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Fla. Regents Back Plan to End Affirmative Action

By KENNETH J. COOPER
Washington Post Staff Writer

Florida's board of regents yesterday approved Gov. Jeb Bush's plan to abolish affirmative action in admissions to the state's public colleges, a vote that was delayed for a month after two black legislators staged a sit-in in the state Capitol.

Despite the sit-in and other public protests, approval by the appointed regents had been anticipated since Bush (R) announced his plan in November to ban affirmative action and adopt other measures designed to recruit minority students without considering race or ethnicity in admission decisions.

The plan needs one final approval when Bush and independently elected members of his Cabinet meet Tuesday as the state Board of Education, whose expected support would mean that three of the nation's four most populous states would have banned af-

firmative action in college admissions. Bans already are in force in Texas by federal court order and in California under a referendum vote.

Bush took the initiative to change state policy on affirmative action in admissions and contracting rather than face a possible vote in November on a state referendum to ban affirmative action that was proposed by California regent Ward Connerly. Florida's Supreme Court is reviewing the ballot question to determine whether its wording conforms to state law.

Under Bush's plan, Florida students who rank in the top 20 percent of their high school class would be guaranteed a spot in one of 10 state universities if they had completed a college preparatory curriculum. In addition, the colleges would have broad flexibility to consider other social factors—such as poverty or attending an inner-city school—instead of race and ethnicity in

making undergraduate admission decisions. Any changes in admissions to graduate programs were postponed for a year.

Bush has predicted that minority enrollment would actually rise as a result of the changes. Currently, about 35 percent of 219,000 students are minorities, with a large proportion of black students attending historically black Florida A&M University and a big percentage of Hispanic students enrolled at traditionally Hispanic Florida International University.

A preliminary analysis by Bush's own office has indicated that the "Talented 20" rule would by itself fall short of capturing more than the 2,000 minority students who enrolled under affirmative action last fall. But Frederick Humphries, president of Florida A&M, told the regents he believes that the overall plan does have the potential to increase minority enrollment.

Civil rights groups have warned of the

possible "resegregation" of minority students in second-tier schools in the state university system, citing a preliminary analysis by the University of Florida that the selective flagship campus could lose half the minorities in its future freshman classes.

"The board of regents is trying to outrun the controversy with today's vote, but it won't work. It appears they'd rather inflame the situation rather than enlighten themselves about the plan's potential problems," said Wade Henderson, executive director of the Leadership Conference on Civil Rights.

Bush has said he hoped to avert the racial divisions that a ballot referendum could provoke, but they nonetheless surfaced during the regents' meeting in Orlando.

Joyce Perry, an elderly white woman who praised Bush's plan, disputed that racial discrimination occurs in Florida and said the criticisms reflect a desire among minorities for a free ride to college.

"The blacks just keep whining and whining. They have to do what my kids and other poor whites have done—scratch and dig and just try to make it," Perry concluded after heckling briefly interrupted her remarks.



Anna Richter

02/04/2000 12:51:18 AM

Record Type: Record

To: Andy Rotherham/OPD/EOP@EOP, Irene Bueno/OPD/EOP@EOP

cc:

Subject: Florida AA --NYT

Jeb Bush Roils Florida on Affirmative
Action

By PETER T. KILBORN

MIAMI, Feb. 3 -- From school vouchers to the death penalty, Gov. Jeb Bush of Florida has had one political success after another in his first year in office. But his sweeping program to end affirmative action in the state, modeled partly after the one in his brother's state, Texas, has inflamed black leaders, even some who had supported him, and looms as the first real test of his administration.

The passions that have been swirling around his program, which among other things gives a break in college admissions to the poor instead of minorities, broke out in a historic theater in downtown Miami today, where 1,700 protesters filled the seats in the orchestra and balcony and hundreds more circled the block waiting their turn to get in.

Mr. Bush, a Republican, put his program, One Florida, into effect by executive order last November without inviting public comment, and he did not attend a hearing before 600 people last week in Tampa. But today he stayed for more than two hours, often taking notes.

Mr. Bush agreed to ask a legislative committee to conduct three hearings after two black legislators staged a sit-in the Capitol.

"We are embracing diversity, not rejecting it," Mr. Bush, the first speaker at today's hearing, told the mostly black audience. "This plan will create more opportunity for people."

To a din of jeers, he added, "This has been a difficult time for me. The last two weeks I have carried a heavy heart around."

Then to deafening cheers, Carrie P. Meek, a Democrat and black congresswoman from Miami, spoke: "The pain the governor feels is a self-inflicted wound."

There is widespread support among whites for Mr. Bush's program, which would end preferences for businesses owned by women and minorities in bidding for state contracts. And it would end college admissions preferences based on race, substituting a program guaranteeing admission to at least 1 of the 10 state universities for high

school students who graduate in the top 20 percent of their class.

But the outpouring from blacks in Florida has made it clear that Mr. Bush's plan, an effort to fend off a more severe public referendum on affirmative action like those that passed in California and Washington, had failed to defuse the issue.

The debate has implications for politics far beyond Florida. It draws national attention to the state, which has replaced California as the primary battleground over affirmative action. And the governor's college admission plan, modeled after one in Texas that grants admission to the top 10 percent of high school graduates, is likely to touch, at least tangentially, the presidential campaign of Mr. Bush's brother Gov. George W. Bush.

The Texas governor, who received about 27 percent of the black vote in the last governor's race, is likely to confront the polarizing issue before the presidential primary here on March 14.

Some black leaders see promise in the One Florida plan, in that it might create opportunities for the poor, disproportionate numbers of whom are black. But they bristle at the governor's abolition of affirmative action, a lack of detail in his plan and above all, his style and methods.

Despite Mr. Bush's presence at today's hearing, some blacks said the governor's reaction to their opposition showed him to be intransigent, secretive and petulant. And they complain of having been excluded from the plan's preparations and finding closed doors when they they ask to discuss it.

Calls today and on Wednesday to Mr. Bush's office for the governor's reaction to these criticisms were not returned.

"When you think you know better for your child, you do what's best without asking him," said Kenneth Nunn, a black law professor at the University of Florida and an expert on affirmative action.

"So we got One Florida. Now we have an enraged black community."

The Rev. R. B. Holmes, pastor of the 6,000-member Bethel Missionary Baptist Church in Tallahassee and a Democrat, was Mr. Bush's most outspoken black supporter in the 1998 governor's campaign, which Mr. Bush won with 55 percent of the vote. Now, he said, he felt double-crossed and embarrassed.

"Instead of One Florida, it's divisive Florida," Mr. Holmes said. "This is the first time in a long time I've seen so many black leaders so outraged by a governor's initiative. This has left me in a very precarious position. It compromised my sense of 'whoseness' -- who I am as a person."

Outside today's hearing, people chanted, "We are not going back. We are not going back." Sam Guydon, a teacher wearing the baseball cap of the predominantly black fraternity Alpha Phi Alpha, said, "It's not about giving us advantage. It's about taking away the disadvantage. Racism is

still here."

One Florida is an effort to confront disparities in opportunities and incomes of minority groups and whites. It is also a means of dodging a court ruling like one four years ago against a Texas affirmative action program that gave minorities an edge over similarly qualified whites in university admissions.

It also seeks to avoid the sweeping referendums in California and Washington promoted by Ward Connerly, a black businessman in Sacramento. Mr. Connerly has made Florida his next battleground for the November elections, and his proposed ballot initiative, which, among other things, would banish affirmative action throughout the public sector, is being reviewed by the state Supreme Court.

Under One Florida, the contracting provision that Mr. Bush put into effect with an executive order in November asks state procurement officials to strive harder to award more business to minority contractors.

But it leaves assessment of the procurement officers' progress to their elected superiors.

The college admission policy is expected to take effect next month after approval by the university system's Board of Regents.

Blacks accuse the governor of ignoring them. Representative Leslie Miller Jr., a Tampa Democrat and the minority leader in the state House of Representatives, said that Mr. Bush had agreed to meet with him only once for four minutes.

"If you're African-American and don't agree with him," Mr. Miller said, "he pushes you off to the lieutenant governor or his staff members."

Bishop Victor T. Curry, pastor of the New Birth Baptist Church in Miami and president of the Miami-Dade County branch of the National Association for the Advancement of Colored People, recalled Mr. Bush's defeat in his first race for governor six years ago and his statement then that he would do "probably nothing" to help African Americans.

When Mr. Bush began his second campaign two years ago, he sought out people like Bishop Curry. "Bush sat in my office," Bishop Curry said. "I said, 'You've got to deal with this issue of doing nothing.'"

Mr. Bush campaigned actively in the black community. In the end, he won only about 14 percent of the black vote, about the same percentage as the state's black population. But he had won some good will, Bishop Curry said, and blacks did not actively fight his legislative agenda last year.

Whatever good feeling Mr. Bush and the African-American community shared last year has been evaporating since Mr. Bush announced One Florida.

"This is the fulfillment of that philosophy" to do nothing, said Bishop

Curry, who did not support Mr. Bush's election. "There's no compassion. He has no compassion for people who are disenfranchised."

Still, blacks held their fire until two weeks ago, when state Senator Kendrick Meek of Miami and state Representative Tony Hill of Jacksonville occupied the office of the Republican lieutenant governor, Frank Brogan, in Tallahassee after they were rebuffed in attempts to see Mr. Bush.

The sit-in ended after 20 hours, when Mr. Bush agreed to hold public hearings on One Florida in Tallahassee, Tampa and Miami and to delay the Board of Regents vote on the college admission plan.

During the sit-in, Mr. Bush was recorded on video tape using a profane word in telling an aide to kick them out, a remark that Mr. Bush's office said later referred only to reporters. But Mr. Meek said he took the governor's remark to mean him and Mr. Hill.

"That was a low point," said Susan MacManus, a political scientist at the University of South Florida in Tampa.

With Florida's presidential primary approaching, Ms. MacManus said, "this will get national attention."

"What affects one brother affects the other," she said. "They're kind of joined at the hip."

Dario Mareno, professor of political science at Florida International University, said, "This is the first big problem for Bush."

"If you look at it carefully," he said of One Florida, "it is not bad. But he's run into a real buzz saw. One of the things that has contributed has been his stubbornness."

Florida Regents Exclude Race And Sex as Admission Factors

ORLANDO, Fla., Feb. 17 (AP) — The board of Florida's university system approved rules today eliminating race and sex as considerations for admission at the state's 10 public universities.

The panel voted 12 to 0 in favor of Gov. Jeb Bush's plan, which would also end such preferences in granting state contracts. Two members were absent.

Mr. Bush, a Republican, has argued that the plan would enhance diversity by increasing outreach efforts and by ensuring the admission of the top 20 percent of each high school senior class at state universities.

The changes in rules must still go before the governor and an independently elected cabinet, which is to consider the matter on Tuesday.

Florida is likely to become the fourth state to take action to turn back affirmative action programs. The University of California system did away with affirmative action beginning with the undergraduate class that entered in 1998. After a federal court ruling, Texas ended racial preferences at state schools beginning with students applying to enter in the fall of 1997. Voters in Washington State banned race and sex as criteria in admissions starting in 1999.

In Florida, hundreds of college stu-

dents, elected officials and others came from around the state to the board's meeting at the University of Central Florida, and most argued that the plan would result in fewer minority students attending state universities.

"This plan looks very good on paper," said Telisha Terry, 21, a Central Florida student. "But if you really think about it, the top 20 percent of students go to college anyway."

The university board also approved a system to admit students who fail to meet minimum admission criteria by using a system that considers factors like socioeconomic status, whether an applicant's parents went to college and whether an applicant's high school performed poorly.

The Florida Board of Regents was supposed to vote a month ago on the rules changes, but the meeting was delayed after two black lawmakers staged a 25-hour sit-in at the governor's office. To get them out, Mr. Bush agreed to three public hearings, where the plan came under strong criticism.

