

A Century Foundation Report

# A Better Affirmative Action:

State Universities that Created Alternatives to Racial Preferences



Richard D. Kahlenberg  
Individual State University Profiles by Halley Potter

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The Century Foundation is a progressive nonpartisan think tank. Originally known as the Twentieth Century Fund, it was founded in 1919 and initially endowed by Edward Filene, a leading Republican businessman and champion of fair workplaces and employee ownership strategies, all with an eye to ensuring that economic opportunity is available to all. Today, TCF issues analyses and convenes and promotes the best thinkers and thinking across a range of public policy questions. Its work today focuses on issues of equity and opportunity in the United States, and how American values can be best sustained and advanced in a world of more diffuse power.

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# I. Racial Affirmative Action in Higher Education May Be on Its Way Out

When affirmative action in higher education and employment began in the 1960s, leading figures raised objections to racial preferences, including many liberals such as Robert F. Kennedy and William O. Douglas.<sup>6</sup> Most notably, in the late 1960s, before his death, Dr. Martin Luther King Jr. wrestled with the issue of how best to remedy our nation's history of discrimination. On the one hand, he argued in his 1964 book *Why We Can't Wait* that compensation is due to black Americans. "It is impossible to create a formula for the future which does not take into account that our society has been doing something special against the Negro for hundreds of years," he wrote. In the book, and in subsequent testimony before the Kerner Commission in 1967, King called for "compensatory consideration," noting, "if a man is entered at the starting line in a race three hundred years after another man, the first would have to perform some impossible feat in order to catch up with his fellow runner."<sup>7</sup>

But instead of urging adoption of a special program for blacks, as some civil rights leaders had done, King called for a color-blind Bill of Rights for the Disadvantaged: "While Negroes form the vast majority of America's disadvantaged, there are millions of white poor who would also benefit from such a bill." King continued, "It is a simple matter of justice that America, in dealing creatively with the task of raising the Negro from backwardness, should also be rescuing a large stratum of the forgotten white poor." King knew that class-based approaches would disproportionately benefit victims of historic discrimination without violating the colorblind ideal he had famously articulated in the 1963 March on Washington.<sup>8</sup>

Many of those who went further than King and supported the use of explicit racial preferences did so with the understanding that they would be temporary in nature, recognizing that to discriminate in favor of students of color represented a stark departure from the historic goal of making race irrelevant to who gets ahead in society. In the 1960s, White Young Jr. of the National Urban League called for "a decade of discrimination in favor of Negro youth," while in the 1970s, Eleanor Holmes Norton, chair of the Equal Employment Opportunity Commission under President Jimmy Carter, acknowledged that "there is a general consensus in our society" that affirmative action "ought to be temporary."<sup>9</sup> Several decades later, racial preferences in higher education remain in force—but they are now hanging on by a thread. Although the Congress and most state legislatures have failed to curtail affirmative action by race, the practice is under increasing attack from society's most democratic force (the initiative and referendum process) and its least (the judiciary).

# The Political Vulnerability of Racial Preferences

## *\* Outright Bans on Racial Affirmative Action*

Racial preferences in higher education remain highly unpopular among voters, who consistently register opposition by a two-to-one margin.<sup>10</sup> Anti-racial preference referenda have been put to voters in six states—both “blue” and “red”—and prevailed in five of those: California (1996), Washington (1998), Michigan (2006), Nebraska (2008), and Arizona (2010). Colorado’s 2008 vote was the only statewide referendum in which racial affirmative action survived, and there it did so by a vote of 50.8 percent to 49.2 percent.<sup>11</sup> In addition, in 1999, Florida banned racial preferences in the state’s employment, contracting, and higher education admission decisions by executive order (to pre-empt a referendum), and in 2011, the New Hampshire legislature outlawed racial preferences in public colleges. Finally, in two states (Texas and Georgia), lower court orders struck down the use of race for a period of time, and leading institutions in these states (Texas A&M and the University of Georgia) chose not to reinstate racial affirmative action programs, even after the U.S. Supreme Court cleared the way for them to do so.

Taken together, seven states have entirely banned racial affirmative action by public institutions, and two others have no affirmative action at leading public universities. A tenth state, Oklahoma, is slated to vote on an anti-affirmative action referendum in November 2012. The seven states with complete bans on affirmative action at public institutions educate 27.7 percent of all high school students in the United States.<sup>12</sup>

## *\* Why Racial Preferences Are Unpopular*

Racial preferences remain unpopular for several reasons. To begin with, people understand that where you go to college matters, and they do not like the idea of race counting in who gets ahead. On average, getting into a selective college confers many advantages. Colleges with low selectivity spend about \$12,000 per students compared with \$92,000 per student at the most selective institutions.<sup>13</sup> Moreover, per pupil subsidies at selective universities are eight times greater than at nonselective institutions.<sup>14</sup> In the wealthiest 10 percent of institutions, for example, students pay \$0.20 for each \$1 spent on them, compared with poorest 10 percent of colleges, where students pay \$0.78 for each \$1 spent on them.<sup>15</sup>

Georgetown University’s Anthony Carnevale and Jeff Strohl also find that selective colleges and universities graduate equally qualified students at much higher levels—a finding reinforced by former Princeton president William Bowen’s research.<sup>16</sup> (At the extreme, only 10 percent of those who start community college end up with a BA degree.)<sup>17</sup> Wages are estimated to be 5 percent to 20 percent higher for graduates of selective colleges.<sup>18</sup> Moreover, extensive empirical data support Justice Sandra Day O’Connor’s view that America’s leadership class derives disproportionately from the ranks of top colleges and universities. As Thomas Dye’s research has found, 54 percent of America’s corporate leaders and 42 percent of government leaders are graduates of just twelve institutions—Harvard, Yale, the University of Chicago, Stanford, Columbia, MIT, Cornell, Northwestern, Princeton, Johns Hopkins, the University of Pennsylvania, and Dartmouth.<sup>19</sup>

While universities try to minimize preferences by race as “just one factor” among otherwise equally qualified candidates, careful research consistently finds that selective institutions use race as much more than a tie-breaker. A 2009 analysis by Thomas Espenshade and Alexandria Walton Radford, for example, finds that at high selective private institutions, the boost provided to African American applicants is worth 310 SAT points (on a 1600 scale).<sup>20</sup> A 2005 study of highly selective institutions by William Bowen and colleagues found that being an underrepresented minority increases one’s chance of admissions by 27.7 percentage points.<sup>21</sup> And a 2004 Century Foundation study of the nation’s most selective 146 institutions by Georgetown University’s Anthony Carnevale and Stephen J. Rose found that race-based affirmative action triples the representation of blacks and Hispanics compared with the proportion who would be admitted by grades and test scores.<sup>22</sup>



These advantages might be more palatable to Americans if they were helping poor and working class students of color, as evidence presented below suggests Americans support a leg up for economically disadvantaged students. But research from strong supporters of affirmative action—Derek Bok and William Bowen—found that 86 percent of African Americans at selective colleges were either middle or upper class.<sup>23</sup> At Ivy League institutions, 41 percent of black freshmen in one study were immigrants, a group that is more socioeconomically advantaged than non-immigrant blacks.<sup>24</sup> At Harvard College, the *New York Times* reported in 2004, the majority of black undergraduates “perhaps as many as two-thirds—were West Indian and African immigrants or their children, or to a lesser extent, children of biracial couples.”<sup>25</sup>

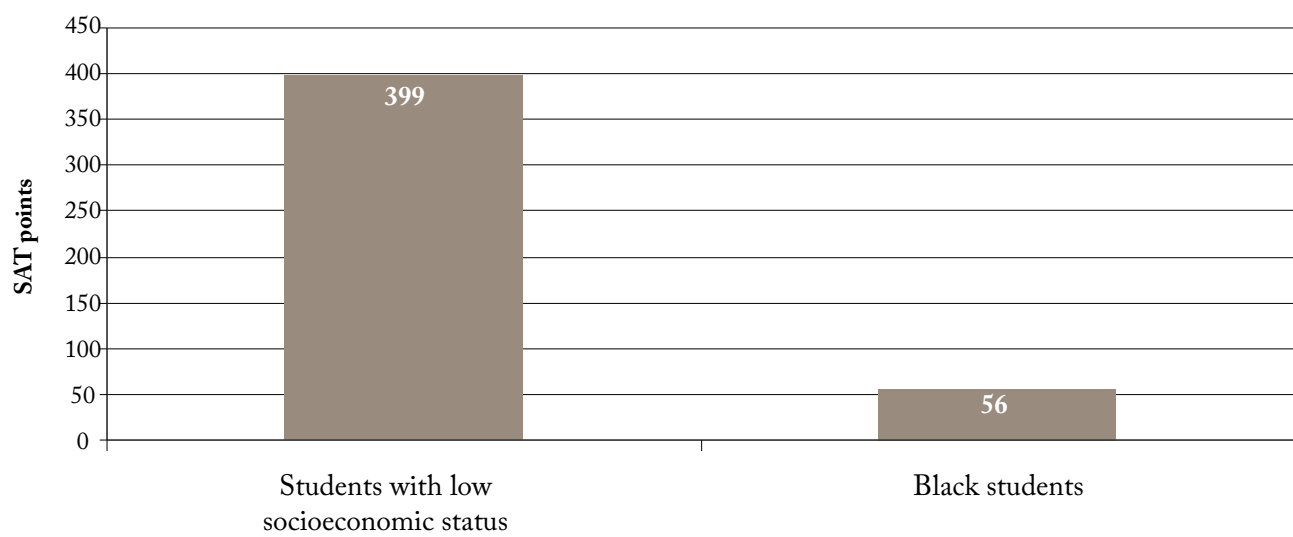
Likewise, the *New York Times*’s David Leonhardt notes that, as the University of Michigan was valiantly defending the use of racial affirmative action in the U.S. Supreme Court in 2003, more freshman that year entered from families making more than \$200,000 a year than from the bottom half of the income distribution.<sup>26</sup>

Many Americans appear to recognize that, today, educational disadvantages are much more closely linked to class than race. In a comprehensive 2011 analysis of the test score gap, Stanford professor Sean Reardon examined nineteen nationally representative studies going back more than fifty years and found that, whereas the black/white test score gap used to be about twice as large as the rich/poor gap, today, the income gap is about twice as large as the race gap.<sup>27</sup>

Likewise, gaps in attainment are today more closely associated with class than race. In general, whites are twice as likely to attain a bachelor’s degree as blacks, a significant and worrisome divide; but students from educated affluent families are seven times as likely to receive a bachelor’s degree as those from low-income less educated families (68 percent vs. 9 percent).<sup>28</sup>

Perhaps most relevant to the issue of affirmative action in selective college admissions, research finds that the obstacles to doing well on standardized tests like the SAT are much more closely related to class than race. In a 2010 Century Foundation study, Carnevale and Strohl found that socioeconomically disadvantaged students are expected to score 399 points lower on the math and verbal SAT than the most socioeconomically advantaged, while blacks are expected to score 56 points lower than whites. Put differently, the socioeconomic obstacles were seven times as large as the racial ones.<sup>29</sup>

**Figure 1. The Cost of Disadvantage, in SAT Points**



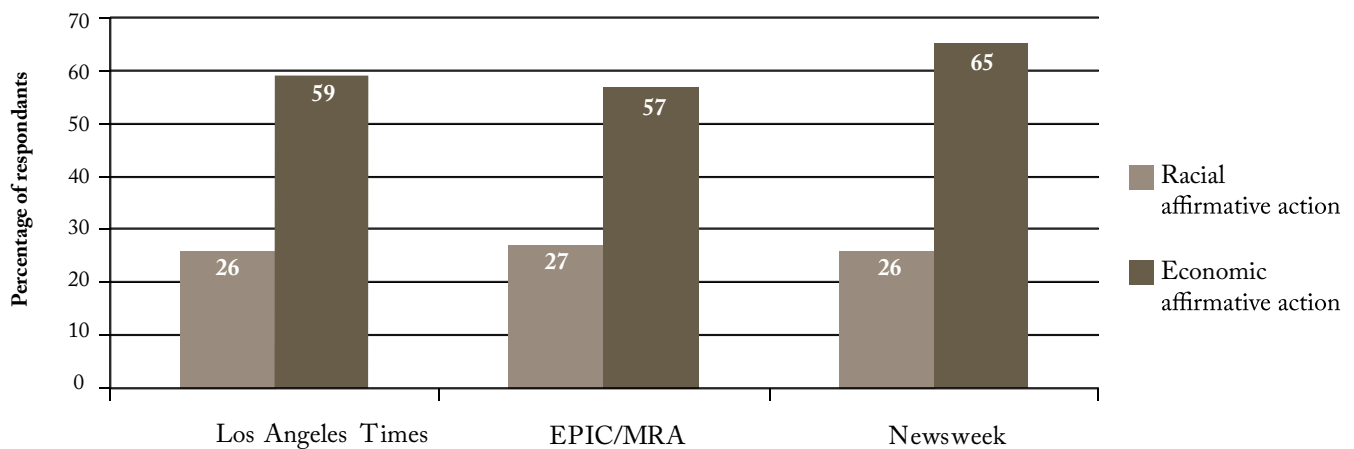
Source: Anthony P. Carnevale and Jeff Strohl, “How Increasing College Access Is Increasing Inequality, and What to Do about It,” in *Rewarding Strivers: Helping Low-Income Students Succeed in College*, ed. Richard D. Kahlenberg (New York: Century Foundation Press, 2010), 170, Table 3.7.



### \* *Greater Support for Class-Based Preferences*

Americans appear to understand that class is now a bigger obstacle to opportunity than race, which may help explain why Americans strongly prefer economic to racial affirmative action. In 2003, for example, a *Los Angeles Times* survey found that Americans opposed (56 percent to 26 percent) the University of Michigan's racial preference policy, but those same Americans supported preferences for low-income students (59 percent to 31 percent). A *Newsweek* poll around that same time likewise found that Americans opposed preferences for blacks in university admissions (68 percent to 26 percent), but supported preferences for economically disadvantaged students (65 percent to 28 percent). A third poll, by EPIC/MRA, also found that voters opposed the University of Michigan's affirmative action plan (63 percent to 27 percent), but supported preferences for economically disadvantaged students (57 percent to 36 percent).<sup>30</sup> (See figure 2.) A subsequent 2005 *New York Times* poll put support for socioeconomic preferences at nearly 85 percent.<sup>31</sup>

**Figure 2. Public Support for Racial and Economic Affirmative Action, in Three Polls**



Source: EPIC/MRA poll (conducted January 29–February 3, 2003); *Los Angeles Times* poll (conducted January 30–February 2, 2003); and *Newsweek* poll (conducted January 16–17, 2003).

Part of the reason that King opted against race-based preferences was that he worried that race-specific programs would never gain sufficient political support and would sever the progressive coalition in America. King wrote a letter to the freelance editor for *Why We Can't Wait*, noting:

Any “Negro Bill of Rights” based on the concept of compensatory treatment as a result of the years of cultural and economic deprivation resulting from racial discrimination must give greater emphasis to the alleviation of economic and cultural backwardness on the part of the so-called “poor white.” It is my opinion that many white workers whose economic condition is not too far removed from the economic condition of his black brother, will find it difficult to accept a “Negro Bill of Rights,” which seeks to give special consideration to the Negro in the context of unemployment, joblessness, etc and does not take into sufficient account their plight (that of the white worker).<sup>32</sup>

Even President Obama, who supports racial preferences in the University of Texas case, has acknowledged that class-blind racial preferences are problematic, and that his own daughters, although black, are privileged and do not deserve a preference in admissions.<sup>33</sup>

### \* *A Dim Political Future for Racial Preferences*

Finally, it is important to note that affirmative action is likely to grow increasingly unpopular over time. To begin with, the growth in minority populations may spur some white voters to “develop a stronger consciousness of their political interests,” as Gregory Rodriguez notes, and they may wish to put an end to racial preferences

while they still maintain majority status. Demographic shifts may help explain why California, where Anglos dropped below 50 percent of the population in 2000, was the first state to vote to end affirmative action, four years earlier.<sup>34</sup> Likewise, the fact that the City of Richmond, Virginia, had a large minority population may help explain why the U.S. Supreme Court was particularly skeptical of a racial set aside program for minority contractors.<sup>35</sup>

So, too, the striking rise in racial intermarriage and biracial babies—a very hopeful sign for race relations in the United States—could raise new questions about race-based affirmative action, both as the questions of identity blur and the number of students potentially eligible for preference multiplies.<sup>36</sup>

Likewise, with the passage of time from the days of slavery and state-sanctioned segregation, the case for affirmative action based on race may become less persuasive to new generations of Americans. According to a January 2009 *Washington Post*-ABC poll, the percentage of Americans saying racism is a “big problem” stands at just 26 percent, down an astounding 28 percentage points from 1996.<sup>37</sup> Barack Obama’s election does not usher in a “post-racial” nirvana, as Jabari Asim has written, “but it exposes the fallacy of referring to all black Americans as particularly oppressed.”<sup>38</sup> President Obama, who supports affirmative action, nevertheless acknowledged in his 2008 speech on race in Philadelphia that “Most working- and middle-class white Americans don’t feel that they have been particularly privileged by their race.”<sup>39</sup>

## *Legal Vulnerability: Fisher v. University of Texas*

### *\*Changes in the Makeup of the Supreme Court*

Defenders of affirmative action breathed a sigh of relief in 2003, when a divided U.S. Supreme Court ruled by a 5–4 vote that universities could consider race as one factor in admissions, in the case of *Grutter v. Bollinger*, involving the University of Michigan Law School. But *Grutter*’s swing vote in favor of affirmative action, Justice Sandra Day O’Connor, has been replaced with the much more conservative Samuel Alito. The Court’s new pivotal vote is Justice Anthony Kennedy, who dissented in *Grutter*. Many legal observers believe that the Supreme Court will use the new case—in which a white student, Abigail Fisher, claims she was denied admission at the University of Texas at Austin (UT Austin) because of race, in violation of the Constitution’s Equal Protection clause in the Fourteenth Amendment—to significantly curtail or eliminate the ability of universities to employ race in admissions.

Although there is some reason to believe that the Supreme Court will not overturn *Grutter* directly—out of respect for precedent—the Court could severely limit the ability of colleges and universities to use race by exploiting a provision in Justice O’Connor’s holding for the Court in *Grutter*. In that decision, the Court declared that universities must engage in “periodic reviews to determine whether racial preferences are still necessary to achieve student body diversity.” The opinion then pointed to universities in California, Florida, and Washington, which were “engaged in experimenting with a wide variety of alternative approaches.”<sup>40</sup>

For many years, the courts have required that government explore alternative means before using race, but there is considerable disagreement over how aggressively race-neutral alternatives must be pursued. In *Grutter*, O’Connor applied a very relaxed standard, declaring: “We take the Law School at its word that it would ‘like nothing better than to find a race-neutral admissions formula’ and will terminate its race-conscious admissions program as soon as practicable.”<sup>41</sup> The new swing vote on the court—Justice Anthony Kennedy—by contrast, used a much tougher standard. In *Grutter*, Kennedy joined with Justices William Rehnquist, Antonin Scalia, and Clarence Thomas in arguing that, “Although the Court recites the language of strict scrutiny analysis, its application of that review is unprecedented in its deference.”<sup>42</sup> Then Kennedy wrote separately, emphasizing, “Were the courts to apply a searching standard to race-based admissions schemes, that would force educational institutions to seriously explore race-neutral alternatives. The Court, by contrast, is willing to be satisfied by the Law School’s profession of its own good faith.”<sup>43</sup>

A 2007 Supreme Court decision involving school integration illustrates the way in which the new, more conservative Court applied strict scrutiny to strike down the government's use of race. In *Parents Involved in Community Schools (PICS) v. Seattle School Board No. 1*, Kennedy joined Alito and other conservatives to invalidate Seattle and Louisville's racial integration plans because, in Kennedy's words, "the schools could have achieved their stated ends through different means."<sup>44</sup> Before categorizing individuals by race, other methods must first be explored, he said. The Court opinion, joined by Kennedy, found that in Seattle, several race-neutral alternatives had been rejected "with little or no consideration" and that Jefferson County had "failed to present any evidence that it considered alternatives."<sup>45</sup> In his dissent, Justice Stephen Breyer appeared to detect a heightened form of strict scrutiny, arguing that in fact there were no viable race-neutral alternatives, making the Court's requirement one "that in practice would never be met."<sup>46</sup> But it is clear from *PICS* that Kennedy believes the individual classification of students by race should be used only as a "last resort."

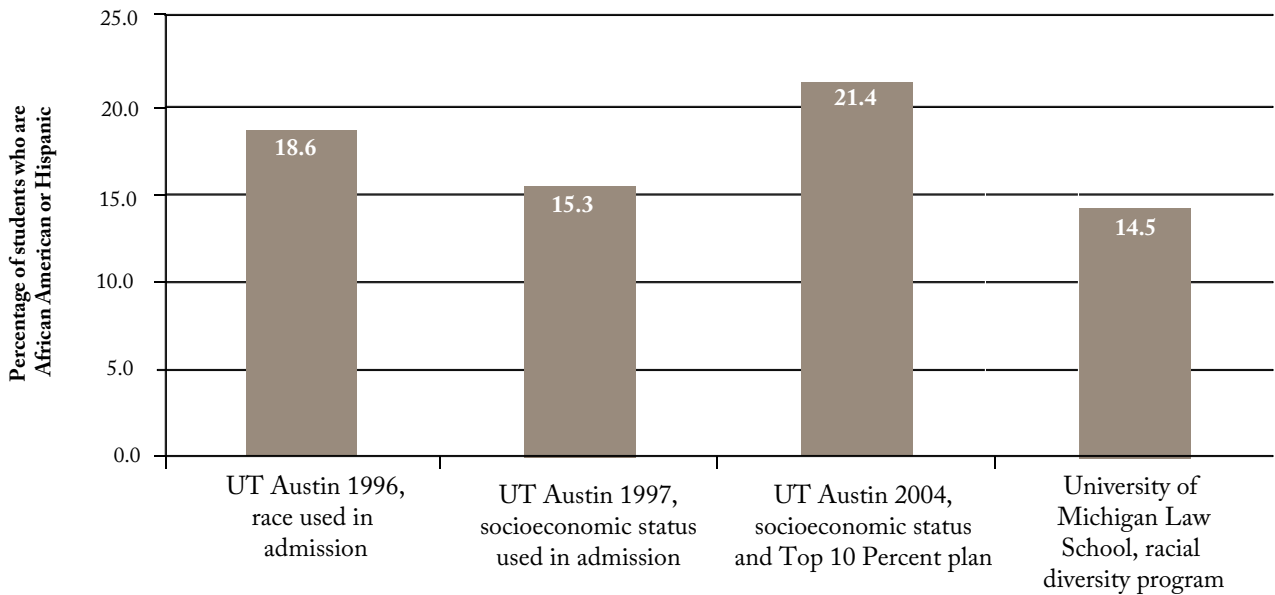
Moreover, in some ways,<sup>47</sup> the University of Texas has a higher burden to use race than the school districts in Seattle and Louisville, because the elementary and secondary education cases involved no issue of "merit"; that is, no argument that a given student "deserved" to go to a particular nonselective elementary or secondary school because she worked hard and "earned" it.<sup>48</sup> The "non-merit-based" nature of the K-12 decisions, Justice Breyer argued, was part of what made the Seattle and Louisville plans "more narrowly tailored than the race-conscious admissions plans that this Court approved in *Grutter*."<sup>49</sup> The fact that five justices struck down the fairly mild use of race when the stakes for nonselected students were so small does not bode well for the survival of affirmative action in the new case, *Fisher v. University of Texas*.

### *\*Texas's Successful Race-Neutral Alternatives: Socioeconomic Affirmative Action and the Top 10 Percent Plan*

Worse for supporters of race-based affirmative action, the facts in the Texas case seem tailor-made to confirm Justice Kennedy's skepticism about the claims by universities and the colleges that they cannot create racial and ethnic diversity except by resorting to explicit racial preferences in admissions. For years, supporters of affirmative action argued that no workable alternatives existed for creating racial diversity. In the words of Justice Harry Blackmun's opinion in the 1978 *Bakke* case: "I suspect that it would be impossible to arrange an affirmative action program in a racially neutral way and have it successful. To ask that this be so is to demand the impossible. In order to get beyond racism, we must first take account of race. There is no other way."<sup>50</sup>

But UT Austin did find another way. In the fall of 1996, using race in admissions, UT Austin's freshman class was 4.1 percent African American and 14.5 percent Hispanic. When UT Austin was temporarily barred from using race by a 1996 Fifth Circuit ruling in the case of *Hopwood v. Texas*, the state did not simply throw up its hands and give up. Instead, it adopted two plans. First, it created a socioeconomic affirmative action plan that gave a leg up in admissions by examining grades and test scores in the context of "special circumstances," including "socio-economic status, whether the applicant is from a single parent home, language spoken at home, family responsibilities, socio-economic status of the school attended, and average SAT or ACT score of the school attended in relation to the student's test scores." Second, an interesting political coalition of civil rights advocates and rural white legislators created a program to automatically admit students in the top 10 percent of every high-school class. The Top 10 Percent plan effectively enables students from disadvantaged schools and lower test scores to be admitted who might otherwise not be. These two programs resulted, in 2004, in a freshman class that was 4.5 percent African American and 16.9 percent Hispanic. In other words, the combined black and Hispanic percentage actually rose from 18.6 percent under the old race-based plan to 21.4 percent under the race-neutral programs. These rates of diversity were also comparable to those found at the University of Michigan Law School, where underrepresented minorities constituted 14.5 percent of the class in 2000, which was deemed to have achieved a "critical mass" of such students.<sup>51</sup> (See figure 3.)

**Figure 3. African American and Hispanic Representation at UT Austin and University of Michigan Law School**



Source: Brief for Petitioner in *Abigail Noel Fisher v. University of Texas at Austin*, et al., <http://www.projectonfairrepresentation.org/wp-content/uploads/2008/08/Brief-for-Petitioner-Fisher-v-Univ-of-Texas.pdf>; *Grutter v. Bollinger*, 539 U.S., at 320 (2003).

In 2005, Texas added race back into the mix in addition to the class-based affirmative action and Top 10 Percent plan after the Supreme Court’s *Grutter* decision effectively overruled *Hopwood*. This reinstitution of race led to Abigail Fisher’s lawsuit. In 2011, the Fifth Circuit ruled in Texas’s favor, and in 2012 the Supreme Court agreed to hear the appeal. Often, the U.S. Supreme Court takes cases when there is a split in the circuit courts on an issue and guidance is necessary. The fact that there was no split in the circuits in this case is yet another reason that supporters of affirmative action are pessimistic about their chances of prevailing.

### *\*New Arguments about Diversity Are Unlikely to Prevail*

Faced with the fact that socioeconomic affirmative action and the Top 10 Percent plan produced considerable racial and ethnic diversity, supporters of race-based affirmative action are making three novel arguments that the use of race is nevertheless justified.

First, supporters suggest that diversity at the school-wide level is insufficient; what’s truly important is diversity at the classroom level. Even with the 2004 levels of diversity, there were thousands of classrooms in which black and Latino students “were nearly non-existent,” the University of Texas brief argues.<sup>52</sup>

Second, supporters suggest that, while the University of Texas did produce greater diversity using the race-neutral plans, this was true in large measure because Texas became more racially and ethnically diverse over time. In fact, the university’s growth in diversity failed to keep up with even faster statewide growth in diversity, which is relevant in defining “critical mass.”<sup>53</sup>

Third, supporters suggest that the class-based affirmative-action and Top 10 Percent plans did not produce sufficient levels of socioeconomic diversity *within* the student body’s black and Latino communities. Those admitted through the Top 10 Percent plan were more likely “to be the first in their families to attend college,” for example, than those admitted through a racial preference. Having wealthier black and Latino students in the mix, Texas argues, is critical to the process of “breaking down racial stereotypes” that other students might have.<sup>54</sup>

Will these arguments fly with the Supreme Court? Shifting the traditional focus from school-wide diversity to classroom diversity seems unlikely to convince a majority of the justices, as there are mathematical challenges to ever ensuring a critical mass of students in all classrooms. Such a requirement is likely to raise concerns that the use of race could be justified for many, many years into the future.

Likewise, while reference to the gap between black and Latino representation at the University of Texas as compared with statewide numbers is a valid public policy concern, as a legal matter, it has never been accepted by the U.S. Supreme Court. In *Grutter*, Justice O'Connor, said it is permissible to use race to achieve a "critical mass" of minority students to promote the educational benefits of diversity, but never suggested that it was appropriate to seek racial representation at universities with reference to a state's demographic makeup. If the argument referencing statewide demographics would have had a hard time prevailing with the Supreme Court in 2003, it is very unlikely to convince a far more conservative Supreme Court today.

Moreover, the argument for using race to admit more advantaged students of color seems unlikely to sway the court. To begin with, while it is important for a university to have minority students from a wide variety of backgrounds in order to combat stereotypes, it is poor and working-class students of color, not upper-class students of color, who are missing from the equation. Wealthy kids of all colors predominate at selective universities, and, with or without affirmative action, on average are the candidates most likely to qualify for admission on the merits given the educational advantages they enjoy. Furthermore, the call for admitting more wealthy students of color highlights the very weakest moral argument for race-based affirmative action, as President Obama implicitly acknowledged when he suggested that his own daughters, as fairly privileged students, do not deserve an affirmative action preference. In short, trying to stretch *Grutter* in a more liberal direction with a more conservative Supreme Court seems unlikely to prove a winning strategy.

## II. What Should Replace Racial Affirmative Action in Higher Education?

If the Supreme Court curtails or even eliminates the ability of universities to use race and ethnicity in admissions, the impact would be considerable. The vast majority of selective colleges and universities employ racial or ethnic preferences in admissions, and a Supreme Court ruling would have an impact on both public and private institutions. Although the suit in *Fisher v. University of Texas* involves a constitutional challenge at a state university, any prohibitions the Supreme Court imposes will also apply to private institutions. The Court has long held that whatever the Fourteenth Amendment prohibits in the area of affirmative action also applies to Title VI of the Civil Rights Act, which forbids discrimination in educational institutions receiving federal dollars.<sup>55</sup> Virtually all private higher education institutions in the United States receive federal funding and are therefore covered under Title VI.

What are universities likely to do if the ability to employ racial preferences is significantly curtailed by the Supreme Court? The good news for those who care about racial and economic equality is that in eight of the nine states where affirmative action has been banned statewide (or dropped by individual institutions), vigorous alternatives have been adopted. (The one exception is New Hampshire, whose ban did not go into effect until January 2012.)

As my colleague Halley Potter notes in considerable detail in section III of this report, in the face of bans on race-based affirmative action, states and/or individual universities have adopted a variety of approaches to indirectly produce racial and ethnic diversity. Perhaps because of the *Fisher* litigation, a great deal of attention has been paid to Texas's Top 10 Percent plan, which focuses on class rank rather than standardized test scores. This is an important approach, which two other states (California and Florida) have adopted. But high school percentage plans may be difficult to apply in the context of private universities or graduate programs, so it is important to note that there are many additional strategies that have been adopted by states.

Seven of nine states have adopted class-based affirmative action programs that give a leg up in admissions to economically disadvantaged students (identified by such factors as parental income, education level, and single-parent status). In three states, key public universities have dropped legacy preferences that provide an advantage to the children of alumni, a group which is disproportionately wealthy and white.<sup>56</sup> In eight states, financial aid programs have been beefed up, as have recruitment efforts. In six states, partnerships have been established between universities and K-12 institutions to improve the pipeline of academically advanced low-income and minority students. And in two states, stronger programs have been created to facilitate transfer from community colleges to four-year institutions.



# The Independent Value of Race-Neutral Affirmative Action Programs

Below, this report discusses the extent to which these race-neutral approaches can produce racial and ethnic diversity, but as an initial matter, it is important to note that these strategies are worth pursuing on their own merits, whatever the racial dividend.

If college admissions officers want to be fair—truly meritocratic—they need to consider not only a student’s raw academic credentials, but also what obstacles she had to overcome to achieve them. As noted earlier, the most economically disadvantaged student is expected to score 399 points lower on the math and verbal sections of the SAT than the most advantaged. This information can be used to identify what Anthony Carnevale calls “strivers”—students who overcame the odds to do quite well despite various disadvantages. In this way, economic affirmative action is not meant to be a challenge to merit but rather a better approximation of it. Unlike race-based affirmative action, class-based preferences compensate for what research suggests are the more substantial obstacles in today’s world: those associated with socioeconomic status. A 1200 SAT score surely means something more for a low-income, first-generation college applicant who attended terrible schools than for a student whose parents have graduate degrees and pay for the finest private schooling.

Percentage plans can open up the doors to students from high schools that may never have sent students in the past. Eliminating legacy preferences, as I have outlined at length elsewhere, takes away an unfair advantage held by privileged applicants, and appears to do no harm to university fundraising.<sup>57</sup> New financial aid initiatives can open the door to deserving students who would otherwise not attend or graduate from college.<sup>58</sup> And K–12 partnerships go about the hard work of actually developing talent, not just providing a preference in admissions.

## The Racial, Ethnic, and Economic Diversity Benefits of Race-Neutral Alternatives

In addition to their intrinsic merit, economic affirmative action programs, percentage plans, new financial aid packages, K–12 partnerships, and the elimination of legacy preferences can have a substantial impact on creating racial and ethnic diversity, as both the experience of states suggest and national simulations find.

### *\*Results from State Experiments in Race-Neutral Affirmative Action*

In creating race-neutral alternatives to affirmative action, states have for more than a decade been serving as “laboratories for democracy.” The evidence presented in Section III of this paper suggests that it is possible to produce a critical mass of African American and Latino students in leading universities without resorting to racial preferences per se. Indeed, at seven of the ten<sup>59</sup> universities examined using race-neutral plans—UT Austin, Texas A&M, the University of Washington, the University of Florida, the University of Georgia, the University of Nebraska, and the University of Arizona—the representation of African Americans and Latinos met or exceeded the levels achieved when the universities had used racial preferences.

