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The Dilemma of Higher Education Reform in a Post-Affirmative Action Society: A Review of Anti-Affirmative Action Legislation to Inform Policy Modification

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The implementation of affirmative action policies in higher education purpose was to fulfill a common mission among many of the United States institutions of higher learning. That is, to diversify the college campus and provide representation relative to individuals' share in the population (Fischer & Massey, 2007; Hagedorn & Tierney, 2002; Nettles, Perna, & Millet, 1998). Since affirmative action's inception, African American and Hispanic representation on college campuses has increased. Likewise, the number of African American and Hispanic degree holders has also increased (Fischer & Massey, 2007; Nettles et al., 1998). However, first generation African American and Hispanic youth still lag behind the college going rates of their White and Asian counterparts, and are underrepresented relative to their presence in the general population (Fischer & Massey, 2007; Hagedorn & Tierney, 2002). This actuality is often the source of justification for institutions' continual need for and use of affirmative action programs.

While the views on affirmative action vary, campaigns to end affirmative action have been successful in two ways: (a) effectively resolving some states' affirmative action programs; and (b) causing other state systems to conduct preemptive legislation to avoid litigation. Critics of affirmative action make the following arguments: (a) affirmative action represents reverse discrimination and lessens the opportunity of admission for better qualified White students; (b) affirmative action fosters a disparity between the skills of the student and the abilities necessary to succeed at selective universities; and (c) affirmative action stigmatizes members of the target population as unqualified (Herrnstein & Murray, 1994; Sowell, 2004; Thernstrom & Thernstrom, 1999). However, a 2006 study on *The Effects of Affirmative Action in Higher Education* found that "Affirmative action as currently practiced carries a clear benefit for minority students and that the potential to achieve even greater benefits in the future is considerable" (Fischer & Massey, 2007, p. 547).

A series of lawsuits and Supreme Court rulings have fueled the debate over the use of affirmative action in college admission policies. Consequently, it has become difficult for institutions to devise admission systems that are successful in creating group diversity, while simultaneously catering to individual fairness (Fischer & Massey, 2007). The states of Washington, Texas, and California have developed well thought out responses to anti-affirmative action legislation, while Florida took preemptive measures to elude litigation. The state of Michigan, however, is still at the beginning stages of determining its future course relative to its new legislation surrounding affirmative action.

As the wave of anti-affirmative action legislation is slowly making its way across the country, and given demands to enhance diversity by increasing the number of underrepresented students on college campuses, it is important to review data related to affirmative action in higher education to analyze the effectiveness of post affirmative action legislation and assess its impact on state systems. This manuscript will provide recommendations for future research and

assess policy implications in order to guide institutions toward realizing their diversity missions devoid of affirmative action programs. I aim to respond to the following questions: How does anti-affirmative action legislation affect a university's student body composition? What are institutions doing to counteract anti-affirmative action legislation and is it working? This manuscript will then aim to achieve the following tasks: (a) present a review of evidence detailing the factors around affirmative action in higher education; (b) synthesize and explicate literature on anti-affirmative action legislation; (c) integrate information from literature to provide an informed perspective on the results of anti-affirmative action legislation, its effect on the diversity of college campuses, and what it means for policy makers; and (d) specify an administrative agenda aimed at achieving diversity goals in the wake of anti-affirmative action legislation.

Method

The literature reviewed focuses on the use of affirmative action programs on college campuses, or additional factors within, and includes case studies relative to the elimination of affirmative action dating from 1994 to 2007. The research was gathered from a combination of sources including court cases, books, professional and scholarly journals, and individual university or other websites relevant to information about anti-affirmative action legislation. Among the journals and sources are: *The Economist, The Review of Educational Research, Social Science Research, The Civil Rights Project at Harvard, The Journal of Blacks in Higher Education, Diverse Issues in Higher Education, and The Chronicle of Higher Education.* Moreover, these articles included information, research, or studies detailing descriptions or aspects of affirmative action, diversity, higher education, admission policies or anti-affirmative action legislation. The cited materials in this manuscript were retrieved by searching scholarly journals and publications for relevant articles.

To analyze this data, I reviewed said sources to identify the core ideals related to affirmative action programs, anti-affirmative action legislation, effects of affirmative action and anti-affirmative action on higher education access, and administrative responses to anti-affirmative action legislation. This manuscript defines affirmative action programs within higher education as programs whose aim is to provide college access to underrepresented populations who otherwise might not be able to attend college, not those programs aimed at other beneficiaries of affirmative action (e.g., veterans). I extricated pertinent information relevant to affirmative action, diversity, higher education, admission policies or anti-affirmative action legislation from the sources listed. Likewise, I recorded the results of my findings in a systematic format, illustrating the current effects of anti-affirmative action legislation to the affected state systems, and its relationship to the underrepresented populations these systems sought to serve.