On Wednesday, Mr. Bush offered a set of modifications to the university admissions plan, including creation of an oversight panel to make sure enough minorities were being admitted.

Online time soars at office

Not all surfing work-related

By Greg Farrell
USA TODAY

Productivity may be skyrocketing in the workplace, but so is Web surfing.

In its first major study of Internet usage in the workplace, Nielsen/Net Ratings finds that people spend more than twice as much time online at the office as they do at home.

Although many of the most-visited sites at the office deliver news and financial information, the study finds, some decidedly nonwork sites — from eBay to RootsWeb to MyFamily.com — take up a big chunk of the workday.

"You can't characterize the people doing this as goof-offs," said Allen Weiner, vice president of analytical services at Net Ratings. "People would perform the same stuff at work using other methods. The Internet has just given them a more effective way of doing it."

Highlights from the survey of Internet usage in January,

Where workers surf longest

	Average mins./visit
eBay	157
Datek	120
Yahoo	106
MSN	88
Schwab	86
WOn.com	67
E*Trade	66
Fidelity	64
RootsWeb	61
MyFamily.com	58

Source: Nielsen/Net Ratings, Jan., 2000

USA TODAY

based on a sample of 6,500 workers at small, medium and large companies:

► Workers spent an average of 21 hours online vs. an average of 9.5 hours at home.

► Web users at the office take advantage of high-speed connections to access broadband entertainment sites such as Broadcast.com and Mp3.

► Working and ogling don't mix. Visits to adult sites on office time occur at half the rate

they do at home.

► Surfers access news, information and finance sites much more frequently during the workday than at night so that they can keep up with breaking news or the markets.

► Online shopping is dominated by Amazon.com and eBay both at home and at the office. But office-shopping sites such as CDW.com, Staples.com and OfficeMax.com are much more popular at work than at home.

The total audience of workers with access to the Internet, according to Net Ratings, is 32.7 million. The total with home Internet access is 122.7 million, of which 77 million are active users.

Only 5.7 million workers visit eBay, compared with 21.5 million for the most-visited site, Yahoo. But eBay visitors stay at the auction site the longest, almost three hours a visit.

Media Metrix, another Web audience measurement company, has been publishing home and office traffic numbers since 1997, based on random phone calls.

Fla. moves to end affirmative action

By Deborah Sharp
USA TODAY

ORLANDO, Fla. — Despite weeks of protests, Gov. Jeb Bush's plan to end affirmative action cleared its first hurdle Thursday with a vote to eliminate race and gender as considerations for college applicants at the 10 public universities in Florida.

Several hundred opponents were present when the state university system's Board of Regents voted 12-0 to replace racial and gender preferences with a plan to grant university admission to the top 20% of high school seniors.

Bush says the "Talented 20" plan — and his broader efforts to end racial set-asides throughout state government — won't hurt minorities. Critics disagree.

"The message being sent from Florida is that we have a dictator in the governor's seat," said state Rep. Tony Hill, a Jacksonville Democrat who staged last month's sit-in with another black lawmaker. "We still need affirmative action."

Under Florida's former admission policies, universities could use race as a factor in deciding student admissions.

Racial set-asides also reserve

a certain percentage of state contracts for minorities or minority-owned businesses.

The new admissions also decrease reliance on SAT scores. Bush said that will increase the admission chances of disadvantaged students. On average, blacks do not score as well on SATs as do whites or Asian-Americans.

School systems in California, Washington state and Texas also have done away with affirmative action programs.

The governor said he enacted his plan in part to derail a drive by the same organizers in Florida, where polls have found voters would approve a widespread end to racial preferences by a margin of 2 to 1.

"We see the vote by the Florida regents as a sign to other states that it's time to abandon race-based policies," said Kevin Nguyen, spokesman for the American Civil Rights Coalition.

The Sacramento, Calif., group has said Bush's plan does not go far enough because it fails to address state hiring practices or lower-level public schools. Bush's larger "One Florida" plan must still go before an independently elected Cabinet, which is to consider the matter Tuesday.

Florida vote would change admissions

Sex, race would not be considered

By David Mark
ASSOCIATED PRESS

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ORLANDO, Fla. — The State University System's Board of Regents yesterday approved rules eliminating race and sex as considerations for college admissions at Florida's 10 public universities.

The 14-member panel voted 12-0 in favor of Gov. Jeb Bush's One Florida plan after a heated public hearing during which the governor was compared to Adolf Hitler.

The proposal ends race and sex preferences in admissions to state universities and in granting state contracts. Two members were not present for the vote.

Mr. Bush contends the plan will help minorities by increasing outreach efforts and by admitting the top 20 percent of each high school senior class into state universities.

Hundreds of college students, elected officials and others came from around the state to the regents' meeting at the University of Central Florida (UCF).

Most said the One Florida plan would result in fewer minorities attending state universities.

"This plan looks very good on

paper," said Telisha Terry, 21, a UCF student. "But if you really think about it, the top 20 percent of students go to college anyway."

Yesterday's session grew heated with the comments of the Rev. Frank Williams, a Tampa minister.

"You say Bush, I say 'Heil Hitler,'" Mr. Williams shouted. "He is nothing but a dictator, and I guarantee we as a people in America will not stand for a dictator in Florida."

That raised the ire of Regent Steven Uhlfelder.

"For you to compare this governor to Hitler is totally irresponsible, and I'm not going to sit here and listen to that," Mr. Uhlfelder replied.

U.S. Rep. Corrine Brown said the governor and state officials could not be trusted to admit enough minority students.

"We do not live in a colorblind society. Race is still a factor," said the Jacksonville Democrat. "I'm very disappointed with what's going on in Florida, and it's an example of the ugly side of politics."

In addition, the regents approved a system to admit students who do not meet minimum admission criteria by using a "student profile assessment," which considers factors like socioeconomic status, whether a student's parents went to college, and whether a high school is low-performing.

Lew Oliver, chairman of the Orange County Republican Party, said the changes would head off a proposed ballot measure by California businessman Ward Connerly to do away with all preference programs in Florida, going much further than Mr. Bush's plan.

"Sometimes you don't have a choice," Mr. Oliver said of Mr. Bush's proposal. "Sometimes you don't have a perfect option."

The rule changes must still go before the governor and indepen-

dently elected Cabinet, which is to consider the matter Tuesday.

A few people at the meeting spoke in favor of the rule changes.

"We should not cling to policies that are not based on merit," said Dennis Freytes, a trustee of Orlando's Valencia Community College. "I hope you don't let demagoguery and group politics affect your vote."

Florida is not the first state to take on affirmative-action programs. The University of California system did away with affirmative action beginning with the undergraduate class that entered in 1998.

After a federal court ruling, Texas ended racial preferences at state schools beginning with students applying to enter in the fall of 1997. Washington state voters banned race and sex criteria in admissions starting in 1999.

The Florida Board of Regents was supposed to vote a month ago on the rules changes, but the meeting was delayed after two black lawmakers staged a 25-hour sit-in inside the governor's office suite.

USCCR To Issue Statement On Inadequacy Of Percentage Plans
Press Conference Scheduled For Tuesday, April 11

Washington, DC--The U.S. Commission on Civil Rights voted by a 6-2 margin on Thursday, April 6, to issue a statement expressing concern about the capacity of percentage plans to replace affirmative action as a means of achieving diversity in higher education.

A press briefing to release the statement is scheduled for Tuesday, April 11, 2000, at the Commission's headquarters, 624 9th Street, NW, Washington, DC 20425, at 11 AM.

The U.S. Commission on Civil Rights is an independent, bipartisan fact-finding agency. Its members are chairperson Mary Frances Berry, Vice Chairperson Cruz Reynoso, and Commissioners Carl A. Anderson, Christopher Edley, Jr., Yvonne Y. Lee, Elsie Meeks, Russell G. Redenbaugh, and Victoria Wilson. Ruby G. Moy is Staff Director.

Irene Bueno
04/10/2000 01:57:51 PM

Record Type: Record

To: Andy Rotherham/OPD/EOP@EOP
cc: eric p. liu/opd/eop@eop, bruce n. reed/opd/eop@eop
bcc: Records Management@EOP
Subject: Re: Public Agenda Alert - April 10, 2000 

Thanks. Attached is a NY Times article on the same subject. I will try to track down this report. As far as I know we have not asked nor are we doing anything on this issue with the exception of OCR working with FL as it relates to the Partnership agreement.

The New York Times

April 9, 2000, Sunday, Late Edition - Final

SECTION: Section 1; Page 16; Column 5; National Desk

LENGTH: 659 words

HEADLINE: Rights Panel Criticizes Shift In College Admissions Plans

BYLINE: By JODI WILGOREN

BODY:

The United States Commission on Civil Rights plans this week to issue a harsh critique of policies in Florida, Texas and California that have replaced affirmative action with admission to public universities for the top graduates in every high school in the state.

A draft of the 10-page statement, which was approved in a 6-to-2 vote by the commission last week, notes that the programs' success in bringing minorities to campuses relies on the segregation of high schools, and that they do nothing to diversify graduate and professional schools.

It reserves special contempt for Florida's plan, which was enacted voluntarily by Gov. Jeb Bush last fall; the other states implemented the new admissions systems after affirmative action was outlawed, in Texas by a federal court

and in California by the voters.

The plans "may succeed as an effective public relations strategy" and "could gain broad appeal because they focus on the goal that everyone should have an equal opportunity to learn in higher education," the draft statement says. "But they are no substitute for strong race-conscious affirmative action in higher education."

The statement calls on the Clinton administration to "leave the sidelines and enter the public debate to reinforce the president's support for affirmative action." It also outlines ways Texas and California could improve their admissions programs, and says "Florida should keep affirmative action unless forced to abandon it."

Created in 1957, the commission, whose members are appointed by Congress and the president, has no legislative or regulatory power but is often described as the nation's conscience on civil rights, issuing reports and recommendations, and sometimes holding public hearings. There are six Democrats and two Republicans, and last week's vote broke along party lines.

The Republican members, Carl A. Anderson and Russell G. Redenbaugh, have submitted a two-page dissent saying the statement is "littered with inaccuracies and half-truths," and raising questions about the research behind the statement as well as its analytical approach.

The strategy of automatic admission for a certain percentage of high school graduates is increasingly popular with people on both sides of the affirmative action debate as a less controversial way to diversify campuses and expand educational opportunities for minorities than using race-conscious admissions.

Texas was the first to adopt the approach, guaranteeing the top 10 percent of graduates from each of the state's high schools a seat in the public university of their choice. In the two years that the program has been in place, the percentage of black and Hispanic students at the state's flagship institutions, the University of Texas at Austin and Texas A&M, has been restored to the levels before the 1996 court decision that ended affirmative action.

California, where affirmative action was banned by a ballot initiative in 1996, promises admission to the University of California -- but not any particular campus -- to the top 4 percent of high school graduates. Minority admission overall has increased under the program, but it lags at Berkeley and U.C.L.A., the most competitive campuses.

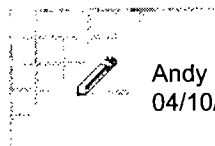
In Florida, Governor Bush implemented a plan by fiat, a year before a proposed ballot initiative that could end affirmative action, to curtail racial preferences and instead admit the top 20 percent of high school graduates. Last

month, officials in Pennsylvania proposed a top 15 percent plan, and the United States Commission on Civil Rights has received inquiries from half a dozen other states.

"Our overall advice to folks is if you're thinking about a percentage plan, you should do so warily," said Mary Frances Berry, the commission chairwoman, who is a history and law professor at the University of Pennsylvania. "They're not effective solutions. If you have affirmative action and can keep it, you ought to keep it."