As noted above, UT Austin was able to create even higher levels of black and Latino representation in 2004 using the Top 10 Percent plan and class-based affirmative action than it did using race in 1996 prior to being banned (temporarily) from using race.<sup>60</sup> Texas A&M, likewise, has in every year since 2005 achieved greater Latino representation than it did in 1996, the last year race and ethnicity was considered. Furthermore, while African American representation initially declined with the ban on racial preferences (from 3.6 percent to 2.9 percent), in subsequent years it has managed to match or even exceed black representation since the race-neutral alternatives were put in place.<sup>61</sup>



The University of California (UC) system, which has been barred from using race following passage of a 1996 voter initiative, Proposition 209, has employed a percentage plan and economic affirmative action, among other race-neutral approaches. The overall UC system—which includes nine campuses—has seen an increase in racial and ethnic diversity in the years since Proposition 209. The proportion of blacks and Latinos who made up new freshman initially declined from 18 percent in 1997 to 15 percent in 1998, but by 2008, it reached 24 percent. The elite institutions—UC Berkeley and UCLA—have still not fully recovered the diversity levels found prior to Proposition 209, but they have made a great deal of progress. The share of African American and Latino new freshman declined from 23 percent in 1997 to 14 percent in 1998 (the first year of race-blind admissions), but has since rebounded to 20 percent.<sup>62</sup>

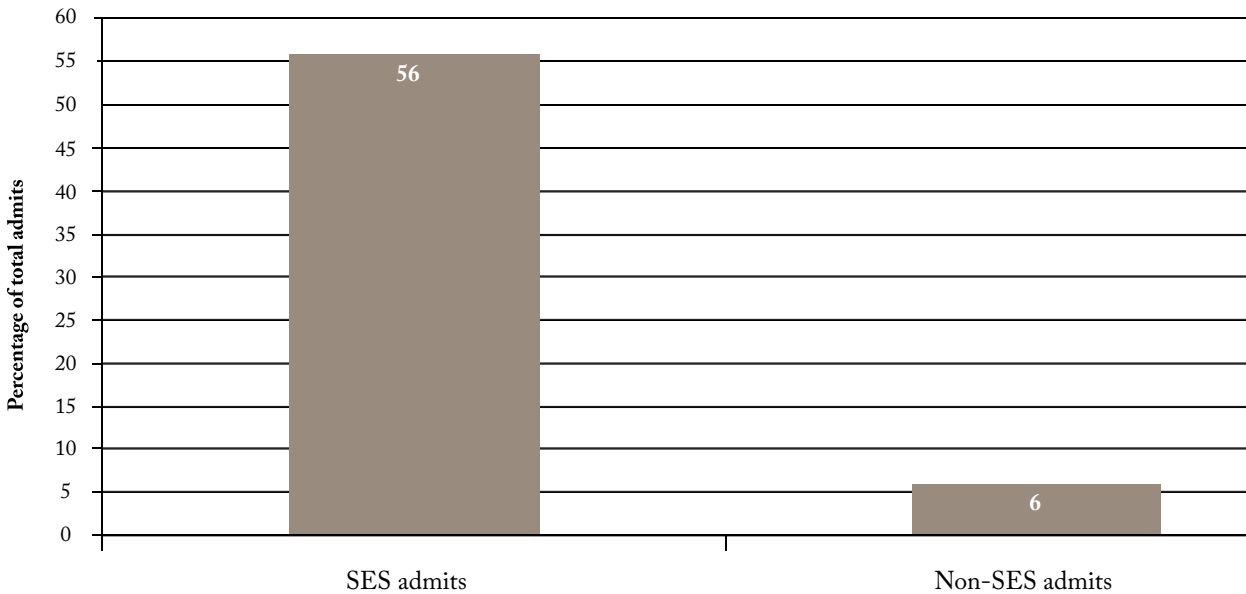
At UCLA Law School, under a program counting wealth and single-parent family status alongside other traditional socioeconomic status (SES) factors, in the fall 2011 entering class, African Americans were 11.3 times as likely to be admitted under the socioeconomic program as other programs, and Latinos were 2.3 times as likely to be admitted.<sup>63</sup> As indicated in Table 1, African Americans constituted 20.4 percent of those admitted under the SES program (22 of 108) compared with 0.8 percent of admissions for non-SES programs (12 of 1,363). Likewise, Latinos constituted 35.2 percent of SES admits (38 of 108) compared with 5.5 percent for non-SES admits (75 of 1,363). Even though the SES program admitted 108 students, compared with 1,363 under non-SES, the absolute number of African Americans admitted under the SES program (22) exceeded the number admitted under other programs (12).

**Table 1. Racial and Ethnic Breakdown of SES vs. Non-SES Admissions, UCLA Law School, 2011**

	SES			All Others		
	Applicants	Admits	Enrolled	Applicants	Admits	Enrolled
Race/ethnicity unknown	22	3	2	1,361	305	55
Nonresident alien	13	3	1	325	32	3
Hispanics of any race	158	38	13	731	75	16
American Indian/Alaskan native	1	0	0	16	5	4
Asian	55	19	7	971	189	40
Black/African American	63	22	4	382	12	3
Native Hawaiian/other Pacific Islander	0	0	0	13	2	0
Caucasian/white	101	20	6	2,833	696	157
Two or more races	21	3	2	262	47	6
Total	434	108	35	6,894	1,363	284

Source: Karman Hsu, director of admissions, UCLA Law School, email to Halley Potter on September 4, 2012.

**Figure 4. Black/African American and Hispanic Admits, SES vs. Non-SES Admits, UCLA Law School, Fall 2011**



Source: Karman Hsu, director of admissions, UCLA Law School, email to Halley Potter on September 4, 2012.

At the University of Washington, black and Latino representation dropped in the first year that race was banned, but in several subsequent years has matched or exceeded pre-ban representation.<sup>64</sup> At the University of Florida, Latino and black representation fell in the year race was banned from consideration but subsequently rebounded to higher levels than was true when race was used. Hispanic representation declined from 12.0 percent to 11.2 percent when race was dropped, but subsequently climbed to 16.6 percent. Black representation fell from 11.7 percent to 7.2 percent but reached a high under race-neutral affirmative action of 14.1 percent.<sup>65</sup> At the University of Georgia, blacks had a 4.6 percent representation and Latinos a 1.5 percent representation in 2001, the last year in which race and ethnicity were considered in admission, and in the most recent year (2010) black and Latino representation under race-neutral alternatives was even higher: 7.3 percent for African Americans and 4.3 percent for Latinos.<sup>66</sup> The University of Michigan has done less well. Before the use of race was eliminated, 5.6 percent of the freshman enrollment was black and 4.5 percent Hispanic; in 2010, black representation had declined modestly to 4.4 percent and Latinos to 4.2 percent.<sup>67</sup> At the University of Nebraska, the proportion of blacks and Latinos is higher than when race and ethnicity in the year prior to when race and ethnicity were eliminated from admissions.<sup>68</sup>

Of course, part of the reason that states have had some success in preserving or exceeding minority representations at flagship schools is that minority populations (particularly Latino populations) have been growing statewide relative to the white population.<sup>69</sup> To address these issues, states should pursue economic affirmative action more aggressively than they have in the past. But recall that from a legal standpoint, the use of race is justified not to achieve a certain representation in relation to statewide statistics, but rather to achieve a critical mass of students on campus who will share the benefits of educational diversity. In this way, the growing proportion of minority students as a share of the general population will make it easier and easier for states to achieve critical mass without resorting to racial preferences in admissions.

On the whole, states have been remarkably successful in preserving—or even exceeding—the levels of racial and ethnic diversity found before the use of race and ethnicity was eliminated as an admissions criteria. Modestly less successful were the mostly highly selective schools—UC Berkeley, UCLA, and the University of Michigan at Ann Arbor—but these particular examples may overstate the decline in diversity that would occur if a *national* rule were put in place regarding affirmative action by the U.S. Supreme Court.

Berkeley, UCLA, and Michigan, more than the other schools in the sample, are highly selective and compete for a national pool of students who may have been considering a number of public and private options at institutions that still are able to consider the use of race and ethnicity in admission.<sup>70</sup> In this regard, Michigan, UCLA, and Berkeley face an uneven playing field in recruiting minority applicants. These schools must compete for minority students who are being offered large racial preferences at other top undergraduate institutions (public institutions in states that have not banned racial affirmative action or private institutions throughout the country), and may be courted with the offer of race-based scholarships. This problem is exacerbated because some minority students are understandably interested in attending a school with a strong core of minority classmates and may not even apply to the relatively few universities now operating under a ban on racial preferences. Indeed, research finds that underrepresented minorities and African Americans in particular “are more likely to spurn an offer from UC than they were before Prop. 209, and the difference compared to white/Asian Americans has gradually widened under Prop. 209.”<sup>71</sup> All of which is to say that the positive racial dividend of economic affirmative action and other race-neutral programs is likely to be greater in the event that all schools are playing by the same set of rules regarding the use of race.

### *\*The Size and Aggressiveness of Race-Neutral Affirmative Action Programs Matters*

One of the other striking findings from the states pursuing race-neutral alternatives is that they may be able to achieve even greater levels of racial and ethnic diversity by pursuing programs like class-based affirmative action more aggressively than they already have. The percentage of low-income and working-class students (those eligible for federal Pell Grants) has increased at all of the universities profiled, compared to the last year in which race was used in admissions in each case.<sup>72</sup> But national percentages of Pell recipients also increased during those time periods at public flagships nationally and among all college students nationally as the economy deteriorated and rules governing Pell eligibility shifted.<sup>73</sup>

This state of affairs suggests there may be room for improvement in making race-neutral programs even more aggressive. More institutions could adopt percentage plans or drop legacy preferences in admissions. And economic affirmative action programs could be pursued more vigorously. For example, the data regarding UCLA Law School’s program cited above suggests that while it had a very positive racial dividend, it remained modest in size: the law school admitted only 108 of 1,471 students (7 percent) through the SES program. A broader socioeconomic program, involving greater numbers of students, could presumably increase minority representation further, without employing race *per se*.

Likewise, the weight of the socioeconomic preference provided can be very important. A 2010 study modeling an interesting new economic affirmative action experiment at the University of Colorado, Boulder suggests that some universities may be able to equal or even exceed the racial diversity that they have achieved under racial affirmative action programs if they provide a sufficiently large boost to socioeconomically disadvantaged students.<sup>74</sup>

The research grew out of practical considerations. As noted above, in November 2008, Colorado voters considered banning race-based affirmative action and narrowly decided not to. In anticipation of a possible ban, the University of Colorado formulated a race-neutral alternative focusing on socioeconomic status and conducted an experiment using ten admissions officers reviewing the files of a random sample of 478 actual applicants. These students had applied and been accepted or rejected under the race-based system, which served as the baseline. The ten admissions officers then participated in a second review with race stripped from the applications and employing metrics to give a preference to socioeconomically disadvantaged applicants of all races. In the experiment, the university decided to provide a large boost to socioeconomically disadvantaged applicants—larger than that currently provided to legacies or minorities. Under the race-based plan, holding grades and standardized test scores constant, underrepresented minorities were 1.4 times as likely as others to be admitted, while under the class-based approach, economically disadvantaged students were 2.2 times as likely to be admitted as other students.

The study, conducted by Matthew N. Gaertner, found that using a sizeable socioeconomic boost, economic diversity increased compared with using a system of race-based affirmative action. But, surprisingly, racial diversity also increased, though the sample size was too small to yield a statistically significant result. Acceptance rates for economically disadvantaged students increased from 72 percent to 81 percent, while acceptance rates for underrepresented minorities increased from 56 percent to 64 percent. The “somewhat surprising” increase in minority representation in the class-based approach, compared with the race-based one, “highlights the importance of the size of the boost conferred by identification in class-based affirmative action,” Gaertner wrote.

Significantly, even with the larger boost in admissions, the academic credentials of the two groups—those admitted under class-based and race-based affirmative action—were not much different. The mean high school GPA was 3.56 for those admitted under the class approach, and 3.58 for those admitted under the race approach. Likewise, the mean combined SAT score was separated by just ten points: 1197 under the class approach, and 1207 under the race approach.

### *\*Results from National Simulations at Selective Public and Private Colleges and Universities*

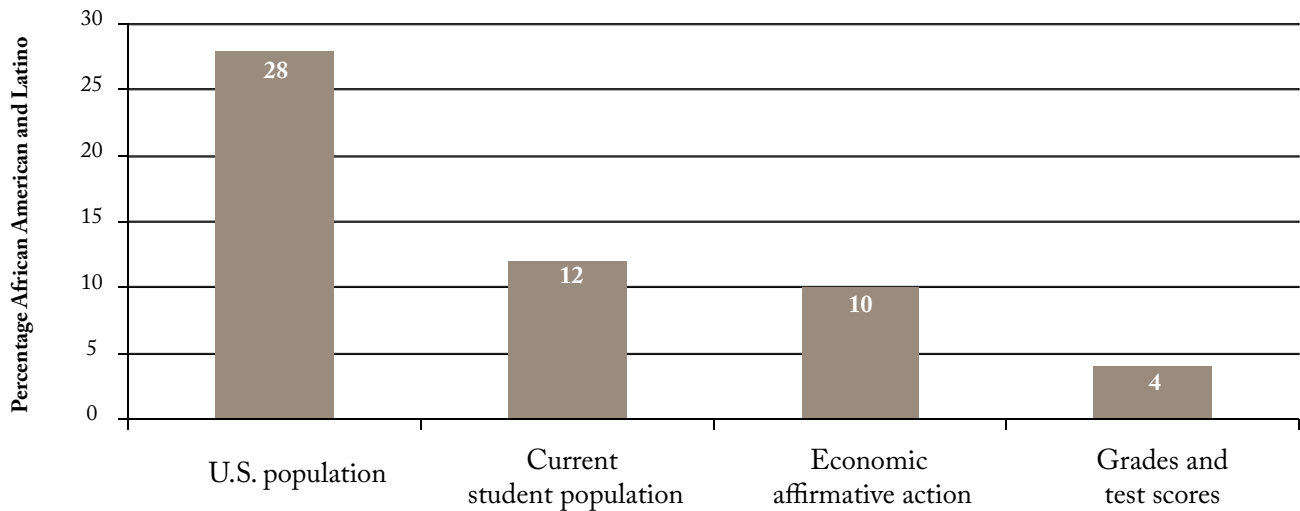
What does the national research suggest about class-based affirmative action at leading public and private universities and colleges? Some of the early scholarship on class-based affirmative action suggested that income is a poor proxy for race. A 1998 study by Harvard professor Thomas Kane found that while blacks and Hispanics are disproportionately represented among low-income students, only 17.3 percent of high scoring low-income students are black and Hispanic.<sup>75</sup> Any income-based affirmative action program would therefore need to admit many low-income white and Asian students in order to also bring in low-income black and Hispanic students.

Subsequent research, however, examined a more complex set of socioeconomic factors. In 2003, the University of California’s Roger E. Studley found that using a definition of economic disadvantage that included parental income, education, language, neighborhood, and high school boosted racial diversity substantially. Studley found that in California, class-based affirmative action would raise African American and Latino enrollment at a selective UC campus from 7.6 percent the campus population (under a system of grades and test scores) to 17.2 percent, only a modest drop from the 18.3 percent representation under race-based affirmative action.<sup>76</sup>

Likewise, the study conducted by Anthony Carnevale and Stephen J. Rose of the nation’s most selective colleges and universities used a more complex definition of socioeconomic disadvantage than Kane’s study.<sup>77</sup> For the top 146 colleges, as defined by *Barron’s Guide*, Carnevale and Rose simulated a pool consisting of (a) all students who have good grades and score above 1300 on the math and verbal sections of the SAT (or the ACT equivalent), plus (b) economically disadvantaged students with high grades and test scores (between 1000 and 1300 on the SAT). Students were considered disadvantaged if they were in the bottom 40 percent by socioeconomic status (defined as parents’ income, education, and occupation) and/or attended high schools with a high percentage of students eligible for free and reduced price lunch or low percentage of high school graduates. Carnevale and Rose’s model assumed that all students within the defined pool—disadvantaged students who score between 1000 and 1300 on the SAT plus all students (advantaged and disadvantaged) who score between 1300 and 1600 on the SAT—have an equal chance of admissions.<sup>78</sup> The 1000 cutoff is employed because students have a good chance of succeeding when they score above that point. The authors estimated that the preference implied under the model is roughly half the size currently used for race. The top 146 colleges represent the most selective 10 percent of four-year colleges and are at the heart of the debate over affirmative action policies, which currently are used primarily at the top 20 percent of four-year colleges.<sup>79</sup>

In their analysis, the authors found that while university admissions based on grades and test scores would yield student bodies that have a 4 percent combined black and Latino admissions, class-based preferences would boost that to 10 percent black and Latino, somewhat short of the current 12 percent representation. (See Figure 5.)

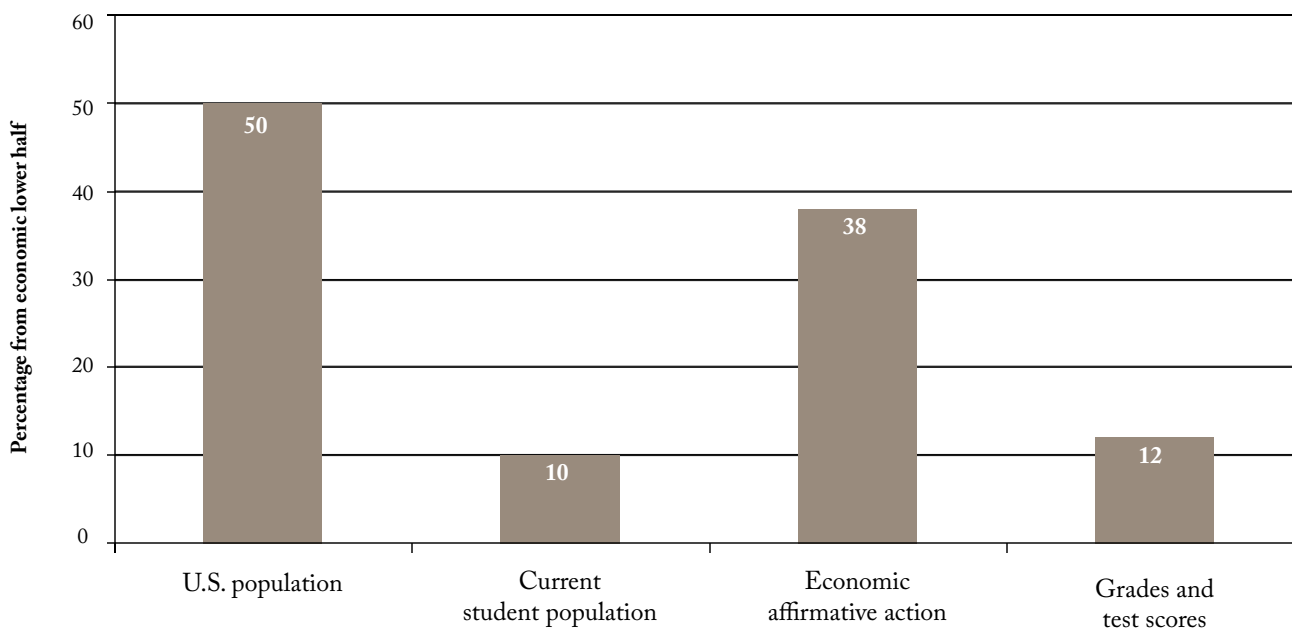
**Figure 5. Racial Diversity at Top 146 Colleges**



Source: Anthony P. Carnevale and Stephen J. Rose, "Socioeconomic Status, Race/Ethnicity, and Selective College Admissions," in *America's Untapped Resource: Low-Income Students in Higher Education*, ed. Richard D. Kahlenberg (New York: Century Foundation Press, 2004), 141, 142 and 148.

Moreover, Carnevale and Rose found, economic affirmative action would produce far greater levels of socioeconomic diversity than colleges currently enjoy. (See Figure 6). If the value of diversity from an educational standpoint is based in large measure on the different life experiences that students bring to the classroom, then a white student growing up in a trailer home, a black student growing up in a ghetto, or a Latino student growing up in a barrio is likely to bring as much diversity as the son of a doctor or lawyer, no matter his race.

**Figure 6. Economic Diversity at Top 146 Colleges**



Source: Anthony P. Carnevale and Stephen J. Rose, "Socioeconomic Status, Race/Ethnicity, and Selective College Admissions," in *America's Untapped Resource: Low-Income Students in Higher Education*, ed. Richard D. Kahlenberg (New York: Century Foundation Press, 2004), 141, 142 and 149.

None of the economic models sustain the current level of racial diversity in part because data show that even middle-class African Americans lag in achievement, on average.<sup>80</sup> This is true, no doubt, because racism continues to afflict our society in myriad ways. (See discussion below.) But from a legal and policy standpoint, the question becomes, are there economic manifestations of racial discrimination—in the housing market, in employment, and in education—that can be used to counteract the effects of racism without resorting to racial preferences? A wide body of research finds that standard indicators of socioeconomic status provide an inadequate measure of economic well-being and underestimate the ways in which African Americans tend to be economically disadvantaged compared with whites. Three factors in particular stand out: differences in concentrated poverty, differences in wealth or net worth, and differences in family structure.

One additional obstacle that black and Latino students face is that they are more likely to live in neighborhoods with concentrated poverty than whites of similar income—which imposes a disadvantage on those students.<sup>81</sup> One recent study found that black families with incomes in excess of \$60,000 live in neighborhoods with higher poverty rates than white families earning less than \$30,000.<sup>82</sup> Counting in college admissions whether a student lives in concentrated poverty will disproportionately benefit students of color.

Another obstacle faced disproportionately by blacks, even when they have similar incomes to whites, is the lack of wealth or financial assets. Research finds that having low net worth has an independent effect on one's educational chances, net of income, because it affects whether one can afford to buy a home in a good neighborhood with good schools, and whether a student has the confidence that if she works hard she can afford to attend college.<sup>83</sup> And while black median income is 62 percent of white income, black median net worth is just 5 percent of white net worth.<sup>84</sup>

On some outcomes—such as college completion rates—factoring in wealth completely eliminates the black/white gap.<sup>85</sup> As Carnevale has noted, using a sophisticated and robust wealth factor in admissions could very well maintain—or even exceed—levels of racial diversity currently achieved employing race-based affirmative action.<sup>86</sup> According to a report in the *Chronicle of Higher Education*, Carnevale found that using a model of class-based affirmative action which employs a family wealth measure meant “black and Hispanic enrollments would actually be higher than they had been under affirmative action with racial preferences.”<sup>87</sup>

A third obstacle, disproportionately borne by black children, is the likelihood that they grow up in single-parent households. The negative effect of growing up in a single-parent household goes beyond reduced income; it also means less supervision and support, on average.<sup>88</sup> In 2010, 66 percent of African American children were being raised in single-parent households compared with 24 percent of white children.<sup>89</sup> Building each of these elements into a class-based affirmative action program—concentrated poverty, wealth, and single-parent household status—is a fair consideration of factors known to affect educational outcomes and would benefit students of color disproportionately.

## Response to Critics of Socioeconomic Affirmative Action and Percentage Plans

Although class-based affirmative action is far more popular among the broader American public than race-based preferences and racial affirmative action faces enormous legal challenges, critics raise a number of objections. Race-neutral alternatives to affirmative action supposedly are disingenuous and unseemly, deny the ongoing significance of racial discrimination, will elevate unprepared students into competitive universities, may themselves be struck down by conservative courts, and, finally, should be a supplement—not a substitute—for racial preferences. We take each in turn.



*\*Objection: Race-Neutral Alternatives to Affirmative Action  
Are Disingenuous and Unseemly*

Some critics see race-neutral affirmative action as phony: if we want racial diversity, they suggest, we should just be honest and use race, rather than indirect means such as socioeconomic affirmative action or percentage plans. Some go further and suggest, in the case of percentage plans, that it is unseemly to leverage the fact that American high schools are racially segregated to produce racial diversity in higher education.

It is true, of course, that race-neutral alternatives such as socioeconomic affirmative action do not yield race-neutral results: a major part of their attractiveness is related to their ability to produce racial diversity. But there are significant moral and political costs to using race in deciding who gets ahead in society, which is why the Supreme Court, and the American public, generally disfavor its explicit use.

If some find it unseemly to rely on the unfortunate reality of racial segregation between high schools to produce diversity in colleges, many Americans find it highly objectionable to use skin color as a factor in deciding who wins admission. Supporters of racial affirmative action are right to deny that there is a moral equivalence between discriminating in favor of historically oppressed groups and against them, but that does not mean there are no costs to the practice. As the Supreme Court has recognized, basic notions of fairness are offended when individuals are favored because of race, especially when those individuals are economically privileged. For political progressives, there are additional costs to class-blind racial preference policies that encourage white working-class voters to vote their race rather than their class.

While race-neutral alternatives may be deemed disingenuous by some critics, in fact they comport with where both a majority of Americans are, and where Fourteenth Amendment jurisprudence points: people want racial and ethnic diversity in colleges but they do not like racial preferences. It is entirely reasonable, given the moral costs associated with using race, to conclude that if universities can achieve racial diversity without racial preferences, then that is the preferred course to take.

*\*Objection: Race Still Matters, So Preferences Should Reflect That*

Some critics support racial preferences as a way of publicly affirming that racism continues to afflict American society. Only a fool would say racial discrimination has been eradicated, but the appropriate remedy to racial discrimination, under our laws, is punishment under civil rights statutes. Although it is routinely argued that racial preferences need to be in place as long as discrimination occurs, the courts have never allowed racial preferences as a means of counteracting ongoing societal discrimination. In the 1978 *Regents of the University of California v. Bakke* case, where the Supreme Court upheld the use of race as a factor to promote diversity in education, the Court flatly rejected the idea of racial preferences as a remedy for generalized discrimination in society—a rejection reaffirmed in the 2003 *Grutter* case.<sup>90</sup>

Moreover, using the right set of economic criteria in class-based affirmative action programs can help capture—and counteract—past and current instances of racial discrimination. In the employment sector racial discrimination is reflected in lower earnings for black families. Likewise, ongoing discrimination in the housing market is reflected in the fact that black and Latino students are much more likely to live in neighborhoods with concentrated poverty than whites of similar income.<sup>91</sup> Most powerful of all, because wealth is accumulated over generations, the nation's steep wealth inequality reflects in some important measure the legacy of slavery and segregation as well as ongoing discrimination in the housing market.<sup>92</sup> Smartly structured economic affirmative action programs can address these instances of discrimination indirectly, without conflicting with our legal system and public perceptions of fairness.

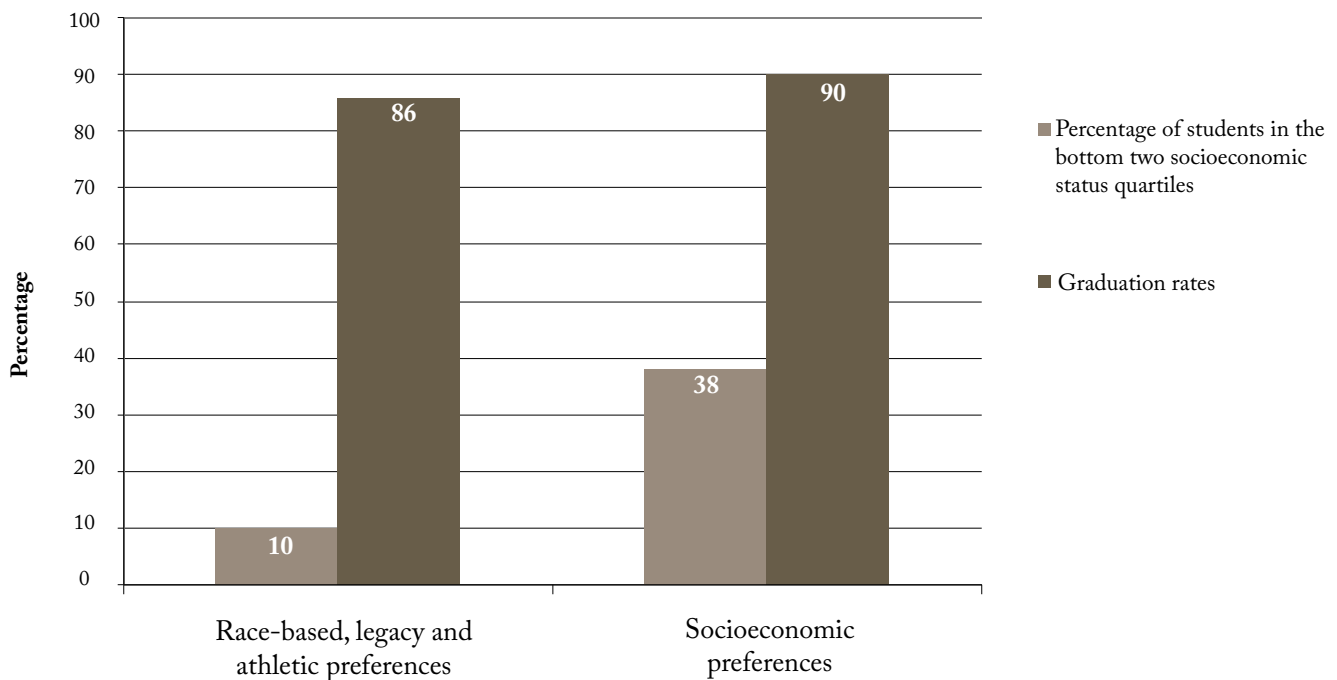


*\*Objection: Race-Neutral Alternatives Will Overwhelm Students Who Are Academically Under-prepared*

Much as critics of race-based affirmative action have suggested that minority students are overwhelmed in selective colleges, many supporters of racial affirmative action now suggest that percentage plans and programs to admit more low-income students will harm academic standards. The University of North Carolina, for example, in an amicus brief in *Fisher*, claimed that admitting students in the top 10 percent of high schools in North Carolina would result in a serious decline in academic quality, suggesting “many of the new ‘automatic admits’ would quickly find themselves educationally lost amid the faster pace of Chapel Hill—flocking to remedial courses to overcome their relatively weak secondary school education and facing increasing challenges to reach graduation.”<sup>93</sup>

In fact, research simulating the effects of socioeconomic affirmative action, and the actual experience of top 10 percent students in Texas, suggest the critics are crying wolf. With respect to class-based affirmative action, Anthony Carnevale and Stephen J. Rose have found that selective universities could, through a merit-based system that also considers socioeconomic disadvantage, boost the representation of students from the bottom socioeconomic half from 10 percent currently to 38 percent and graduation rates would remain the same as under our current system of admissions that includes various preferences for minority students, athletes, and children of alumni.<sup>94</sup> (See Figure 7.)

**Figure 7. The Results of Socioeconomic Preferences versus Other Preferences**



Source: Anthony P. Carnevale and Stephen J. Rose, “Socioeconomic Status, Race/Ethnicity, and Selective College Admissions,” in *America’s Untapped Resource: Low-Income Students in Higher Education*, ed. Richard D. Kahlenberg (New York: Century Foundation Press, 2004), 142, 149.

Other researchers have similarly found that there is a strong pool of economically disadvantaged students who could do well even at the nation’s most selective colleges and universities. William Bowen and colleagues found in a 2005 study that the percentage of students from low-income families at the nineteen selective colleges they studied could rise more than 50 percent (from 11 percent today to 17 percent) without “any reduction in academic standards.” Currently, they note, half of all students from the bottom income quartile who have SAT scores in the 1350–1400 range are rejected.<sup>95</sup> Likewise, researchers Gordon Winston and Catherine Hill have found that at thirty-one very selective colleges that make up the Consortium on Financing Higher Education (COFHE), the representation of students from the bottom two quintiles could rise by 30 percent (from 10

percent to 13 percent) without any change in academic quality (measured by having at least a 1420 SAT score). Representation could rise by 60 percent (to 16 percent) without taking students scoring below 1300 on the SAT.<sup>96</sup>

Likewise, William Bowen's 2009 research finds that low-income students significantly "undermatch," attending institutions that are less selective than ones to which they could be admitted.<sup>97</sup> And the Jack Kent Cooke Foundation and Civic Enterprises identified 3.4 million high achieving low-income K–12 students, defined as those coming from families below the national median income and scoring in the top academic quartile.<sup>98</sup> Astoundingly, Carnevale and Strohl find, only 44 percent of high performing (top quartile) low-income students go to any college at all. The authors note that "our lowest performing affluent students go to college at a higher rate than the highest performing youth from the least advantaged families."<sup>99</sup> Carnevale and Rose conclude, "There are large numbers of students from families with low income and low levels of parental education who are academically prepared for bachelor's degree attainment, even in the most selective colleges."<sup>100</sup>

There is also some evidence that a student who has done well despite having to overcome serious obstacles is likely to have greater long-run potential. One study of Harvard students in the 1950s, 1960s, and 1970s found that blue collar students with more modest SAT scores were more successful as adults when measured by income, community involvement, and professional satisfaction.<sup>101</sup>

So too, research suggests that the fear that the Texas Top 10 Percent plan would admit ill-prepared students who would perform poorly turned out to be unfounded. Looking at data from 1990 to 2003, Sunny X. Niu and Marta Tienda examined the question of whether students granted automatic admission by graduating in the top 10 percent of their class performed less well than those who graduated from highly competitive high schools and ranked lower. The authors concluded, "Compared with White students ranked at or below the third decile, top 10% Black and Hispanic enrollees arrive with lower average test scores yet consistently perform as well or better in grades, 1<sup>st</sup>-year persistence, and 4-year graduation likelihood."<sup>102</sup>

Some of the concern about the academic preparedness of students admitted under percentage plans may be driven more by worries about prestige than anything else. For example, the University of North Carolina's own simulation of what would happen if the university were to drop racial preferences and admit students from the top 10 percent of high school classes in North Carolina found that racial and ethnic diversity would actually increase—from 15 percent to 16 percent "non-white and underrepresented students"—but the average SAT of entering pupils would decline by 55 points.<sup>103</sup> This seems like a fairly damning admission. The Supreme Court so strongly disfavors state institutions using race to decide who gets ahead that it requires that the use of racial preferences be "necessary" to further a "compelling" purpose. It seems clear that the justices are unlikely to find that avoiding a modest 55-point SAT decline truly meets this very high standard.

### *\*Objection: A Conservative U.S. Supreme Court Will Strike Down Race-Neutral Alternatives, Too*

Some critics worry that if the Supreme Court strikes down race-based affirmative action today, it will strike down race-neutral alternatives tomorrow. But that view misunderstands the way the courts view policies that classify individuals by race versus those that classify individuals by economic status.

The courts have long held that distinctions based on income are broadly permissible: the progressive income tax, for example, which imposes a higher marginal tax rate for the wealthy, presents no constitutional problem, while a tax system that imposed a higher marginal rate on whites than blacks would likely be struck down. Whereas the use of race by the government is subject to "strict scrutiny," the government's use of economic status need meet only the more relaxed "rational basis" test.<sup>104</sup> Even opponents of using race in student assignment concede that using socioeconomic status is perfectly legal.<sup>105</sup> Indeed, the most conservative U.S. Supreme Court justices, Antonin Scalia and Clarence Thomas, have explicitly endorsed class-based affirmative action programs.<sup>106</sup>

### *\*Objection: Colleges Should Pursue Race-Based and Class-Based Affirmative Action Simultaneously*

Many smart and highly respected individuals who agree with the arguments outlined above—that universities should pursue economic affirmative action—nevertheless suggest that colleges should give admissions preferences on the basis of race and class, asking, why not “do both?”<sup>107</sup> This is a difficult issue, with strong arguments on both sides, but ultimately, real world experience with affirmative action suggests that socioeconomic and race-based affirmative action rarely coexist in practice.<sup>108</sup> Universities purport to be interested in pursuing socioeconomic diversity<sup>109</sup> but rarely do they do so in practice with one major set of exceptions: when barred for using race, universities will employ class-based preferences as a means of pursuing racial diversity indirectly.