Brief History of Affirmative Action

The origin of affirmative action legislation dates back to 1961. President John F. Kennedy issued Executive Order 10925, which prohibited government contractors from discriminating against current or future employees as a means to counteract widespread discriminatory practices being played out nation-wide. Kennedy's executive order also mandated that contractors assume "affirmative action" to not only guarantee the employment of applicants, but also to ensure that current and prospective employees were assessed without regard to their

nationality, race, creed, or color (Holzer & Neumark, 2000). When President Lyndon B. Johnson took office, he reiterated Kennedy's executive order. Later, in 1967, under Executive Order 11375, Johnson amended his previous reiteration of Kennedy's Executive Order by including women (Holzer & Neumark, 2000). Moreover, a series of additional legislative acts in the years that followed helped to shape what we now view as affirmative action.

The legislative acts that embody affirmative action were implemented as an attempt to provide corrective measures that would deter governmental and social injustices against demographic groups, such as women and minorities, which have traditionally been discriminated against in areas relative to employment and education (Tierney, 1997). Moreover, it was derived from a series of legislative acts whose aim was to counteract past, present, and future discrimination to provide for a balance of societal power that would reflect the demographics of society as a whole, ultimately creating a society of equality. To put the necessity of affirmative action into context in relation to academe, in 1960, less than five percent of senior administrators at mainstream institutions were women or minorities (Tierney, 1997). Legislation like Title VII of the Civil Rights Act of 1964 addressed issues of gender-based admission policy discrimination and permitted courts to take affirmative action to remedy these types of discrimination. This legislation and others such as Title IX of the Educational Amendments in 1972 outlawed employment discrimination based on race, gender, religion, color, or national origin (Tierney, 1997).

Historic court cases that have either affected or been the result of legislation surrounding affirmative action include: *Brown v. Board of Education, 1954*, where the court ruled against the "separate but equal" doctrine that had previously allowed nation-wide segregation*; Swann v. Charlotte-Mecklenburg Board of Education, 1971*, allowing public schools to employ methods to racially balance school districts in an effort to eliminate state-imposed segregation; *Regents of the University of California v. Bakke, 1978*, allowing universities to consider race as one of several factors in admissions but not create slots based solely on race; and *Grutter v. Bollinger, Gratz v. Bollinger, 2003*, allowing universities to consider race as part of an "individualized" consideration of applicants based on a university's commitment to a diverse population; however, deeming an automatic point system unconstitutional ("Historic decisions cited in current cases," 2006).

Opposition to Affirmative Action

The successful elimination of affirmative action in university and state systems originated with the 1996 landmark case *Hopwood v. Texas*. In 1992, Cheryl Hopwood, a White student, was denied admission to the University of Texas Law School, though she was more qualified than were several admitted minority applicants. She consulted The Center for Individual Rights (CIR) and her lawsuit culminated in a four year battle, with a Fifth Circuit Court of Appeals victory. The court's opinion in this case was that the 14th Amendment prohibits state universities from using race as factor in their admissions policies (http://www.cir-usa.org/cases/hopwood.html). However, in 2003, seven years later, the Supreme Court abrogated the Hopwood decision in the *Grutter v. Bollinger* (2003) case, where the courts permitted universities to consider race as part of an individualized consideration of applicants to further the interest of fostering the educational benefits that derive from diversity among the program's students. This ruling enabled the Fifth Circuit Jurisdiction to re-institute race as a factor in their admissions processes, as long as a point or quota system was not used.

Presently, the opposition of affirmative action and the forerunner of its demise nationwide, particularly in the states of California, Washington, Michigan, and most recently Nebraska is the American Civil Rights Institute (ACRI) led by Wardell Connerly. The ACRI professes to be a civil rights organization dedicated to educating the public about racial and gender preferences (http://www.acri.org/). They have three areas of focus, which include: 1) assisting organizations in educating the public about racial and gender preferences, 2) assisting federal representatives with public education, and 3) overseeing the legalities of California's Proposition 209. Connerly's efforts to get his initiative on the November 2008 ballots in Arizona, Missouri, and Oklahoma failed. However, voters in Nebraska approved Connerly's initiative, while Colorado voters rejected his efforts at banning state affirmative action programs (Mooney, 2008).