<http://www.nytimes.com>

Andy Rotherham



Andy Rotherham
04/10/2000 01:47:23 PM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP, Bruce N. Reed/OPD/EOP@EOP, Irene Bueno/OPD/EOP@EOP

cc:

Subject: Public Agenda Alert - April 10, 2000

fyi, the first bullet is on Affirmative Action.

AR

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Public Agenda Alert -- April 10, 2000

* In the Headlines: Rights Panel to Criticize Admissions Plans

* The Issues: Medicare Recipients Pay More for Prescriptions

<http://www.publicagenda.org>

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In the Headlines:

Civil Rights Panel to Criticize College Admissions Plans

The U.S. Commission on Civil Rights will criticize policies that replace affirmative action in college admissions with guaranteed admissions for top high school graduates, according to The New York Times. The guaranteed admissions systems, already in place in California, Texas and Florida and under consideration elsewhere, generally promise a certain percentage of top graduates a seat in the state university system. Supporters say these plans are an alternative to affirmative action programs that have been overturned in court or by referendum. Texas and California have seen minority enrollments rise under their policies, although not at California's most competitive campuses. The Civil Rights Commission, which has only advisory powers, is expected to say enrollment advances are a result of segregation in high schools, and do nothing for diversity in graduate schools. The commission split on party lines in suggesting revisions to existing programs as well as recommending that other states continue affirmative action programs unless forced to abandon them, the Times reported.

For additional context on affirmative action and higher education, visit our issue guides on Race and Education.

- Public Opinion -
 - Both African Americans and whites say affirmative action has improved conditions for blacks
 - More than half of Americans support affirmative action, but there is a clear racial divide in public opinion
 - African Americans are much more likely than whites to say diversity is very important
 - Blacks and whites have similar views on affirmative action when presented with more specific, concrete examples
- Fact File -
 - SAT scores
 - High school and college graduation rates
- Additional Information -
 - Red Flags: Race
 - Sources and Resources: Education
 - Notable and Newsworthy: Race

<http://www.publicagenda.org/headlines/headline.htm>

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The Issues: Medicare Recipients Pay More for Prescriptions

A Clinton administration study released today contends that Medicare recipients pay an average of 15 percent more for prescription drugs than people with private insurance. Private insurers are usually able to negotiate special discounts for their clients, while Medicare currently does not cover prescriptions. President Clinton and Republicans in Congress are currently debating on whether to add a prescription drug benefit to Medicare, and if so, who would be covered. Additional context is available in

our Medicare issue guide.

STORY ANGLES that may have been underreported or overlooked:

- Prescriptions - Seven in ten (69 percent) say they are willing to pay higher taxes to expand Medicare to cover prescriptions for low-income seniors. And four in five (79 percent) support allowing Medicare recipients to buy prescription coverage for \$24 a month. Federal statistics show that out-of-pocket spending by Medicare recipients has steadily increased since 1975.

- Fear - Seven in ten Americans (69 percent) say the possibility that Medicare will run out of funds is a "very serious problem," and half (48 percent) say they worry "a great deal" about this. Three-quarters (74 percent) say they are "very concerned" or "somewhat concerned" that when they retire, they will not be able to pay for the health care needs that Medicare does not cover.

- Fixing - More than half of Americans (57 percent) say Medicare needs major changes or a complete overhaul, but few proposals for reforming the system draw strong popular support.

http://www.publicagenda.org/issues/angles.cfm?issue_type=medicare

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**Toward an Understanding of Percentage Plans in Higher Education:
Are They Effective Substitutes for Affirmative Action?**

A Statement by the United States Commission on Civil Rights

April 2000

U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices;
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin;
- Submit reports, findings, and recommendations to the President and Congress;
- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.

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**Toward an Understanding of Percentage Plans in Higher Education:
Are They Effective Substitutes for Affirmative Action?**

The United States Commission on Civil Rights is deeply concerned about the impact of Governor Jeb Bush's One Florida Plan ("Plan") on remedying the state's history of legal discrimination in state contracting and achieving the goal of diversity and equal higher education opportunity in Florida. Unlike the election-mandated or court-ordered anti-affirmative action measures in California and Texas, Governor Bush self-compellingly issued Executive Order 99-281 on November 9, 1999,¹ ending race-conscious affirmative action in Florida one year before voters could face a ballot question instigated by Ward Connerly asking them to eliminate affirmative action in the state.

Bush's One Florida Plan includes a ban on the consideration of race and gender in state contracting and university admissions. Instead, Bush proposes increasing minority participation in state contracting by requiring the state procurement officers to try to find qualified minority businesses. In addition, the Plan guarantees state university admissions to high school seniors in the top 20 percent of their class, without regard to SAT or ACT scores. Bush would add \$20 million to the student financial aid budget to pay the expenses.²

The development of specifics were left to a task force of education leaders who would make recommendations to the Board of Regents.³ What the Regents and Bush's cabinet approved in higher education failed to include were the kinds of details that would make the Florida Plan at least as palatable as the Ten Percent Plan instituted in Texas.⁴

In Texas, the legislature, following the lead of African American and Latino legislators and education experts, adopted a Ten Percent Plan⁵ ("Ten Percent Plan" or "Texas Plan") in response to the appeals court decision in *Hopwood v. Texas*,⁶ which outlawed race-conscious affirmative action programs in Texas higher education. The Texas Plan (House Bill No. 588), enacted in 1997, entitles the top 10 percent of the graduating class of each accredited high school in Texas to attend the University of Texas at Austin ("UT-Austin"), the university system's flagship campus, Texas A&M University ("Texas A&M"), or any other state university. Colleges and universities are permitted to require an essay, letters of recommendation, admissions and placement tests, fees, and an official high school transcript. Under the Ten Percent Plan, the students must take the ACT or SAT but only to determine the need for academic support and to track whether the scores can predict the success or failure of the students.⁷

¹ Executive Order 99-281 was issued by Governor Jeb Bush on Nov. 9, 1999 <http://www.state.fl.us/eog/executive_orders/1999/november/eo99-281.gtml>. See Attachment A.

On Thursday, Feb. 17, 2000, the Florida Board of Regents approved Governor Jeb Bush's One Florida Initiative. *Atlanta Constitution*, Feb. 18, 2000.

² See One Florida Initiative—Remarks by Governor Bush: Announcement of the One Florida Initiative, Tallahassee, Florida, Nov. 9, 1999. WebCast of the One Florida Press Conference <http://www.state.fl.us/eog/one_florida/remarks_original.html> pp. 1-7.

³ See "Talented 20 task force named," Florida Board of Regents Web site at <<http://www.borfl.org/releases/press/prs/talented%2020%20task%20force.asp>>.

⁴ TEX. EDUC. CODE ANN. § 51.803(a) (West 1998).

⁵ *Id.*

⁶ *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 518 U.S. 1033 (1996).

⁷ University of Texas at Austin, Office of Admissions, Implementation and Results of HB 588, Report 1 <www.utexas.edu/student/research/reports/>.

In 1997, during the first post-*Hopwood* school year and prior to the passage of the Texas Plan, minority enrollment figures were down in the incoming freshman classes at UT-Austin and Texas A&M. "At UT-Austin, freshman enrollment dropped by 4.3% for Hispanic students and by 33.8% for black students. At Texas A&M, freshman enrollment of Hispanic and black students dropped by 12.6% and 29% respectively."⁸

In 1998, the first year of the Ten Percent Plan, UT-Austin admitted a freshman class of students, some of whom came from low-income districts with inadequate schools. In a 1998 analysis of the first implementation of the Texas Plan, the UT-Austin admissions office reported, "Though it is not possible to determine the precise impact of HB 588 on the University's freshman class one can see that when compared to the class entering in 1997, the class of 1998 is more diverse (34% minority compared to 32%) but not as diverse as the class that entered in 1996 which was 38% minority."⁹

During the second year of the Ten Percent Plan, the 1999 freshman class at UT-Austin was as diverse as the last class enrolled prior to the 1996 *Hopwood* decision.¹⁰ This return to pre-*Hopwood* diversity figures is relative in that it disregards the fact that in 1999 the total applicant pool for blacks and Hispanics increased while the yield decreased in comparison to 1996 figures. In contrast, the yield for white students has remained the same as the number of white applicants increased (see table 2).

TABLE 1
The Effects of *Hopwood* on Minority Enrollment at UT-Austin

	<i>First-Time UT-Austin Freshmen, 1994–1999</i>					
	1994	1995	1996	1997	1998	1999
White	3,893 64%	4,081 64.2%	4,159 64.7%	4,730 66.8%	4,399 65%	4,447 63%
Hispanic	880 14.5%	935 14.7%	932 14.5%	892 12.6%	891 13%	976 14%
Black	323 5.3%	309 4.9%	266 4.1%	190 2.7%	199 3%	286 4%
Total enrolled	6,086	6,352	6,430	7,085	6,744	7,040

SOURCE: University of Texas at Austin, Office of Admissions, Implementation and Results of HB 588, Report 2 <www.utexas.edu/student/research/reports/>.

⁸ Danielle Holley and Delia Spencer, "The Texas Ten Percent Plan," 34 Harv. C.R.-C.L. L. Rev. 245, 251 (1999).

⁹ University of Texas at Austin, Office of Admissions, Implementation and Results of HB 588, Report 1 <www.utexas.edu/student/research/reports/>.

¹⁰ University of Texas at Austin, Office of Admissions, Implementation and Results of HB 588, Report 2 <www.utexas.edu/student/research/reports/>.

TABLE 2
UT-Austin (Undergraduate) Admissions Statistics

	<i>1996</i>				<i>1999</i>			
	Applied	Admitted	Yield	Enrolled	Applied	Admitted	Yield	Enrolled
Black	809	461	57.0%	266	953	438	46.0%	286
Hispanic	2,492	1,617	64.9%	932	2,677	1,497	55.9%	976
White	10,584	6,571	62.1%	4,159	10,621	6,656	62.7%	4,441

SOURCE: University of Texas at Austin, Office of Admissions, Implementation and Results of HB 588, Report 2 <www.utexas.edu/student/research/reports/>. See also University of Texas at Austin, Office of Admissions, Student Profile <www.utexas.edu/>.

The Texas Plan at UT-Austin has resulted in increased diversity in 1999 among the freshmen students admitted under the program in comparison to 1998 (see table 3). This increase in enrollment can be credited to various efforts aimed to encourage minority high school students to attend UT-Austin. Some of the innovative recruitment and retention programs include alumni-sponsored minority scholarships and a new scholarship initiative that targets students in the top 10 percent. The state also enacted a law requiring posters at each high school informing students about the Texas Plan and telling them how to apply. Texas State Senators Rodney Ellis and Royce West initiated a partnership between UT-Austin and Bank of America entitled the Texas Longhorn PREP (Partners Responding to Educational Priority) program.¹¹ The program is available to all top 10 percent high school students in Houston and Dallas, and its goal is to assist in their academic success in college.¹²

TABLE 3
Top 10% of Students Admitted to UT-Austin by Ethnicity

	<i>1997</i> <i>(before HB 588)</i>	<i>1998</i> <i>(first year of HB 588)</i>	<i>1999</i> <i>(second year of HB 588)</i>
White	2,262	2,561	2,753
Black	118	143	268
Hispanic	613	734	911

SOURCE: University of Texas at Austin, Office of Admissions, Implementation and Results of HB 588 Report 2, <www.utexas.edu/student/research/reports/>.

Despite these relative gains, a comparison of the admittance rates in tables 2 and 3 reveals that in 1999 only 170 black and 586 Hispanic high school students were admitted to UT-Austin under general admission standards. Thus, it is clear that the absence of an affirmative action program at UT-Austin has detrimentally affected the admission of black and Hispanic students not in the top 10 percent of their high school class who pre-*Hopwood* might have been admitted.

¹¹ Telephone interview with Rick Svatora, legislative aide to State Senator Rodney Ellis (Mar. 15, 2000).

¹² Ibid.