One would think that economic diversity would be a fairly uncontroversial goal in higher education, but the evidence suggests it is little-valued for its own sake. As Richard Sander, a UCLA Law professor, has noted, “only one out of every 20 people I’ve talked to in the legal academy attach value to the idea of economic diversity.” He continued, “Schools that are willing to throw themselves into the fire to preserve racial effects act like class-based affirmative action is if anything a bad thing.”<sup>110</sup>

Sophisticated research has consistently found that selective colleges and universities provide considerable weight in admissions to candidates who will add racial and ethnic diversity, but much less weight to those who will contribute socioeconomic diversity. Earlier in this report, we noted three studies finding that race and ethnicity count heavily in admission decisions at selective colleges and universities. But each of these studies finds class is a relatively small consideration.

A 2009 analysis by Thomas Espenshade and Alexandria Walton Radford finds that, at highly selective private institutions, the boost provided to African American applicants is worth 310 SAT points (on a 1600 scale) compared with 70 points for working class students and 130 points for poor students.<sup>111</sup> (See Figure 8.)

**Figure 8. Boost in the Admissions Process at Highly Selective Private Institutions, with an Emphasis on Race not Class, in SAT Points**

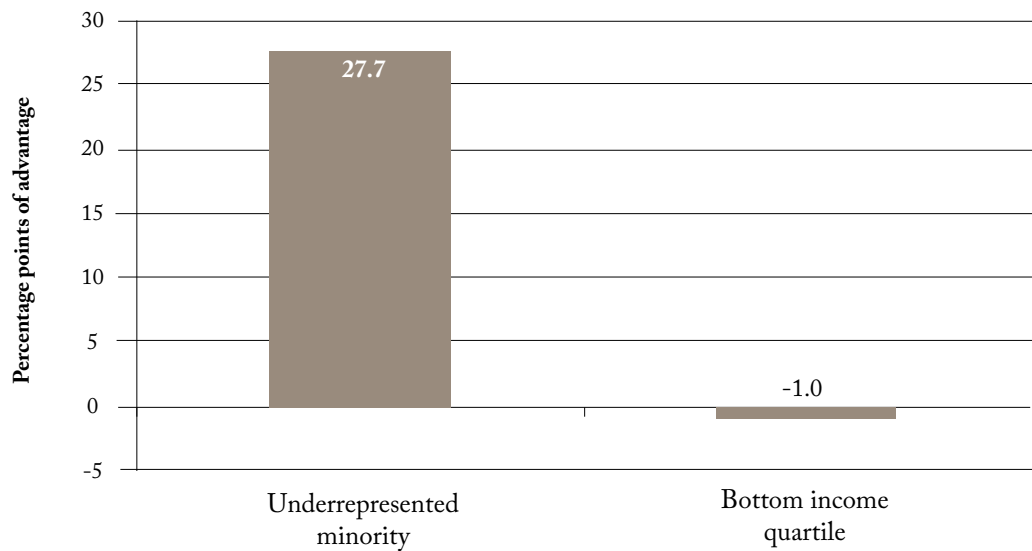


Source: Thomas J. Espenshade and Alexandria Walton Radford, *No Longer Separate, Not Yet Equal* (Princeton, NJ: Princeton University Press, 2009), 92, Table 3.5.

So too, in a 2005 study of highly selective institutions, William Bowen and colleagues found that being an underrepresented minority increases one’s chance of admissions by 27.7 percentage points; that is an applicant

with a 40 percent chance of admission has a 68 percent chance if she is black, Latino, or Native American. By contrast, being in the bottom income quartile (relative to the middle quarters) has no positive effect.<sup>112</sup> (See Figure 9.)

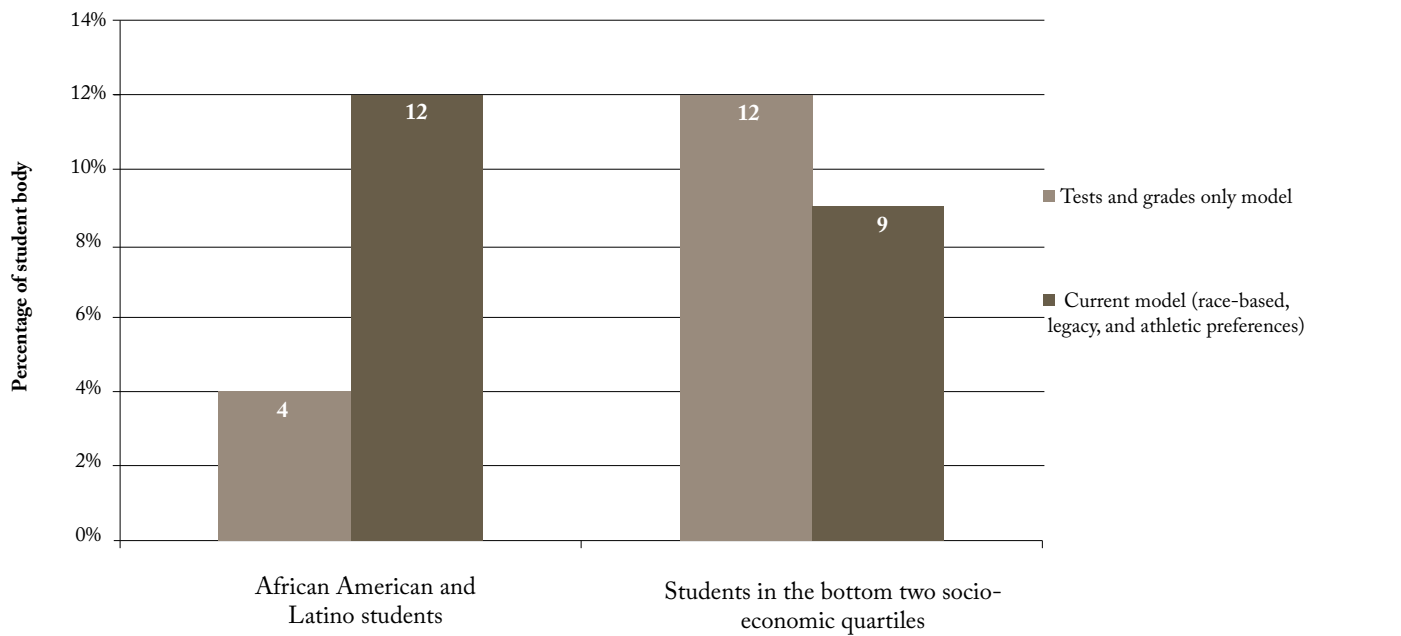
**Figure 9. Boost in the Admissions Process at Highly Selective Private Institutions, with an Emphasis on Race not Class, by Percentage Point Advantage**



*Note:* Figures refer to 1995 applicant pool. Adjusted admissions advantage for Bottom income quartile is calculated relative to middle quartiles.  
*Source:* William G. Bowen, Martin A. Kurzweil, and Eugene M. Tobin, *Equity and Excellence in American Higher Education* (Charlottesville, VA: University of Virginia Press, 2005), 105, Table 5.1.

Finally, in a 2004 study of the nation’s most selective 146 institutions, Anthony Carnevale and Stephen Rose found that race-based affirmative action triples the representation of blacks and Hispanics but that universities do virtually nothing to boost socioeconomic representation per se.<sup>113</sup> In fact, the representation of poor and working class students today is lower, not higher, than if grades and test scores were the sole basis for admissions, the researchers find.<sup>114</sup> (See Figure 10.)

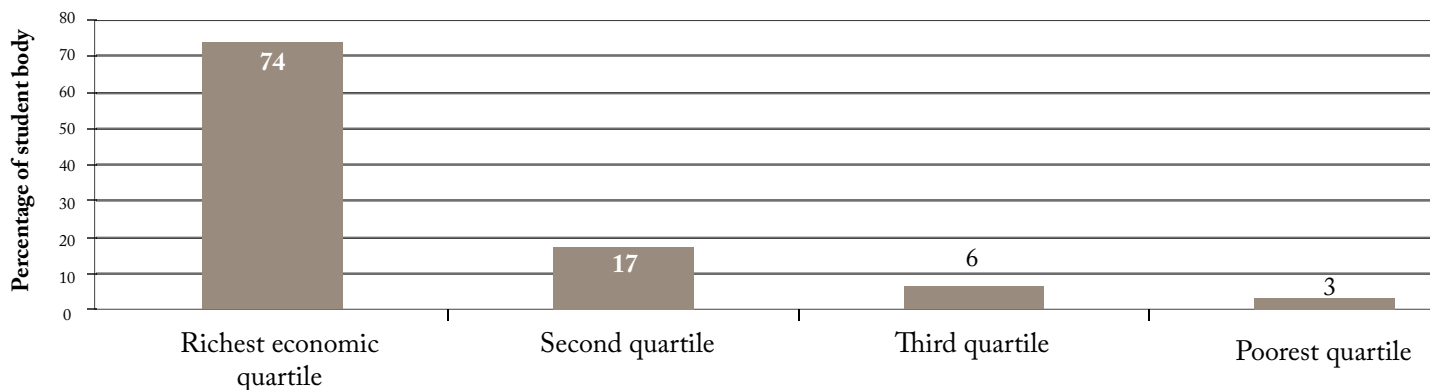
**Figure 10. Enrollment Effects of the Current Admissions Model at the Top 146 Colleges Compared to Test and Grades Model, by Race and Class**



*Source:* Anthony P. Carnevale and Stephen J. Rose, “Socioeconomic Status, Race/Ethnicity, and Selective College Admissions,” in *America’s Untapped Resource: Low-Income Students in Higher Education*, ed. Richard D. Kahlenberg (New York: Century Foundation Press, 2004), 135.

As a result, Carnevale and Rose found that on America's most selective 146 campuses—virtually all of which practice race-based affirmative action—74 percent of students came from the top socioeconomic quarter of the population, and just 3 percent from the poorest.<sup>115</sup> (See Figure 11.) In other words, one was twenty-five times as likely to run into a rich kid as a poor kid on the nation's selective campuses. The under-representation of poor and working class at elite universities is far greater than the under-representation of students of color; indeed, low-income students are as underrepresented today as minorities would be if racial affirmative action programs were eliminated and replaced by a regime of admissions based on grades and test scores.<sup>116</sup>

**Figure 11. Economic Diversity at Top 146 Colleges**



Source: Anthony P. Carnevale and Stephen J. Rose, "Socioeconomic Status, Race/Ethnicity and Selective College Admissions," in *America's Untapped Resource: Low-Income Students in Higher Education*, ed. Richard D. Kahlenberg (The Century Foundation, 2004), 106, Table 3.1.

It is hard to know exactly why universities provide strong preferences by race but limited to no preferences by socioeconomic status. It may be that some higher education officials are concerned primarily with appearances, and know that a lack of racial diversity on campus is quite visible but a lack of socioeconomic diversity is less so. Others may worry (unnecessarily) that low-income and working-class students will be unprepared. Perhaps some higher education officials have disdain for white working class students, who may not share their worldview on cultural matters such as abortion, the role of religion in society, or gay rights. Finally, some faculty and administrators may worry that the financial costs of enrolling low-income students will come at the expense of things they value more, such as attracting prestigious faculty, having a well-resourced library, or funding arts programs.

A similar pattern can be found among law schools. Despite the rhetoric of admissions committees, research finds that law schools give no leg up to economically disadvantaged applicants.<sup>117</sup> Richard Sander of UCLA Law School found in a 2011 study published in the *Denver University Law Review* that while schools provide very large preferences to black and Latino students, there is no preference provided to students whose parents have lower levels of education. Likewise, Sander found that law school grants and scholarships are not geared toward financial need. Wealthy whites receive twice as much grant and scholarship money as low-income whites (12 percent of costs covered versus 5 percent). And wealthy blacks receive four times as much grant and scholarship aid as low-income whites (20 percent versus 5 percent).<sup>118</sup>

Sander also notes that racial affirmative action in legal education has done little to indirectly promote socioeconomic diversity. At the top twenty law schools, 89 percent of African Americans, and 63 percent of Latinos come from the top socioeconomic half of the population (along with 92 percent of Asian Americans and 93 percent of whites).

Astoundingly, Sander found that just 2 percent of students at the top twenty law schools come from the bottom socioeconomic quarter of the population, while more than three-quarters come from the richest socioeconomic quartile. He finds that a student from the bottom quarter of the socioeconomic distribution "is less than one-hundredth as likely to attend a 'top ten' law school as a young person from the top tenth" of the distribution by socioeconomic status (SES). Sander observes: "low-SES representation at elite law schools is comparable to

racial representation 50 years ago, before the civil rights revolution.”

On the surface, it might appear that universities have turned the corner on the issue of socioeconomic diversity, as institutions have in the last decade announced a flurry of financial aid initiatives. But a 2011 analysis by the *Chronicle of Higher Education* found that the percentage of students receiving Pell grants at the wealthiest fifty institutions remained flat between 2004–05 and 2008–09. Thirty-one colleges actually saw declines in the proportion of Pell recipients.<sup>119</sup>

The exceptions to the rule—those institutions that have relatively higher proportions of students receiving Pell grants—tend to be in states that banned affirmative action and that had to find other ways to create racial and ethnic diversity short of racial preferences. Of the eight most socioeconomically diverse schools in the *Chronicle’s* analysis of the fifty wealthiest institutions, five are public institutions in states where universities created plans to counteract bans on affirmative action by race.<sup>120</sup> Likewise, of the 258 national universities that the *Washington Monthly* said did the best job of promoting social mobility, five of the top ten were located in California, and the top seventy-five included a number of others that did not employ racial preferences, including Florida A&M (ranked 9), UC Irvine (15), UC Santa Barbara (18), Michigan State University (32), the University of Florida (33), the University of Washington (38), UC Santa Cruz (45), Texas A&M (53), Florida State University (69), and the University of Michigan at Ann Arbor (70).<sup>121</sup> Likewise, in a 2008 *Chronicle of Higher Education* analysis of the thirty-nine wealthiest public institutions, half (six of the top twelve) most economically diverse universities were located in California, Florida, Texas, and Washington.<sup>122</sup>

This is not to suggest that universities in states with bans on race-based affirmative action are doing enough to promote socioeconomic diversity. Nor is it to suggest that all public universities in states with bans on racial preference do well in terms of economic diversity. But there is some suggestive evidence that affirmative action bans may leverage universities to pursue something they do not intrinsically care much about—socioeconomic diversity—in order to indirectly achieve something they do care about, racial and ethnic diversity. And one can draw a direct line between the elimination of race-based affirmative action in the UC system, at Texas A&M, and at the University of Georgia, and the decision of those institutions to drop legacy preferences.<sup>123</sup> As Clarence Thomas noted in the *Grutter* case, “Were this Court to have the courage to forbid the use of racial discrimination in admissions, legacy preferences (and similar practices) might quickly become less popular—a possibility not lost, I am certain, on the elites (both individual and institutional) supporting the Law School in this case.”<sup>124</sup>

## Where This May Lead

Although universities are among the staunchest supporters of the status quo on racial preferences, the winds of change are blowing. The explicit and heavy reliance on race in admissions—and the avoidance of deeper issues of class inequality—may soon come to an end.

As the state profiles in the following section indicate, the end of racial preferences does not usually mean the end to affirmative action, but rather the creation of something new—that is, in many respects, a better affirmative action. Fifty years after Martin Luther King Jr. outlined the need for a Bill of Rights for the Disadvantaged, higher education may be pushed, at long last, to address the less visible, but more powerful, issue of class inequality.



# III. Profiles of States in Which Affirmative Action in College Admissions Has Been Banned

This section profiles nine states in which the consideration of race/ethnicity in admissions at public colleges and universities has been banned at one time. In all but the case of Texas, the bans remain in place today, and in all states except Georgia, the prohibition was statewide. The profiles are organized chronologically according to when the ban was issued. When available, data on racial/ethnic and socioeconomic demographics at the states' flagship universities before and after the ban are provided. The complete data are available from the authors upon request.

## Texas (1996)

### *\*Background on the Affirmative Action Ban*

For the entering class of fall 1996 and earlier, both the University of Texas system and Texas A&M University used race/ethnicity-based affirmative action in admissions. In 1996, the Fifth Circuit Court of Appeals ruled in *Hopwood v. Texas* that colleges and universities could not use race/ethnicity-based admission policies. Texas attorney general Dan González applied the ban on the use of race/ethnicity to scholarships, financial aid policies, retention plans, and recruiting initiatives as well.<sup>125</sup> The ban also applied to both public and private universities in the state.<sup>126</sup>

Starting with the class enrolling in fall 1997, the freshman classes at all universities in Texas were admitted without the use of race/ethnicity.<sup>127</sup> (A number of race/ethnicity-neutral alternatives were introduced; see section below.)

In 2003, in response to the U.S. Supreme Court's ruling in *Grutter v. Bollinger*, the University of Texas system reopened the possibility of using racial/ethnic preferences in admissions by any campus that developed a plan and demonstrated that race/ethnicity-neutral alternatives had been inadequate in providing diversity.<sup>128</sup> The University of Texas at Austin (UT Austin), the flagship of University of Texas system, was the only campus to develop a plan and submit it for approval.<sup>129</sup> Starting with admissions for the class enrolling in fall 2005, UT Austin added race/ethnicity to the list of "special circumstances" that factored into the "Personal Achievement Index" (PAI) portion of the admissions review, providing a competitive boost for African-American and Hispanic applicants.<sup>130</sup>

Like all University of Texas campuses except Austin, Texas A&M University, whose College Station campus is considered the state's other public flagship university, chose not to reinstate racial preferences after the *Grutter* ruling but continued aggressive outreach, recruitment, and scholarships to promote diversity.<sup>131</sup>

### *\*Admission Policies after the Ban*

**Top 10 Percent Plan.** In 1997, the Texas legislature passed H.B. 588, the "uniform admission law" or Top 10 Percent plan, as it is commonly known. The bill guaranteed high school seniors in the top 10 percent



of their graduating class admission to the public university campus of their choice. It also included a list of eighteen factors that state universities should consider when admitting students who do not meet the top 10 percent requirement. This list includes socioeconomic factors such as family income, parents' level of education, first generation college status, and financial and academic record of the student's school district.<sup>132</sup> These changes went into effect for the admission of students enrolling in fall 1998.<sup>133</sup>

In June 2009, Texas passed S.B. 175, amending the Texas Top 10 Percent plan, beginning with admissions for the 2011–12 academic year, to limit the percentage of students admitted under the Top 10 Percent plan to 75 percent of the incoming class at UT Austin. If the number of students qualifying for admission under the Top 10 Percent plan exceeds 75 percent of the available slots at UT Austin, the university will rank all qualifying students by GPA-based class rank percentile and create a new percentile cutoff in order to limit the number of admitted students. This new cutoff point will be decided each September to apply to current high school juniors, allowing applicants to know before they apply whether or not they meet the automatic admissions cutoff.<sup>134</sup> Students who are within the top 10 percent of their graduating class but miss the new cutoff will be considered for admission according to the same procedure used for applicants not in the top 10 percent of their graduating class.<sup>135</sup> Under the new plan, the cutoff for automatic admission for the fall 2011 class at UT Austin, the first time the new law went into effect, was the top 8 percent. For fall 2012, it was the top 9 percent, and for fall 2013, it will be the top 8 percent.<sup>136</sup>

**Socioeconomic Factors Added at UT Austin.** In immediate response to the ban on the use of race/ethnicity, UT Austin added consideration of socioeconomic factors starting with students admitted for the fall of 1997. Prior to 1997, student admissions were determined based on applicants' "Academic Index" (AI), which could be boosted for underrepresented minorities. In 1997, UT Austin based admissions on a combination of the AI (with no race/ethnicity-based boosting) and the "Personal Achievement Index" (PAI), which was determined based on essay responses, factoring in "special circumstances" including socioeconomic status, home language, and single-parent status.<sup>137</sup>

After the passage of the Top 10 Percent plan, socioeconomic factors were no longer used in all admission decisions, as many students were admitted based solely on high school class rank; however, Texas students who were not in the top 10 percent of their high school class, as well as out-of-state and international applicants, were still admitted using AI and PAI scores, and these scores were also used to determine all students' admission to particular degree programs or majors.<sup>138</sup>

In 2005, UT Austin added race/ethnicity to the list of "special circumstances" considered; however, socioeconomic factors remain a consideration, and this information is solicited in a variety of ways.<sup>139</sup> The statewide ApplyTexas application asks for mother's and father's highest educational level, as well as family income and household size. In addition, it asks applicants, "Do you have family obligations that keep you from participating in extracurricular activities? If you have family obligations, do you: a. have to work to supplement family income? b. provide primary care for family member(s)? c. have other family obligations that prevent participation?"<sup>140</sup> UT Austin also invites applicants to submit optional essays or letters addressing special circumstances.<sup>141</sup>

**Legacy Preferences Dropped at Texas A&M.** When Texas A&M decided in 2003 to continue with race/ethnicity-blind admissions, they also continued with their legacy preference in admissions. This caused public outcry because of the hypocrisy of allowing one factor of ancestry that favors privileged students to be considered while simultaneously opting not to consider factors that might be associated with disadvantage. Later that year, the university's president, Robert M. Gates, responded to the pressure and announced that Texas A&M would end legacy preferences in admissions.<sup>142</sup>

## *\*Financial Aid Policies after the Ban*

**State Aid Programs.** Two statewide financial aid programs offer support for low-income college students in Texas. The Towards Excellence, Access and Success (TEXAS) Grant, created by the Texas Legislature in 1999, is awarded to students with financial need who complete the Recommended High School Program or Distinguished Achievement Program.<sup>143</sup> It is renewable for up to five years, as long as students meet certain credit hour and GPA criteria; however, funding for this program was significantly reduced for the 2011–12 academic year.<sup>144</sup>

Texas also offers scholarships for students with financial need in the top 10 percent of their class who enroll at a Texas public college or university. The Top 10 Percent Scholarship Program was created by the Texas Legislature in 1997 alongside the Top 10 Percent plan, and the award is renewable, contingent upon funding and meeting credit-hour and GPA requirements.<sup>145</sup>

**Programs at UT Austin.** UT Austin offers two main institutionally funded financial aid programs for low-income students. The Presidential Achievement Scholarship (PAS) was started in 1997 and is awarded to students who have achieved high academic standards relative to their peers while overcoming adversity. In addition to financial support, the program offers tutoring and social support services.<sup>146</sup>

The Longhorn Opportunity Scholarship (LOS) program was started in 1999. LOS targets students in low-income and underserved areas by focusing exclusively on sixty-eight identified “Longhorn Opportunity Schools,” a group of underrepresented high schools that are mostly in Dallas, El Paso, Houston, and San Antonio. LOS recruits students from these schools and offers them financial aid. A certain number of scholarships are reserved for each identified school, and the scholarships usually go to students eligible for automatic admission. LOS also provides enrollment support for students once they are at UT. For example, Longhorn Scholars enroll in special first-year seminars, participate in peer mentoring, have individual faculty advising, and can participate in a student advisory council for the program.<sup>147</sup> In 2011, one hundred students received \$10,000–per-year, four-year LOS and PAS awards.<sup>148</sup>

## *\*Recruitment, Outreach, and Support Programs after the Ban*

**Recruitment Programs.** UT Austin has a number of programs designed to recruit students from underrepresented high schools. The university has seven regional admissions centers throughout the state of Texas, allowing UT representatives to attend college fairs, visit high schools, and provide information sessions for high schools students in their area.<sup>149</sup> The admissions office also holds weekend recruitment events to target underrepresented populations, such as “Longhorn Game Weekends,” which focus on specific geographic regions, and “Longhorn for a Day,” which reaches out to students from underrepresented high schools.<sup>150</sup>

**K–12 partnerships.** UT Austin also works with a number of high schools in the state to prepare students for college-level work. The university-run Pre-College Academic Readiness Programs (PCARP) work with students at underrepresented high schools to emphasize college access while providing rigorous academic experiences. ChemBridge and Students Partnering for Undergraduate Rhetoric Success (SPURS) provide college-level, dual-credit classes in chemistry and writing, respectively. A third program, Math Masters, was piloted in 2011–12.<sup>151</sup>

UT Outreach is another college preparatory program for high school students. UT Outreach has the goal of increasing low-income and other underrepresented student populations at four-year colleges in general, as well as connecting students eligible for automatic admissions with UT Austin admissions. Through the program, students at participating high schools receive test prep, application help, and financial aid advice. In 2010–11, the program served forty-six high schools in seventeen school districts in Texas.<sup>152</sup>

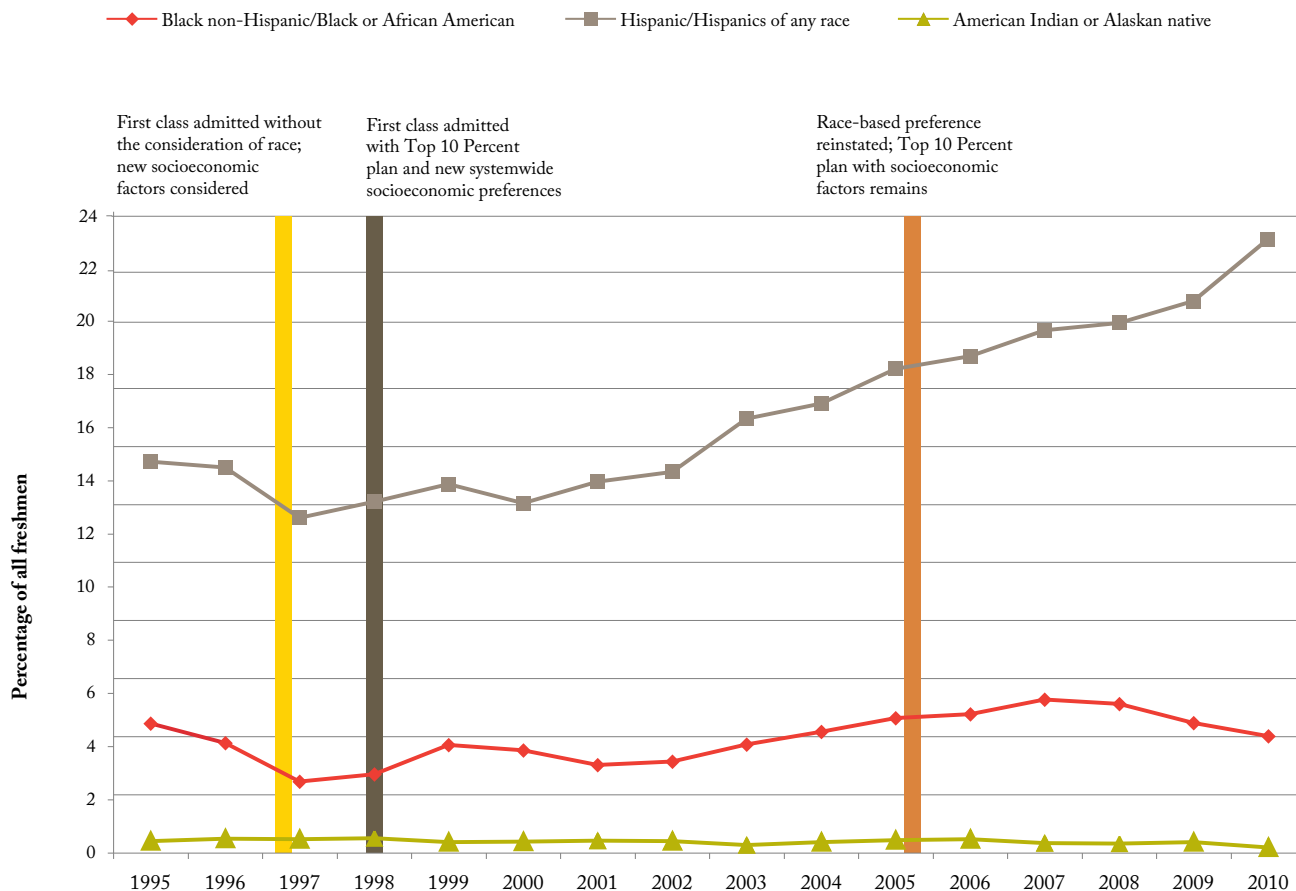
Several colleges at UT Austin also run academic programs that target underrepresented high schools. These include Subiendo: The Academy of Rising Leaders, a program for high school students run by McCombs School of Business, as well as My Introduction to Engineering (MITE) Summer Camp and Longhorn Engineering: The Power to Shape Your World, programs for high school juniors and seniors run by the Cockrell School of Engineering.<sup>153</sup>

In addition to these programs, UT Austin is working on finding other ways to improve the pipeline for low-income students entering higher education. In 2010–011, UT Austin conducted a study, “Preparing the Next Generation of Texas’ Leaders to Ensure the State’s Economic Vitality,” that made a number of recommendations, which the university is in the process of adopting, such as linking the admissions office, the registrar, and the financial aid office. The study also recommended identifying more high schools and community colleges for recruitment, adjusting recruitment strategies to reflect changing demands and demographics, and employing more strategic financial aid.<sup>154</sup>

### *\*Changes in Demographics*

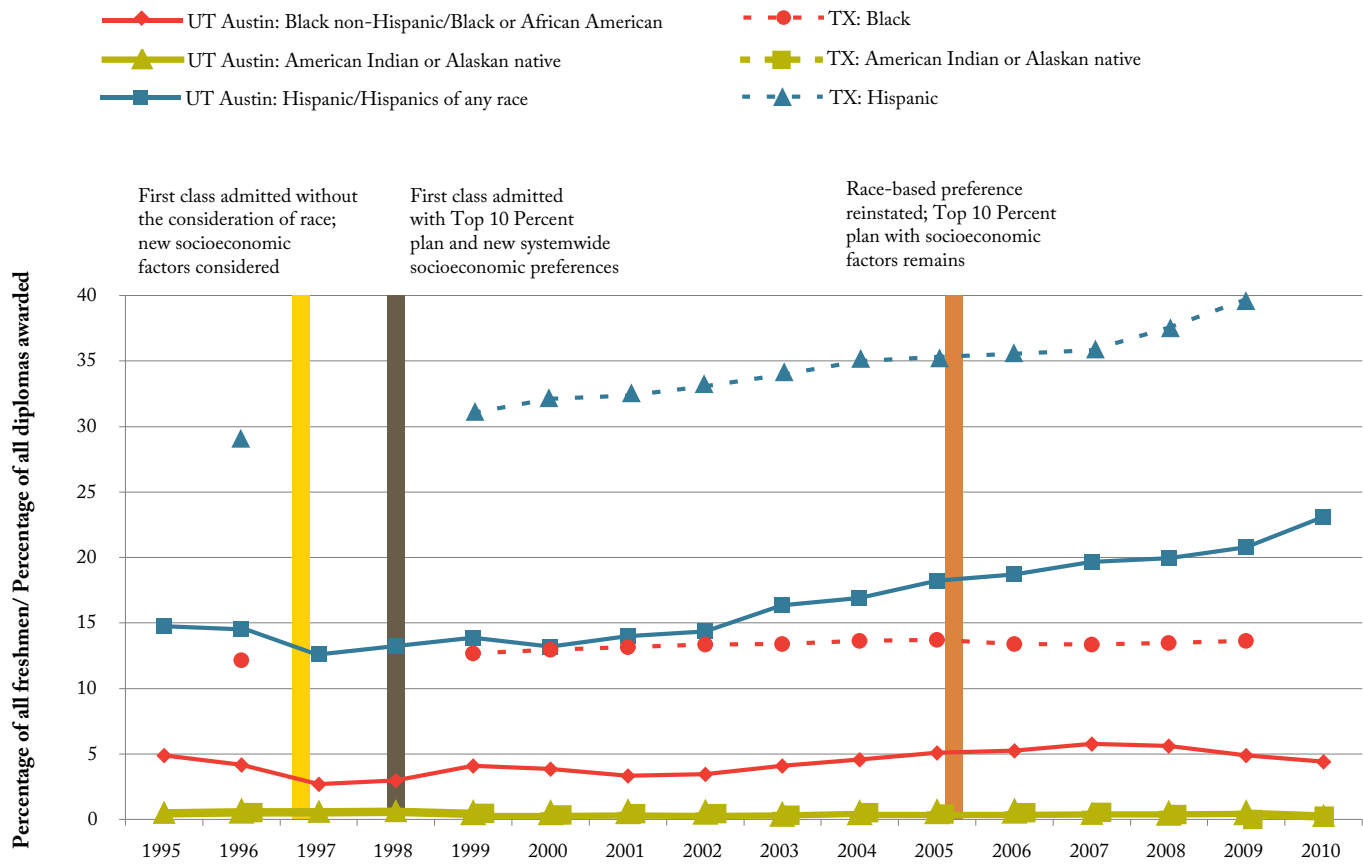
Data is shown for both the University of Texas at Austin and Texas A&M University-College Station because they are often considered co-flags.

**Figure TX-UT-1. University of Texas at Austin Fall Freshman Enrollment, by Race/Ethnicity**



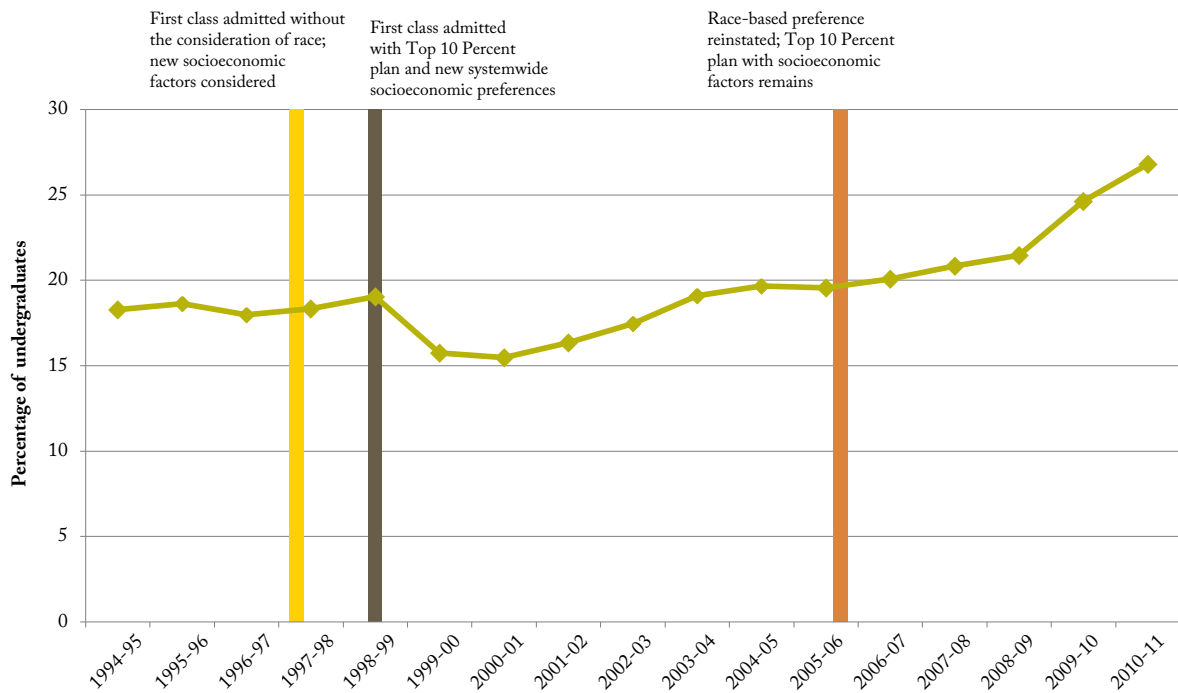
*Note:* For information on the data and their sources, see the end of this section.