While a member of the University of California Board of Regents, Ward Connerly gained national attention as he led the challenge against the race-based system of preference the university was implementing in its admissions policies. His efforts led to a vote by the Board to end the use of race as a factor in the university's admissions processes. As chairman of the California Civil Rights Initiative, also known as Proposition 209, Connerly ran a successful campaign to have this initiative placed on the November 1996 ballot. Proposition 209 was passed by California voters, outlawing affirmative action racial quotas in the state of California. Similarly, two years later, Connerly headed the efforts to impose Initiative 200 in Washington State, which outlawed the use of race or ethnicity in admissions, employment, or contract decisions within the state. Connerly's next triumph was the passing of the State of Michigan's Proposal 2 (Michigan Civil Rights Initiative) which provided legislation requiring equal treatment for all Michigan residents in public education, employment, as well as contracting on November 7, 2006, to be made law on December 22, 2006 (http://www.acri.org/). Furthermore, Connerly's latest victory in Nebraska follows on the heel of those victories in California in 1996, Washington State in 1998, and Michigan in 2006, with future efforts lined up in additional states for the 2010 ballot (Mooney, 2008). This anti-affirmative action legislation has had drastic affects on the states in which it was implemented as well as other states around the country concerned with lawsuits and other legislative action detailing race-based admissions or preferential treatment. Likewise, it has significantly altered the make-up of the student body at state universities within the active states with the exception of Nebraska as it is in the very early stages of legislation.

State Responses to Anti-Affirmative Action Legislation

Though several of the schools' reactions to the ending of affirmative action in their particular states were indeed similar, the dynamics of the states, the university system, as well as the language of the reactive legislation fostered a variety of repercussions for each state. In response to *Hopwood v. Texas* (1996), State Senator Gonzalo Barrientes created a task force to analyze the implications of the removal of affirmative action from the state's university systems. He also charged them to provide alternatives, later to be drafted into legislation (Flores & Horn, 2003). The legislative response came in the form of House Bill 588, which was passed in 1997 and allotted for the automatic admission of all students in the top ten percent of their class to any public university in the State of Texas, regardless of their standardized test scores.

Texas' plan failed to provide a substantive alternative to affirmative action programs proven by the low numbers of admittees among African American and Hispanic populations, and

failed to meet its own goals set through its Access and Equity 2000 plan, in which the state set as its first institutional goal "minority enrollment reflecting the population of the area it serves and from which it recruits students" (Flores & Horn, 2003, p.15). As it relates to Texas, a study involving its two top tier institutions, University of Texas and Texas A&M University, revealed significant declines in regards to applications from underrepresented groups. Likewise, these declines surfaced at a time when there was a significant trend in the growth of the college-age population (Liecht, Lloyd, Maltese, Sullivan, & Tienda, 2003).

The 10 percent policy, aimed at adding diversity, resulted in fewer African American and Hispanic admittees after the *Hopwood* decision. Likewise, the probability of underrepresented students being admitted in the top ten percent were minuscule as the system almost certainly admitted those students (not necessarily African American or Hispanic students) who ranked in the top ten percent of their high school graduating class prior to the 1996 *Hopwood* ruling. Additional ramifications included a rising Asian population that was characterized by higher admission probability and higher odds of matriculation (Liecht, Lloyd, Maltese, Sullivan, & Tienda, 2003). Ultimately, the new policy created a student body that was increasingly disproportionate to the demographics of the State of Texas. Asian Americans were a substantial population before the initiative went into effect. Yet increasing their proportion of the whole did little to address the decreasing proportion of African American and Hispanics whose presence in the population of Texas continues to increase.

Furthermore, post-affirmative action legislation has also failed to address the institutional disparities resulting from the history of racial segregation in the state. In 1997, on the eve of the passage of Bill 588, the state's Office of Civil Rights found that the disparities in Texas' higher education system were traceable to segregation and still existed in the following areas: the mission of the universities, the land grant status of Prairie View A&M University when compared to Texas A&M University, program duplication, facilities, funding, and the racial identifiability of public universities (Flores & Horn, 2003). What the Texas case reveals is that meeting the goal of enrolling a population of minority students proportionate to their presence in its service area will continue to challenge the creation of a race-blind admissions policy. By necessity, it must continue to address the history of racial segregation and institutional disparity in secondary and post secondary education.

California's strategy after the passage of proposition 209 mirrored Texas' House Bill 588. The first state response to the Proposition 209 Legislation was presented as a proposal by the 1999 California elected Governor Gray Davis. Governor Davis proposed that the top four percent of graduates from public and private high schools throughout the state be guaranteed admission to any school within the University of California system. He posited that this effort would ensure that those students who excelled would automatically be admitted, ensuring diversity within the system schools (Flores & Horn, 2003).

California's response mirrored Texas' House Bill 588; however, the competition for admittance to University of California system schools, particularly its flagship institutions, makes the effectiveness of its four percent plan unlikely in its efforts to diversify its institutions and make up for the loss of race-conscious affirmative action. Governor Davis' four percent plan, known as Eligibility in Local Context (ELC), was implemented with four main intentions: 1) to increase the pool of eligible students so that the University of California system would comply to standards set by the California Master Plan for Higher Education to increase the number of eligible high school graduates from 11.1% to 12.5%, 2) to give the University of California a label of recognition in each California high school that would foster a college-going

culture not typical of those particular schools, 3) to influence low-performing elementary and high schools to implement and offer the plan's necessary courses in an effort to foster educational reform, and 4) to recognize student achievement relative to their high school and the opportunities available to the student (Flores & Horn, 2003).