These results show that a color-blind law in a racially segregated primary and secondary public school environment can promote some diversity in undergraduate admissions. However, the adverse impact on the admission of black and Hispanic high school students not in the top 10 percent shows that UT-Austin's failure to increase the yield while implementing the Texas Plan creates an ineffective replacement program when compared with the university's previous affirmative action policy. Severe decreases in the number of minority students enrolled in UT-Austin's graduate and professional schools enforce the need for race-conscious affirmative action.¹³

Undoubtedly, the end of affirmative action has resulted in a significant decline in the overall enrollment of black and Hispanic students at UT-Austin. This decrease reveals the need for the university to increase the yield in black and Hispanic undergraduate admissions. In order to address UT-Austin's low minority enrollment in graduate and professional schools, the Texas Legislature should consider creating a percentage plan program that provides special consideration to the top 10 percent of Texas college seniors applying to state postgraduate programs.

Prior to *Hopwood* and the Texas Plan, race-conscious affirmative action programs did not bring nearly enough black and Hispanic students into the state's flagship universities.¹⁴ It is doubtful that the Texas Plan will be able to achieve enrollment figures in undergraduate and graduate school similar to pre-*Hopwood* numbers. But at least, the Ten Percent Plan makes it possible for some students to attend UT-Austin who after *Hopwood* might have been excluded.

Florida, unlike Texas, failed to provide for adequate remediation given Governor Bush's acknowledgement of the poor quality of K-12 schools attended by many African American and Latino students. His announcement of the extension of existing mentoring programs and the establishment of a task force to deal with K-12 inequities may help in the long run.¹⁵ But for now, as Florida A&M President Frederick

¹³ Attachment B, The Effects of Hopwood on Minority Postgraduate Enrollment at UT-Austin, 1995-1999.

¹⁴ Although blacks and Hispanics constitute 40 percent of Texas' population, neither flagship university (UT-Austin or Texas A&M) has ever enrolled a student body composed of more than 15 percent minority students. See Harvard article, p. 247.

¹⁵ Governor Bush concedes in a 15-page Web-published report entitled "Governor Bush's One Florida Initiative: Governor Bush's Equity in Education Plan" the existence of glaring disparities between the opportunities for African American and Hispanic students and the opportunities for white students, yet his plan does little to address such disparities.

For example, Florida public schools are ranked on the basis of performance on a scale ranging from "A" to "F"; "A" being the best and "F" being the worst. The report also states that Florida schools, which are ranked as A or B schools, have dropout rates of "only 1%, and 67% of students pass the reading component of the FCAT." This is not the case in Florida schools ranked at the D and F levels. Such schools have dropout rates of "5.6% annually, and only 27% of students pass the reading component of the FCAT."

Further, out of the 65 Florida schools ranked at the D and F levels, "72% of the enrolled students are African American and Hispanic, while 26% are white" and 70 percent of enrolled students at those same D and F schools are poor or come from low socioeconomic backgrounds. Admittedly, the report states that "[b]ased on these numbers, it is obvious that minority and poor students are more likely to feel the impact of this gap."

Bush also concedes that minorities are more likely to attend low-performing schools, where in many cases they have been assigned to less-qualified teachers, have had fewer curriculum opportunities, and have been expected to achieve less than students in higher-performing schools. Nevertheless, the 20 percent plan does little to immediately address such inequities. His plan includes a recommendation to make funding available to low-performing high schools to access an extremely limited number of online AP courses; a "recommendation to target funds that are currently reserved for teacher training and for assistance to low-performing schools and directing them to provide teacher training and support for higher-level courses in low-performing high schools"; as well as a recommendation to require "school districts to provide options for students to gain access to higher level college preparatory courses." However, there are no guidelines for how these suggestions are to be implemented, how long such recommendations would take to be implemented, and it does not include predictions on the likelihood of their success.

Humphries and others point out, students who graduate from low-performing minority schools might not have the 19 precollege credits still required by the state university system because of inadequate curricular offerings at their high schools. Humphries has suggested that the state fix the schools so that any failure to take the courses would be “their choice, not the system’s choice.”¹⁶

Unfortunately, rather than focusing primarily on improving Florida’s failing public schools, which under the Florida Constitution have the responsibility to provide a quality education to the state’s school-age children,¹⁷ Governor Bush made the implementation of the Opportunity Scholarship Program “the centerpiece” of his first year in office. This voucher program provides students in failing Florida public schools with state funds in the form of vouchers, which may be applied toward tuition fees in private schools.¹⁸ The problem with this voucher plan is that it does nothing to ameliorate the deplorable conditions of Florida public schools and simply allows a small number of students to flee failing public schools.¹⁹

The recognition that the voucher plan failed to meet the Florida constitutional mandate that the state “provide a free education through a system of public schools” came on March 14, 2000, when Leon County Circuit Judge L. Ralph Smith Jr. ruled the Opportunity Scholarship Program unconstitutional.²⁰ He wrote that “by providing state funds for some students to obtain a K–12 education through private schools, as an alternative to the high quality education available through the system of free public schools, the legislature has violated the mandate of the Florida constitution, adopted by the electorate” of Florida.²¹ Although Bush plans to appeal the decision, for now Judge Smith has ruled that the Governor is “enjoined from taking further measures to implement the private-school tuition program.”²²

Bush’s overreliance on his voucher program and failure to adequately address the problems in Florida’s K–12 educational system are only part of the problem. In addition to K–12 deficiencies, Bush’s plan at the university level could also be improved. For example, Bush’s program, unlike that in Texas, does not require the state’s most prestigious flagship institutions to admit students in the top 20 percent, if they

Further, Bush also admits to the disparities in advanced placement (AP courses): “[N]ot all schools in Florida offer AP courses, or have the same rates of AP enrollment. . . . [S]tudents in Florida’s A and B schools are four times more likely to enroll in AP English and five times more likely to enroll in AP math courses than students in D and F schools. Twenty-five counties offer no AP courses at all.” See “Governor Bush’s One Florida Initiative: Governor Bush’s Equity in Education Plan” at Governor of Florida Jeb Bush’s Web site at <www.flgov.com>. These concerns over accountability and equal opportunity were echoed by Beatrice Louissaint, head of the Black Business Association, and member of the accountability commission overseeing Governor Bush’s One Florida Initiative, in a *Sun-Sentinel* article when she stated that she had “not seen the teeth in this [One Florida Initiative] plan needed to ensure equal opportunity and equal access.” Marcia Heroux Pounds, “Black Leaders: We’ll Hold Jeb’s Feet to Fire Over This,” *Sun-Sentinel*, Feb. 25, 2000.

¹⁶ Karla Schuster, “Regents Approve One Florida Plan: Controversial Proposal Ends Race-Based Preferences in Student Admissions to Colleges,” *Sun-Sentinel*, Ft. Lauderdale, Feb. 18, 2000.

¹⁷ FLA. CONST. of 1885, art. IX, § 1 (1968).

¹⁸ Opportunity Scholarship Program. Florida Stat. § 229.0537 (1999).

¹⁹ Lesley Clark and Analisa Nazareno, “Bush Suffers Legal Setback as Judge Decides Vouchers are Unconstitutional,” *Miami Herald*, Mar. 15, 2000.

²⁰ *Holmes v. Bush*, No. CV 99-3370 (Fla. Cir. Ct., Leon County, Mar. 14, 2000).

²¹ *Id.* at 2.

²² *Holmes v. Bush*, No. CV 99-3370 at 17 (Fla. Cir. Ct., Leon County, Mar. 14, 2000). Cheryl Wetzstein, “Voucher Plan in Florida is Ruled Illegal; Judge Says Scholarship Law Violates State Constitution,” *Washington Times*, Mar. 15, 2000.

choose to attend.²³ The Plan also makes no provisions for students who are qualified for admission but who are not in the top 20 percent of their class.

The Plan is an unprovoked stealth acknowledgment—and acceptance—that the existing school and housing segregation will never change and that longstanding efforts to remedy the race discrimination that was legal in Florida have been abandoned.²⁴ The Plan also voluntarily abolishes affirmative action with nothing to replace it that will ensure inclusion for people of color in graduate and professional education.

The Florida Plan, approved by the Regents, failed as well, to clarify how students would be admitted, and what rights they have so that students would not have to pay multiple application fees to apply to every institution, hoping one or some will take them. The Governor's accountability measures include a commission established to evaluate whether the program is admitting minority students over the next three years and requests that the Chancellor include meeting diversity goals in the evaluation of university presidents, without specifying any goals.²⁵

California's actions, since the Regents policy in 1995 abolished affirmative action,²⁶ have recently led to the announcement of a four percent plan.²⁷ The prestigious campuses of Berkeley and UCLA have yet to reverse the declines in enrollment of black and Hispanic students that occurred following the Regents policy that excluded affirmative action as a race-conscious remedy for the class beginning in 1998 at the undergraduate level and in 1997 at the graduate level.²⁸

²³ Although the Governor's office states that minority enrollment at Florida flagship universities, the University of Florida and Florida State University, will not decline, there is no offering of evidence to the contrary. The statements contained in the article "Florida Initiative-One Florida Myths and Truths" paint an overly optimistic picture of the 20 percent plan's implementation. See "Florida Initiative-One Florida Myths and Truths" at Governor of Florida, Jeb Bush's Web site at <www.state.fl.us/eog/one_florida/myths.html>. In fact, even the University of Florida admissions director Bill Kolb admits that the effect of the 20 percent plan on minority admissions is "difficult to predict." Mary MacDonald, "Panel Suggests Other Admissions Factors," *Florida Times-Union*, Jacksonville, Dec. 4, 1999.

²⁴ University of Florida "Regents estimate that . . . [the 20 percent plan] not only would maintain diversity but also might bring 400 more minority students to enroll this fall. This is an almost irrelevant increase, however, to a system that admitted some 27,000 freshman last year. Of the 220,000 total students in the system, 32 percent are minorities, records show. But the numbers are skewed by Florida A&M University, the historically black university that in 1998 claimed a 99 percent minority student body. In contrast, the state's oldest and most selective college, the University of Florida, is only 5.5 percent black and 9 percent Hispanic." Grace Frank, "Regents Likely to OK One Florida," *Tampa Tribune*, Feb. 2, 2000.

²⁵ See "One Florida—The Next Step Forward," Remarks of Governor Jeb Bush, Feb. 16, 2000 <www.state.fl.us/eog/one_florida/remarks_original.html>.

²⁶ On July 20, 1995, the Regents of the University of California approved an admissions policy called SP-1 which prohibited all schools in the University of California system from using "race, religion, sex, color, ethnicity, or national origin as criteria for admission to the University or to any program of study." The Regents of the University of California Web site at <ucop.edu/regents/policies/sp1.html>. See Attachment C.

²⁷ University of California Regents Item 303. Endorsement of the Recommendation of the Academic Senate of the University of California to Establish U.C. Freshman Eligibility in the Local Context. Mar. 18, 1999.

²⁸ Since the UC Board of Regents policy first took affect in 1998, the numbers of enrolled American Indian, African American, Chicano, Latino, and Pilipino students have decreased significantly. In fact, the numbers of first-time California resident freshman American Indian students in the University of California system have gone from 183 in 1997 to 168 in 1998 to 140 in 1999. This amounted to a 15.7 percent decrease from 1997 (the year preceding the implementation of SP-1) to 1999 in American Indian enrollment alone. *University of California Office of the President, Student Academic Services, Application Flow Reports, 1999*. See Attachment E.