Figure TX-UT-2. University of Texas at Austin Fall Freshman Enrollment and Texas High School Diplomas, by Race/Ethnicity



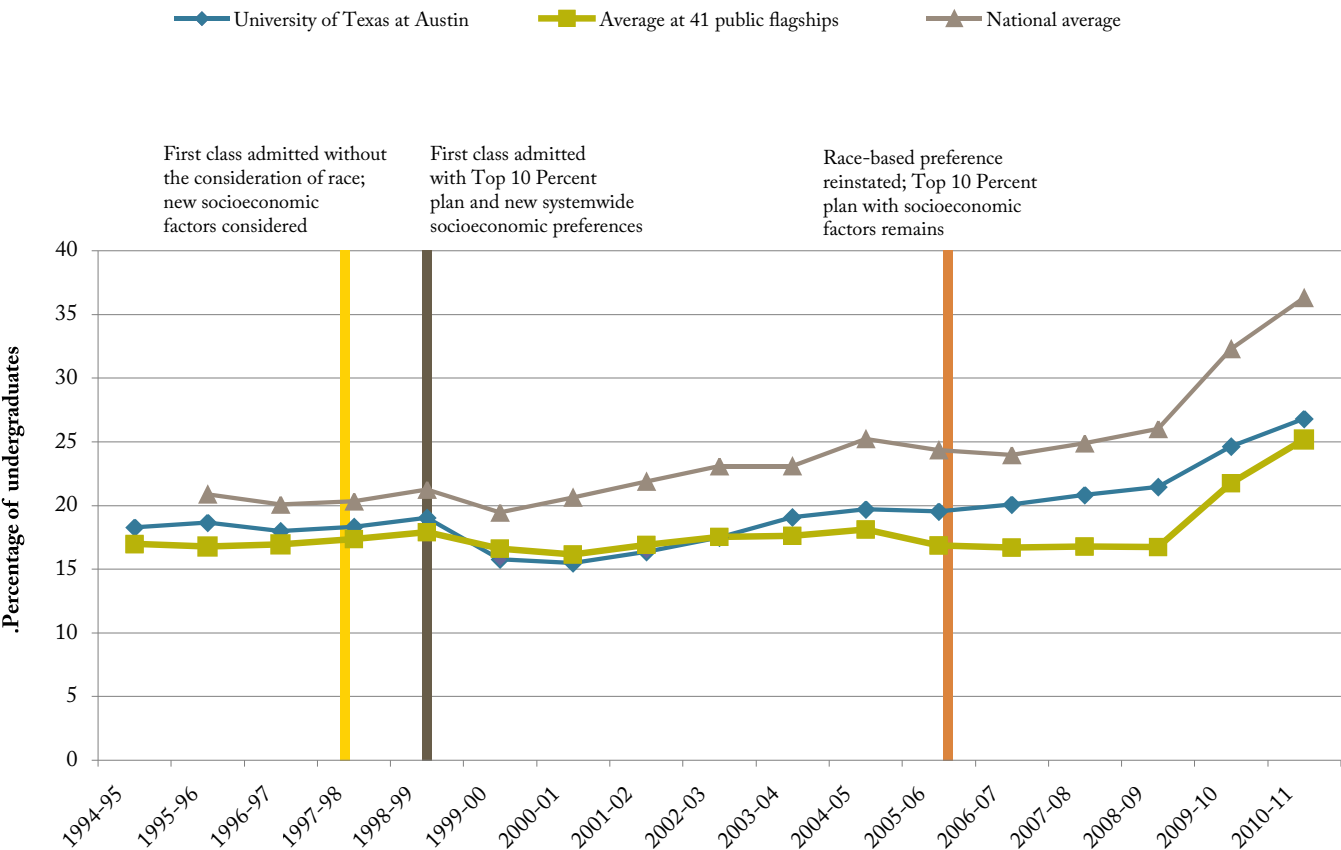
Note: Race/ethnicity data on diplomas in Texas was not available for 1995 or 1998. For more information on the data and their sources, see the end of this section.

Figure TX-UT-3. Percentage of University of Texas at Austin Undergraduates Receiving Pell Grants



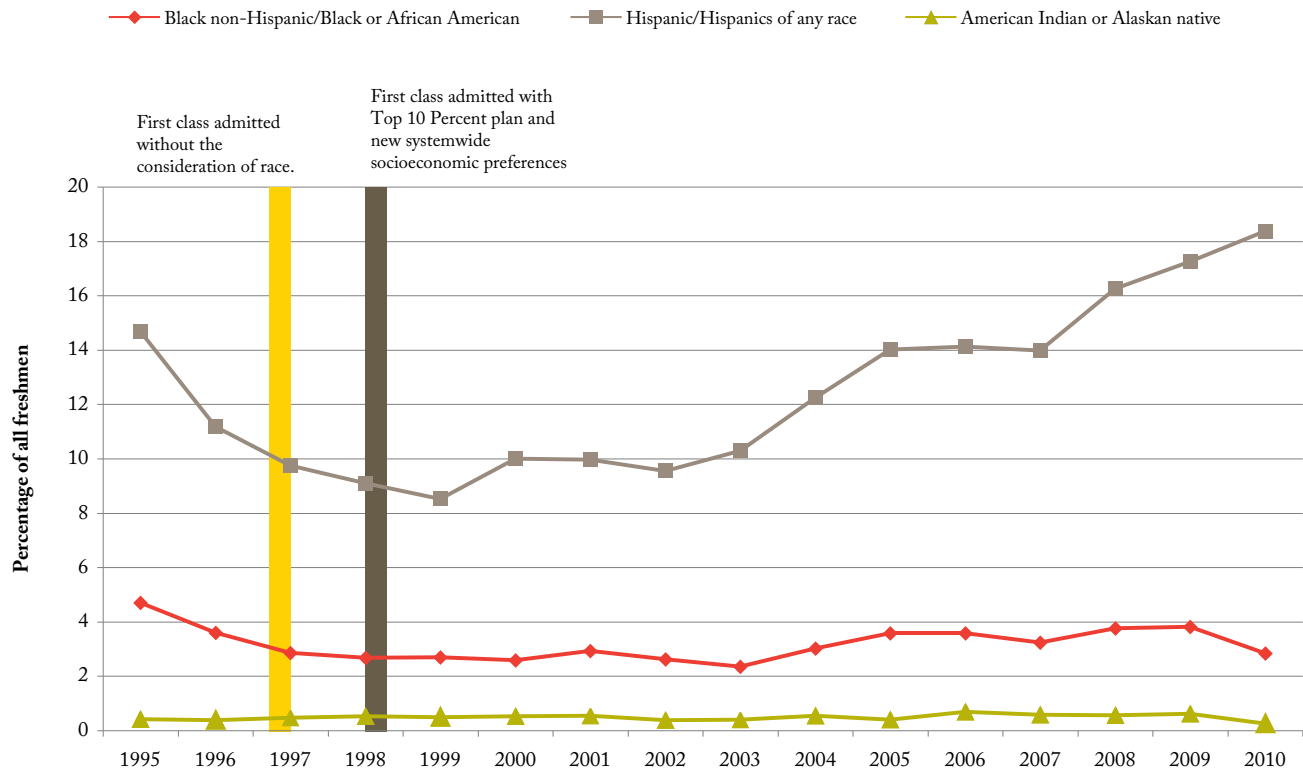
Note: For information on the data and their sources, see the end of this section.

Figure TX-UT-4. Percentage of Undergraduates Receiving Pell Grants at the University of Texas at Austin, at 41 Public Flagship Universities, and Nationwide



Note: For information on the data and their sources, see the end of this section

Figure TX-TAMU-1. Texas A&M University-College Station Fall Freshman Enrollment, by Race/Ethnicity



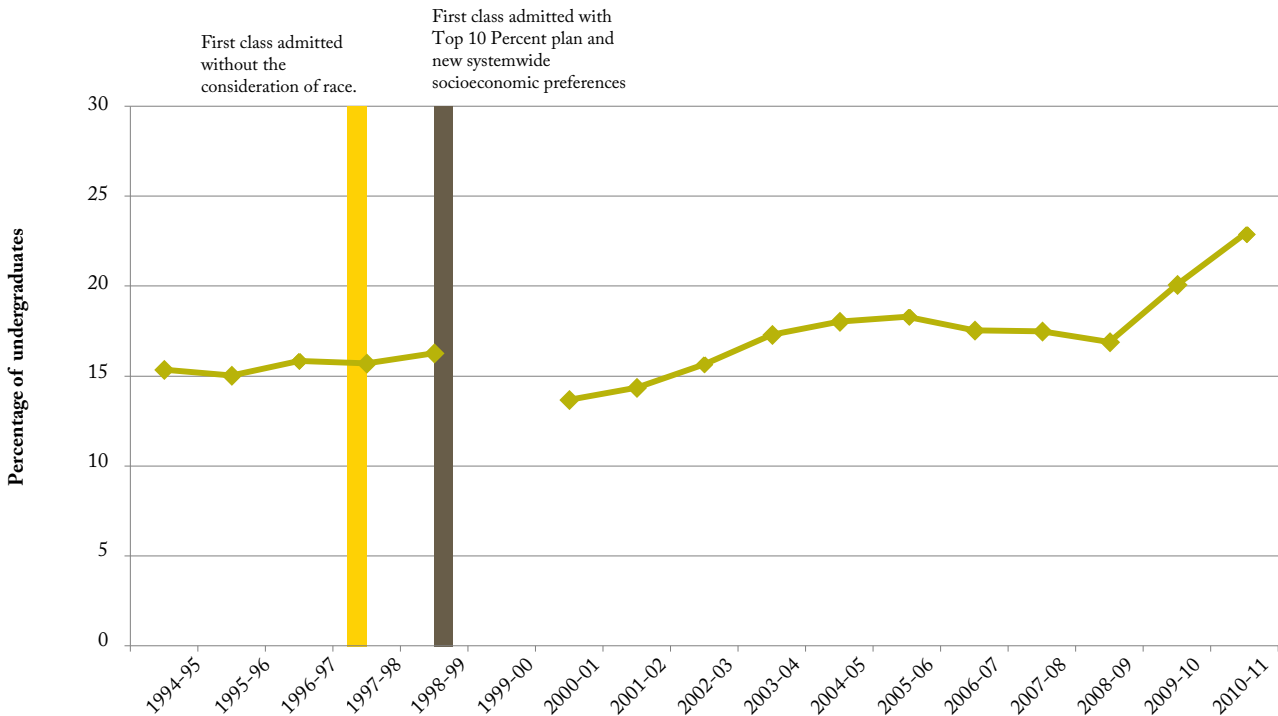
Note: For information on the data and their sources, see the end of this section.

Figure TX-TAMU-2. Texas A&M University-College Station Fall Freshman Enrollment and Texas High School Diplomas, by Race/Ethnicity



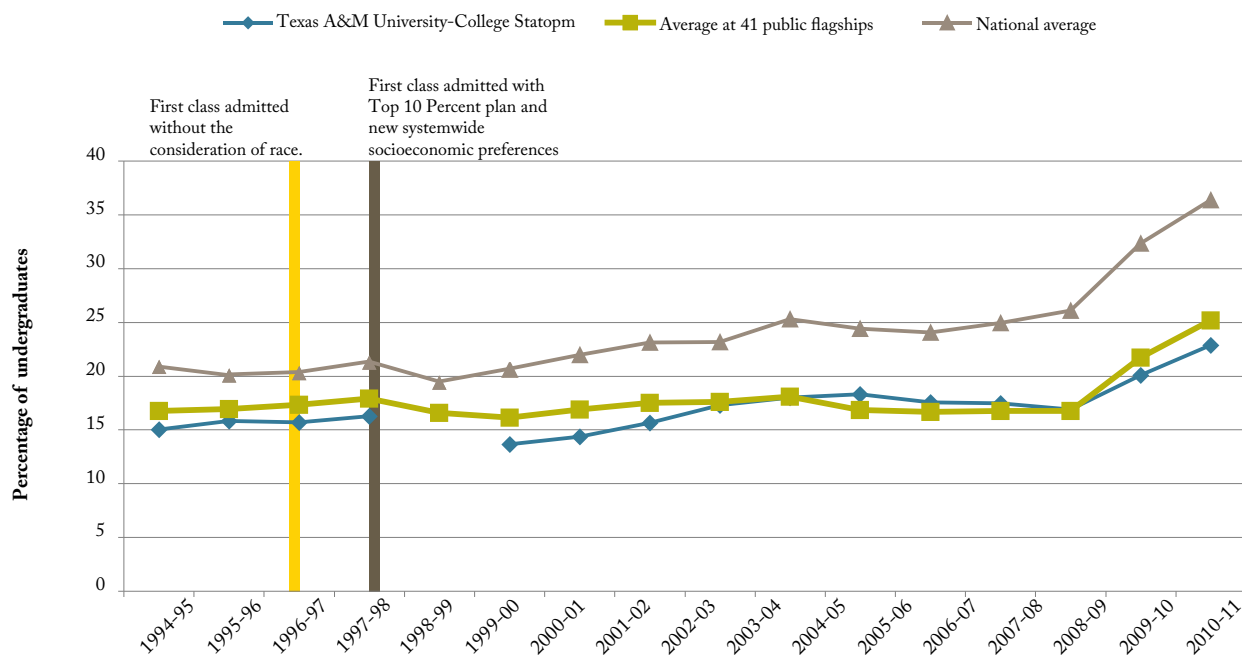
Note: Race/ethnicity data on diplomas in Texas was not available for 1995 or 1998. For more information on the data and their sources, see the end of this section.

Figure TX-TAMU-3. Percentage of Texas A&M University-College Station Undergraduates Receiving Pell Grants



Note: Twelve-month undergraduate enrollment was not available for Texas A&M-College Station for 1999-2000. For more information on the data and their sources, see the end of this section.

**Figure TX-TAMU-4. Percentage of Undergraduates Receiving Pell Grants at Texas A&M University-College Station, at 41 Public Flagship Universities, and Nationwide**



*Note:* Twelve-month undergraduate enrollment was not available for Texas A&M-College Station for 1999-2000. For more information on the data and their sources, see the end of this section.

## California (1996)

### *\*Background on the Affirmative Action Ban*

In November 1996, California voters enacted Proposition 209, banning the state government from using preferences based on race, ethnicity, or gender in public employment, contracting, and education. The ban went into effect in August 1997.<sup>155</sup>

Before the vote, in 1995, the Regents of the University of California had already adopted a resolution to eliminate the use of race, ethnicity, and gender in admissions and started to create a new admissions policy that would also take into account economic disadvantage and the social environment of applicants.<sup>156</sup> Students entering the University of California in the fall of 1998 were the first class to be admitted using the new race/ethnicity-neutral policy.<sup>157</sup>

### *\*Admission Policies after the Ban*

**Percent Plans.** The University of California traditionally admitted all students that met certain eligibility criteria based on coursework, GPA, and standardized test scores. (These requirements were periodically adjusted so that they included the top 12.5 percent of California high school graduates, as set out in the master plan for the UC system.) This admissions pathway, which guaranteed admission to the UC System but not necessarily to a student's campus of choice, was called admission through Eligibility in the Statewide Context.<sup>158</sup>

Starting with the class entering in fall 2001, the University of California added a new admissions pathway, Eligibility in the Local Context. Under this pathway, students who ranked in the top 4 percent of their high schools' graduating class, based on their GPA for a specific set of UC-required courses, were guaranteed admission to the UC system, even if they failed to meet the statewide admission criteria.<sup>159</sup>



This policy has continued to evolve. The class entering UC in fall 2012 is the first admitted under a revised admissions policy that removes guaranteed admission for students meeting coursework, GPA, and standardized test score requirements, but increases guaranteed admission pathways based on class rank. Rather than being guaranteed admission, students meeting the coursework, GPA, and standardized test requirements are “entitled to review.” Students guaranteed admission to UC are now restricted to two groups: students in the top 9 percent of all high school graduates statewide, based on ACT/SAT scores and GPA in UC-approved courses, and students in the top 9 percent of graduates at their own high school, based only on GPA in UC-approved courses. Under this new system, about 10 percent of all high school graduates statewide are guaranteed admission to UC, as opposed to 12.5 percent under the previous system.<sup>160</sup>

The rationale behind these changes was to give more high-achieving students the chance to attend UC by removing some requirements that may have previously served as obstacles (especially SAT II subject tests, which are no longer required).<sup>161</sup> Under the new “entitled to review” requirements, roughly 21 percent of students meeting the requirements will be underrepresented minorities, compared to 17 percent of students who met the old eligibility requirements. Furthermore, the students guaranteed admission will be more evenly geographically distributed throughout the state than under the old eligibility system.<sup>162</sup>

**Socioeconomic Factors in “Comprehensive Review.”** Students guaranteed admission to UC—whether through the old system of statewide or local eligibility pathways or the new system of top 9 percent eligibility—are promised a seat at a UC campus, but not necessarily at the campus of their choice.<sup>163</sup> Individual campuses have always used additional admissions criteria, on top of the UC system policies, to select students.

Starting with the class of fall 2002, all individual UC campuses were required to make admission decisions using a “comprehensive review” policy, which moved away from quantitative formulas and instead created a system “to evaluate applicants’ academic achievements in light of the opportunities available to them.” This process, which considers the socioeconomic background of applicants in admission decisions, remains in place today. Factors that are considered include the “quality of [the students’] academic performance relative to the educational opportunities available in their high school,” “academic accomplishments in light of a student’s life experiences and special circumstances,” and “location of a student’s secondary school and residence.”<sup>164</sup> Relevant life experiences and special circumstances include, but are not limited to, “disabilities, low family income, first generation to attend college, need to work, disadvantaged social or educational environment, difficult personal and family situations or circumstances, refugee status or veteran status.”<sup>165</sup>

**Legacy Preferences Dropped across UC System.** In 1996, in response to Proposition 209, the California Board of Regents voted to eliminate alumni relation preferences in admissions. In 2000, they made the policy stricter, specifically prohibiting the practice that had cropped up at a number of campuses of admitting out-of-state legacies under in-state admissions criteria.<sup>166</sup>

### *\*Financial Aid Policies after the Ban*

**State Aid.** Created in 1955, the Cal Grant Program offers aid for California residents with financial need attending a qualifying California college. For 2012–13, the maximum Cal Grant award for students attending a UC campus is \$12,192.<sup>167</sup>

**University of California Grants.** In 2009, the University of California Board of Regents approved the Blue and Gold Opportunity Plan to provide additional assistance to low-income students.<sup>168</sup> For the 2011–12 academic year, the program fully covered system-wide tuition and fees for students from families with incomes below \$80,000.<sup>169</sup>

## *\*Recruitment, Outreach, and Support Programs after the Ban*

**K–12 partnerships.** The University of California office of Education Partnerships runs a number of programs that provide support to K–12 schools and community colleges, building the pipeline to four-year degrees. After the passage of Proposition 209, the University of California used state funding to expand many access programs that had already existed for a number of years.<sup>170</sup> The Early Academic Outreach Program (EAOP), for example, was created in 1976 and is the largest academic preparation program at UC, working with 39,000 students at 43 middle schools and 266 high schools. Services provided by EAOP include academic advising to help high school students complete their UC-required courses, enrichment programs and research opportunities for high school students, test preparation, and college information sessions.<sup>171</sup>

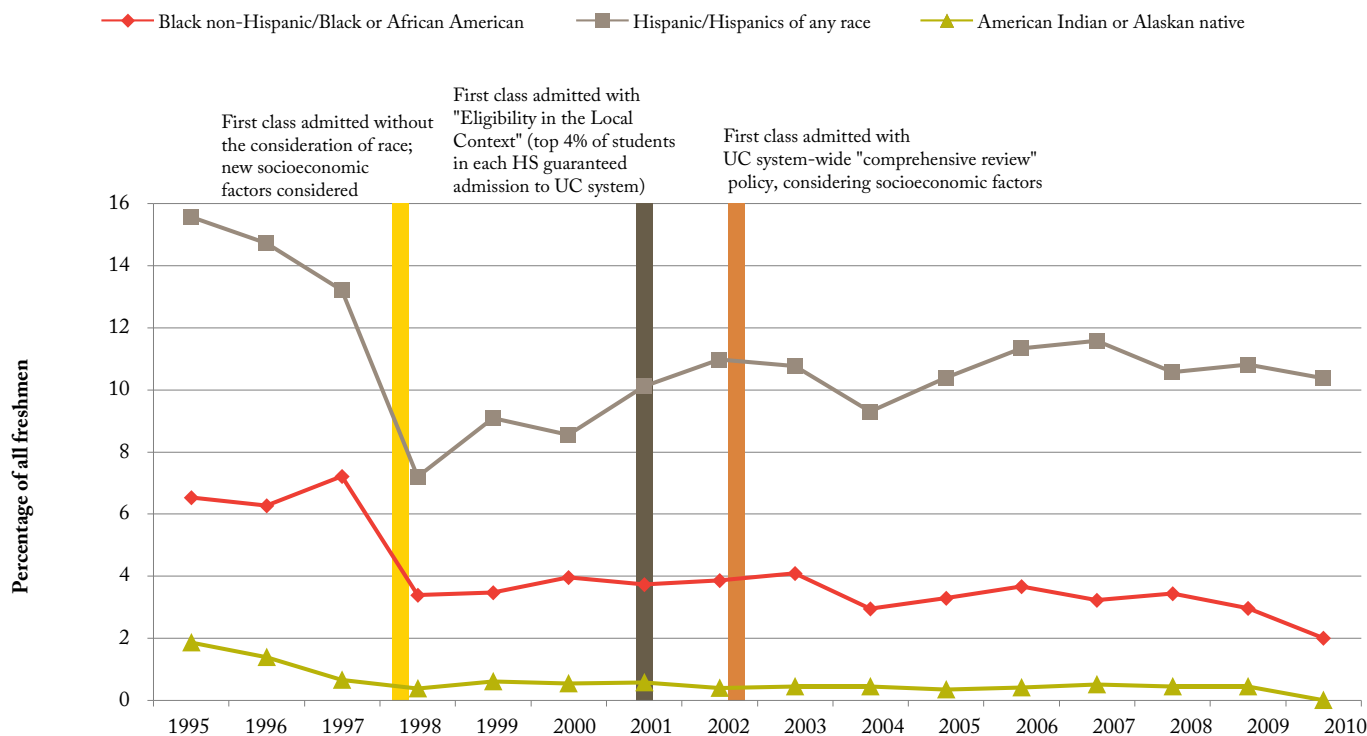
The University of California also created new outreach programs in the years following Proposition 209. The School/University Partnership Program expanded partnerships between UC campuses and specific K–12 schools, providing services that range from curricular resources to mentoring.<sup>172</sup> The UC Davis ArtsBridge, for example, provides arts education to students and teachers in schools within three counties.<sup>173</sup> In addition, in 1999 UC created the University of California Professional Development Institutes to expand professional development opportunities for K–12 teachers, with a special focus on preparing teachers to serve English Language Learners.<sup>174</sup>

**Community College Transfer.** In the wake of proposition 209, the University of California also focused on community college transfers. In 1997, UC signed a memorandum of understanding with the State of California pledging to increase community college transfer enrollment at UC campuses by a third, and in 1999 UC increased the commitment to a 50 percent increase.<sup>175</sup> In 2008–09, 26.3 percent of new students enrolling in the UC system were transfers from California community colleges.<sup>176</sup>

## *\*Changes in Demographics*

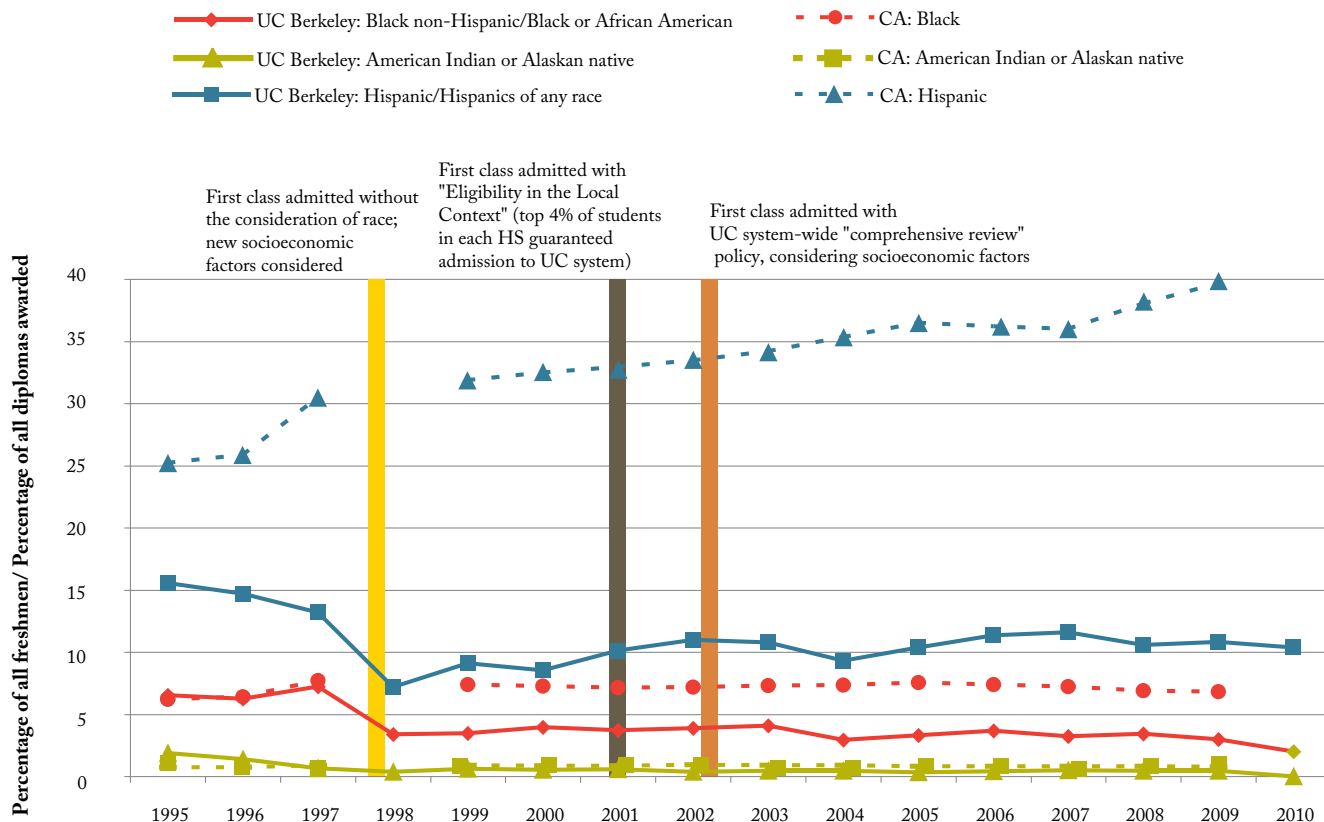
Data is shown for both the University of California-Berkeley and the University of California-Los Angeles because they are often considered co-flagships.

**Figure CA-B-1. UC-Berkeley, Fall Freshman Enrollment, by Race/Ethnicity**



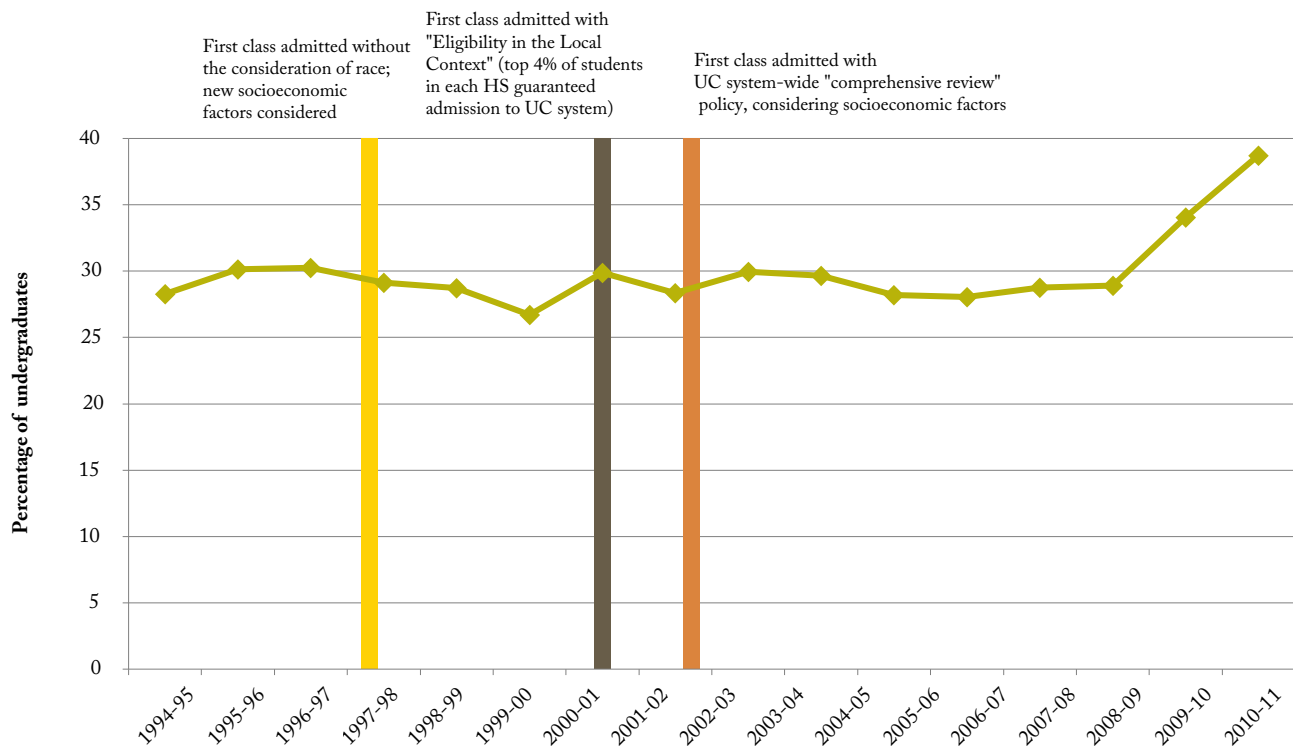
Note: Race/ethnicity data on diplomas in California was not available for 1998. For more information on the data and their sources, see the end of this section

**Figure CA-B-2. UC-Berkeley Fall Freshman Enrollment and California High School Diplomas, by Race/Ethnicity**



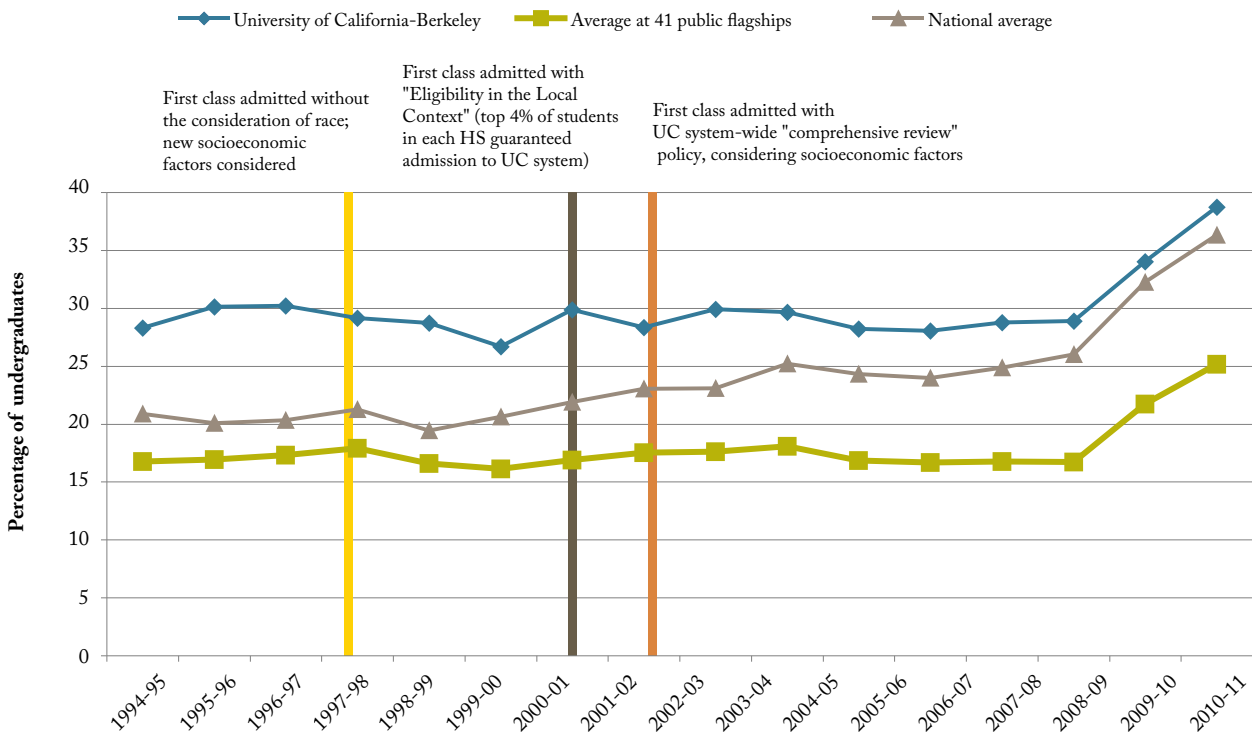
Note: For information on the data and their sources, see the end of this section.