In the first year when California's Proposition 209 (i.e., 1998) was fully enforced, the University of California's undergraduate colleges enrolled 22% less African American students than the year prior to the proposition's passing (1996), and at a time when the number of students enrolled increased by more than a tenth (see Table 1). Likewise, California's top two institutions, Berkeley and UCLA, decreased its number of African American students by 47% ("Unintended Consequences," 2006). However, in 2005, Asian-Americans made up 41.8% of the freshman class. At University of California - San Diego, African Americans made up 1% of the freshman class in that same year (Su, 2006). In March, 2005, reflecting the challenge of combining color-blind admissions with class based schematics for recruitment, the Chancellor of University of California Berkeley stated of Proposition 209 that, "because it has resulted in a dramatic diminution in numbers of California citizens, it has in fact created a system that is quite unfair" (http://www.berkeley.edu/news/media/releases/2005/03/29_birgeneau.shtml).

TABLE 1

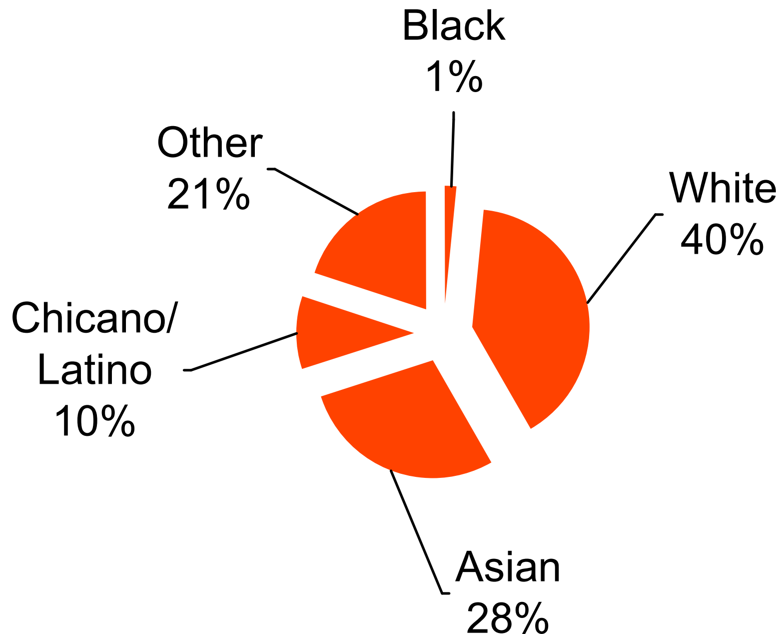
BLACK AND WHITE ENROLLMENT (UNDERGRADUATE AND GRADUATE) 1 YEAR PRIOR TO PROPOSITION 209 LEGISLATION AND SUBSEQUENT YEARS AFTER ITS FULL ENFORCEMENT IN THE UNIVERSITY OF CALIFORNIA SYSTEM

	1995	1998	1999	2000	2001	2002	2003	2004	2005	2006
Black	6546	6023	5722	5654	5572	5807	6103	6049	6083	6281
White	71421	71009	72606	73714	75647	77833	79145	77655	77374	78453
University Total	163704	173643	178410	183355	191903	201297	208391	207909	209080	214298

Source: University of California Statistical Summary of Staff and Students 2007

FIGURE 1

1998 UNIVERSITY OF CALIFORNIA – SAN DIEGO ENROLLMENT PERCENTAGE



Source: University of California Statistical Summary of Staff and Students 2007

When Ward Connerly took his campaign to end affirmative action to Florida in 1999, Governor Jeb Bush took some preemptive measures. Governor Bush requested a review of Florida's affirmative action plans in an effort to assess the legal viabilities thereof. Though he publicly opposed Connerly's initiatives, deeming them divisive, he voluntarily implemented Executive Order 99-281 or the One Florida Plan in November of 1999 (Flores & Horn, 2003). This plan eliminated affirmative action policies in state employment, state contracting, as well as higher education with the exception that race consciousness was still allowed in areas of higher education relative to awarding scholarships, conducting outreach, as well as the development of pre-college enrichment programs. Bush immediately responded to the One Florida Plan by simultaneously initiating the Talented 20 policy to the Florida State University System (SUS), which guaranteed admission to the top 20 percent of public high school graduates who had completed the required course work. The plan went into immediate affect beginning with the Fall 2000 class (Flores & Horn, 2003).