Total enrollment for American Indians at UCLA has also been on a steady decline since 1997. In 1997, UCLA had 203 American Indian students enrolled, in 1998—177, and in 1999—147. Even after controlling for fluctuations in total student popula-

In March 1999, California announced a proposal to increase outreach efforts, and to ensure that the existing policy that students who rank in the top 4 percent of their junior-year class will be eligible for admission to the University of California starting in fall 2001.²⁹ The plan was developed to increase the system's overall eligibility pool to the top 12.5 percent of the state's high school seniors, a benchmark specified in the California Master Plan for Higher Education. During the past few years, the figure has slipped to 11.5 percent.³⁰

Since the 4 percent group would constitute only a small portion of overall admissions, the effects on diversity at UC as a whole would be minimal. Also, the applicants would not be guaranteed admission to the campus of their choice. In fact, the denial of admission to the University of California's premiere flagship university, UC Berkeley, to qualified Pilipino, African American, and Latino high school students has prompted the Mexican American Legal Defense and Education Fund, the NAACP Legal Defense and Educational Fund, Inc., and the Asian Pacific American Legal Center of Southern California, to file a lawsuit against the University of California, Berkeley in federal court.³¹ The case is a class action suit which alleges that UC Berkeley's admissions policies, which comply with the University of California Regents' adoption of Resolution SP-1 prohibiting the explicit use of race and ethnicity as criteria for admissions, violate federal antidiscrimination laws and the civil rights of African American, Chicano, Latino, and Pilipino American past and future applicants to the University of California at Berkeley, amounting to a denial of equal opportunity to compete for admission to undergraduate studies programs. The complaint alleges that UC Berkeley's current admissions process discriminates against Latino, African American, and Pilipino American applicants in several respects, including, but not limited to, the granting of "unjustified preferential consideration to applicants who have taken certain courses that are less accessible in high schools attended largely by African American, Latino, and Pilipino American students"; as well as placing "undue and unjustified reliance upon standardized test scores and to make judgements based on educationally insignificant differences in test scores."³²

tion, the Native American population has decreased at UCLA by at least 10 percent each year since SP-1 took effect. See Attachment F.

At UCLA, freshman enrollment during the period of 1997 to 1999 dropped for African Americans from 5.6 percent in 1997 to 3.8 percent in 1999. For Chicanos, the drop for the same period went from 11.9 percent to 9.4 percent. Similarly, at UC Berkeley, African American first-year enrollment dropped from 7.8 percent in 1997 to 3.8 percent in 1999. For Chicanos at Berkeley, enrollment went from 12 percent in 1997 to 6.8 percent in 1999. See University of California Office of Admissions, 1999. See Barbara Whitaker, "Minority Rolls Rebound at University of California; But Disparity Persists at Main Campuses," *New York Times*, Apr. 5, 2000.

Most drastic, however, are the effects that UC Regents decision SP-1 and Proposition 209 have had on graduate enrollment. See Attachment G. In 1996 African American enrollment of first-year law students at UCLA was 6.2 percent. In 1999 that figure dropped to less than 1 percent. At UC Berkeley's law school, African American first-year enrollment went from 7.6 percent in 1996 to 2.6 percent in 1999. Similarly, Hispanic and Native Americans also saw their numbers decrease at the law school level in the years following SP-1 and Proposition 209. In 1996 Hispanic enrollment at UCLA School of Law for first-year students was 14.8 percent. In 1999 that figure was 6.2 percent. Hispanic enrollment at UC Berkeley's law school was at 10.6 percent in 1996 and dropped to 5.9 percent in 1999. Native American students at UCLA School of Law and UC Berkeley's law school dropped from approximately 1.5 percent in 1996 to less than 1 percent in 1999 (UC Admissions Office).

²⁹ "The University of California Board of Regents Friday (Mar. 19) approved changes in freshman eligibility that will make the top 4 percent of students from all California public high schools" University of California eligible. "Board of Regents Adopts New Eligibility Plan," University of California Office of the President Press Release. Mar. 19, 1999. See Web site at <www.ucop.edu/ucophome/commserv/fourpcsol.html>. See Attachment D.

³⁰ Renda Rutmanis, "University of California System Adjusts Admissions Policies Through Time," *Daily Californian*, Mar. 15, 2000.

³¹ *Rios et al. v. Regents of Univ. Cal.*, No. C 99-0525 SI (N.D. Cal. filed Mar. 24, 1998).

³² *Id.* at 1.

The complaint further alleges that “[p]rior to its modification, the admissions process implemented by UC Berkeley considered race and ethnicity as criteria, among others, in a manner that mitigated, to some degree, the adverse impact of other components of the process that discriminated against minority applicants. In the absence of such mitigation, the current admissions process discriminates against African American, Latino, and Pilipino American applicants.” Specifically, the complaint alleges that when “comparing only applicants with a grade point average of 4.0 or higher, African American, Latino and Pilipino American students were denied admission at far higher rates than white students. For example, UC Berkeley admitted 48.2% of white applicants with GPAs of 4.0 or higher but only 31.6% of Pilipino American, 38.5% of African American, and 39.7% of Latino applicants with such GPAs.”³³

Additionally, the complaint alleges that “[t]he current admissions process is inconsistent with UC Berkeley’s educational mission. UC Berkeley has failed to demonstrate that the selection criteria utilized in its current admissions process are valid and necessary to achieve the university’s educational mission. Although alternative criteria and admission methods exist that are consistent with the university’s educational mission and that would have less disparate impact upon minority applicants, UC Berkeley has failed to adopt or to implement them. Therefore, Defendants’ adoption, implementation, and refusal to modify the current admissions process violates Title VI of the Civil Rights Act of 1964, the United States Department of Education regulations implementing Title VI (34 C.F.R. § 100.1, et seq.), and the Fourteenth Amendment to the United States Constitution.”³⁴

In conclusion, the percentage plans may succeed as an effective public relations strategy. They could gain broad appeal because they focus on the goal that everyone should have an equal opportunity to learn in higher education. There is general American acceptance of the notion that hardworking students should not be deprived of an equal chance at the best public higher education opportunity because their schools did not offer them a chance to take certain courses.

Percentage plans are also a good public relations strategy because they fit into an educational history having nothing to do with race. States have long had policies that allowed graduates in the top percentage of a high school to attend the capstone public university. These policies existed well before the use of SATs and ACTs for admission decisions. Geographic diversification, without regard to the quality of the schools in different regions, ensured public support for the flagship institution. Because racial segregation dominates much of the American landscape, percentage plans necessarily afford undergraduate admission to some African American and Latino undergraduates in state college and university systems. They also permit poor whites from a state’s poorer counties to benefit. The concept of geographical diversity retains populist appeal and will help to insulate the percentage plans from political attacks in the states. This is so, even though opponents of affirmative action may denounce them as just another pretext for discrimination against whites.

The major problem with the percentage plans is their inattention to law schools, medical schools, and other graduate and professional schools, where ending affirmative action is devastating.³⁵ At the law schools of the University of Texas at Austin, the University of California at Berkeley, and the University

³³ *Id.* at 3.

³⁴ *Id.*

³⁵ Since the ending of affirmative action in California the numbers of students enrolled in graduate programs have significantly decreased for Native Americans, African Americans, Chicanos, Latinos, and Pilipinos at the flagship University of California institutions at Los Angeles and Berkeley. See Attachment F. The Florida plan could potentially cause the same disaster in the future if efforts are not made to ensure that diversity is maintained.

of California at Los Angeles, African American and Latino enrollment remain well below 1996 figures, which needed increasing not decreasing. Florida is proposing to voluntarily inflict this harm by ending affirmative action.

Florida should keep affirmative action unless forced to abandon it. California needs to address the steering of African American and Latino students to the less prestigious institutions in the system. Texas and California should, at the very least, address the need to admit more Latino and African American students to undergraduate, graduate, and professional programs.

The percentage plans are experimental responses to the attacks on affirmative action. But they are no substitute for strong race-conscious affirmative action in higher education.³⁶ What is required is a Supreme Court decision reaffirming *Bakke* and making affirmative action an imperative.³⁷

Race-conscious affirmative action has not brought nearly enough black and Latino students into undergraduate, graduate, or professional higher education programs; the percentage plans will do no better and probably worse. While the battle rages in Florida, the Clinton Departments of Education and Justice need to leave the sidelines and enter the public debate to reinforce the President's support for affirmative action. In a February 7, 2000, letter to Commission Chairperson Mary Frances Berry, the Secretary of Education Richard Riley emphasized his agency's continued support of "appropriately tailored affirmative action programs under the Constitution, Title VI of the 1964 Civil Rights Act and Title IX of the Education Amendments of 1972."³⁸

The most positive aspect of the percentage proposals is that they shine a spotlight directly on the failure of the states to exercise their constitutional responsibility to ensure an equal opportunity to learn in K-12 for poor African American and Latino students.³⁹

³⁶ Many state and national black leaders have condemned Governor Bush's plan. The Florida branches of the National Association for the Advancement of Colored People (NAACP) has appealed the Governor's plan to end affirmative action in state university admissions by filing a "petition with the state Division of Administrative Hearings, contesting votes taken . . . [on the approval of the elimination of affirmative action] by the state Board of Regents and Bush and the Cabinet, sitting as the state Board of Education." In the petition the NAACP characterizes the Governor's plan as "arbitrary and capricious," and "asks that an administrative hearing judge be allowed to decide 'whether the proposed rules are irrational in that they simultaneously purport to commit to increasing diversity and equal educational opportunities while prohibiting consideration of the facts that establish diversity and contribute to the need for equal educational opportunity'." *Orlando Sentinel*, Feb. 26, 2000.

³⁷ *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

³⁸ Richard W. Riley, U.S. Department of Education, letter to Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights, Feb. 7, 2000, p. 1.

³⁹ The state of public K-12 education for poor Latino and African American students has become a national problem. In California, for example, University of California admissions officials, in the wake of the approval of UC Regents decision SP-1 and Proposition 209, no longer take race into consideration in their admissions decisions. Instead, they have increasingly relied on high school grades and test scores. In July of 1999, the American Civil Liberties Union (ACLU) filed a class action law suit against the California Department of Education on behalf of four students attending Inglewood High School in Los Angeles, California. The complaint alleges that the lack of advanced placement (AP) courses which are offered at some California public high schools and not others constitutes a violation of students' state constitutional guarantee of equal educational opportunities for all.

These inequities are demonstrated by the fact that according to State Education Department data, "129 California public high schools, with 80,000 students, do not offer any AP classes." Louis Sahagun and Kenneth R. Weiss, "Bias Suit Targets Schools Without Advanced Classes," *Los Angeles Times*, July 28, 1999.

Further, Inglewood High School, which has a student body that is 97 percent Latino and African American, offers only three AP courses. Whereas, Beverly Hills High School, which has a student body that is 8 percent people of color, offers 14 AP courses. Torri Minton, "Ahead but Already Behind," *San Francisco Chronicle*, Aug. 22, 1999.

Civil rights activists need to insist that states fix K-12 education now instead of waiting for more task forces and partnerships to evolve. Governor Jeb Bush announced plans to increase need-based financial aid, provide equal access to Preliminary Standardized Achievement Tests (PSATs), expand access to more advanced placement courses, and to increase mentoring. If these plans actually come to fruition rather than remain rhetorical, then they should be welcomed. However, they will not improve the quality of K-12 education, nor will they substitute for affirmative action.

Civil rights activists must also insist that while we work to repair the pipeline, politicians not slam shut the doors for those who can do academic work now. To do so, would deprive all students of critically important opportunities, including the opportunity to learn from, and with, students who are different. This must be understood as an essential element of excellence in accordance with the mission of higher education institutions.

The goal is diversity, inclusion, opportunity, and a bright future for our nation in the world economy.

"In California, blacks and Latinos make up 45 percent of the high school population—but only 13 percent of the advanced-placement test takers. The shortfall of advanced placement courses has been found to afflict rural areas as well, placing low-income whites at a competitive disadvantage when they apply to college. As a class-action suit, the ACLU complaint covers 'similarly situated persons,' which includes these rural whites." Brent Staples, "California Schools, After Affirmative Action," *New York Times*, Aug. 23, 1999.