Figure CA-B-3. Percentage of UC-Berkeley Undergraduates Receiving Pell Grants



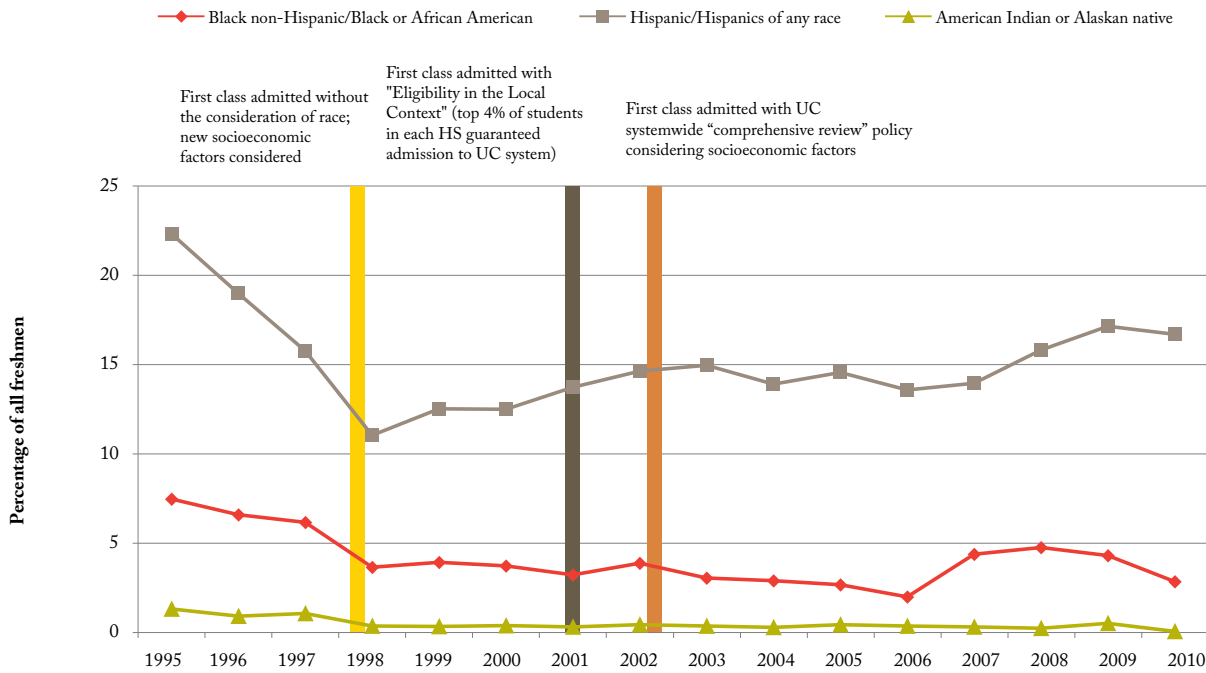
Note: For information on the data and their sources, see the end of this section.

Figure CA-B-4. Percentage of Undergraduates Receiving Pell Grants at UC-Berkeley, at 41 Public Flagship Universities, and Nationwide



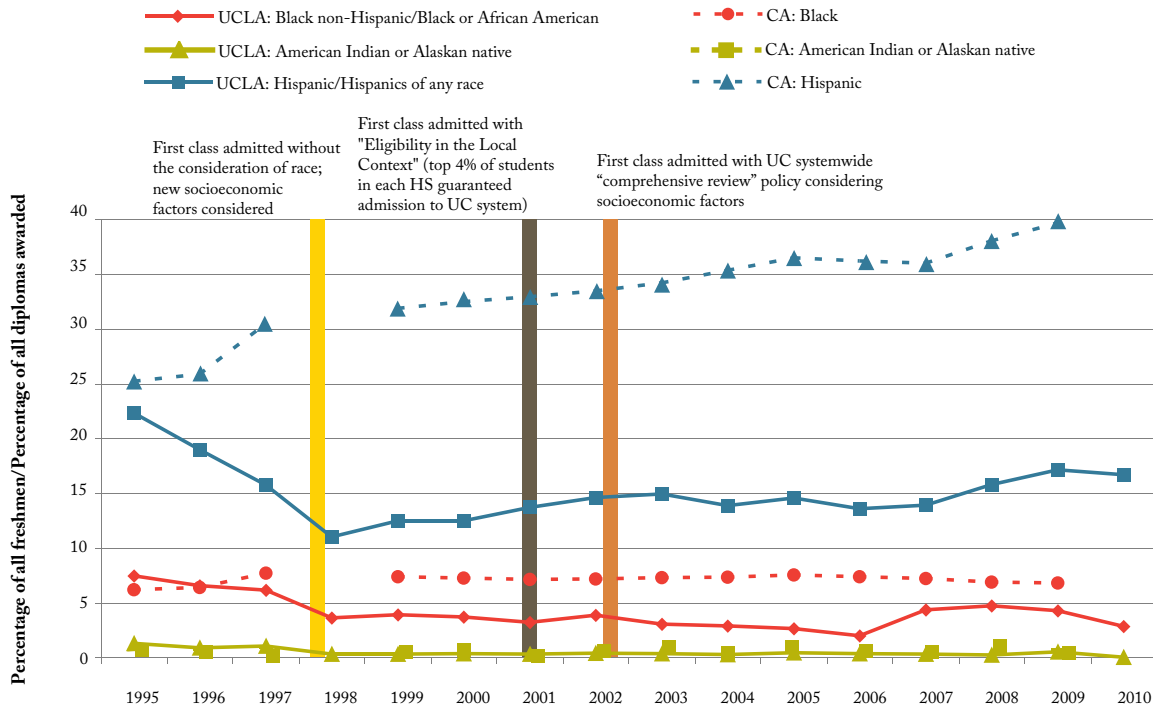
Note: For information on the data and their sources, see the end of this section.

**Figure CA-UCLA-1. UCLA Fall Freshman Enrollment, by Race/Ethnicity**



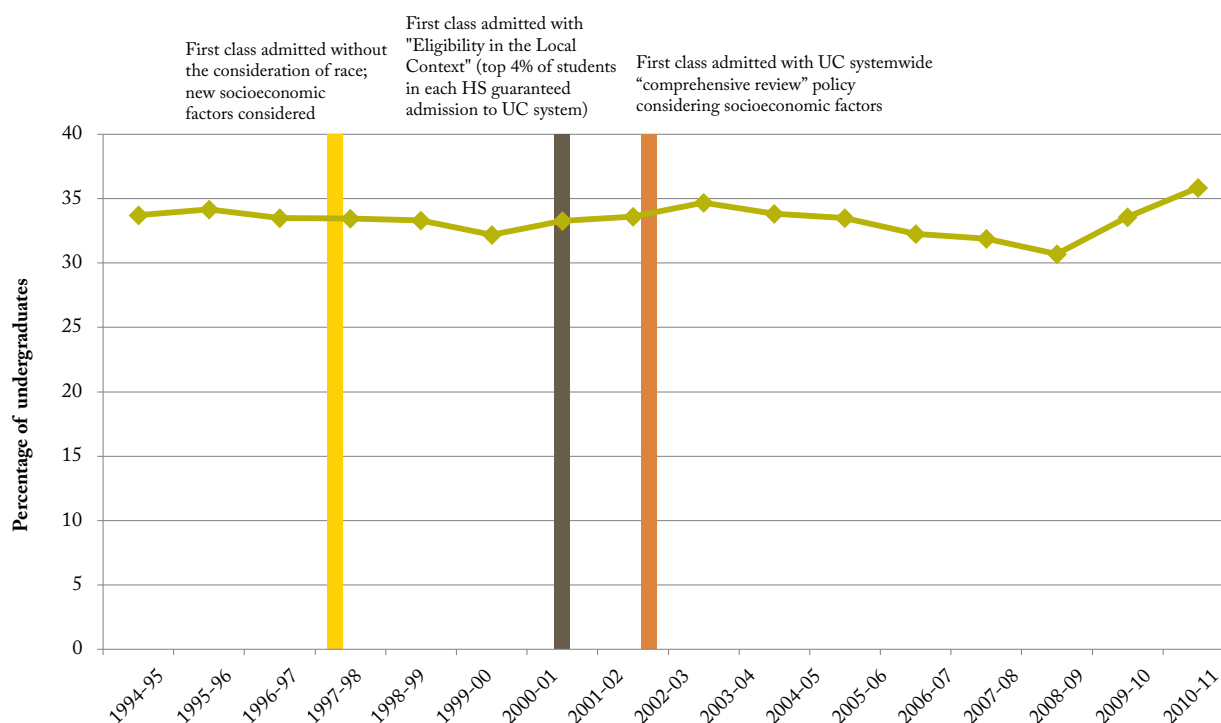
Note: Race/ethnicity data on diplomas in California was not available for 1998. For more information on the data and their sources, see the end of this section.

**Figure CA-UCLA-2. UCLA Fall Freshman and California High School Diplomas, by Race/Ethnicity**



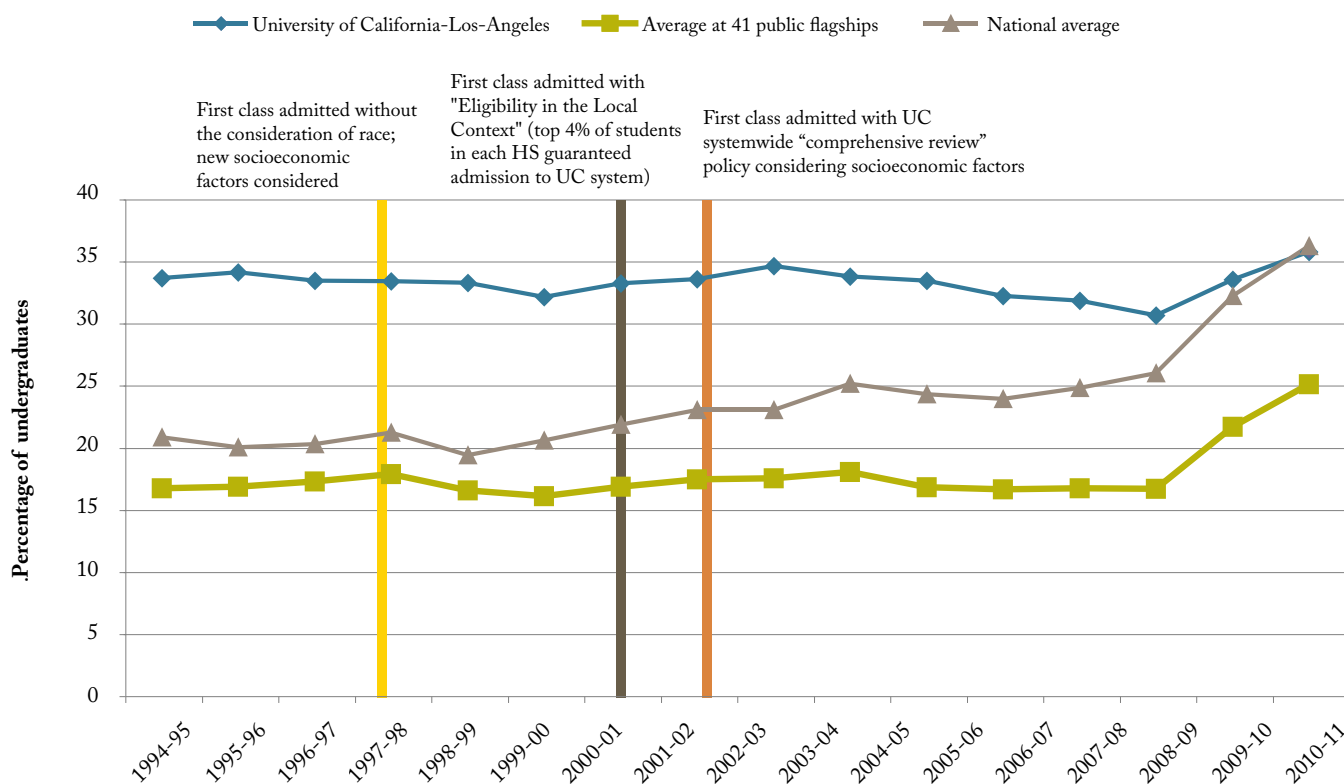
Note: For information on the data and their sources, see the end of this section.

**Figure CA-UCLA-3. Percentage of UCLA Undergraduates Receiving Pell Grants**



Note: For information on the data and their sources, see the end of this section.

**Figure CA-UCLA-4. Percentage of Undergraduates Receiving Pell Grants at UCLA, at 41 Public Flagship Universities, and Nationwide**



Note: For information on the data and their sources, see the end of this section.



# Washington (1998)

## *\*Background on the Affirmative Action Ban*

In 1968, the University of Washington (UW), the state's flagship institution, created the Educational Opportunity Program (EOP) to admit low-income and minority applicants through a separate admissions process.<sup>177</sup> In 1997, the University of Washington merged EOP with regular admissions, concerned that a two-track admissions process might be unconstitutional. All students were now required to write an essay, previously required only of EOP students, and all students' applications were reviewed in the same manner, but race/ethnicity was still a consideration in this review.<sup>178</sup>

In November 1998, Washington State voters passed Initiative 200 (I-200), which prohibited discrimination or preferential treatment "based on race, sex, color, ethnicity or national origin in public employment, education, and contracting."<sup>179</sup> I-200 eliminated affirmative action in admissions as well as in publicly financed financial aid and recruiting at public colleges and universities in the state.<sup>180</sup>

The classes enrolling in all public universities in the state in fall 1999 and later were admitted without the consideration of race/ethnicity.<sup>181</sup> Starting that year, the University of Washington moved to a comprehensive review admissions system that looked at a number of race/ethnicity-neutral personal characteristics and began exploring other options to enhance diversity.<sup>182</sup> In October 2000, the university's president, regents, student leaders, and administrators made a pledge to complete nineteen specific diversity initiatives by May 2001.<sup>183</sup> As a result of that pledge, the University Diversity Council was established in 2001, convening members from the administration, staff, and faculty, as well as undergraduate and graduate students, to make recommendations about diversity and equity. The council continues to play an active role in advising the University of Washington's diversity initiatives.<sup>184</sup>

## *\*Admission Policies after the Ban*

**The University of Washington.** The University of Washington's holistic review admissions process, adopted in 1999, looks at a number of "Personal Achievements and Characteristics," including "demonstrating a commitment to community service and leadership"; "exercising significant responsibility in a family, community, employment, or through activities"; "attaining a college-preparatory education in the face of significant personal adversity, economic disadvantage, or disability"; "demonstrating cultural awareness or unique perspectives or experiences"; and "demonstrating notable tenacity, insight, originality, or creativity."<sup>185</sup>

This information is elicited in several places on the UW's application. The required personal statement and short response both provide an opportunity to look at students' personal characteristics and achievements. The personal statement asks students to answer one of the following questions: "Discuss how your family's experience or cultural history enriched you or presented you with opportunities or challenges in pursuing your educational goals," or "Tell us a story from your life, describing an experience that either demonstrates your character or helped to shape it."<sup>186</sup> The short response likewise gives two options: "The University of Washington seeks to create a community of students richly diverse in cultural backgrounds, experiences, and viewpoints. How would you contribute to this community?" or "Describe an experience of cultural difference or insensitivity you have had or observed. What did you learn from it?"<sup>187</sup>

An optional writing section provides an additional place for students to explain extenuating circumstances: "Is there anything else you would like us to know about you? Use this section for anything you wish to express that doesn't seem to fit in any of the required Writing Section areas. For example, if you have experienced personal hardships in attaining your education, if your activities have been limited because of work or family obligations, or if you want us to know how important a personal or professional goal is to you, tell us here."<sup>188</sup>

**Public Universities across the State.** All six public universities in Washington State now use some form of holistic or comprehensive review for applicants that allows for socioeconomic factors. At the University of Washington, Western Washington University, and Washington State University, all students are reviewed through holistic review. At Eastern Washington University, Central Washington University, and the Evergreen State College, a comprehensive review process exists only for those students that do not meet the minimum academic admissions requirements.<sup>189</sup>

### *\*Financial Aid Policies after the Ban*

Although I-200 banned the use of race/ethnicity in publicly funded financial aid,<sup>190</sup> the University of Washington increased privately funded scholarships targeted for minorities.<sup>191</sup> The UW created a new system for awarding targeted scholarships that they believed would stand up to greater legal scrutiny: race/ethnicity-neutral criteria determine a pool of eligible students, and then race/ethnicity may be used to match students with specific scholarships only if they have first passed the race/ethnicity-blind test.<sup>192</sup>

The university started the Diversity Scholars program in 2001, and within the first two years, the program raised over \$7 million in private funding, which was used to provide scholarships for two hundred students who meet the criteria of being underrepresented minorities with exemplary academic records and demonstrated financial need.<sup>193</sup>

### *\*Recruitment, Outreach, and Support Programs after the Ban*

**Increased Targeted Recruitment.** After the passage of I-200, the University of Washington increased recruitment efforts aimed at diversifying the student body. In 1999–00, the university sent letters to qualified students from the western United States, including a high proportion of minorities, encouraging them to apply. The UW also sent letters signed by the president to minority students with SAT scores of 1200 or higher.<sup>194</sup> The university hired two counselors to work specifically with high schools in Seattle and Tacoma and created a new student ambassador program, sending UW students into high schools.<sup>195</sup> The Office of Minority Affairs began hosting many overnight visits on the campus for minority high school and community college students.<sup>196</sup>

The UW also increased graduate student outreach by adding new orientation days, graduate student days, and symposia on diversity-related topics to the existing Graduate Opportunities and Minority Achievement Program (GO-MAP).<sup>197</sup>

**K–12 partnerships.** In the wake of I-200, the UW created a Diversity Scale-Up Project to expand preexisting efforts to strengthen the pipeline of underrepresented students in STEM (science, technology, engineering, and mathematics). Preexisting programs that were targeted for the “scale-up” included MESA (Mathematics, Engineering, Science Achievement), which runs programs for underrepresented students in grades 6–12, and STEP (Sciences and Tribes Educational Partnership), through which UW partners with Native American tribes.<sup>198</sup>

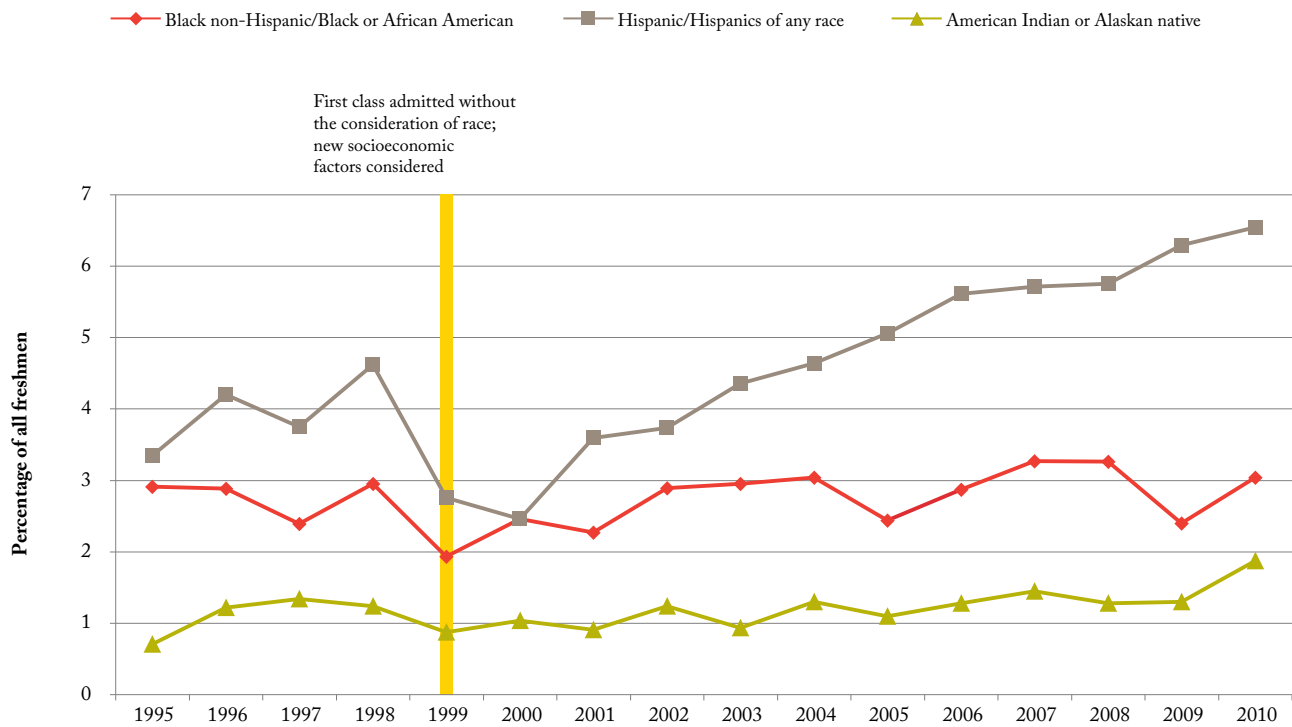
In 2009–10, the UW started the Champions Program, which reaches out to high school and community college students who are foster care alumni or are currently in foster care and provides them with a variety of supports helping them towards enrolling in a four-year degree program.<sup>199</sup>

**Support for Enrolled Students.** The UW’s Educational Opportunity Program (EOP), which from 1968 to 1997 was an alternative admissions route for low-income and minority students, now supports students who are underrepresented minorities, economically disadvantaged, or first-generation college students. EOP provides academic counseling services and also helps students navigate financial aid, housing, and other personal matters.<sup>200</sup>

The university also runs several other student support programs. In 2010, the UW was awarded a five-year federal College Assistance Migrant Program (CAMP) grant, which is being used to provide assistance for first-year college students from migrant and seasonal farm worker families who are enrolled at the UW.<sup>201</sup>

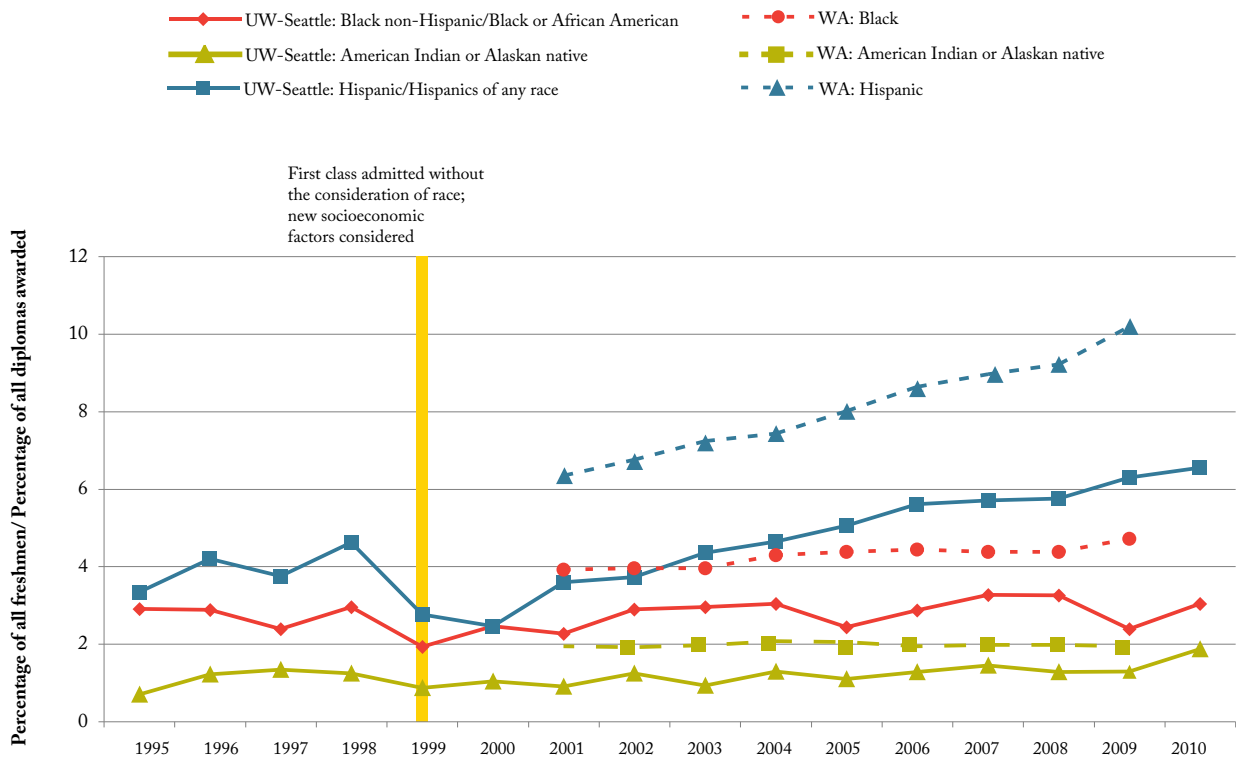
*\*Changes in Demographics*

Figure WA-1. University of Washington–Seattle Fall Freshman Enrollment, by Race/Ethnicity



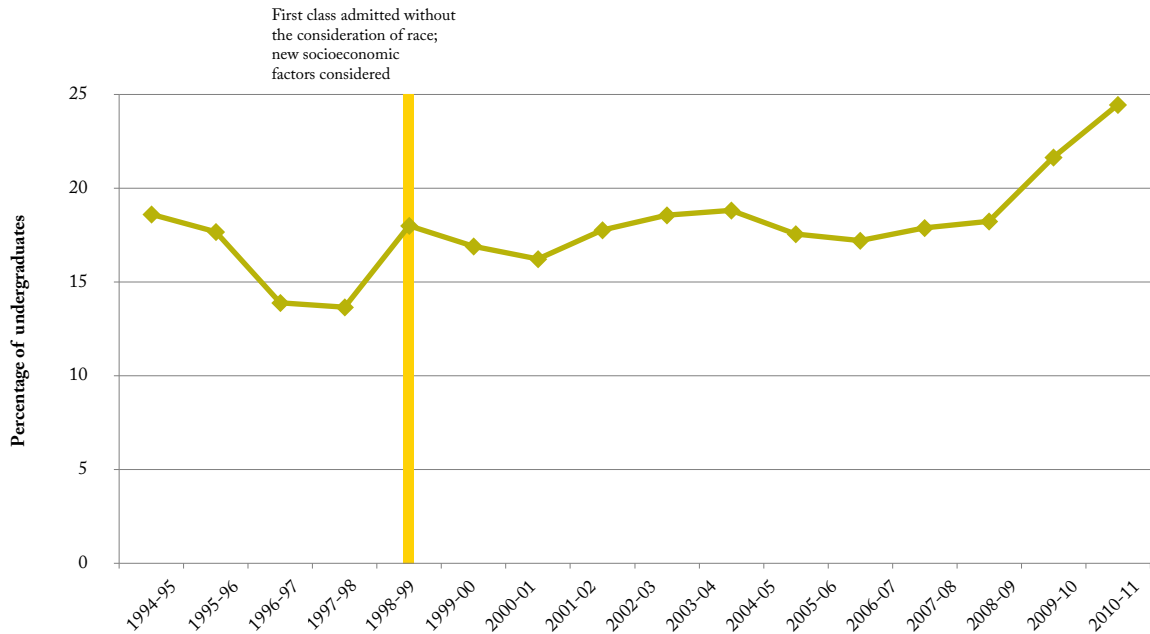
Note: For information on the data and their sources, see the end of this section.

Figure WA-2. University of Washington-Seattle Fall Freshman Enrollment and Washington High School Diplomas, by Race/Ethnicity



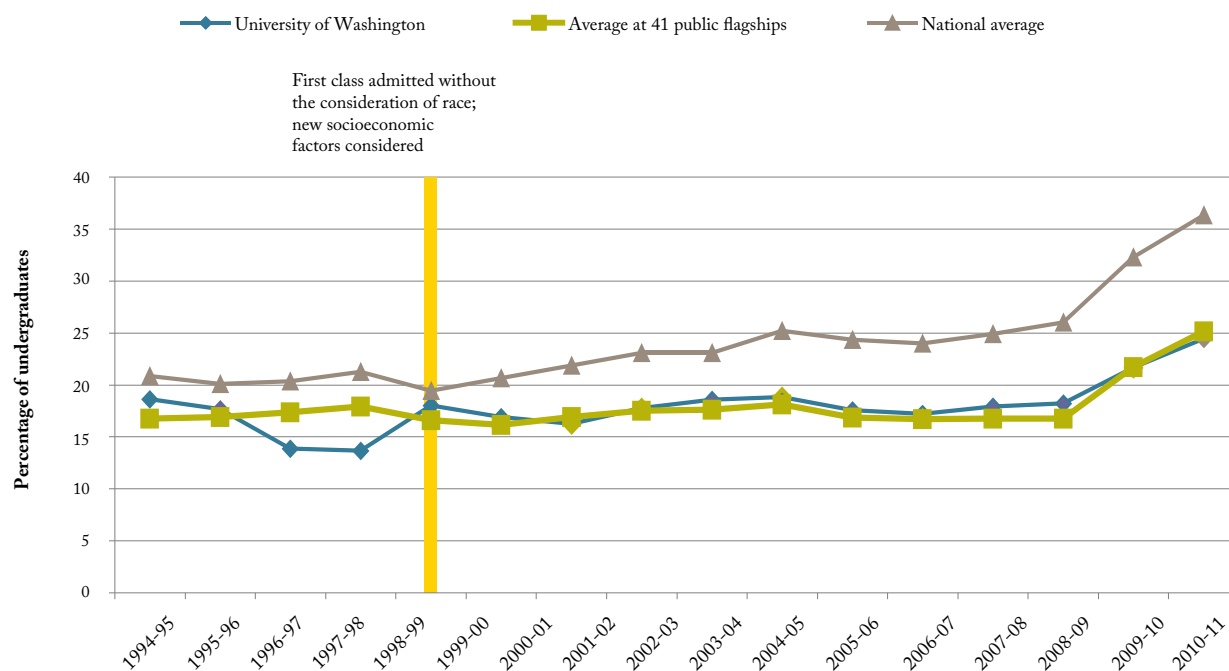
Note: Race/ethnicity data on diplomas in Washington State was not available for years prior to 2001. For more information on the data and their sources, see the end of this section.

Figure WA-3. Percentage of University of Washington-Seattle, Tacoma, and Bothell Campus Undergraduates Receiving Pell Grants



Note: Pell Grant data for the University of Washington was not available at the campus level. For information on the data and their sources, see the end of this section.

**Figure WA-4. Percentage of Undergraduates Receiving Pell Grants at the University of Washington–Seattle, Tacoma, and Bothell Campuses, at 41 Public Flagship Universities, and Nationwide**



Note: Pell Grant data for the University of Washington was not available at the campus level. For more information on the data and their sources, see the end of this section.

## Florida (1999)

### *\*Background on the Affirmative Action Ban*

In November 1999, Governor Jeb Bush announced Executive Order 99-281, the “One Florida Initiative,” ending the use of race/ethnicity or gender in the state’s employment, contracting, and higher education admission decisions. The higher education portion of the ban affected only admissions in the State University System (SUS), and the consideration of race/ethnicity was still permitted in scholarships, outreach, and targeted programs at SUS schools.<sup>202</sup> The One Florida Initiative also contained two major revisions to SUS admission policies, the Talented 20 program and Profile Assessment (discussed below). The plan was designed in part to preempt a voter referendum on the issue, like the ones passed in California and Washington in recent years.<sup>203</sup>

The Board of Regents voted on the One Florida/Talented 20 plan in February 2000, and the plan went into effect that July, partially affecting admissions for the entering class of fall 2000.<sup>204</sup> (However, many admission decisions for that fall had already been made prior to June and were not affected by One Florida/Talented 20.)<sup>205</sup> The first class for which the ban on affirmative action and revised admissions policy were in full effect was the class entering in fall 2001.