Florida differed from its counterparts in California by allowing race consciousness in specific areas, but did little to rectify the lack of admittance of African Americans and Latinos to the top tier institutions in the SUS. The Talented 20 program only guarantees admission to one school within the SUS, and not the school of the applicants' choice. Once an offer of admission has been extended, the goals of the program have been met. Moreover, very few students who qualify for this program need it in order to gain admission to the SUS because of their high academic standings (Lee & Marin, 2003). With this in mind, the Talented 20 Program does not

aid in the admission of students from underrepresented backgrounds. Likewise, this program is an ineffective and inefficient means to compensate for the diversity gaps within the SUS caused by Bush's One Florida Plan.

Washington State's response to the passing of its version of Ward Connerly's Civil Rights Initiative, Initiative-200, came in the form of The Diversity Outreach and Community Relations Program, a program mandated by former University of Washington (UW) President Richard McCormick and the Board of Regents in an effort to recruit underprivileged and minority students from around the state (Baker, 2004). The program is comprised of UW students labeled Ambassadors, whose duties are to reach out to high school students and encourage them on their path to higher education throughout their four-year matriculation through high school. The program targets specific schools throughout the state with the largest numbers of minority or underprivileged students, and schools that were not pipeline schools to the University in the past.

Despite the emphasis on outreach programs, Washington's I-200 demonstrated similar ramifications to California's plan as the plan experienced a one-third drop in enrollment in 1999, a year after the plan was implemented. However, by 2004, the state funded Diversity Outreach and Community Relations Program achieved minority enrollments comparable to their minority enrollment in 1998, before the passing of I-200. In general, while this plan initially decreased the representation of an already small minority population, its long-term success is encouraging. Moreover, the program might provide the evidence necessary to garner state support for diversity outreach initiatives as a means to offset the decrease in minority enrollment (see Table 2).

TABLE 2

UNIVERSITY OF WASHINGTON
AGGREGATE BLACK STUDENT ENROLLMENT CHANGES FROM AUTUMN 1998 THROUGH AUTUMN 2002

Year	Grand Total	% Change	% of Total	Total Undergrad	% Change	% of Total
1998	984		2.8%	759		3.0%
1999	906	-7.9%	2.5%	699	-7.9%	2.7%
2000	879	-3.0%	2.4%	678	-3.0%	2.6%
2001	882	0.3%	2.4%	695	2.5%	2.6%
2002	953	8.0%	2.4%	733	5.5%	2.6%

Source: University of Washington Enrollment Percentages 2004

An Institution's Response to Unwanted Legislation

On November 7, 2006, Michigan voters accepted Proposal 2, Michigan's version of the Civil Rights Initiatives' ban on affirmative action as an amendment to the state constitution. Proposal 2 amends the Michigan state constitution to ban public institutions from discriminating against or giving preferential treatment to groups or individuals based on their race, gender, color, ethnicity, or national origin. In a response to a lawsuit filed against the three universities by the Coalition to Defend Affirmative Action By Any Means Necessary (BAMN) and others on November 8, 2006, the University of Michigan, Michigan State University, and Wayne State University filed a motion in federal court seeking a short-term delay in the implementation of Proposal 2 with respect to admissions and financial aid. The request would allow the universities to complete that year's admissions and financial aid cycles using the same criteria for admissions and financial aid that were in place at the start of the cycle.

The University of Michigan has been at the forefront of the affirmative action debate for several years, and had recently revamped its admissions and financial aid program to comply with the Supreme Courts ruling in *Grutter v. Bollinger et al*. (http://www.admissions.umich.edu/process/review/categories). After a seven-year battle through several lower courts, on June 23, 2003, the U.S. Supreme Court held in *Grutter v. Bollinger et al.* that diversity is an imperative component within higher education, and that race, along with several other factors, is of great significance and should be taken into account in an effort to afford the educational benefits of a student body that is diverse. The court upheld the University of Michigan's law school's admissions criteria, while rejecting part of the undergraduate admissions policy. The Court held that while race is one of a number of factors that can be considered in undergraduate admissions, automatically assigning twenty (20) points to students from underrepresented minority groups did not meet the goal of narrowly tailoring its policy for admissions.

