughout his matriculation. Affirmative action required to recruit, admit, and retain minority students must be part of an overall commitment to integrate the student body, faculty, and curricula, and to make "qualifications" for access more realistic, reliable

indicators of ability and potential.

Wherever admissions procedures are re-cast and clarified so as to insure the increased representation of racial minorities, there ought to be, as a matter of educational policy, **less** reliance on standardized (aptitude) test scores, and more consideration of more reliable factors of achievement, capability and potential, such as grades, letters of reference and recommendation, community service, extra-curricular activities, and evidence of the candidates having overcome handicaps or disadvantage to the point of being self-motivated and persistent in attainment of academic and personal achievement.

If you have any questions whatsoever please contact the National Office of the NAACP.

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