### *\*Admission Policies after the Ban*

**Talented 20.** Governor Bush’s One Florida Initiative contained an admissions program known as Talented 20. Under Talented 20, graduates of Florida public high schools who complete required classes, rank in the top 20 percent of the graduating class at their high school, and submit an ACT or SAT score (the score

itself is not considered, but it must be submitted) are guaranteed admission to SUS, though not necessarily to their school of choice.<sup>206</sup>

There is debate about how much the Talented 20 program actually changed SUS admission decisions. Patricia Marin and Edgar K. Lee find that most Talented 20 students would have been admitted to SUS based on grades and test scores alone, without relying on the Talented 20 guarantee.<sup>207</sup> In addition, the program is not administered centrally, so the burden of ensuring admission for Talented 20 students falls onto high school guidance counselors and the students themselves. Guidance counselors are instructed to work with Talented 20 students to identify SUS campuses where the students have a good chance of admission. Students must apply and be rejected by three SUS campuses before they can exercise the guarantee. After three rejections, the student is instructed to work with the guidance counselor to identify more campuses and, if that fails, to contact the Office of Equity and Access.<sup>208</sup> In the first year of Talented 20, 16,047 applicants to public Florida universities were in the top 20 percent of their graduating class. Of these, only 711 were rejected by all SUS schools to which they applied. And of those, only 30 had applied to more than three SUS schools, meaning that only 30 of 16,047 had the possibility of being affected by Talented 20.<sup>209</sup>

**Profile Assessment.** Bush's One Florida Initiative also replaced SUS's old system of Alternative Admissions, a program originally adopted to increase the number of black students by admitting students who do not meet the regular admissions criteria after considering special circumstances, including racial background.<sup>210</sup> Under the new Profile Assessment, a maximum of 10 percent of the incoming class across SUS may be admitted under an alternative set of criteria that considers socioeconomic factors in addition to grades and test scores. These factors include "family education background, socioeconomic status, graduate of a low performing high school, international baccalaureate program graduate, geographic location and special talents." Race, ethnicity, national origin, and gender are not factors.<sup>211</sup>

**More Detailed Application at the University of Florida.** In December 1999, the University of Florida (UF), the SUS flagship, created an Admissions Task Force to prepare to adjust to admissions without affirmative action. As a result of the task force, UF added an essay to its application as well as an optional information section that included questions on extracurricular activities, work history, and single parent status.<sup>212</sup>

### *\*Financial Aid Policies after the Ban*

**University of Florida.** UF's Florida Opportunity Scholar Fund, started in 2006, offers full scholarships to first-generation freshmen from low-income families, allowing students to graduate without loans.<sup>213</sup> The program also includes a special orientation session, a "First Year Florida" course for all Opportunity Scholar freshmen, a year-long leadership seminar for juniors and seniors, and peer mentoring services.<sup>214</sup>

**Statewide.** The Florida Student Assistance Grant (FSAG), started back in 1972, provides need-based scholarships to Florida high school students who attend public or eligible private colleges and universities in the state.<sup>215</sup> With the passage of One Florida, Talented 20 students were given priority for FSAG funding, provided they also met the eligibility criteria for FSAG.<sup>216</sup>

Florida also offers the First Generation Matching Grant Program, established in 2006. Grants are administered by individual colleges and universities and are contingent on the school finding matching funding from private sources.<sup>217</sup>

### *\*Recruitment, Outreach, and Support Programs after the Ban*

**Race/ethnicity-conscious Recruitment, Outreach, and Support.** UF increased its racially conscious outreach, recruitment, and support programs in accordance with recommendations from the Admissions Task Force, in order to compensate for the loss of racial/ethnic considerations in admissions.<sup>218</sup> Race/ethnicity-conscious programs continue today at UF.<sup>219</sup> Current minority student support programs include the Black



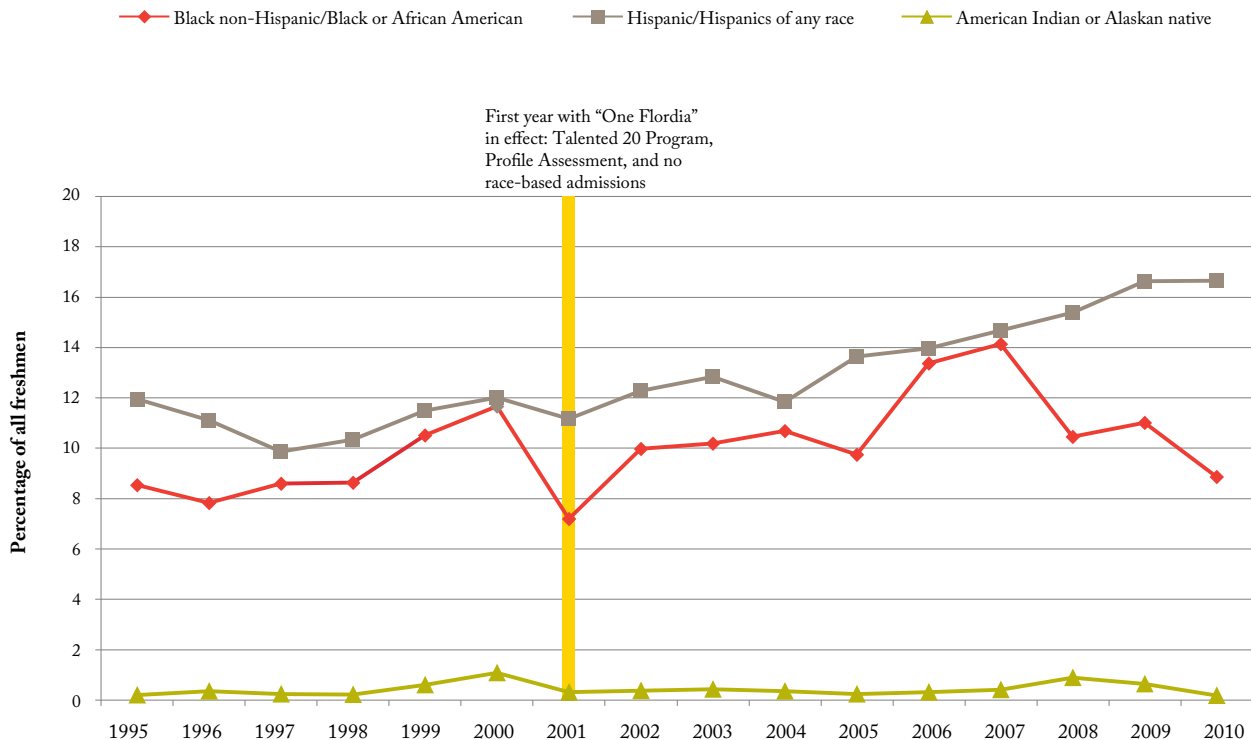
Male Development Initiative and the Black Women's Image Initiative.<sup>220</sup> The College of Education administers the Florida Fund for Minority Teachers, Inc., a state-sponsored scholarship for minority students in teacher education programs.<sup>221</sup> In addition, the UF Admissions Office runs a number of programs for minority high school and community college students, including student recruitment conferences for African-American students and Hispanic-Latino students.<sup>222</sup>

Florida State University (FSU) also increased outreach to minority high school students, focusing on black and Hispanic areas of South Florida, and increased their enrollment cap in order to allow them to admit more minorities.<sup>223</sup>

**Targeting Low-income Students at FSU.** In 2000, Florida State University (FSU) replaced two older programs that aimed to increase minority student retention with a new socioeconomically targeted program, CARE (Center for Academic Retention and Enhancement).<sup>224</sup> CARE provides outreach to high school students and academic support for enrolled students, all targeted at first-generation college students or those facing particular educational or economic challenges.<sup>225</sup> In addition, CARE runs the Summer Bridge Program (SBP), an alternative admissions program for “first-generation college students from financially disadvantaged backgrounds who have demonstrated a strong desire to succeed.” Applicants must meet a number of criteria, including being eligible to receive a Pell grant and earning minimum GPA and ACT/SAT scores. SBP students submit a supplemental application in addition to FSU's general admissions application, and if admitted, they complete a pre-college summer session as well as receive academic and orientation support while at FSU.<sup>226</sup>

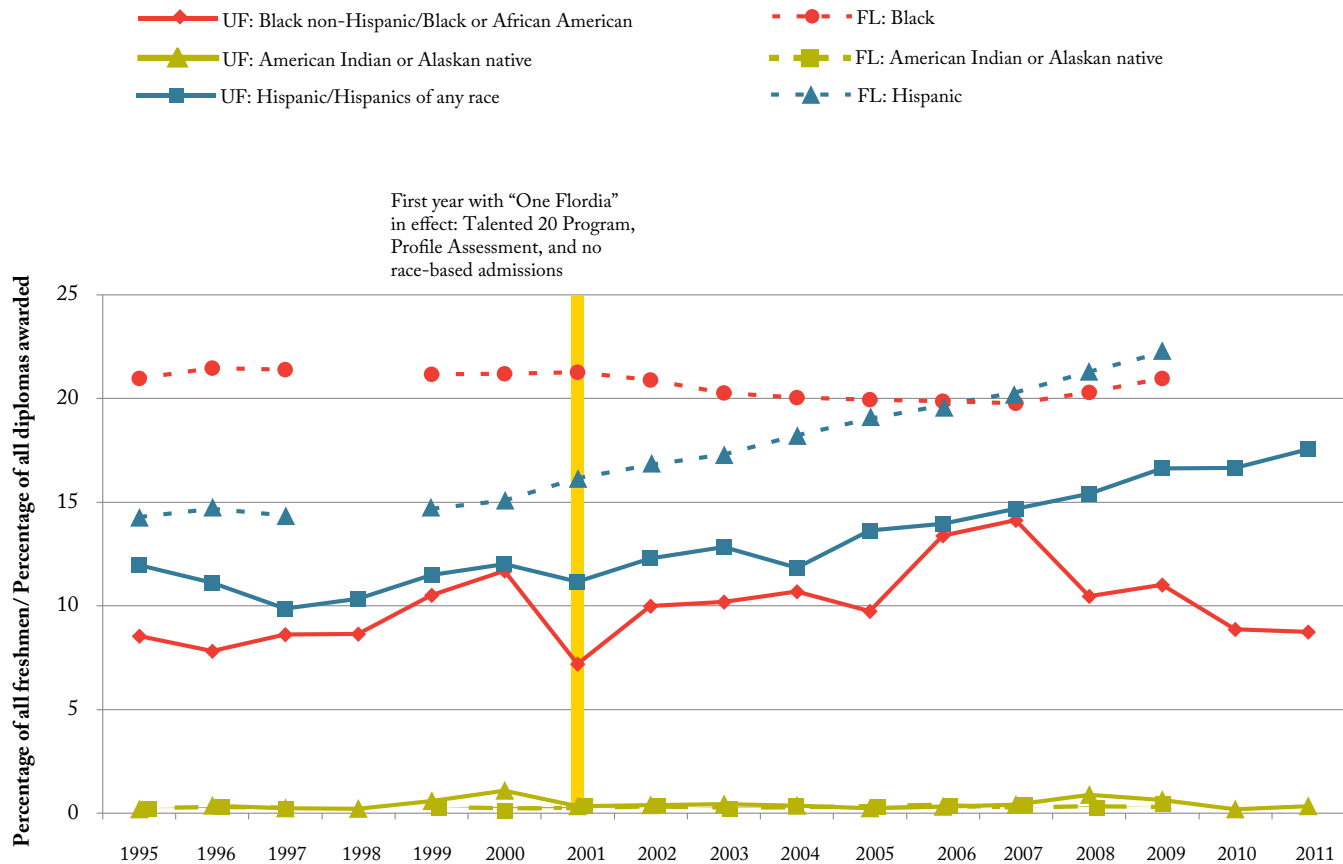
### *\*Changes in Demographics*

**Figure FL-1. University of Florida Fall Freshman Enrollment, by Race/Ethnicity**



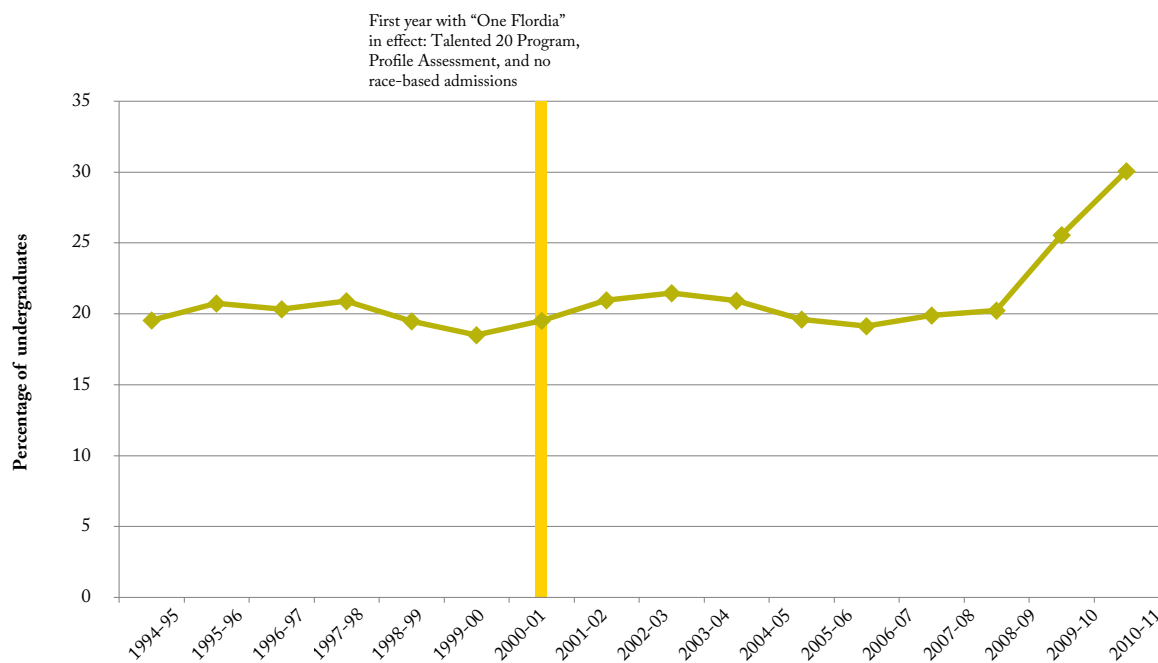
*Note:* For information on the data and their sources, see the end of this section.

Figure FL-2. University of Florida Fall Freshman Enrollment and Florida High School Diplomas, by Race/Ethnicity



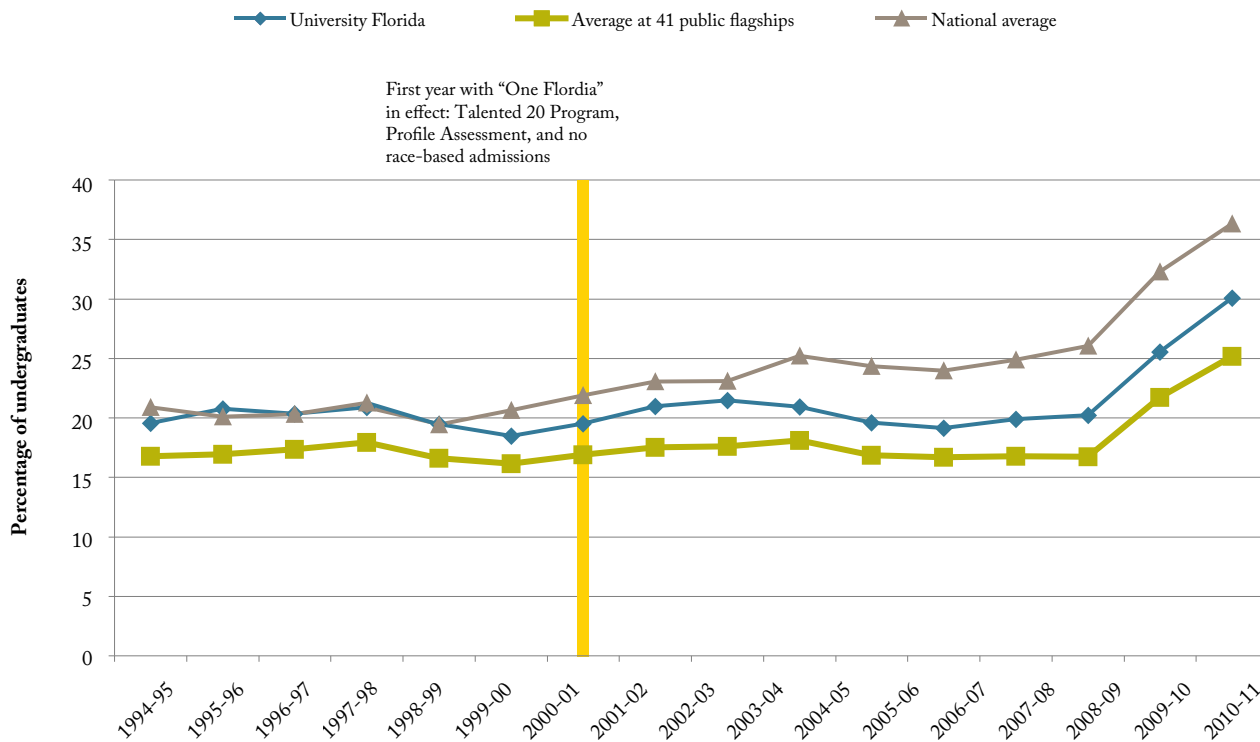
Note: Race/ethnicity data on diplomas in Florida was not available for 1998. For more information on the data and their sources, see the end of this section.

Figure FL-3. Percentage of University of Florida Undergraduates Receiving Pell Grants



Note: For information on the data and their sources, see the end of this section.

**Figure FL-4. Percentage of Undergraduates Receiving Pell Grants at the University of Florida, at 41 Public Flagship Universities, and Nationwide**



Note: For information on the data and their sources, see the end of this section.

## Georgia (2000)

### *\*Background on the Affirmative Action Ban*

In July 2000, U.S. District Judge Avant B. Edenfield ruled that the University of Georgia (UGA), Georgia's public flagship university, had to drop the consideration of race/ethnicity in admissions.<sup>227</sup> The University appealed the decision. In 2001, the Court of Appeals for the Eleventh Circuit found in *Johnson v. Board of Regents of the University of Georgia* that the University of Georgia's particular admissions policy was unconstitutional because the use of race/ethnicity was not narrowly tailored.<sup>228</sup>

UGA dropped affirmative action starting for the class enrolling in fall 2002.<sup>229</sup> After the Supreme Court decision in *Grutter and Gratz*, a UGA faculty committee proposed reinstating the consideration of race/ethnicity. The committee developed recommendations for new admissions criteria for students, which included "race and ethnic background, where they live, their native language, and the range and quality of their experiences and backgrounds."<sup>230</sup> However, the state attorney general's office expressed skepticism about the plan, and ultimately UGA chose to continue with race/ethnicity-neutral admissions.<sup>231</sup>

### *\*Admission Policies after the Ban*

**New Admissions, with More Factors Considered.** Starting with the class enrolling in fall 2003, UGA implemented a new admissions policy. As was the case the previous year, the policy was race/ethnicity-neutral; however, the new policy contained a longer application form, more space for essays, and a new teacher recommendation requirement. Under the new process, 75 percent to 80 percent of students would be admitted

based on academics alone, but the rest of the class would be admitted with additional factors weighed, such as “exceptional circumstances,” “intellectual curiosity, integrity, personal maturity, creativity, commitment to service and citizenship, ability to overcome hardship and respect for cultural differences.”<sup>232</sup>

**Ending Legacy Preferences.** When UGA was forced to end racial/ethnic preferences in admissions, the university’s president, Michael F. Adams, followed the advice of a faculty committee that was redesigning UGA admissions and voluntarily eliminated legacy preferences as well.<sup>233</sup>

### *\*Financial Aid Policies after the Ban*

In 2006, the university started the One UGA Scholarship, awarded each year to thirty-five to forty students who “provide diversity to UGA based on the University’s broad definition of diversity.” The award is \$1,500 per year, renewable.<sup>234</sup>

### *\*Recruitment, Outreach, and Support Programs after the Ban*

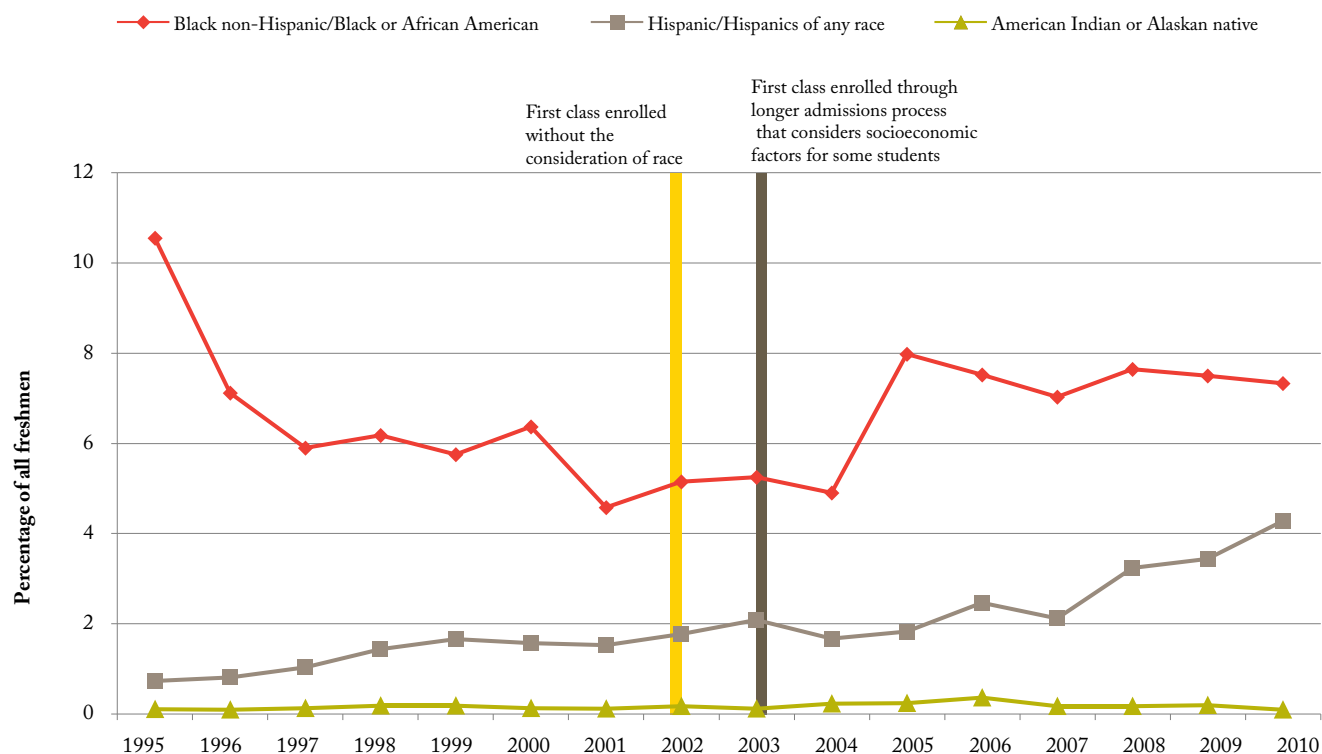
**Undergraduate Recruitment.** After dropping the consideration of race/ethnicity in admissions, UGA increased racially targeted recruitment through a number of initiatives. In 2001–02, a task force comprised of students, faculty, and staff also created a three-year plan for improving campus diversity.<sup>235</sup> That year the university opened up a new Office of Institutional Diversity and a new satellite recruitment office to help recruit students from historically underrepresented populations.<sup>236</sup> A second satellite recruitment office opened the following year.<sup>237</sup> In 2004, the admissions office purchased recruiting lists for over nine thousand “multicultural high school students” to aid with recruitment.<sup>238</sup> Admissions counselors also increased their work at career fairs, reached out more to high schools, and offered weekend information sessions.<sup>239</sup>

**Graduate Recruitment.** The university’s graduate school also increased minority recruitment and retention efforts in the years following the loss of racial preferences. For example, the school created a Summer Bridge program to help transition students to graduate school and formed special partnerships with certain historically black colleges and universities.<sup>240</sup>

**K–12 partnerships.** In 2002, the College of Education opened the Center for Latino Achievement and Success in Education, offering professional development for teachers and helping to improve educational outcomes for Latino students in the state.<sup>241</sup>

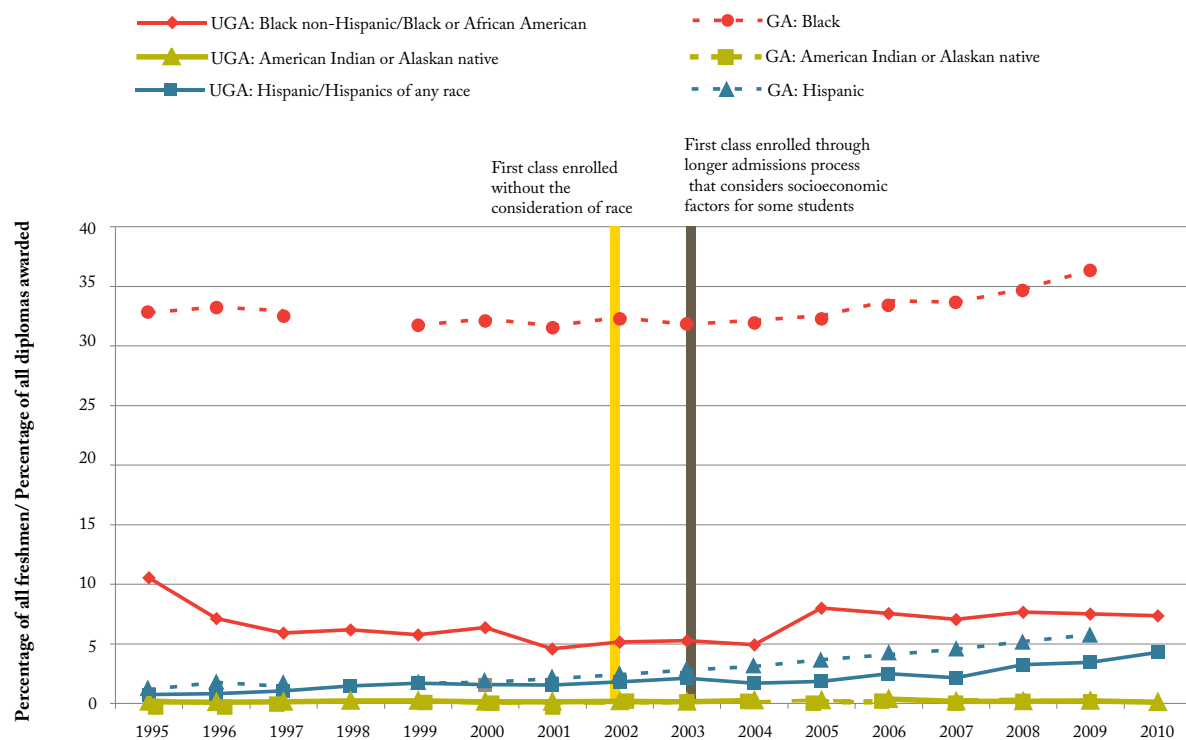
## \*Changes in Demographics

**Figure GA-1. University of Georgia Fall Freshman Enrollment, by Race/Ethnicity**



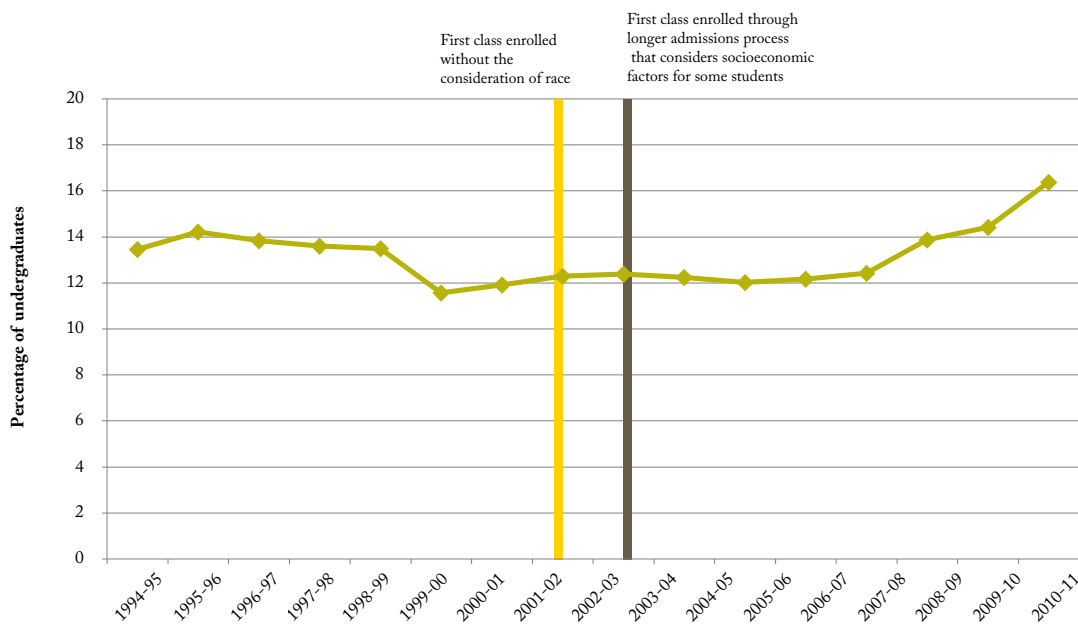
Note: For information on the data and their sources, see the end of this section.

**Figure GA-2. University of Georgia Fall Freshman Enrollment and Georgia High School Diplomas, by Race/Ethnicity**



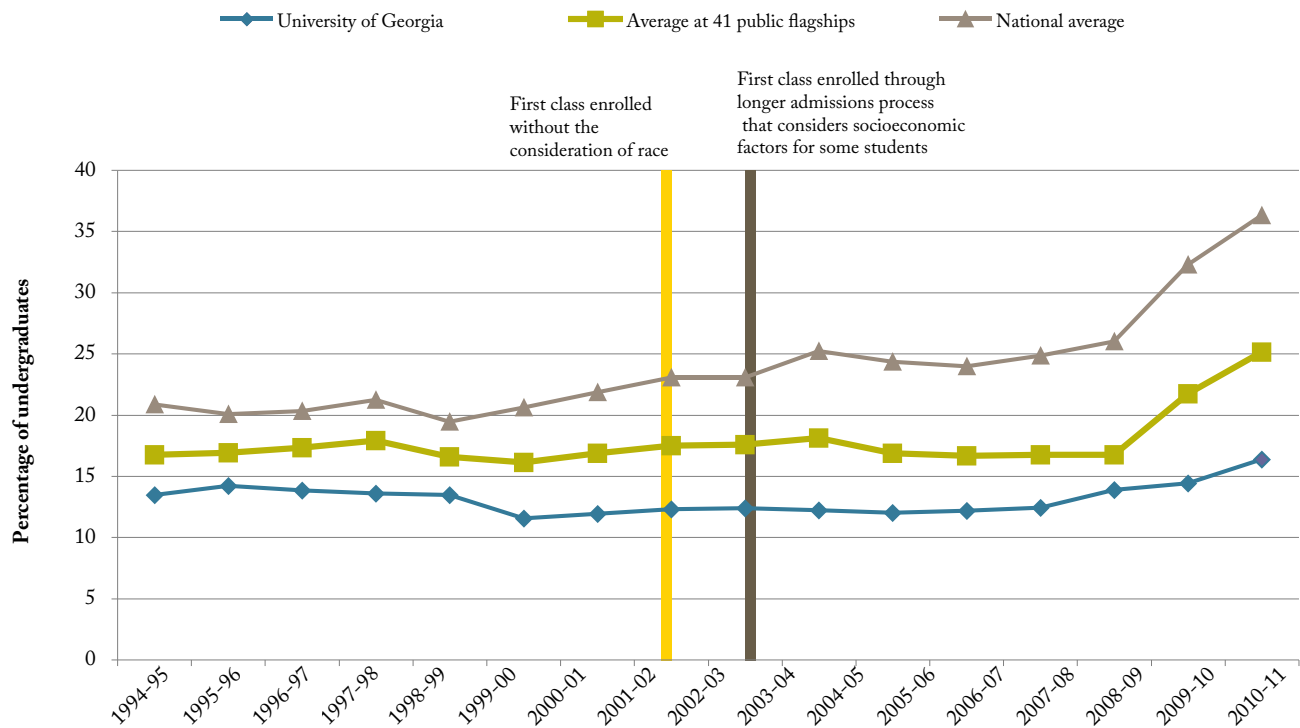
Note: Race/ethnicity data on diplomas in Georgia was not available for 1998.  
For more information on the data and their sources, see the end of this section.

Figure GA-3. Percentage of University of Georgia Undergraduates Receiving Pell Grants



Note: For information on the data and their sources, see the end of this section.

Figure GA-4. Percentage of Undergraduates Receiving Pell Grants at the University of Georgia, at 41 Public Flagship Universities, and Nationwide



Note: For information on the data and their sources, see the end of this section.



# Michigan (2006)

## *\*Background on the Affirmative Action Ban*

In June 2003, the U.S. Supreme Court ruled in *Grutter v. Bollinger* and *Gratz v. Bollinger* that diversity is a compelling interest in higher education and that universities can take race/ethnicity into account as a factor, but that the use of race/ethnicity in admissions must be narrowly tailored. That fall, the University of Michigan—Ann Arbor (UM), the state's public flagship, announced a new undergraduate admissions process with greater individualized review (rather than the points-based affirmative action previously in place) in order to be in compliance with the new Supreme Court ruling. The new admissions process went in effect for classes enrolling in winter, spring, and summer 2004.<sup>242</sup>

In 2006, Michigan voters passed the Michigan Civil Rights Initiative, also known as Proposal 2, which banned the use of affirmative action based on race/ethnicity or gender in public education, employment, and contracting.<sup>243</sup> After the passage of Proposal 2, the University of Michigan—Ann Arbor created the Diversity Blueprints Task Force to make recommendations about increasing student diversity in the wake of the state's ban on affirmative action.<sup>244</sup> The class entering UM in fall 2008 was the first class admitted without affirmative action.<sup>245</sup> A number of new race/ethnicity-neutral policies were introduced (described below).