Justice Sandra Day O'Connor (joined by Justices Stevens, Souter, Ginsburg, and Breyer) delivered the opinion of the court. The Court's opinion upheld Justice Powell's view in *The Regents of the University of California v. Bakke (1978)* case, and found that diversity within the student body is a significant state interest that can validate the use of race in university admissions. As Jonathan Alger, the Assistant General Counsel for the University of Michigan noted in his description of the decision:

> The Court cited social science research showing that 'student body diversity promotes learning outcomes, … better prepares students for an increasingly diverse workforce and society, and better prepare them as professionals.' It acknowledged that 'major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints,' and that high-ranking former military leaders have asserted that 'a highly qualified, racially diverse officer corps' is essential to national security. Finally, the Court noted that diversity is particularly important in the law school context because law schools 'represent the training ground for a large number of our Nation's leaders' The Court concluded that 'effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized.' (Alger, 2003, p. 2)

With the recent amendment to the state constitution, the state of Michigan now joins the ranks of other states with similar prohibitions. Michigan's democratic governor, Jennifer Granholm, has called for a Civil Rights Commission to investigate the effects of this type of legislation on the other states where it had been enacted. While there has yet to be a state-wide initiative beyond the investigation, given the University of Michigan's forthright endorsement of diversity for the sake of diversity and its cogent analysis of its economic value for the state, the University of Michigan has emerged as the representative of the state and of its three leading state universities. In an address to the University community one day after the passage of Proposal 2, Mary Sue Coleman, the President of the University of Michigan, publicly declared that the university would comply with the new amendment. Nevertheless, she also vocalized her concern with the constitutionality of the amendment, suggesting the possibility of future legal and extra-legal challenges to the law, and reaffirming the University's commitment to diversity (http://www.umich.edu/pres/speeches/061103div.html).

The anti-affirmative action legislation as well as the affirmative action lawsuits that challenged the University of Michigan's policies evoked a greater sense of responsibility "to provide continued leadership in advancing diversity and education as a means of achieving equity, democracy, and freedom in our society" among university administration and faculty (http://www.ncid.umich.edu/about/rationale.shtml, p. 1). As a response, Senior Vice Provost Lester Monts proposed a national diversity center that would bring together and equip leaders from various social networks to critically engage with the challenges and opportunities surrounding diversity. In December 2003, the Ford Foundation provided a grant that would support the University of Michigan's new National Center for Institutional Diversity (NCID). The NCID "aims to prepare people for active engagement in a diverse society and works toward building productive as well as inclusive communities at U-M and beyond." Moreover, the Center "promotes national exemplars of diversity scholarship, multilevel engagement, and innovation by operating as a catalyst, venture fund, incubator, clearinghouse, publisher, and think tank" (http://www.ncid.umich.edu/about/mission.shtml, p. 1).

Opportunities for Moving Forward

The University of Michigan and the other two top universities are positioning themselves to develop a response, and are looking at the successes and failures of others states as a model for how to proceed. The University's official response to questions concerning how it will go about adhering to the law suggests uncertainty concerning the amendment's reach, as well as its impact. University of Michigan posits that some of the amendment's provisions relative to how they will be applied to specific programs are up for interpretation. The University cites the fact that similar ballot proposals were interpreted as permitting outreach to underrepresented populations in Washington while prohibiting it in California. Moreover, the University of Michigan claims that though the law precludes discrimination and preferential treatment, that in no way means that diversity is no longer a compelling interest of the University (http://www.vpcomm.umich.edu/diversityresources/prop2faq.html). While the University of Michigan or the other public universities in the state have yet to lay out their responses to the program, the University's early responses suggest possible avenues in which the long time proponent of affirmative action programs might pursue as possible alternatives.

What is clear and has been consistent over time is the University of Michigan's commitment to various forms of diversity as a component of its academic excellence. Citing the

more immediate state of difficult economic transition in which the state of Michigan finds itself, and a number of reports that have identified the urgency of ensuring an "ever greater cross section of Michigan's population is able to attain a college degree" as justification, the University argues that it must "tap available talent in our state if we are to prosper in the future" (http://www.vpcomm.umich.edu/diversityresources/prop2faq.html p. 2). The emphasis on the economic benefits of developing a cross section of the states' populations is reminiscent of the rationale for diversity recruitment and outreach initiatives being employed in Washington state, for example, and may very well factor into the legal grounding for the University of Michigan's post-Proposal 2 initiatives.

One option that the University of Michigan will not pursue, however, is replacing race and gender conscious programs with ones that focus on socioeconomic status. The University's stance is that socioeconomic status is already considered in their admissions and financial aid programs, and that pursuing diversity through a socioeconomic focus does not assist in enrolling a racially diverse student body. Likewise, according to the University, there are far more White students from low-income families applying to the institution than minority students from low-income families. Based on an assessment of other schools that have tried to do so, the University of Michigan has found that socioeconomic status does not stand in as a proxy for race and is not helpful in addressing participation based on gender, and therefore declines to adopt this strategy for itself.