Statement of Chairperson Mary Frances Berry

The Commission has conducted poll votes over the years when a majority agreed to do so, and released the results if they were generated in advance of a monthly Commission meeting. The Commission decided by a vote of 6–2 that public discussion of percentage plans in higher education and inquiries concerning the Commission’s position had reached a level that an immediate analysis of the data generated in the states that have already adopted such plans would serve the public interest. It was especially important to examine the official information published by the states on their Web sites as public information. Whether one believes in the use of gender and race-conscious remedies such as affirmative action or not, it is important to understand the role percentage plans play in achieving higher education opportunity for all Americans. The Commission believes this analysis will help to inform the public debate.

Dissenting Statement of Commissioner Carl A. Anderson and Commissioner Russell G. Redenbaugh

We strongly object to this statement and to the way it has been pushed through, on a “poll vote,” out of the public’s eye, and without providing the opportunity for open discussion and full deliberation by the Commission.

The poll vote is an extraordinary procedure that should be used only on urgent matters that the Commission has already reviewed and discussed openly, as in the case of the South Dakota report last month, or where there is unanimous consent to proceed in such a manner. In the case of the present statement on “percentage plans,” however, the poll vote clearly is being used to keep any discussion or dissent off the public record. The issues raised in the statement are certainly too important and complex to be rushed through in this way, without full and careful consideration by this body.

Although we were denied the opportunity for discussion, here are just a few of the questions we would have liked to pose, in an open session:

- What is the reason for politicizing the discussion on percentage plans? Specifically, considering that the statement critiques the plans in three states (Florida, Texas and California), what is the reason for beginning the paper with a personalized attack on the Governor of Florida? Why is the Governor’s plan characterized as a “stealth acknowledgment—and acceptance” that “existing segregation will never change and that longstanding efforts to remedy the race discrimination that was legal in Florida have been abandoned”?
- In conducting their research, was Commission staff ever in contact with the office of the Florida Governor, the Florida Board of Regents, or the Florida Department of Education to seek information about the One Florida Initiative? Aside from the information obtained from the Internet, was any other research conducted through direct contact with the other two States (California and Texas)?
- In regard to the charges about the Florida Governor’s “ending” affirmative action, shouldn’t it be clarified that the Governor’s executive order did not repeal a single affirmative action law on the books in Florida? Similarly, in regard to the claim that One Florida “bans” consideration of race and gender in contracting, wouldn’t it have been fair to present the Governor’s public response (“Race consciousness is appropriate, as long as the State does not benefit one racial or ethnic group to the detriment of another.”)? Why does the statement make reference to only one element of the contracting plan when it contains at least six key elements to root out discrimination and enhance minority participation?
- With respect to the statistics showing increased diversity at the University of Texas at Austin, what is the point of the claim that “[t]his return to pre-*Hopwood* diversity figures is relative in that it disregards the fact that in 1999 the total applicant pool for blacks and Hispanics increased while the yield decreased in comparison to 1996 figures”? Considering that the decrease in the “yield” is a result of the increase in the number of applicants, doesn’t this enhance rather than detract from the post-*Hopwood* effects, particularly in terms of minority recruitment?

- Isn't there a way to explain more clearly the following assertions in the discussion on the Texas Plan?: (1) "... it is clear that the absence of an affirmative action program at UT-Austin has detrimentally affected the admission of black and Hispanic students not in the top ten percent of their high school class who pre-*Hopwood* might have been admitted." (2) "... at least, the Ten Percent Plan makes it possible for some students to attend UT-Austin who after *Hopwood* might have been excluded."
- Considering that minority admissions to UT-Austin and Florida State today are at or above the level they were when racial preference policies were in effect, why does the statement conclude that "the percentage plans will do no better and probably worse" than traditional race-conscious programs?
- Why does the statement claim that "rather than focusing primarily on improving Florida's failing public schools" the Florida Governor has given priority attention to implementing his voucher program, the Opportunity Scholarship Program? In other words, why is the Governor's education plan characterized as antithetical to the goal of improving schools when the whole focus of the plan is on improving low-performing schools serving primarily low-income and minority students?
- Why does the statement fail to incorporate the views of voucher proponents in Florida?
- In regard to the claims that minority enrollment in the University of California system has "decreased every year" since Proposition 209 and the Board of Regents' policy that excluded affirmative action, why are no charts or statistics given similar to the ones provided for Texas? Why does the statement exclude data showing that in the UC system, minority enrollment for this year's freshman class is slightly below pre-Proposition 209 numbers and has increased over last year?

As these questions reveal, the proposed statement is littered with inaccuracies and half-truths. The major fact the statement ignores is this: Courts across the nation are striking down racial preferences and set-asides. The majority of Americans do not support race-based preferences. This does not mean we should do away with outreach, recruitment and other efforts to increase diversity and expand opportunities for minorities; but we can do that without discriminating. That is the whole point behind the reforms in Florida, Texas, and California: to increase the pool of eligible applicants; to reach out to students that traditionally have not been recruited, particularly those from the inner city; to focus on need-based financial aid; and to expand opportunity for students in low-performing schools.

The proposed statement reflects neither the scholarship nor deliberation to which the American taxpayers are entitled. We dissent from this premature rush to judgment in a matter of such public importance.



EXECUTIVE OFFICE OF THE GOVERNOR

Executive Order 99-281

WHEREAS, the Florida Constitution provides that all natural persons, female and male alike, are equal before the law and that no person shall be deprived of any right because of race or national origin; and

WHEREAS, Florida's government has a solemn obligation to respect and affirm these principles in its policies relating to employment, education and contracting; and

WHEREAS, the use of racial and gender set-asides, preferences and quotas is generally inconsistent with the obligation of government to treat all individuals as equals without respect to race or gender; and

WHEREAS, the use of racial and gender set-asides, preferences and quotas is considered divisive and unfair by the vast majority of Floridians, produces few, if any, long-term benefits for the intended beneficiaries, and is of questionable legality; and

WHEREAS, the laudable goal of increasing diversity in Florida's government and institutions of Higher Education, and in the allocation of state contracts, can and should be realized without the use of racial and gender set-asides, preferences and quotas; and

WHEREAS, the obligation of Florida's government to root out vestiges of discrimination can and should likewise be accomplished without resort to remedies involving the use of racial and gender set-asides, preferences and quotas.

NOW, THEREFORE, I, JEB BUSH, as the Governor of the State of Florida, by virtue of the authority vested in me by the Constitution and laws of the State of Florida, do hereby promulgate the following executive order effective immediately:

Section 1: Non-Discrimination in Government Employment

(a) It is the policy of my Administration to provide equal opportunity to all qualified Floridians, to prohibit discrimination in employment because of race, gender, creed, color or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each Executive Agency and the Office of the Governor. This policy of equal opportunity applies to every aspect of employment policy and practice in my Administration.

(b) It is the policy of my Administration to seek out employees for hiring, retention and promotion who are of the highest quality and ethical standards, and who reflect the full diversity of Florida's population.

(c) Unless otherwise affirmatively required by law or

administrative rule, neither the Office of the Governor nor any Executive Agency may utilize racial or gender set-asides, preferences or quotas when making decisions regarding the hiring, retention or promotion of a state employee. Any law or administrative rule requiring or allowing the use of racial or gender set-asides, preferences or quotas in hiring, retention or promotion shall be brought to the attention of my General Counsel by any affected Executive Agency no later than December 31, 1999.

Section 2: Non-Discrimination in State Contracting

(a) It is the policy of my Administration to provide equal state contracting opportunities to all qualified businesses, to prohibit discrimination in contracting because of race, gender, creed, color or national origin, and to promote the full realization of equal contracting opportunities through a positive, continuing program in each Executive Agency and the Office of the Governor. This policy of equal contracting opportunities applies to every aspect of contracting policy and practice in my Administration.

(b) Unless otherwise required by law or administrative rule, neither the Office of the Governor nor any Executive Agency may utilize racial or gender set-asides, preferences or quotas when making state contracting decisions. Any law or administrative rule requiring or allowing the use of racial or gender set-asides, preferences or quotas, or artificial, arbitrary goals in state contracting shall be brought to the attention of my General Counsel by any affected Executive Agency no later than December 31, 1999.

(c) The Department of Management Services and the Minority Business Advocacy and Assistance Office at the Department of Labor & Employment Security are hereby ordered to develop an implementation strategy for all other aspects of my Equity in Contracting Plan by January 31, 2000, and to present that plan to my Office of Policy and Budget for appropriate action.

Section 3: Non-Discrimination in Higher Education

(a) It is the policy of my Administration to support equal educational opportunities for all qualified Floridians, to prohibit discrimination in education because of race, gender, creed, color or national origin, and to promote the full realization of equal educational opportunities throughout the State.

(b) I hereby request that the Board of Regents implement a policy prohibiting the use of racial or gender set-asides, preferences or quotas in admissions to all Florida institutions of Higher Education, effective immediately.

(c) The Office of Policy and Budget is hereby ordered to develop an implementation strategy for all other aspects of my Equity in Education Plan by December 31, 1999.

Section 4: No Legal Cause of Action

Nothing in this Executive Order shall be construed to create a cause of action or any legal remedy not otherwise provided for by law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of the State of Florida to be affixed at Tallahassee, the Capitol, this 9th day of November, 1999.



Jeb Bush
Governor

ATTEST:
/s/ **Katherine Harris**
Secretary of State

Attachment B

The Effects of *Hopwood* on Minority Postgraduate Enrollment at UT-Austin, 1995–99*

Ethnicity	<u>1995</u>		
	Graduate school	Law school	Graduate business
White	6,816 65.6%	1,206 76.8%	828 66.4%
Black	247 2.4%	107 6.8%	64 5.1%
Hispanic	644 6.2%	170 10.8%	95 7.6%
Total enrolled	10,394	1,570	1,247

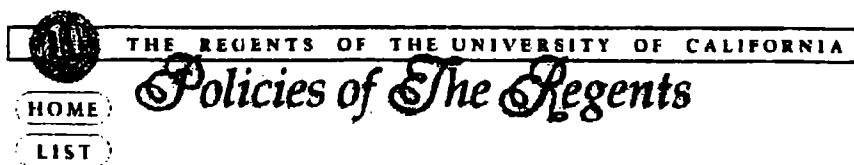
Ethnicity	<u>1996</u>		
	Graduate school	Law school	Graduate business
White	6,491 64.8%	1,141 74.8%	823 64.5%
Black	272 2.7%	100 6.6%	56 4.4%
Hispanic	653 6.5%	178 11.7%	106 8.3%
Total enrolled	10,019	1,525	1,275

Ethnicity	<u>1997</u>		
	Graduate school	Law school	Graduate business
White	6,080 64.3%	1,115 73.7%	806 65.6%
Black	287 3.1%	97 6.4%	48 3.9%
Hispanic	674 7.3%	179 11.8%	107 8.7%
Total enrolled	9,478	1,513	1,228

* University of Texas at Austin, Office of Admissions, 1995–1999 Student Profile <www.utexas.edu/>.