The courts continue to review the legality of the Michigan Civil Rights Initiative. In July 2011, the U.S. Court of Appeals for the Sixth Circuit in Cincinnati struck down Michigan's ban on affirmative action in a 2-to-1 vote. Michigan attorney general Bill Schuette promised to appeal through request for en banc rehearing.<sup>246</sup> In September 2011, the court vacated that decision and decided to rehear the case.<sup>247</sup> In March 2012, the court reopened the case and heard arguments, but no new ruling has been issued.<sup>248</sup>

## *\*Admission Policies after the Ban*

Following Proposal 2, UM adopted a new admissions process that considers a number of different factors related to socioeconomic background and students' life experiences. Factors considered when scoring applications include "Extenuating Circumstances" such as overcoming personal adversity/disadvantage/unusual hardships, speaking another language at home, moving frequently, or attending many different schools; "Educational Environment" factors, such as characteristics of the student's high school, including the average SAT and/or ACT scores, the percentage of students from the school attending 4-year colleges, and the school's status as academically disadvantaged; and "Personal Background" factors, including cultural awareness/experiences, status as first generation college student, low economic family background, and residence in an economically disadvantaged region.<sup>249</sup> The University hired more admissions staff to help with the burden of the new application review process.<sup>250</sup>

The UM application solicits information about students' background and life experiences in a variety of ways. One of the mandatory essay topics on the application asks about the student's community and background: "Everyone belongs to many different communities and/or groups defined by (among other things) shared geography, religion, ethnicity, income, cuisine, interest, race, ideology, or intellectual heritage. Choose one of the communities to which you belong, and describe that community and your place within in."<sup>251</sup>

## *\*Financial Aid Policies after the Ban*

**M-PACT.** Starting in 2005, UM introduced M-PACT, a new financial aid program that provides need-based grants to low-income Michigan residents, helping to reduce loans for more than 2,900 undergraduates in its first year.<sup>252</sup> To support this expansion of aid, UM began a special fundraising effort to find private donations for need-based scholarships, matched with institutional funds.<sup>253</sup>

**Community College Transfer Scholarships.** UM also created new scholarships specifically for community college transfer students and increased funding available for existing programs.<sup>254</sup> Spurred to action by a four-year grant from the Jack Kent Cooke Foundation that began in 2006, the university created the University of Michigan Community College Scholar Award, a renewable scholarship of \$5,000 per year. At the same time, UM reviewed and improved the preexisting University of Michigan Community College Scholarship, a one-time award of \$1,500, and the university later worked to streamline the application process for both awards in order to broaden access.<sup>255</sup>

**Geography-based Scholarships.** The university no longer has scholarships based on race, gender, or ethnicity. Instead, starting with the 2007–08 admissions cycle, UM uses a special tool that looks at data for a student’s neighborhood and high school to determine scholarship eligibility.<sup>256</sup> The tool, Descriptor PLUS, identifies “academic, socioeconomic and student-interest characteristics according to geodemography, a system based on the concept that people with similar backgrounds and perspectives cluster in communities.”<sup>257</sup>

### *\*Recruitment, Outreach, and Support Programs after the Ban*

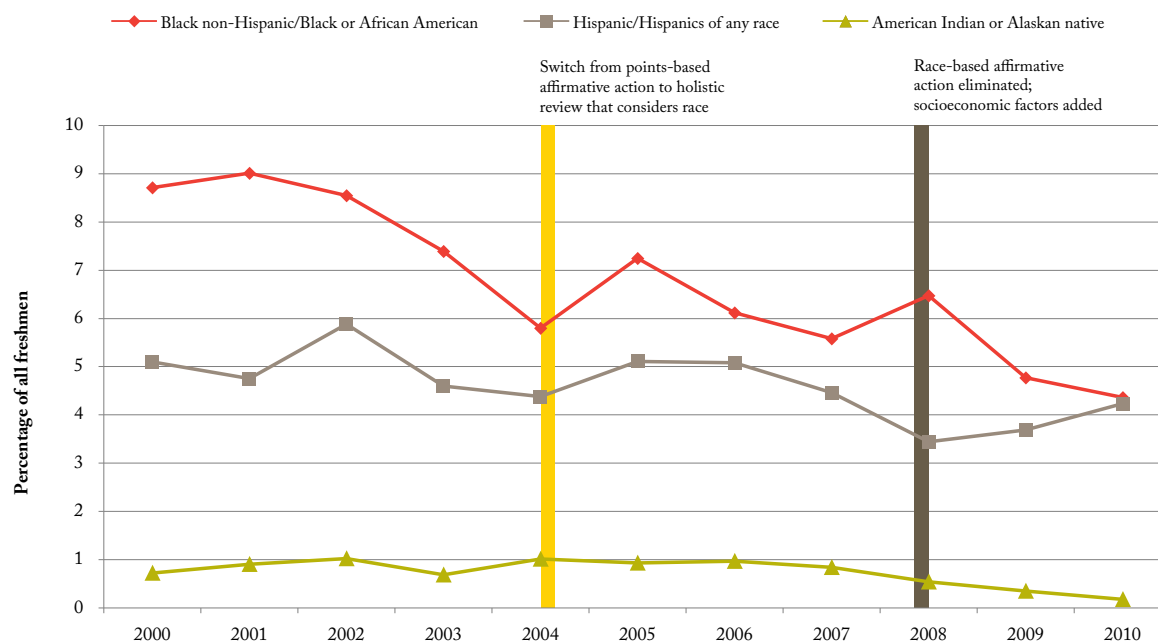
**K–12 partnerships.** As a result of the 2007 Diversity Blueprints Task Force Report, UM opened the Center for Educational Outreach to coordinate programs that link the university with K–12 schools in the state. The CEO Scholars Program, for example, awarded scholarships to twenty-seven middle and high school students in 2010–11 to support participation in UM summer programs.<sup>258</sup> The center’s College 101 program offers a three-day, overnight program for rising tenth grade students to expose them to the college experience, with UM students serving as mentors during the program.<sup>259</sup> Similarly, the Michigan College Advising Corp trains recent UM grads to work for up to two years as college advisers in traditionally underserved high schools across the state.<sup>260</sup>

**Community College Transfer.** The Jack Kent Cooke Foundation gave UM funding to expand programs and services for transfer students and funded a study conducted during 2008–09 to better understand the characteristics of community college transfer students targeted by UM.<sup>261</sup> Bolstered services include recruitment, pre-admission support, application help, post-admission support, a summer Navigation Course, and a Community College Undergraduate Research Opportunity Program that gives transfer students the opportunity to work with faculty members on in-depth research projects.<sup>262</sup>

**One-on-one Recruiting.** Mary Sue Coleman, president of the University of Michigan since 2002, stressed that one of the most effective tools for recruiting underrepresented minorities, particularly when faced with race/ethnicity-neutral admissions, is personal contact between prospective students and university representatives: “personal calls to students, speaking at African American churches, meeting with the editors of Latino and African American newspapers, and attending admissions recruitment and conversion programs.”<sup>263</sup>

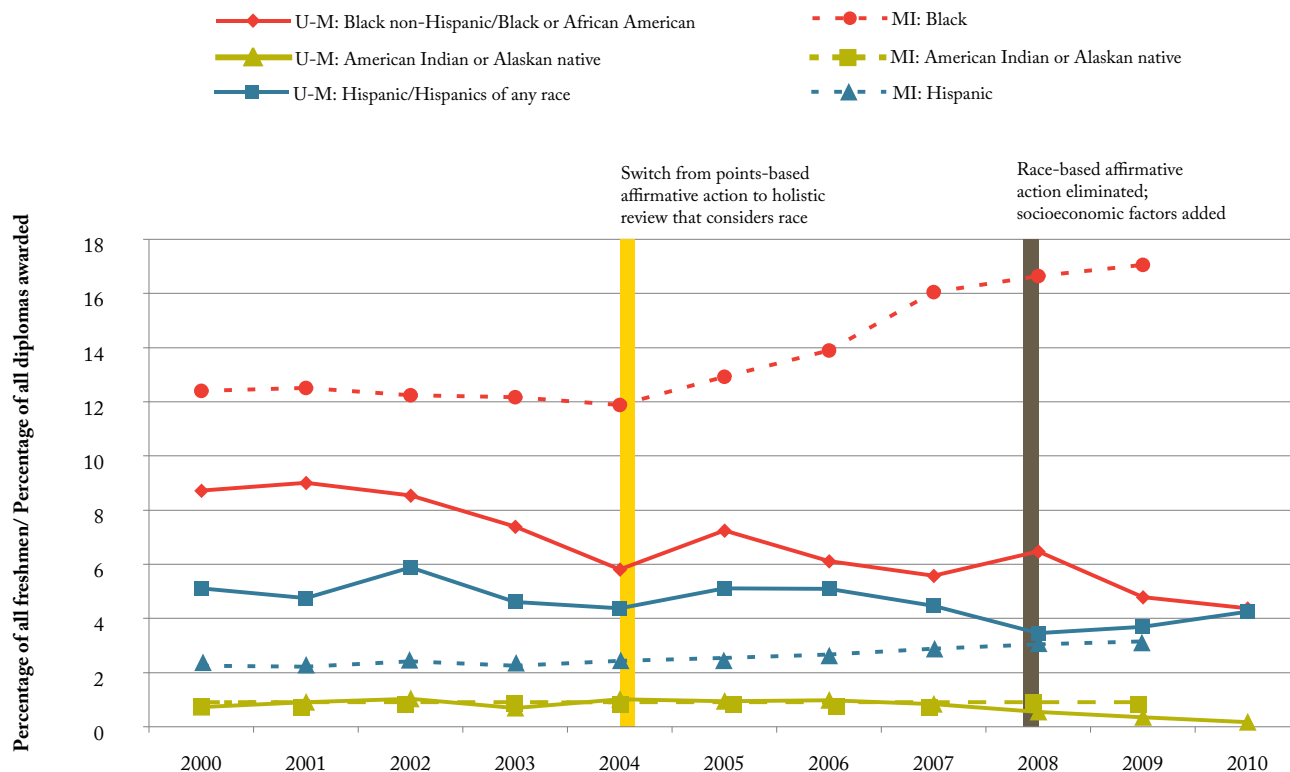
## \*Changes in Demographics

**Figure MI-1. University of Michigan-Ann Arbor Fall Freshman Enrollment, by Race/Ethnicity**



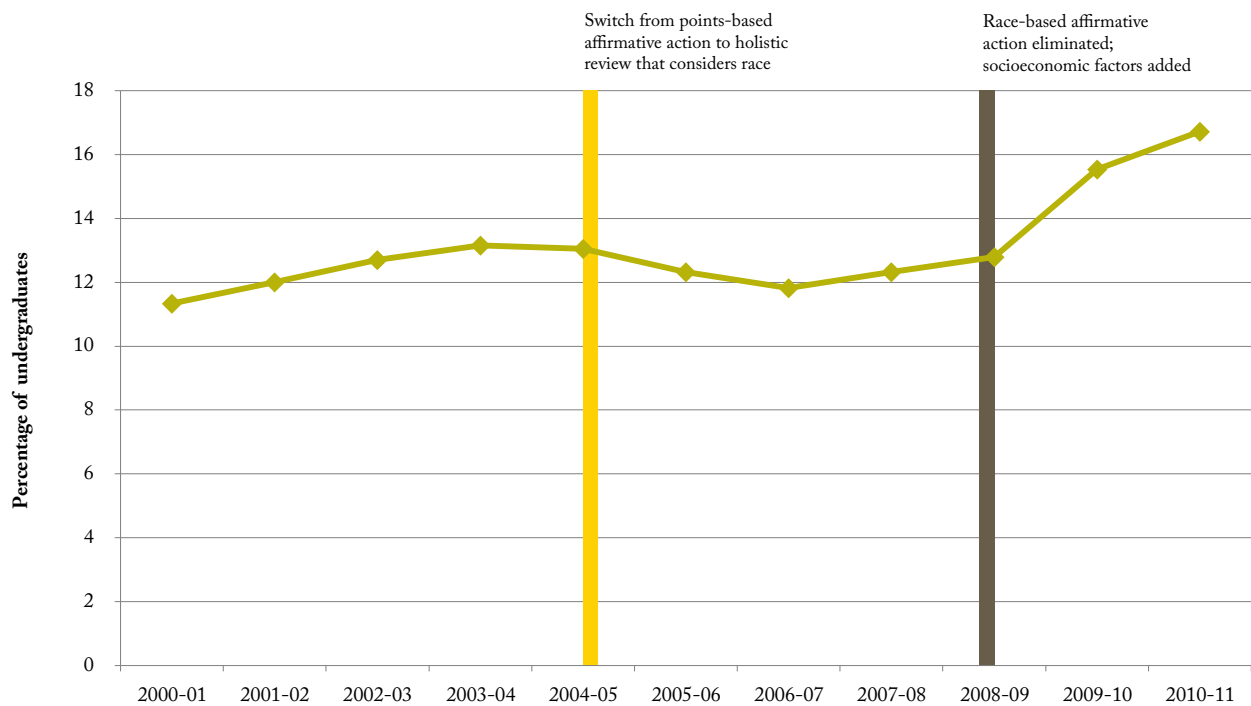
Note: For information on the data and their sources, see the end of this section.

**Figure MI-2. University of Michigan-Ann Arbor Fall Freshman Enrollment and Michigan High School Diplomas, by Race/Ethnicity**



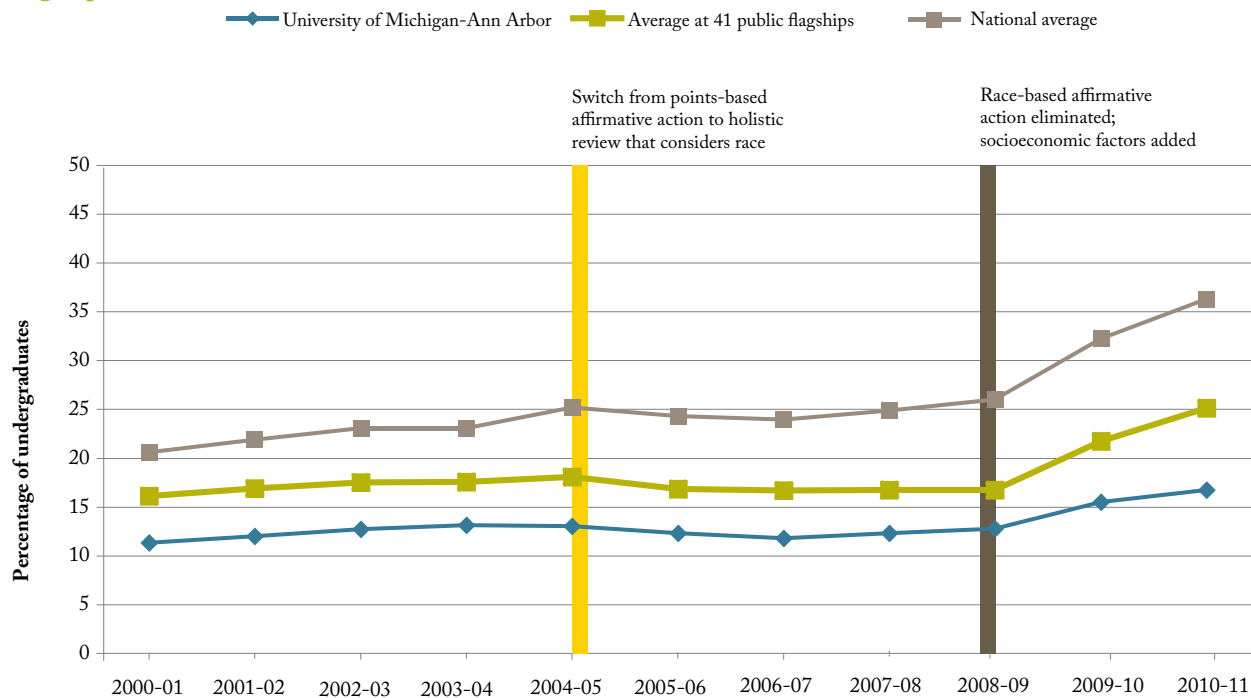
Note: For information on the data and their sources, see the end of this section.

Figure MI-3. Percentage of University of Michigan–Ann Arbor Undergraduates Receiving Pell Grants



Note: For information on the data and their sources, see the end of this section.

Figure MI-4. Percentage of Undergraduates Receiving Pell Grants at the University of Michigan–Ann Arbor, at 41 Public Flagship Universities, and Nationwide



Note: For information on the data and their sources, see the end of this section.

# Nebraska (2008)

## *\*Background on the Affirmative Action Ban*

In November 2008, Nebraska voters passed Initiative 424 (I-424), banning the state from discriminating or giving preferential treatment based on race, ethnicity, color, national origin, or gender in hiring, scholarships, recruitment, or admissions at public universities and other public institutions.<sup>264</sup> A group called Nebraskans United challenged the I-424 vote based on allegations that signatures to get the initiative on the ballot were obtained illegally; however, the ban was upheld by a state court in January 2009.<sup>265</sup>

There is not a clear date for when this ban went into effect because the effects on admission policies were negligible and the response in terms of financial aid and recruiting was spread over several years. Presumably universities needed to be compliant with the ban starting with admissions for the class enrolling in fall 2009. According to institutional reporting from the University of Nebraska-Lincoln (UNL), the university's flagship campus, racial/ethnic status was dropped as a consideration in admissions back in 2005;<sup>266</sup> however, UNL did have some race/ethnicity-conscious programs that needed to be adjusted to be compliant with I-424.<sup>267</sup>

## *\*Admission Policies after the Ban*

Amber Hunter, associate director of the Office of Admissions at UNL, reported that complying with I-424 was easy for UNL because few programs required changing.<sup>268</sup> UNL had dropped the consideration of race/ethnicity in undergraduate admissions prior to the passage of I-424.

There is debate about to what extent race/ethnicity was considered in admissions at the University of Nebraska College of Law. In October 2008, the Center for Equal Opportunity, a conservative think tank, released a study reporting that the college offered large preferences for racial minorities in admissions.<sup>269</sup> The dean of the school responded that the data might not be trustworthy and that the study was politically motivated, but did not provide a direct response as to whether or not the school considered race/ethnicity in admissions.<sup>270</sup>

## *\*Financial Aid Policies after the Ban*

A small percentage of UNL scholarships—about 6 percent of total award dollars—had been awarded with some kind of diversity criteria prior to I-424.<sup>271</sup> With the passage of I-424, race/ethnicity could no longer be used as a diversity factor; however, the university expanded its financial aid offerings for low-income students. J. B. Milliken, president of the University of Nebraska, emphasized the schools' focus on using socioeconomic status in response to I-424: "We believe that focusing efforts on those with the greatest financial need and those who, historically, have had the lowest participation in higher education will help increase the diversity of our campuses."<sup>272</sup>

Starting in fall 2008, just before the passage of I-424, the Board of Regents of Nebraska implemented a newly expanded financial aid program, Collegebound Nebraska, to be offered at all four University of Nebraska campuses.<sup>273</sup> This program expanded a previous initiative, the Tuition Assistance Program, which was started in 2004.<sup>274</sup> Collegebound Nebraska offers free tuition for all Nebraska residents who are Pell Grant recipients (as well as some from families just outside Pell eligibility) and maintain a full-time course schedule with a minimum GPA of 2.5.<sup>275</sup>

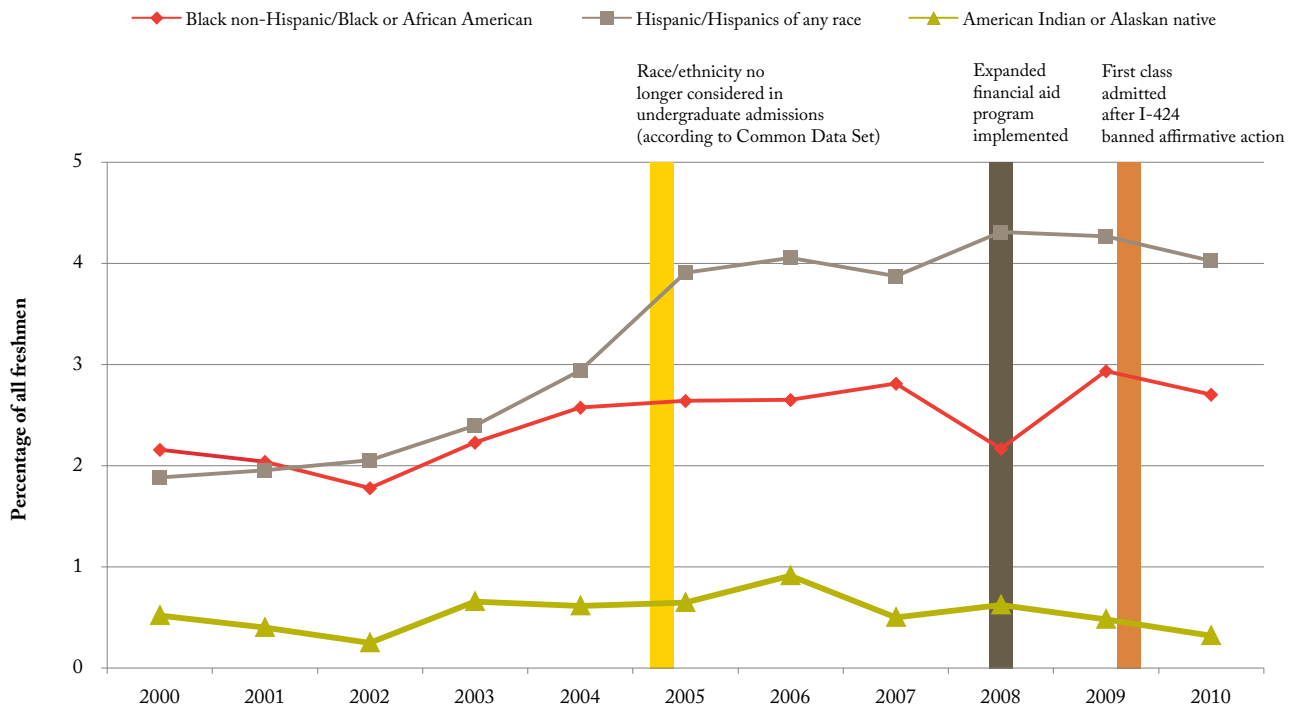
### *\*Recruitment, Outreach, and Support Programs after the Ban*

**K–12 partnerships.** The University of Nebraska expanded several outreach programs during the year that I-424 passed. In 2008, the University of Nebraska-Kearney (UNK) expanded the Kearney Bound program, through which the university pairs with specific high schools to give first-generation students academic support and full scholarships to UNK.<sup>276</sup> The Nebraska College Preparatory Academy, run by UNL, also grew that year. The academy works with high school students at two schools in Nebraska, providing them academic support, counseling, summer courses, and science camps. Students from the program who are admitted to UNL or Metropolitan Community College receive full scholarships with no loans.<sup>277</sup>

**Medical Center Recruitment.** I-424 also prompted increased dialogue about diverse recruitment at the University of Nebraska Medical Center (UNMC). The medical school held a conference, “Diversity in Post I-424 Nebraska,” in March 2009.<sup>278</sup> Speakers included Richard McCormick, who was president of the University of Washington when the ban on affirmative action passed in that state in 1998. In a 2009 article in the *Journal of the National Medical Association*, a number of professors and administrators from UNMC highlighted programs at the medical school that already existed to improve the pipeline of diverse candidates and urged that UNMC build these efforts and others, in light of I-424.<sup>279</sup>

### *\*Changes in Demographics*

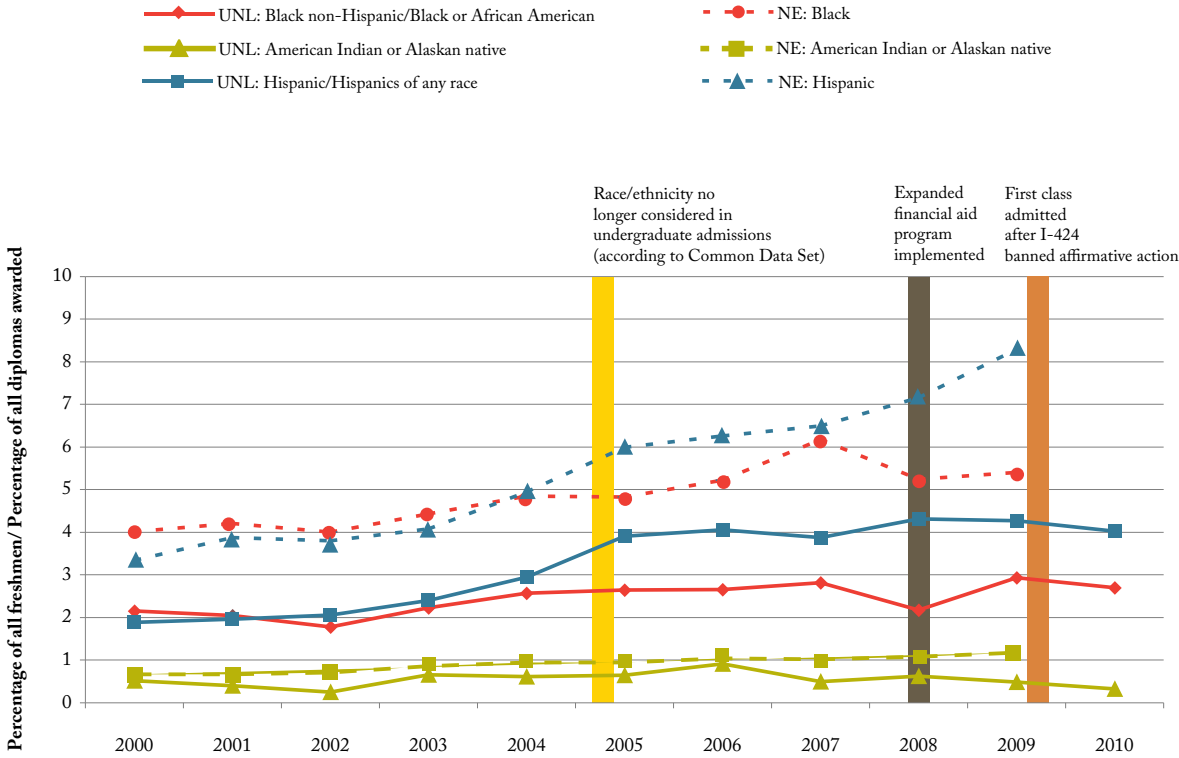
**Figure NE-1. University of Nebraska-Lincoln Fall Freshman Enrollment, by Race/Ethnicity**



*Note:* For information on the data and their sources, see the end of this section.

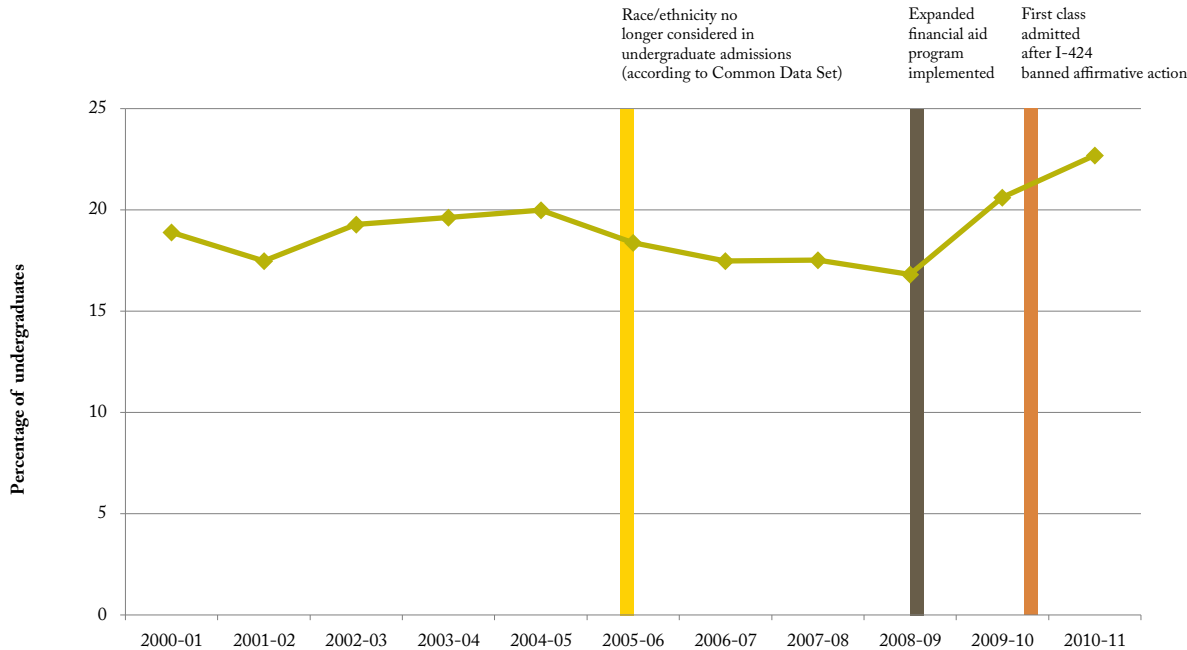


Figure NE-2. University of Nebraska-Lincoln Fall Freshman Enrollment and Nebraska High School Diplomas, by Race/Ethnicity



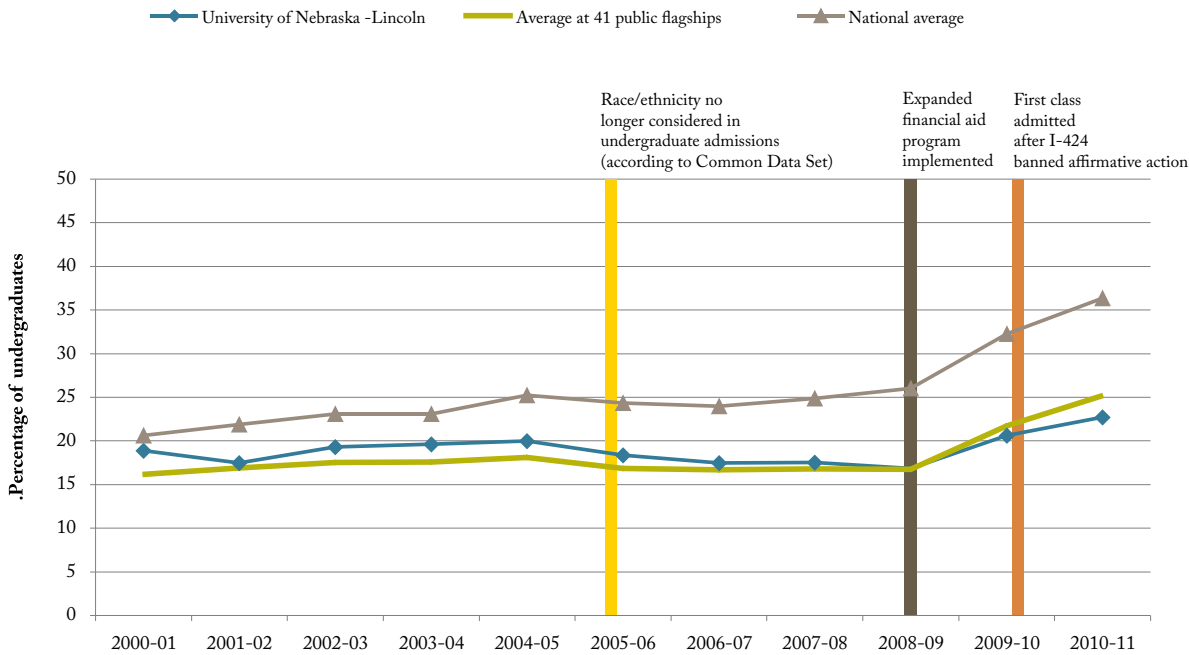
Note: For information on the data and their sources, see the end of this section.

Figure NE-3. Percentage of University of Nebraska-Lincoln Undergraduates Receiving Pell Grants



Note: For information on the data and their sources, see the end of this section.

**Figure NE-4. Percentage of Undergraduates Receiving Pell Grants at the University of Nebraska-Lincoln, at 41 Public Flagship Universities, and Nationwide**



*Note:* For information on the data and their sources, see the end of this section.

## Arizona (2010)

### *\*Background on the Affirmative Action Ban*

In November 2010, Arizona voters approved Proposition 107, stating that the “state shall not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, public education or public contracting.”<sup>280</sup> The ban on the consideration of race/ethnicity in higher education admissions went into effect for the class enrolling in fall 2011.<sup>281</sup>

It is unclear to what extent the ban changed undergraduate admissions at the state’s public universities. Arizona’s public universities are generally less selective than those in some other states and accept all students meeting minimum academic criteria, without consideration of race/ethnicity.<sup>282</sup> However, according to institutional reporting forms, the University of Arizona, the state’s public flagship, considered race/ethnicity in undergraduate admissions from 2001–02 to 2009–10.<sup>283</sup>

Certain graduate admissions were affected by the ban.<sup>284</sup> Before the ban, Arizona’s public law schools and medical school did use race/ethnicity as part of a holistic review that looked at other factors, including family background and socioeconomic status. In response to the ban, the admissions process stayed largely the same, with the omission of race/ethnicity.<sup>285</sup>

### *\*Admission Policies after the Ban*

The most notable change to admission policies at Arizona universities occurred at the graduate level. After Proposition 107, the University of Arizona College of Medicine added new admission factors related to socioeconomic status, geography (rural location), first-generation status, home language, overcoming obstacles in education, and disabilities. Although some socioeconomic factors were considered prior to the ban, the medical school expanded the number of factors considered afterward.<sup>286</sup>

### *\*Financial Aid Policies after the Ban*

The University of Arizona no longer considers race, ethnicity, national origin, or gender in institutional financial aid programs.<sup>287</sup> The University can supply students with information about private scholarships that may consider race, ethnicity, or gender, but the University cannot be involved in the selection process.<sup>288</sup> According to a fact sheet from the University of Arizona, the university may continue to offer programs for members of Indian Tribes, as this is a political rather than racial or ethnic classification.<sup>289</sup>

Prior to Proposition 107, the University of Arizona Graduate College offered two scholarships, the Diversity Fellowships and the Arizona Scholars Program, which considered race, ethnicity, national origin, or gender. After Proposition 107, the university eliminated these scholarships and shifted focus to the already existing Graduate Access Fellowships with race/ethnicity-neutral criteria.<sup>290</sup> The Graduate Access Fellowships are available to “incoming domestic graduate students who have shown academic achievement despite facing challenging social, economic or educational obstacles.”<sup>291</sup>

In fall 2008, a few years prior to the ban, the University of Arizona started a new undergraduate financial aid and support program, the Arizona Assurance Scholars Program. This program is available to Arizona residents who meet a maximum income requirement, receive a Pell Grant, and have a high school GPA of 3.0 or higher.<sup>292</sup> In addition to financial aid, the program provides one-on-one faculty or staff mentoring for students. Arizona Assurance is designed to cover tuition, fees, room and board, and books when combined with other grant aid and 10-12 hours a week of work study.<sup>293</sup> The University of Arizona has pointed to the Arizona Assurance Scholars as an example of a strategy that the school will continue to use to seek diversity while complying with Proposition 107.<sup>294</sup>

### *\*Recruitment, Outreach, and Support Programs after the Ban*

In addition to the support features that are part of the Arizona Assurance Scholars Program, the University of Arizona has several other programs to support students from underrepresented populations or build the K-12 pipeline that predate the ban on affirmative action.

Started in 1969, the New Start Summer Program helps transition incoming freshmen from high school to college. The program is open to all incoming freshmen and charges a fee, but the cost is heavily subsidized for all students, and fee waivers combined with Pell Grants help low-income students afford the program.<sup>295</sup>

Started in 1969, the New Start Summer Program helps transition incoming freshmen from high school to college. The program is open to all incoming freshmen and charges a fee, but the cost is heavily subsidized for all students, and fee waivers combined with Pell Grants help low-income students afford the program.<sup>295</sup>

More recently, in 2007, UA started Project SOAR (Student Outreach Access & Resiliency).<sup>296</sup> Through Project SOAR, UA undergraduates serve as mentors to middle school students in the Tucson area while earning course credit.<sup>297</sup>

### *\*Changes in Demographics*

It is too soon to obtain data from the U.S. Department of Education demonstrating diversity at the University of Arizona after the ban.

According to data from the University of Arizona, undergraduate minority enrollment generally increased in the first year after the ban. From fall 2010 to fall 2011, the undergraduate student body at the University of Arizona went from 3.9 percent to 4.1 percent African American or black, from 19.2 percent to 21.0 percent Hispanic, and from 2.9 percent to 2.8 percent American Indian or Alaskan Native. Over that same period of time, the law school at the University of Arizona saw slight decreases across those demographic categories: from 2.6 percent to 1.7 percent African American or black, from 6.9 percent to 4.9 percent Hispanic, and from 5.8 percent to 4.2 percent American Indian or Alaskan Native.<sup>298</sup>

## New Hampshire (2011)

### *\*Background on the Affirmative Action Ban*

In 2011, New Hampshire's state legislature passed House Bill 623, prohibiting "preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the community college system, and the postsecondary education commission" on the basis of "race, sex, national origin, religion, or sexual orientation."<sup>299</sup> The law went into effect on January 1, 2012.<sup>300</sup>

### *\*Policies after the Ban*

It is unclear to what degree public universities in New Hampshire considered race/ethnicity in admissions or other programs before the passage of House Bill 623. During debate over the bill, the director of human resources for the University System of New Hampshire said that the university system did not use affirmative action, but did have goals for hiring women and minorities.<sup>301</sup> Likewise, the vice provost for faculty development and inclusive excellence for the University of New Hampshire (UNH), the state's public flagship, said that she did not expect the law to affect the university.<sup>302</sup> According to the university's institutional reporting, however, racial/ethnic status was a consideration in undergraduate admissions at UNH as of 2011–12, the most recent data available.<sup>303</sup> As any necessary changes to university policy may not emerge until fall 2012 or 2013, it remains to be seen how the state's public universities will respond to the new law.

### *\*Changes in Demographics*

It is too soon to obtain data demonstrating diversity at the University of New Hampshire after the ban. In fall 2010, the undergraduate baccalaureate student body at the University of New Hampshire was 1.3 percent black or African American, 2.5 percent Hispanic or Latino, and 0.2 percent American Indian or Alaskan Native. As of spring 2012, the black or African American and Hispanic or Latino representations were identical to 2010, and there was a small increase to 0.3 percent American Indian or Alaskan Native.<sup>304</sup>

# Notes on the Data and Sources for the Figures in This Section

## *\*Data and Sources for the First Figure for Each University*

The categories used in IPEDS to report race/ethnicity for fall enrollment changed in 2008, 2009, or 2010, depending on the institution. Although these reporting categories have been combined in these figures in order to allow comparison across time, the new categories are not comparable with the old categories, which did not include an option for multi-racial or multi-ethnic identities.

The source for the data is U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), <http://nces.ed.gov/ipeds/datacenter/>.

## *\*Data and Sources for the Second Figure for Each University*

The categories used in IPEDS to report race/ethnicity for fall enrollment changed in 2008, 2009, or 2010, depending on the institution. Although these reporting categories have been combined in these figures in order to allow comparison across time, the new categories are not comparable with the old categories, which did not include an option for multi-racial or multi-ethnic identities.

The source of the data is U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), <http://nces.ed.gov/ipeds/datacenter/>, and U.S. Department of Education, National Center for Education Statistics, Common Core of Data, <http://nces.ed.gov/ccd/>.

## *\*Data and Sources for the Third Figure for Each University*

Enrollment figures for 2010–11 are based on IPEDS preliminary data. Twelve-month enrollment figures were used instead of fall enrollment because this data on Pell Grant recipients from the U.S. Department of Education includes all recipients for a complete grant cycle. These calculations differ slightly from the Pell Grant percentages reported by institutions in IPEDS, which use a financial aid cohort and report aid only for students in that cohort, that is, students enrolled by a certain fall cut-off date. IPEDS data on Pell Grant recipients was not used for this chart because IPEDS only includes this data for 2007–08 forward.