There is considerable confusion among the presidents of Michigan's major universities over whether outreach and recruitment programs are covered under the law (Stuart, 2006). However, the University of Michigan has stated that it believes that its outreach and pipeline programs are on firm legal ground, and will continue with them (http://www.vpcomm.umich.edu/diversityresources/prop2faq.html). Moreover, in lieu of admissions and financial aid policies that give racial preference, the University seems poised to at least investigate the possibility of moving toward an even greater focus on recruitment and outreach initiatives. President Coleman along with Provost Teresa Sullivan has announced the creation of a University wide task force called Diversity Blueprints. The Diversity Blueprints initiative seeks input in the following areas: recruiting, pre-college/K-12 outreach, admissions, financial aid, mentoring/student success, climate, curriculum/classroom discussions, diversity research and assessment, and external funding opportunities. Coleman has vowed to commit to the necessary funds these programs may incur (Coleman, 2006). As Dr. Irvin D. Reid, the president of Wayne State University, observed in relationship to his own University: "there are now more questions than answers on how the proposal will affect the schools" (Stuart, 2006, p. 2). This uncertainty will perhaps prove to be an ally for affirmative action advocates in the next stage as they seek grounds to challenge or circumvent the law's provisions.

One such avenue to challenge the amendment might be linked to federal and private support for racial diversity in higher education. As a state constitutional amendment, the subordinance of state to federal law limits its sovereignty. Sections seven and four of the amendment contain exceptions for any actions that are mandated by federal law or that are necessary for an institution to receive federal funding (http://www.vpcomm.umich.edu/diversityresources/prop2amend.html). As a result, federal and private dollars might offer state universities an opportunity to sidestep some of the amendment's provisions. If the University is chosen as a grant recipient for a federal program that seeks to promote diversity, then the University will have to comply with the terms of that grant, including

any terms that require consideration of race, ethnicity, gender, or national origin in pursuit of the goals of the project (http://www.vpcomm.umich.edu/diversityresources/prop2faq.html).

Where Do We Go from Here?

This manuscript does not claim to make a definitive statement about what will work in the efforts of increasing diversity post anti-affirmative action legislation, but instead will suggest a range of alternatives that may provide additional insights into future directions for institutions like the University of Michigan and other flagship institutions focused on diversifying their student body. Clearly, the reactive measures taken by California, Florida, and Texas proved ineffective as the idea of "percent systems" usually encompass those students already on target to qualify for the state institutions' admissions standards. Though it has taken five years to do so, Washington State achieved the minority representation it maintained pre-anti-affirmative action legislation by investing its state dollars in early outreach programs. Moreover, these programs targeted those schools in Washington that encompassed the majority of underrepresented students as well as those schools that traditionally lacked representation in the Washington State school system, and followed these students throughout their four-year high school matriculation. What we can then learn from this example is that recruitment and retention programs might be a useful channel for federal and state funding and a useful avenue for rescuing some of the benefits of diversity without using race as an overtly driving consideration.

University system's might then channel federal and state dollars by developing a strategy that will combine public engagement with strategies to rectify the underlying circumstances that cause disparities between applicants. One strategy is put forth by the University of Michigan's Diversity Blueprints Task Force. This 55 member task force, made up of faculty, staff, administrators, students, and alumni has issued an in-depth report that provides a discussion of underlying principals and specific recommendations on how to proceed in the wake of Proposal 2 including:

- Establish fully coordinated educational and community outreach engagement activities
- Maintain and improve student admissions, conversion, and retention practices within the new legal parameters
- Address U-M's interpersonal climate by providing structured interactions, facilitated dialogue, and opportunities to work across boundaries
- Dismantle structural impediments and increase structural support for faculty, staff, and students, especially those working on diversity-related issues
- Ensure campus-wide buy-in, engagement, and transparency with diversity efforts
- Increase accountability and sustain mechanisms for all units and departments across the university (Diversity Blueprints Final Report, 2007)

While it is still too early to evaluate the success of this initiative, the University of Michigan's National Center for Institutional Diversity (NCID) mentioned earlier and the Diversity Blueprint recommendations serve to provide direction— a new vision of an institution of higher learning that is more publicly engaged. The initiatives detailed in the report aim to foster a welcoming environment at the university that will enrich the community and promote the success and engagement of all its members. Moreover, the University of Michigan's initial steps

are vitally important for any institution that is seriously committed to enhancing or maintaining diversity, especially under the new legal constraints of anti-affirmative action legislation.

The second area for additional analysis and restructuring is in the realm of admissions policies and standards. One recommendation for restructuring or re-evaluating admissions policies is to allow more or equal weight to be given in the consideration of leadership, service, and citizenship, compared to only test scores or grade point average in evaluating a student's application. As evident by the success of underrepresented students who indeed matriculate through graduation, many underrepresented groups have the ability to succeed in these flagship institutions. However, in lieu of anti-affirmative action legislation, many do not possess the skills necessary to compete on standardized tests with their more affluent White counterparts.