Ethnicity	<u>1998</u>		
	Graduate school	Law school	Graduate business
White	5,893 63.4%	1,089 77.0%	868 67.4%
Black	261 2.8%	67 4.7%	39 3.0%
Hispanic	677 7.3%	145 10.3%	92 7.2%
Total enrolled	9,294	1,415	1,287

Ethnicity	<u>1999</u>		
	Graduate school	Law school	Graduate business
White	5,553 60.9%	1,043 75.8%	776 64.2%
Black	248 2.7%	40 2.9%	17 1.4%
Hispanic	623 6.8%	122 8.9%	65 5.4%
Total enrolled	9,118	1,377	1,208



**POLICY ENSURING EQUAL TREATMENT
ADMISSIONS (SP-1)
Approved July 20, 1995**

WHEREAS, Governor Pete Wilson, on June 1, 1995, issued Executive Order W 124-95 to "End Preferential Treatment and to Promote Individual Opportunity Based on Merit"; and

WHEREAS, paragraph seven of that order requests the University of California to "take all necessary action to comply with the intent and the requirements of this executive order"; and

WHEREAS, in January 1995, the University initiated a review of its policies and practices, the results of which support many of the findings and conclusions of Governor Wilson; and

WHEREAS, the University of California Board of Regents believes that it is in the best interest of the University to take relevant actions to develop and support programs which will have the effect of increasing the eligibility rate of groups which are "underrepresented" in the University's pool of applicants as compared to their percentages in California's graduating high school classes and to which reference is made in Section 4;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. The Chairman of the Board, with the consultation of the President, shall appoint a task force representative of the business community, students, the University, other segments of education, and organizations currently engaged in academic "outreach." The responsibility of this group shall be to develop proposals for new directions and increased funding for the Board of Regents to increase the eligibility rate of those currently identified in Section 4. The final report of this task force shall be presented to the Board of Regents within six months after its creation.

Section 2. Effective January 1, 1997, the University of California shall not use race, religion, sex, color, ethnicity, or national origin as criteria for admission to the University or to any program of study.

Section 3. Effective January 1, 1997, the University of California shall not use race, religion, sex, color, ethnicity, or national origin as criteria for "admissions in exception" to UC-eligibility requirements.

Section 4. The President shall confer with the Academic Senate of the University of California to develop supplemental criteria for consideration by the Board of Regents which shall be consistent with Section 2. In developing such criteria, which shall provide reasonable assurances that the applicant will successfully complete his or her course of study, consideration shall be given to individuals who, despite having suffered disadvantage economically or in terms of their social environment (such as an abusive or otherwise dysfunctional home or a neighborhood of unwholesome or antisocial influences), have

nonetheless demonstrated sufficient character and determination in overcoming obstacles to warrant confidence that the applicant can pursue a course of study to successful completion, provided that any student admitted under this section must be academically eligible for admission.

Section 5. Effective January 1, 1997, not less than fifty (50) percent and not more than seventy-five (75) percent of any entering class on any campus shall be admitted solely on the basis of academic achievement.

Section 6. Nothing in Section 2 shall prohibit any action which is strictly necessary to establish or maintain eligibility for any federal or state program, where ineligibility would result in a loss of federal or state funds to the University.

Section 7. Nothing in Section 2 shall prohibit the University from taking appropriate action to remedy specific, documented cases of discrimination by the University, provided that such actions are expressly and specifically approved by the Board of Regents or taken pursuant to a final order of a court or administrative agency of competent jurisdiction. Nothing in this section shall interfere with the customary practices of the University with regard to the settlement of claims against the University relating to discrimination.

Section 8. The President of the University shall periodically report to the Board of Regents detailing progress to implement the provisions of this resolution.

Section 9. Believing California's diversity to be an asset, we adopt this statement: Because individual members of all of California's diverse races have the intelligence and capacity to succeed at the University of California, this policy will achieve a UC population that reflects this state's diversity through the preparation and empowerment of all students in this state to succeed rather than through a system of artificial preferences.



Policies of The Regents

POLICY ENSURING EQUAL TREATMENT EMPLOYMENT AND CONTRACTING (SP-2)

Approved July 20, 1995

WHEREAS, Governor Pete Wilson, on June 1, 1995, issued Executive Order W 124-95 to "End Preferential Treatment and to Promote Individual Opportunity Based on Merit"; and

WHEREAS, paragraph seven of that order requests the University of California to "take all necessary action to comply with the intent and the requirements of this executive order"; and

WHEREAS, in January 1995 the University initiated a review of its policies and practices, the results of which support many of the findings and conclusions of Governor Wilson;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. Effective January 1, 1996, the University of California shall not use race, religion, sex, color, ethnicity, or national origin as criteria in its employment and contracting practices.

Section 2. The President of the University of California is directed to oversee a systemwide evaluation of the University's hiring and contracting practices to identify what actions need be taken to ensure that all persons have equal access to job competitions, contracts, and other business and employment opportunities of the University. A report and recommendations to accomplish this objective shall be presented to the Board of Regents before December 31, 1996.

Section 3. Nothing in Section 1 shall prohibit any action which is strictly necessary to establish or maintain eligibility for any federal or state program, where ineligibility would result in a loss of federal or state funds to the University.

Section 4. Nothing in Section 1 shall prohibit the University from taking appropriate action to remedy specific, documented cases of discrimination by the University, provided that such actions are expressly and specifically approved by the Board of Regents or taken pursuant to a final order of a court or administrative agency of competent jurisdiction. Nothing in this section shall interfere with the customary practices of the University with regard to the settlement of claims against the University relating to discrimination.

Section 5. Believing California's diversity to be an asset, we adopt this statement: Because individual members of all of California's diverse races have the intelligence and capacity to succeed at the University of California, this policy will achieve a UC population that reflects this state's diversity through the preparation and empowerment of all students in this state to succeed rather than through a system of artificial preferences.



FOR IMMEDIATE RELEASE

Friday, March 19, 1999

Terry Lightfoot (510) 987-9194

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BOARD OF REGENTS ADOPTS NEW ELIGIBILITY PLAN

The University of California Board of Regents Friday (March 19) approved changes in freshman eligibility that will make the top 4 percent of students from all California public high schools eligible for UC.

The new criteria ensure access to the university and academic excellence among the pool of students eligible for enrollment at UC's eight general campuses.

UC faculty developed the new criteria following more than a year of analysis and considering ways for the university to increase the number of UC-eligible students in order to meet its obligation to enroll from the top 12.5 percent of California high school graduates and continue to maintain academic quality.

Granting eligibility to students who rank in the top 4 percent of each high school class based on UC-required courses will make nearly 3,600 additional students eligible for the university.

Those new students increase the percentage of high school graduates eligible for UC from 11.1 percent to 12.5 percent as required by the state Master Plan for Higher Education and do not displace students who currently are eligible on a statewide basis.

"This new approach to eligibility represents an historic change in California higher education admissions," said UC President Richard C. Atkinson. "Under this plan, the University of California is sending a clear message, especially to young people from rural and inner city schools who may have considered UC beyond their grasp – that we will recognize and reward academically accomplished students from every public high school in California."

This new path to eligibility greatly enhances UC's ability to attract students from across the state, particularly from rural and inner city schools.

It also rewards individual academic achievement regardless of the level of educational opportunities available in a student's school.

An analysis of several schools showed that the additional students who would become eligible based on performance at individual high schools have achievement and potential that are comparable to other UC-eligible students.

The mean grade point average of the newly eligible students in the top 4 percent is 3.91, compared to 3.56 for eligible students not in the top 4 percent. The mean SAT I score for the newly eligible students in the top 4 percent is 1025, compared to 1130 for eligible students not in the top 4 percent.

The university is committed to accommodating all eligible students at one of its eight general campuses. However, eligible students are not guaranteed admission to the campus of their choice.

In addition to granting eligibility to students ranked in the top 4 percent of their high school class, the board also approved including a visual and performing arts course among the 15 yearlong high school courses students must take to become eligible. This change fully aligns the courses required by UC and California State University, making it easier for students and parents to plan for college.

The board referred back to the faculty for further review proposed changes in the amount of extra credit given for honors courses.

To give students, parents and schools ample time to prepare and plan for these changes, the new criteria will be phased in over a number of years.

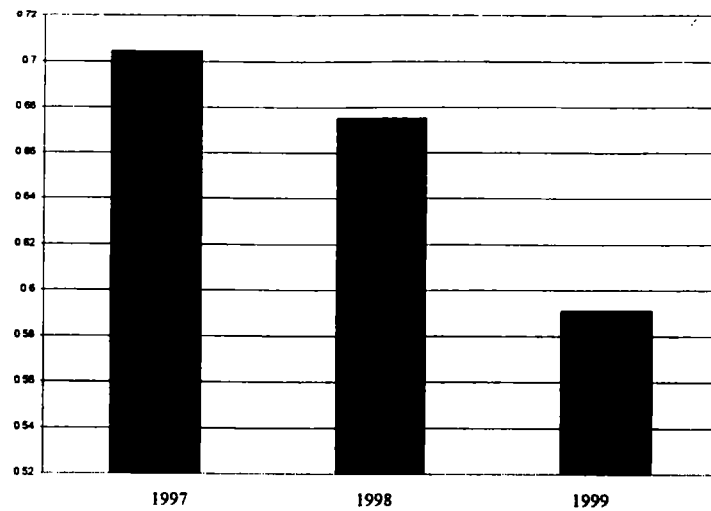
In 2001, eligibility will be granted to the top 4 percent of students at each high school. In 2003, the visual and performing arts requirement will be among one of 15 UC-required courses.

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Attachment E

University of California Enrollment of California Resident Freshmen*

Graph Expresses Percentage of American Indian Enrollment, 1997-1999



* Source: Office of the President of the University of California

Attachment F

Enrollment Percentages for Undergraduate Students at University of California Flagship Institutions (UCLA and Berkeley)

University of California Los Angeles*

	International	American Indian	African American	Chicano / Chicana	Latino / Latina	Pilipino / Pilipina	Chinese	Japanese	Korean	Other Asian	Pakistani	White	Unknown
1999	2.5%	0.6%	4.7%	10.5%	4.1%	4.4%	14.4%	2.4%	6.7%	6.1%	4.8%	33.8%	5.1%
1998	2.6%	0.7%	5.4%	11.1%	4.4%	4.6%	14.1%	2.3%	7.0%	6.4%	4.0%	32.8%	4.5%
1997	2.7%	0.8%	5.9%	11.8%	4.6%	4.5%	14.1%	2.4%	7.0%	6.0%	3.3%	33.5%	2.1%
1996	2.7%	1.0%	6.0%	12.2%	4.7%	4.2%	13.8%	2.4%	7.6%	7.4%	3.0%	33.0%	2.0%
1995	2.5%	1.1%	6.0%	11.8%	5.0%	4.4%	14.0%	2.5%	7.6%	7.6%	2.7%	33.1%	1.7%

* Source: Office of the President of the University of California

Enrollment Percentages for Undergraduate Students at University of California Flagship Institutions (UCLA and Berkeley)

University of California at Berkeley*

	International	American Indian	African American	Chicano / Chicana	Latino / Latina	Pilipino / Pilipina	Chinese	Japanese	Korean	Other Asian	Pakistani	White	Unknown
1999	3.7%	0.8%	4.7%	7.4%	2.9%	2.7%	20.0%	1.9%	6.2%	5.3%	5.2%	30.2%	8.8%
1998	3.7%	0.9%	5.1%	8.1%	3.1%	2.5%	20.0%	2.0%	6.2%	5.1%	5.3%	30.2%	7.9%
1997	3.7%	1.1%	5.8%	9.1%	3.7%	2.4%	20.0%	1.9%	6.2%	5.3%	5.1%	30.3%	5.2%
1996	3.6%	1.2%	5.5%	9.1%	4.2%	2.3%	19.9%	1.9%	6.5%	5.6%	4.8%	30.2%	5.2%
1995	3.6%	1.2%	5.7%	9.0%	4.5%	2.6%	19.1%	1.8%	6.7%	5.6%	4.5%	30.1%	5.5%

* Source: Office of the President of the University of California

Attachment G

Enrollment Percentages for Graduate Students at University of California Flagship Institutions (UCLA and Berkeley)