The data on Pell Grant recipients was obtained from the U.S. Department of Education. Data for 1999–00 forward is available at <http://www2.ed.gov/finaid/prof/resources/data/pell-institution.html>. Data for 1998–99 and previous was emailed to Halley Potter by Mary Miller, Program/Management Analyst, ED/OPE/PPI, on July 16, 2012. Data on undergraduate enrollment was obtained from the U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), <http://nces.ed.gov/ipeds/datacenter/>.

## *\*Data and Sources for the Fourth Figure for Each University*

National average includes all Title IV participating institutions. Enrollment figures for 2010–11 are based on IPEDS preliminary data. Twelve-month enrollment figures were used instead of fall enrollment because this data on Pell Grant recipients from the U.S. Department of Education includes all recipients for a complete grant cycle. These calculations differ slightly from the Pell Grant percentages reported by institutions in IPEDS, which use a financial aid cohort and report aid only for students in that cohort, that is, students enrolled by a certain fall cut-off date. IPEDS data on Pell Grant recipients was not used for this chart because IPEDS only includes this data for 2007–08 forward. Campus-level data on Pell Grants was either unavailable or incomplete for the flagship universities in CT, KY, NH, NJ, NY, NM, OH, PA, and WA.



Data on Pell Grant recipients was obtained from the U.S. Department of Education. Data for 1999–00 forward is available online: <http://www2.ed.gov/finaid/prof/resources/data/pell-institution.html>. Data for 1998–99 and previous was emailed to Halley Potter by Mary Miller, Program/Management Analyst, ED/OPE/PPI, on July 16, 2012. Data on undergraduate enrollment was obtained from the U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), <http://nces.ed.gov/ipeds/datacenter/>. Aggregated national Pell Grant data was obtained from the U.S. Department of Education, Office of Postsecondary Education, *2010–2011 Federal Pell Grant Program End-of-Year Report*, <http://www2.ed.gov/finaid/prof/resources/data/pell-2010-11/pell-eoy-2010-11.pdf>, Table 1. Aggregated national enrollment data was obtained from the National Center for Education Statistics, *Enrollment in Postsecondary Institutions and Financial Statistics and Postsecondary Institutions and Price of Attendance in the United States*, various years, and IPEDS.

## Notes

1. Portions of this essay are drawn from Richard D. Kahlenberg, “Introduction,” *Rewarding Strivers: Helping Low-Income Students Succeed in College* (New York: Century Foundation Press, 2010), 1–16; Richard D. Kahlenberg, “Introduction,” *America’s Untapped Resource: Low-Income Students in Higher Education* (New York: Century Foundation Press, 2004); and Kahlenberg’s essays in the *Chronicle of Higher Education*, *Slate*, *The American Prospect*, the *Washington Monthly*, and the *New Republic*.

2. This report addresses racial preferences in higher education, not gender preferences. While it is commonly said that the chief beneficiaries of affirmative action are white women, this is demonstrably untrue in the context of selective college admissions. Here, women are over-represented among applicants and are generally held to a higher standard in admissions. See, e.g., Jennifer Delahunty Britz, “To All the Girls I’ve Rejected,” *New York Times*, March 23, 2006, A25 (“the standards of admission to today’s most selective colleges are stiffer for women than men.”); and Nancy Gibbs, “Affirmative Action for Boys,” *Time*, April 3, 2008. See also Richard D. Kahlenberg, “Are Admissions Preferences for Men OK?” *Innovations Blog, Chronicle of Higher Education*, March 17, 2011, <http://chronicle.com/blogs/innovations/are-admissions-preferences-for-men-okay/28909>.

3. Walter Benn Michaels, *The Trouble with Diversity: How We Learned to Love Identity and Ignore Inequality* (New York: Metropolitan Books, 2006), 108.

4. Derek Bok and William Bowen, *The Shape of the River* (Princeton, N.J.: Princeton University Press, 1998), 341, Table B.2.

5. Stephen L. Carter, “Affirmative Distraction,” *New York Times*, July 6, 2008.

6. See Richard D. Kahlenberg, *The Remedy: Class, Race, and Affirmative Action* (New York: Basic Books, 1996), 11–12, 25.

7. Martin Luther King, Jr., *Why We Can’t Wait* (New York: New American Library, 1964), 134; and Kahlenberg, *The Remedy*, 10.

8. King, *Why We Can’t Wait*, 137–38.

9. Both quoted in Kahlenberg, *The Remedy*, 26. See also Abigail and Stephan Thernstrom, *America in Black and White: One Nation Indivisible* (New York: Simon and Schuster, 1997), 427.

10. See, e.g., Rasmussen Reports, “55% oppose affirmative action policies for college admissions,” February 26, 2012 [http://www.rasmussenreports.com/public\\_content/politics/general\\_politics/february\\_2012/55\\_oppose\\_affirmative\\_action\\_policies\\_for\\_college\\_admissions](http://www.rasmussenreports.com/public_content/politics/general_politics/february_2012/55_oppose_affirmative_action_policies_for_college_admissions)  
11. Amendment 46, in State of Colorado, Official Publication of the Abstract of Votes Cast in the 2008 election, [http://www.sos.state.co.us/pubs/elections/Results/2008/2008\\_Abstract.pdf](http://www.sos.state.co.us/pubs/elections/Results/2008/2008_Abstract.pdf).

12. U.S. Department of Education, National Center for Education Statistics, Common Core of Data, <http://nces.ed.gov/ccd/> “Public Elementary/Secondary School Universe Survey,” 2009–10, v. 1a.

13. Anthony P. Carnevale and Jeff Strohl, “How Increasing College Access Is Increasing Inequality, and What to Do about It,” in *Rewarding Strivers: Helping Low-Income Students Succeed in College*, ed. Richard D. Kahlenberg (New York: Century Foundation Press, 2010), 112.

14. Ibid.

15. Ibid., 79.

16. Ibid., 151, Table 3.5; William G. Bowen, Matthew M. Chingos, and Michael S. McPherson, *Crossing the Finish Line: Completing College at America’s Public Universities* (Princeton, N.J.: Princeton University Press, 2009), 193–96.

17. Carnevale and Strohl, “How Increasing College Access Is Increasing Inequality, and What to Do about It,” 106, 126.

18. Anthony P. Carnevale and Stephen J. Rose, “Socioeconomic Status, Race/Ethnicity, and Selective College Admissions,” in *America’s Untapped Resource: Low-Income Students in Higher Education*, ed. Richard D. Kahlenberg (New York: Century Foundation Press, 2004), 111–15.

19. Thomas Dye, *Who’s Running America?* (Upper Saddle River, N.J.: Prentice Hall, 2002), 148.

20. Thomas J. Espenshade and Alexandria Walton Radford, *No Longer Separate, Not Yet Equal* (Princeton, N.J.: Princeton University Press, 2009), 92, Table 3.5.

21. William G. Bowen, Martin A. Kurzweil, and Eugene M. Tobin, *Equity and Excellence in American Higher Education* (Charlottesville, Va.: University of Virginia Press, 2005), 105, Table 5.1.

22. Carnevale and Rose, “Socioeconomic Status, Race/Ethnicity, and Selective College Admissions,” 135.

23. Bok and Bowen, *The Shape of the River*, p. 341, Table B.2.

24. Douglas S. Massey, Margarita Mooney, Kimberly C. Torres and Camille Z. Charles, “Black Immigrants and Black Natives Attending Selective Colleges and Universities in the United States,” *American Journal of Education* 113 (February 2007), 243–271, 246 and 249.

25. Sara Rimer and Karen W. Arenson, “Top Colleges Take More Blacks, but Which Ones?” *New York Times*, June 24, 2004.

26. David Leonhardt, “Top Colleges, Largely For the Elite” *New York Times*, May 25, 2011, B1.

27. See Sean Reardon, “The Widening Academic Achievement Gap Between Rich and Poor: New Evidence and Possible Explanations,” in *Whither Opportunity? Rising Inequality, Schools, and Children’s Life Chances*, ed. Greg J. Duncan and Richard J. Murnane (New York: Russell Sage Foundation and the Spencer Foundation, 2011), 93 and 98.

28. Bowen, Chingos, and McPherson, *Crossing the Finish Line*, 21, figure 2.2; and 30, figure 2.6.

29. Carnevale and Strohl, “How Increasing College Access Is Increasing Inequality, and What to Do about It,” 170, Table 3.7. The authors, who support using both race and class in admissions, note that the 56 points for race may both understate and overstate the case. There appear to be interaction effects between race and class, they suggest, though the data set employed was too small to establish the extent of interaction. See Carnevale and Strohl, 171–72 and 211 n.137. At the same time, the authors acknowledge that using a more robust measure of wealth (net worth) than they had available to them might in fact eliminate the predictive value of race per se altogether. (Their wealth variable was limited in scope, relying on self-reported savings for college.) Carnevale and Strohl, 165 and 170.

30. *Los Angeles Times* poll (conducted January 30, 2003 to February 2, 2003); *Newsweek* poll (conducted January 16, 2003 to January 17, 2003); and EPIC/MRA poll (conducted January 29, 2003 to February 3, 2003).

31. David Leonhardt, “The New Affirmative Action,” *New York Times Magazine*, September 30, 2007.

32. King, quoted in Kahlenberg, *The Remedy*, 15.

33. Barack Obama on *This Week with George Stephanopoulos*,

ABC News, May 13, 2007, transcript available at [http://blogs.suntimes.com/sweet/2007/05/obama\\_on\\_abcs\\_this\\_week\\_with\\_g.html](http://blogs.suntimes.com/sweet/2007/05/obama_on_abcs_this_week_with_g.html).

34. Gregory Rodriguez, "The White Anxiety Crisis: America is getting a new minority," *Time*, March 22, 2010, 52.

35. See *City of Richmond v. Croson* 488 U.S. 469 (1989) at 495-96 (noting that "blacks comprise approximately 50% of the population of the city of Richmond" and hold "five of the nine seats of the city council" raising concern that "a political majority will more easily act to the disadvantage of a minority.")

36. See Carol Morello, "Number of Biracial Babies has Risen, Census Data Show," *Washington Post*, April 26, 2012, B1.

37. Michael A. Fletcher and Jon Cohen, "Far Fewer Consider Racism Big Problem," *Washington Post*, January 29, 2009, p. A6. See also *New York Times*/CBS News Poll, October 25-29, 2008 available at <http://www.nytimes.com/packages/pdf/politics/oct08e.trn.pdf> (finding that the proportion of people who say blacks "have an equal chance of getting ahead" rose to 64 percent, up from 46 percent in 1997).

38. Jabari Asim, *What Obama Means* (New York: William Morrow, 2009), pp. 210-11.

39. Barack Obama, "A More Perfect Union," Speech on Race, Philadelphia, Pennsylvania, March 18, 2008, available at <http://www.npr.org/templates/story/story.php?storyId=88478467>.

40. 539 U.S. 306, at 342.

41. 539 U.S. 306, at 343.

42. 539 U.S. 306, at 380.

43. 539 U.S. 306, at 394.

44. 127 S.Ct. 2738, at 2793.

45. 127 S.Ct. 2738, 2760.

46. 127 S.Ct. 2738, at 2827.

47. In other ways, higher education officials are better positioned than K-12 educators to justify the use of race. The majority in *Parents Involved in Community Schools v. Seattle School District #1*, 551 U.S. 701 (2007) noted that higher education has a special right under the First Amendment to academic freedom which includes some deference to shaping student bodies as compared to elementary and secondary schools. 127 S.Ct. 2738, at 2754.

48. For a more complete discussion of the implications of *Parents Involved* on the future of affirmative action in higher education, see Richard D. Kahlenberg, "Affirmative Action in Higher Education After the Seattle and Louisville Decisions: Reexamining the Socioeconomic Alternative," Paper Prepared for the American Association for the Advancement of Science and National Action Council for Minorities in Engineering, January 15, 2008, [http://php.aaas.org/programs/centers/capacity/documents/Kahlenberg\\_Post-Seattle.doc](http://php.aaas.org/programs/centers/capacity/documents/Kahlenberg_Post-Seattle.doc)

49. 127 S.Ct. 2738, at 2825 (Breyer, J., dissenting).

50. 438 U.S. 265 at 407(1978).

51. Brief for Respondents, *Fisher v. University of Texas*, August 2012 at 6-7 and 10. <http://www.utexas.edu/vp/irla/Documents/Brief%20for%20Respondents.pdf> and *Grutter v. Bollinger* 539 U.S. 306, at 320 (2003).

52. Brief for Respondents, *Fisher v. University of Texas*, 43, <http://www.utexas.edu/vp/irla/Documents/Brief%20for%20Respondents.pdf>.

53. Brief for the United States as Amicus Curiae in Support of Respondents, *Fisher v. University of Texas*, 23 and 28, <http://www.utexas.edu/vp/irla/Documents/ACR%20UnitedStates.pdf>.

54. Brief for Respondents, *Fisher v. University of Texas*, 33-34.

55. 438 U.S. 265 at 287(1978).

56. See John Brittain and Eric L. Bloom, "Admitting the Truth: The Effect of Affirmative Action, Legacy Preferences, and the Meritocratic Ideal on Students of Color in College Admissions," in *Affirmative Action for the Rich: Legacy Preferences in College Admission*, ed. Richard D. Kahlenberg (New York: Century Foundation Press, 2010), 127-29.

57. See Kahlenberg, *Affirmative Action for the Rich*, 8-9 and 101-121.

58. See Edward B. Fiske, "The Carolina Covenant," in *Rewarding Strivers*, 50-63.

59. An eleventh institution, the University of New Hampshire, had insufficient data.

60. See Figure TX-1.

61. See Figure TAMU-1.

62. Toughshan Chang and Heather Rose, "A Portrait of Underrepresented Minorities at the University of California, 1994-2008", *Equal Opportunity in Higher Education: The Past and Future of California's Proposition 209*, ed. Eric Grodsky and Michal Kurlaender (Cambridge, Mass.: Harvard Education Press, 2010), 88-89.

63. Data provided to author for the entering class in the fall of 2002 by Andrea Sossin-Bergman, Director of Admissions, UCLA Law School, November 2002.

64. See Figure WA-1.

65. See Figure FL-1.

66. See Figure GA-1.

67. See Figure MI-1.

68. See Figure NE-1.

69. See the second set of figures in Section III.(eg TX-UT-2, TX-TAMU-2)

70. In the 2012 U.S. News & World Report rankings of national universities, for example, U.C. Berkeley ranked 21, UCLA 25 and the University of Michigan 28. By contrast, the other universities in the sample ranked lower: University of Washington (42), UT Austin (45), Texas A&M (58), the University of Florida (58), the University of Georgia (62), the University of Nebraska (101), the University of New Hampshire (101), and the University of Arizona (124).

71. William C. Kidder, "Misshaping the River: Proposition 209 and Lessons for the Fisher Case," August 3, 2012, 1 and 11-24.

72. See the third set of figures in Section III.( e.g. TX-UT-3, TX-TAMU-3)

73. See the fourth set of figures in Section III. (e.g. TX-UT-4, TX- TAMU-4). The percentage of students receiving Pell Grants nationwide increased each year from 2006-07 to 2010-11. The maximum Pell Grant also increased each year over this period of time, with the greatest growth from \$4,731 in 2008-09 to \$5,350 in 2009-10, at 13.1 percent increase. Increasing the maximum Pell Grant expands eligibility to students from middle-income families who previously fell outside the maximum Expected Family Contribution requirements. U.S. Department of Education, Office of Postsecondary Education, *2010-2011 Federal Pell Grant Program End-of-Year Report*, <http://www2.ed.gov/finaid/prof/resources/data/pell-2010-11/pell-coy-2010-11.pdf>, Table 1.

74. Matthew N. Gaertner, "Evaluating a New Approach to Affirmative Action Policy: Results from a Randomized Controlled Study," University of Colorado at Boulder, April 2, 2010 <http://chronicle.com/items/biz/pdf/Gaertner.pdf>.

75. Thomas J. Kane, "Racial and Ethnic Preferences in College Admissions," in *The Black-White Test Score Gap*, ed. Christopher Jencks and Meredith Phillips (Washington D.C.: Brookings Institution Press, 1998), 450.

76. Roger E. Studley, "Inequality, Student Achievement, and College Admissions: A Remedy for Underrepresentation," University of California, Berkeley Center for Studies in Higher Education, Research and Occasional Paper Series, February 2003, 13 and 23, Table 4.

77. Carnevale and Rose, "Socioeconomic Status, Race/Ethnicity, and Selective College Admissions."

78. The authors acknowledge this is not the way colleges would or should admit individual students. A student with a 1280 SAT who is economically disadvantaged should have a greater (not an equal) shot at admissions as an economically advantaged student scoring 1300. Likewise, at the other extreme, an economically disadvantaged student scoring 1000 should have a smaller (not an equal) chance of being admitted as an economically advantaged student receiving a 1600. That is to say, in these examples, the preference for disadvantaged students should be more than 20 SAT points, but less than 600 points. But these individual effects are likely to cancel one another out, and in approximating rough shares of students at the 146 colleges, the authors' simulation provides a fair and accurate aggregate prediction.

79. Thomas Kane, "Racial and Ethnic Preferences in College Admissions," in *The Black-White Test Score Gap*, 432.

80. See, e.g., Andrew Hacker, *Two Nations* (New York: Ballantine Books, 1992) , 146.

81. See, e.g., Richard D. Kahlenberg, *All Together Now: Creating Middle-Class Schools through Public School Choice* (Washington, D.C.: Brookings Institution Press, 2001), 32-34 (citing numerous studies).

82. See Darly Fears, "Disparity Marks Black Ethnic Groups, Report Says," *Washington Post*, March 9, 2003, p. A7.

83. Dalton Conley, *Being Black, Living in the Red: Race, Wealth, and Social Policy in America* (Berkeley, Calif.: University of California Press, 1999), 2, 22, 58, 62, 64, and 134-35. See also Henry Louis Gates, Jr., "Forty Acres and a Gap in Wealth," *New York Times*, November 18, 2007.

84. Paul Taylor, Rakesh Kochhar, Richard Fry, Gabriel Velasco and Seth Motel, "Twenty-to-One: Wealth Gaps Rise to Record Highs Between Whites, Blacks, and Hispanics," Pew Research Center, July 26, 2011, [http://www.pewsocialtrends.org/files/2011/07/SDT-Wealth-Report\\_7-26-11\\_FINAL.pdf](http://www.pewsocialtrends.org/files/2011/07/SDT-Wealth-Report_7-26-11_FINAL.pdf).



85. Conley, *Being Black*, pp. 22, 57, and 133.
86. Peter Schmidt, *Color and Money: How Rich White Kids Are Winning the War over College Affirmative Action* (New York: Palgrave Macmillan, 2007), 158. See also Peter Schmidt, "ETS Accused of Squelching New Approach on Racial Bias," *Chronicle of Higher Education*, November 10, 2006; and Carnevale and Strohl, "How Increasing College Access," 165.
87. Peter Schmidt, "ETS Accused of Squelching." See also Schmidt, *Color and Money*, 158.
88. See research cited in Kahlenberg, *The Remedy*, 134–36.
89. Annie E. Casey Foundation, "Kids Count Data Center," <http://datacenter.kidscount.org/data/acrossstates/Rankings.aspx?ind=107>.
90. *University of California Regents v. Bakke*, 438 U.S. 265, at 310 (1978) ("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 respondent, who bear no responsibility for whatever harm the beneficiaries of the special admissions program are thought to have suffered. To hold otherwise would be to convert a remedy heretofore reserved for violations of legal rights into a privilege that all institutions throughout the Nation could grant at their pleasure to whatever groups are perceived as victims of societal discrimination. That is a step we have never approved."); and *Grutter v. Bollinger*, 539 U.S. 306, at 323–24 (2003).
91. See e.g. Richard D. Kahlenberg, *All Together Now: Creating Middle-Class Schools through Public School Choice* (Washington D.C.: Brookings Institution Press, 2001), 32–34 (citing numerous studies).
92. Dalton Conley, "The Cost of Slavery," *New York Times*, February 15, 2003; Conley, *Being Black, Living in the Red*, 22 and 51.
93. Brief of Amicus Curiae The University of North Carolina at Chapel Hill Supporting Respondents, *Fisher v. University of Texas*, 35–36 <http://www.utexas.edu/vp/irla/Documents/ACR%20The%20University%20of%20North%20Carolina%20at%20Chapel%20Hill.pdf>.
94. Carnevale and Rose, "Socioeconomic Status, Race/Ethnicity, and Selective College Enrollment," 149.
95. Bowen, Kurzweil, and Tobin, *Equity and Excellence*, 255.
96. Gordon C. Winston and Catharine B. Hill, "Access to the Most Selective Private Colleges by High-Ability, Low-Income Students: Are They Out There?" Williams Project on the Economics of Higher Education, October 2005, 7. See also David Glenn, "Economists Describe a Missing Pool of Low-Income College Applicants," *Chronicle of Higher Education*, January 5, 2009 (describing research by Caroline Hoxby and Christopher Avery).
97. Bowen, Chingos, and McPherson, *Crossing the Finish Line*, 102–06.
98. Joshua S. Wyner, John M. Bridgeland, and John J. DiIulio, Jr., *Achievement Trap: How America Is Failing Millions of High-Achieving Students from Lower-Income Families* (Lansdowne, Va.: Jack Kent Cooke Foundation and Civic Enterprises, 2007), 10 and Appendix B, 41–42.
99. Carnevale and Strohl, "How Increasing College Access Is Increasing Inequality, and What to Do about It," 157.
100. Carnevale and Rose, "Socioeconomic Status, Race/Ethnicity, and Selective College Admissions," 136.
101. See Ethan Bronner, "Dividing Lines: Colleges Look for Answers to Racial Gap in Testing," *New York Times*, November 8, 1997, p. A1 (citing unpublished dissertation at the Harvard Graduate School of Education).
102. Sunny X. Niu and Marta Tienda, "Minority Student Academic Performance under the Uniform Admission Law: Evidence from the University of Texas at Austin," *Educational Evaluation and Policy Analysis* 32, no. 44 (2010): 44–69. See also Sunny X. Niu and Marta Tienda, "Test Scores, Class Rank and College Performance: Lessons for Broadening Access and Promoting Success," Texas Higher Education Opportunity Project, Princeton University, August 2, 2011, [http://theop.princeton.edu/reports/forthcoming/NiuTienda\\_2011.pdf](http://theop.princeton.edu/reports/forthcoming/NiuTienda_2011.pdf); and Kalena E. Cortes, "Do Bans on Affirmative Action Hurt Minority Students? Evidence from the Texas Top 10% Plan," *Economics of Education Review* 29 (2010): 1110–124. But see Eric Fursenberg, "Academic Outcomes and Texas's Top 10% Law," *Annals of the American Academy of Political and Social Science* 627, no. 1 (2010): 167–83.
103. Brief of Amicus Curiae The University of North Carolina at Chapel Hill Supporting Respondents, *Fisher v. University of Texas*, 34.
104. See, e.g., *Gratz v. Bollinger*, 539 U.S. 244, 270 (2003) (all racial classifications subject to strict scrutiny); and *James v. Valtierra*, 402 U.S. 137, 141 (1971) (wealth classifications not subject to strict scrutiny).
105. See, e.g., Brief for the United States as Amicus Curiae supporting Petitioner, *Parents Involved in Community Schools v. Seattle School District*, at 25–27 (citing socioeconomic considerations as a valid race-neutral alternative); Brief Amicus Curiae of the Pacific Legal Foundation, American Civil Rights Institute and Center for Equal Opportunity in support of the Petitioner, *Meredith v. Jefferson County Board of Education*, at 25 (same). See also Kahlenberg, *The Remedy*, 107–09.
106. See, e.g., Antonin Scalia, "Commentary: The Disease as Cure—In Order to Get Beyond Racism We Must First Take Account of Race," *Washington University Law Quarterly* (1979), 153–54; U.S. Congress, Senate Judiciary Committee, Nomination of Clarence Thomas to Be Associate Justice of the United States Supreme Court, October 1, 1991, 102nd Cong., 1st Sess., 358–60.
107. See, e.g., Carnevale and Rose, "Socioeconomic Status, Race/Ethnicity, and Selective College Admissions," 165–67.
108. UT Austin is an exception, as it did not dismantle the Top Ten Percent Plan and the socioeconomic plan after it reinstituted the use of race. But even in that example, UT Austin has consistently lobbied the state legislature to roll back the Ten Percent Plan, capping the proportion of students who will benefit.
109. See, e.g., In their amicus brief in the University of Michigan affirmative action cases, Harvard, Princeton, and six other elite universities said they "already give significant favorable consideration" to socioeconomic status. Brief of Harvard University, Brown University, The University of Chicago, Dartmouth College, Duke University, The University of Pennsylvania, Princeton University, and Yale University as Amicus Curiae Supporting Respondents, U.S. Supreme Court in *Grutter v. Bollinger* and *Gratz v. Bollinger*, p. 22, n.13. See also Brief of Brown University et al as Amicus Curiae Supporting Respondent, U.S. Supreme Court in *Fisher v. University of Texas*, 7, <http://www.utexas.edu/vp/irla/Documents/ACR%20Brown%20University%20et%20al.pdf>.
110. See Sander, quoted in Richard D. Kahlenberg, "In Search of Fairness: A Better Way," *The Washington Monthly*, June 1998, 28.
111. Thomas J. Espenshade and Alexandria Walton Radford, *No Longer Separate, Not Yet Equal* (Princeton, N.J.: Princeton University Press, 2009), 92, Table 3.5.
112. Bowen et al., *Equity and Excellence*, 105, Table 5.1.
113. Carnevale and Rose, "Socioeconomic Status, Race/Ethnicity, and Selective College Admissions," 135.
114. Under a system of grades and test scores, the bottom 50 percent by income would have an 11 percent representation at the 146 most selective colleges they study. Under the current system of race-based affirmative action, the bottom half actually does marginally worse than it would under the system of grades and test scores, dropping to a 10 percent representation.
115. Carnevale and Rose, "Socioeconomic Status, Race/Ethnicity, and Selective College Admissions," 106, Table 3.1.
116. Carnevale and Rose find that, at the 146 most selective colleges, if grades and test scores were the sole measure of admissions, the classes would be just 4 percent African American and Latino, even though those groups constitute 28 percent of eighteen-year-olds. This degree of underrepresentation would be comparable to the current underrepresentation of low income students, who make up 3 percent of the population at selective colleges but 25 percent of eighteen-year-olds. For comparable findings in Bowen and Bok's analysis, see discussion in Richard D. Kahlenberg, "Style, Not Substance," *Washington Monthly*, November 1998, 45–48.
117. Linda F. Whiteman, "The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions," *New York University Law Review* 72 (April 1997): 42–43.
118. Richard Sander, "Class in American Legal Education," *Denver University Law Review* 88, no. 4 (2011): 631–82.
119. Beckie Supiano and Andrea Fuller, "Elite Colleges Fail to Gain More Students on Pell Grants," *Chronicle of Higher Education*, March 27, 2011.
120. The five are UCLA, UT Austin, Michigan State University, the University of Washington, and Texas A&M.
121. See Richard D. Kahlenberg, "The Next Step in Affirmative Action: Class-based Systems Can Skirt Court and Ballot Defeats—And Do a Better Job of Addressing Socioeconomic Diversity," *Washington Monthly Online*, September 30, 2009.
122. Karin Fischer, "Top Colleges Admit Fewer Low-Income Students," *Chronicle of Higher Education*, May 2, 2008. The six were UCLA, Florida State University, UT Austin, University of Florida, Texas Tech, and the University of Washington.
123. Peter Schmidt, "A History of Legacy Preferences and Privilege," in *Affirmative Action for the Rich: Legacy Preferences in College*

*Admission*, ed. Richard D. Kahlenberg (New York: Century Foundation Press, 2010), 64.

124. *Grutter v. Bollinger*. 539 U.S. 306, at 368 (2003); See also “A History of Legacy Preference,” 66.

125. Mark C. Long and Marta Tienda, “Winners and Losers: Changes in Texas University Admissions Post-Hopwood,” *Educational Evaluation and Policy Analysis* 30, no. 3 (September 2008): 256.

126. Liliana M. Garces, *The Impact of Affirmative Action Bans in Graduate Education* (Los Angeles, CA: The Civil Rights Project, July 2012), 10, <http://civilrightsproject.ucla.edu/research/college-access/affirmative-action/the-impact-of-affirmative-action-bans-in-graduate-education/garces-impact-affirmative-action-graduate-2012.pdf>.

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128. Angel L. Harris and Marta Tienda, “Hispanics in Higher Education and the Texas Top 10% Law,” *Race and Social Problems* 4, no. 1 (2012): 2; and The University of Texas System, “Rules and Regulations of the Board of Regents: Rule: 40304,” <http://www.utsystem.edu/boi/rules/4000Series/40304.pdf>.

129. Barry D. Burgdorf, e-mail to Halley Potter on June 27, 2012.

130. Brief for Petitioner in *Abigail Noel Fisher v. University of Texas at Austin*, et al., <http://www.projectonfairrepresentation.org/wp-content/uploads/2008/08/Brief-for-Petitioner-Fisher-v-Univ-of-Texas.pdf> p. 7

131. Monica Rhor, “Texas A&M Uses Outreach, Not Race, to Draw Minority Students,” *Houston Chronicle*, March 4, 2012, <http://www.chron.com/news/houston-texas/article/Texas-A-and-M-uses-outreach-not-race-to-draw-3381267.php>.

132. Long and Tienda, “Winners and Losers,” 274, n.4.

133. *Ibid.*, 256.

134. “Automatic Admission,” Be a Longhorn, The University of Texas at Austin, <http://bealonghorn.utexas.edu/freshmen/after-you-apply/automatic-admission>.

135. “SB 175,” Texas Legislature Online, <http://www.legis.state.tx.us/billlookup/History.aspx?LegSess=81R&Bill=SB175>; and “Bill Analysis: S.B. 175,” Texas Legislature Online, <http://www.legis.state.tx.us/tlodocs/81R/analysis/pdf/SB00175F.pdf#navpanes=0>.

136. “Automatic Admission,” Be a Longhorn, The University of Texas at Austin.

137. Brief for Petitioner in *Abigail Noel Fisher v. University of Texas at Austin*, et al., 3.

138. *Ibid.*, 4.

139. The list of special circumstances currently considered includes: socioeconomic status of family, single parent home, language spoken at home, family responsibilities, overcoming adversity, cultural background, race and ethnicity, and other information in the file. “What We Consider,” Be a Longhorn, The University of Texas at Austin, <http://bealonghorn.utexas.edu/freshmen/after-you-apply/factors>.

140. “Sample Application,” ApplyTexas, [https://www.applytexas.org/adappt/html/preview12/frs\\_2.html](https://www.applytexas.org/adappt/html/preview12/frs_2.html).

141. “What We Consider,” Be a Longhorn, The University of Texas at Austin, <http://bealonghorn.utexas.edu/freshmen/after-you-apply/factor>

142. John Brittain and Eric L. Bloom, “Admitting the Truth: The Effect of Affirmative Action, Legacy Preferences, and the Meritocratic Ideal on Student Color in College Admissions,” in *Affirmative Action for the Rich: Legacy Preferences in College Admissions*, ed. Richard Kahlenberg (New York: Century Foundation Press, 2010), 139–41. The information available in Texas A&M’s Common Data Set suggests that the status of alumni preferences was more complicated than Gates’ announcement made it sound. Through 2005–06, alumni relation is still marked as “considered” under the list of factors for freshman admission. Starting in 2006–07, the line is blank (rather than marked “not considered”), and for the most recent year available (2011–12), the line says, “per instructions from OAR—LEAVE BLANK.” See Common Data Set, Office of Institutional Studies and Planning, Texas A&M University, <http://www.tamu.edu/customers/oisp/common-data-set/>.

143. “Texas Grant,” Scholarships and Financial Aid, Texas A&M University, [https://financialaid.tamu.edu/Types/grants/texas\\_grant.aspx](https://financialaid.tamu.edu/Types/grants/texas_grant.aspx).

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the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives on the Implementation of SB175,” December 31, 2011, 33, [http://www.utexas.edu/student/admissions/research/SB\\_175\\_Report\\_for\\_2011.pdf](http://www.utexas.edu/student/admissions/research/SB_175_Report_for_2011.pdf). For more info, see “Longhorn Opportunity Scholarships,” TexasScholarships.org, <http://www.texasscholarships.org/types/osfs/los.html>, and “Longhorn Scholars Program,” The University of Texas at Austin, <http://www.utexas.edu/ugs/lsp/>.

148. Powers, “The University of Texas at Austin,” 33–34.

149. *Ibid.*, 2

150. *Ibid.*, 14, 27.

151. *Ibid.*, 18–20.

152. *Ibid.*, p. 17.

153. *Ibid.*, 2, 25.

154. *ibid.*, 24–25.

155. Tim Golden, “California’s Ban on Preferences Goes into Effect,” *The New York Times*, August 29, 1997, <http://www.nytimes.com/1997/08/29/us/california-s-ban-on-preferences-goes-into-effect.html?pagewanted=all&src=pm>.

156. University of California Eligibility and Admissions Study Group, *Final Report to the President*, April 2004, C-1-3, [http://www.universityofcalifornia.edu/news/compreview/studygroup\\_final0404.pdf](http://www.universityofcalifornia.edu/news/compreview/studygroup_final0404.pdf).

157. *Ibid.*

158. Michael T. Brown, Mark Rashid, and David Stern, “The Quest for Excellence and Diversity in UC Freshman Admissions” in *Equal Opportunity in Higher Education*, 132.

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160. The total number of students guaranteed admission under the new system only adds up to about 10 percent because a number of students who are in the top 9 percent of the state or their graduating class are missing required courses or standardized tests, and there is significant overlap between the top 9 percent of students statewide and the top 9 percent of each graduating class. “UC Regents Adopt Changes to Freshman Eligibility,” University of California Office of Strategic Communications, February 5, 2009, and Brown, Rashid, and Stern, “The Quest for Excellence and Diversity in UC Freshman Admissions,” 150, [http://universityofcalifornia.edu/news/eligibilitychanges/documents/eligibility\\_factsheet.pdf](http://universityofcalifornia.edu/news/eligibilitychanges/documents/eligibility_factsheet.pdf).

161. “UC Regents Adopt Changes to Freshman Admissions Policy,” University of California Office of the President website, <http://www.universityofcalifornia.edu/news/eligibilitychanges/>

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163. A third pathway, “Eligibility by Examination Alone,” was also used for a small percentage of students, most of whom were homeschooled or had other special circumstances. *Ibid.*, 133.

164. University of California Eligibility and Admissions Study Group, *Final Report to the President*, C-1-4, and “Comprehensive Review,” University of California website, <http://www.universityofcalifornia.edu/admissions/counselors/freshman/comprehensive-review/index.html>.

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