Hence, a third area for consideration is in the realm of reform within secondary education. If the new legislation dictates that there is to be no preferential treatment, we must ensure that underrepresented communities receive the same tools to become as successful as K-12 students in more affluent communities. If we have determined that structural inequalities have rendered students whose schools have fewer resources from underrepresented communities less competitive on standardized testing, one possibility is to redirect dollars towards preparatory programs. For example, one method to ensure equal access might be to provide enrichment programs that teach minorities how to take standardized tests. Diversifying the student body can be done by a reform of secondary education and enrichment programs.

Finally, if the goal is to address low-income students, it may be beneficial to combine the proposed restructuring of admissions policies, placing less emphasis on test scores and more emphasis on overall performance, with a private institution model such as Princeton University. Princeton offers full tuition grants for families who earn less than $40,000 dollars a year. Most importantly, its model addresses growing concerns over the problems of access and affordability that are prominent among the most important issues in higher education today.

Ultimately, the goal of reforming access to higher education will require an imaginative and integrated approach that values diversity but does not use race as its driving force. While preference in admissions is now becoming illegal in states across the country, there is growing evidence that an integrated approach to diversity in education in the aftermath of anti-affirmative action legislation might need to focus, for starters, on the outreach, recruitment, K-12 education, and socioeconomic barriers to retention and matriculation that most greatly affect admission to institutions of higher learning.

Conclusion

The findings in this manuscript demonstrate the difficulty in increasing diversity in the wake of anti-affirmative action legislation affecting state university systems within the United States. To date we have seen that the post anti-affirmative action programs in place in the states of Texas, California, and Florida are relatively ineffective and are limited in their ability to increase, or even maintain diversity within their higher education institutions. This is at least partially attributable to a lack of infrastructural revamping as well as their failure to forthrightly evaluate and address possible structural impediments to the mission of diversity within their respective universities. While the only substantive success within this manuscript was achieved by Washington's *Diversity Outreach and Community Relations Program* five years after the program was implemented, the state's major institutions only reached diversity levels comparative to where they were before the passing of Initiative 200, not achieving an increase.

What we have learned from these cases is that the diversity outcomes we need to achieve will not come as the result of poorly orchestrated legislative efforts to satisfy affirmative action advocates. Nor can diversity only be the goal or mission of a particular department. Instead, the goal of achieving diversity has to be a well-integrated mission incorporated throughout the inner workings of the entire university system. To this end, one example of how to remedy this failure can include steps such as those taken by the University of Michigan with its *Diversity Blueprints* Program. As *Diversity Blueprints* proposes, diversity endeavors should be transparent, and campus leaders and university constituents alike must strive to ensure university-wide buy-in, commitment, and engagement.

While it is too early to analyze the effects of the University of Michigan's response, including their *Diversity Blueprints* Program, their approach to increasing diversity from the inside out is poised to effectively counteract the passing of Proposal 2. By capitalizing on expanding educational outreach and increasing partnerships with university and community constituents including K-12 systems and community colleges, the University of Michigan has the ability to serve as an example to other states affected by anti-affirmative action legislation, if the implementation and outcomes of their diversity initiatives prove successful. The question is whether the effected states will adopt, implement, or continue to fund programs like those listed that consistently work toward a successfully diverse institution.

This manuscript indicates that outreach and recruitment programs for underrepresented populations is a key and heretofore underutilized component in increasing diversity in higher education systems, especially in the aftermath of anti-affirmative action legislation. Because anti-affirmative action legislation has damaged efforts to increase diversity within higher education, state systems will have to be more systematic regarding state efforts to attract, admit, and matriculate students who have historically maintained under-representation relative to their share in the population. Communication and collaboration between higher education and K-12 systems must be increased if institutions are to capitalize on already established programs under the new law that increase underrepresented student admission into higher education institutions such as Washington State's *Diversity Outreach and Community Relations Program*. As the US Supreme Court affirmed in *Grutter v. Boellinger, et. al*., diversity is a compelling interest of the university system, and the need for increased diversity within state higher education systems is critical if the United States is going to continue to develop and maintain economic competitiveness with the steadily increasing global economy.

In closing, with the passing of anti-affirmative action legislation, it is important to actively and aggressively implement strategies that make transparent the institutions' commitment to diversity. In an effort to rectify declining numbers of underrepresented populations, policy reformation within institutions of higher education in the effected states can serve to: 1) cultivate internal and external diversity initiatives, 2) develop more comprehensive admission policies, 3) devote more resources and cultivation to early outreach, recruitment, and enrichment programs, and 4) map out a working plan and strategy to record progress in achieving their diversity initiatives. As the wave of anti-affirmative action makes its way across state systems, the challenge that higher education institutions will have to overcome is maintaining and increasing diversity in a manner that will foster individual readiness for our college students in an ever-changing global economy.

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