University of California Los Angeles*

	International	American Indian	African American	Chicano / Chicana	Latino / Latina	Pilipino / Pilipina	Chinese	Japanese	Korean	Other Asian	Pakistani	White	Unknown
1999	12.2%	0.4%	4.3%	5.0%	2.7%	1.8%	8.6%	1.8%	3.6%	3.9%	5.5%	46.3%	3.6%
1998	11.5%	0.6%	4.7%	4.7%	2.9%	1.7%	8.7%	2.0%	3.6%	4.0%	5.2%	47.6%	2.6%
1997	11.7%	0.7%	4.7%	4.9%	2.8%	1.7%	8.7%	2.1%	3.4%	3.5%	4.7%	48.1%	2.8%
1996	10.2%	0.6%	5.4%	5.1%	2.9%	1.8%	8.9%	2.1%	3.1%	3.3%	4.3%	49.2%	2.7%
1995	10.0%	0.6%	5.6%	5.1%	3.1%	1.6%	8.7%	2.0%	3.1%	3.4%	4.5%	49.7%	2.5%

* Source: Office of the President of the University of California

Enrollment Percentages for Graduate Students at University of California Flagship Institutions (UCLA and Berkeley)

University of California at Berkeley*

	International	American Indian	African American	Chicano / Chicana	Latino / Latina	Pilipino / Pilipina	Chinese	Japanese	Korean	Other Asian	Pakistani	White	Unknown
1999	18.3%	0.5%	3.0%	2.6%	2.7%	0.9%	6.5%	1.3%	2.0%	1.8%	4.5%	52.6%	3.2%
1998	16.5%	0.7%	3.3%	2.8%	3.0%	0.9%	6.9%	1.5%	2.2%	1.6%	4.1%	53.7%	2.7%
1997	15.7%	0.8%	3.7%	3.1%	2.9%	0.9%	7.0%	1.7%	2.2%	1.4%	3.3%	54.5%	2.8%
1996	14.4%	0.7%	4.1%	3.4%	2.8%	1.1%	6.9%	1.8%	2.0%	1.3%	3.3%	55.4%	2.6%
1995	13.3%	0.7%	4.1%	3.5%	2.9%	1.2%	6.9%	2.0%	1.9%	1.3%	3.2%	56.3%	2.8%

* Source: Office of the President of the University of California

Attachment H



THE SECRETARY OF EDUCATION WASHINGTON, D.C. 20202

February 7, 2000

Dr. Mary Frances Berry
Chairperson
United States Commission on Civil Rights
624 Ninth Street, NW
Washington, DC 20425

Dear Dr. Berry:

In response to your request, I am writing to address any confusion that may have arisen about the Department of Education's views regarding Governor Jeb Bush's Executive Order 99-281, and his One Florida Education Plan (the Governor's Plan). The Governor's Plan, in part, recommends that the Board of Regents implement a policy to prohibit the use of racial and gender set-asides, preferences or quotas in admission to all Florida higher education institutions.

Let me assure you that the Department has not endorsed or approved the Governor's Plan. To the contrary, this Department continues to support strongly the use of appropriately tailored affirmative action programs under the Constitution, Title VI of the 1964 Civil Rights Act and Title IX of the Education Amendments of 1972. Such affirmative action programs are educationally sound and vital tools for remedying the effects of prior discrimination and for fostering the educational benefits of diversity at educational institutions. Our position on this issue is consistent with the President's policy of "mending, not ending" affirmative action and is supported by applicable law including the Supreme Court's 1978 decision in Bakke v. Regents of the University of California.

I regret that some individuals and press accounts have misread and misinterpreted the January 14, 2000 letter from the Office for Civil Rights to Florida Chancellor Adam Herbert. That letter provided preliminary feedback, at the Chancellor's request, regarding the narrow issue of whether the Governor's Plan conflicts with Florida's existing obligations under its Civil Rights Partnership Commitments and Agreement (the Agreement) with the Office for Civil Rights. The Agreement was developed to help Florida meet its duty to eliminate the vestiges of prior segregation in its higher education system as required by the Supreme Court in U.S. v. Fordice. As the letter indicates, the Office for Civil Rights' preliminary assessment is that the Plan can be reconciled with the Partnership Commitments; however, there remain important areas of concern that need to be addressed by the State. For example, the Governor's Plan is currently silent as to whether students eligible for admission would be admitted to Florida's flagship universities and how the Plan will affect admissions at Florida's graduate schools. These concerns are important to me and to the Department, and I can assure you that the Office for Civil Rights will continue to monitor and work with the State to address these and other issues to ensure that the goals of the Agreement are fulfilled.

Because the January 14 letter addresses the narrow issue of the consistency of the Governor's Plan with the Agreement, the letter did not address the Governor's policy decision to end affirmative action. Therefore, as I indicated above, the letter should not be misinterpreted as an endorsement of the Governor's Plan to eliminate affirmative action. On the contrary -- even apart from the issue of compliance with the Agreement -- we are concerned about the negative effects that eliminating affirmative action may have on minority access to all of Florida's institutions of higher education. It is very important that minority students have real access to these educational opportunities and that schools reflect the diversity that is the strength of academic discourse.

Members of my staff have attempted to make this clear to Florida State officials and in response to inquiries from members of Congress, the press and others (see enclosed letter to Representatives Brown and Meek). I welcome any assistance you are willing to provide to underscore our position on this matter, and I hope this letter will be helpful in that regard. Please feel free to share it as appropriate. If you have any questions or concerns, please contact me.

Yours sincerely, .

A handwritten signature in black ink that reads "Dick Riley". The signature is stylized with a large, looped "D" and a cursive "Riley".

Richard W. Riley

Enclosure

U.S. COMMISSION ON CIVIL RIGHTS
Washington, DC 20425

OFFICIAL BUSINESS
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Elián Waits Inside as Tension Grows Outside

By RICK BRAGG

MIAMI, April 4 — As 6-year-old Elián González teased a phalanx of news photographers today by making faces at them through a window in his great-uncle's home, demonstrators broke through metal police barricades while the police stood by and watched.

And, when an untrue rumor spread that an Immigration and Naturalization Service van was approaching

the house, demonstrators formed a human chain around the yard to defy federal officers who never came.

The police said they would take no action until the nearly 200 demonstrators calmed down, and then would move those nearest the house back behind the barricades.

Day 132 of the Elián saga passed much like many recent days, as government officials and Elián's family members again tried and failed to work out a plan for the peaceful,

uneventful transfer of the Cuban boy from the Miami house to his father. Talks were expected to resume on Thursday.

Elián's father, Juan Miguel González, could have custody of his son as soon as he lands in the United States, said Maria Cardona, a spokeswoman for the immigration service.

But how the actual reunion will be accomplished is still much in doubt.

Mr. González's lawyer, Gregory B. Craig, was expected to go to Cuba tonight to help arrange the father's trip, although visas for only 5 of the 27 people that President Fidel Castro has ordered to accompany Mr. González have been granted.

Mr. Craig said Mr. González would go with the smaller group if he could return quickly with the boy, and not have to wait out the outcome of a court fight over Elián's custody in the United States Court of Appeals for the 11th Circuit, in Atlanta.

But later tonight Reuters reported that because only six visas had been issued for the father's trip the Cuban government had made an official announcement ruling out an immediate visit. A State Department spokesman in Washington said the department had no comment on the report.

Visas have been granted for Elián's father, his stepmother, his half-brother, a cousin, his pediatrician and his kindergarten teacher.

The Cuban government wants to send a larger delegation on the trip to retrieve the boy, including a psychiatrist, Elián's classmates and Ricardo Alarcón, the president of the National Assembly. The other visa requests are still being considered, American officials said.

Elián's Miami relatives want three psychologists to evaluate the emotional trauma the boy may suffer if he is sent back to Cuba. In return for peacefully handing over the child, they also want a guarantee from immigration officials that Elián will not be sent back to Cuba before the appeals process is over.

Meanwhile today, Elián's cousin and closest friend here, Marisleysis González, was hospitalized for the second time since Elián's rescue at sea, after an emotional interview this morning in which she pleaded that Elián not be sent back to Cuba.

Elián was rescued off the coast of Florida on Thanksgiving Day. His mother was among 10 people who died after their boat sank in the crossing from Cuba.

As the stalemate continued, polls showed that almost two-thirds of Americans questioned want Elián returned to his father.

A Gallup/CNN/USA Today poll found that of 998 respondents, 64 percent said the child should be returned to his father. An ABC poll of 930 people found that 59 percent wanted the father and son reunited.

Minority Rolls Rebound At University of California

But Disparity Persists at Main Campuses

By BARBARA WHITAKER

LOS ANGELES, April 4 — Three years after race-based admission policies were abolished at the University of California, the number of black, Hispanic and American Indian freshmen who will enter next fall has rebounded to above what it was when affirmative action measures were in place.

But a significant disparity can still be found at the university's flagship campuses here and at Berkeley, as well as at San Diego and Santa Barbara. And the percentage of those minorities enrolled as freshmen will decrease to 17.6 percent in the fall of 2000 from 18.8 percent in 1997, the last year of affirmative action.

At the University of California at Berkeley, the number of black, Hispanic and American Indian freshmen will drop to 1,169 this fall from 1,778 in 1997. Still, that was an increase over the 717 admission in 1998 and 990 in 1999. The figures at the University of California at Los Angeles were much the same, with underrepresented minorities down 1,449 next fall from 2,010 in 1997.

Over all, in the eight schools in the state university system, enrollment of minority freshmen will rise to 7,336 next fall, from 7,236 in 1997. At the same time, the number of black, Hispanic and American Indian students on the Irvine, Riverside and Santa Cruz campuses will increase to 6,650 this fall, from 4,822 in 1997.

The numbers seem to play out the theory that abolishing affirmative action in the selection process would lead to a two-tiered system in the university.

"What you have is your two flagship campuses will be sort of reverse ghettos, with Asians and whites and a lack of color," said Bill Bagley, a regent who opposed the abolition of racial preference in admissions. "That's not good for those institutions."

To Ward Connerly, the regent who led the campaign to end race preference in university admissions, the shift is simply a redistribution of students to where they should be.

"I think the numbers over all demonstrate that the absence of racial preferences, also known as affirmative action, does not mean that minority kids will not be educated at one of the best educational facilities in the country," Mr. Connerly said today. "They'll just be redistributed to less competitive campuses."

Since the change, the university has focused on outreach programs to address disparities at underperforming schools. The programs seek to improve the quality of teachers and inform students of what is required for college admission.

In addition, policies have been established guaranteeing the top 4 percent of graduates in each high school a place at the University of California if they meet eligibility requirements.

"We still know there's a lot of work left to do, not just to get back to where we were but to increase the diversity far beyond what it was in 1997," said Terry Lightfoot, a spokesman for the University of California.

In 1995, the university voted to

A look at the university's numbers three years after affirmative action.

prohibit the consideration of race and sex in admission decisions. The policy took effect in 1998. In a separate initiative in 1996, California voters passed Proposition 209, which prohibits the consideration of race and sex in hiring, contracting and university admissions.

Mr. Bagley acknowledged that progress was being made through outreach programs, but he said much remained to be done.

"It's heartening to see some progress being made," he said. "I do acknowledge that the administration is trying very hard with our outreach program. Nonetheless, there is still a generation being lost of qualified minority students until the outreach program is perfected and until we do more to equalize high school preparations."

Mr. Bagley also expressed concern about a loss of talented graduate-level students to other universities. "Very high-quality, top-of-the-line minority graduate students are choosing to go to places like Harvard, Yale and Stanford for two reasons: one, they're recruited, and two, they're suffering from the feeling we don't want them here," he said.

The New York Times

WEDNESDAY, APRIL 5, 2000

THE ORLANDO SENTINEL

March 15, 2000 Wednesday, METRO

SECTION: EDITORIAL; Pg. A17

LENGTH: 521 words

HEADLINE: BROWN: REASONS TO OPPOSE ONE FLORIDA

BYLINE: By Corrine Brown, Special to The Sentinel

BODY:

I want to make clear my reasons for supporting affirmative action and opposing Gov. Jeb Bush's One Florida plan.

Affirmative action has been defined as "any measure, beyond simple termination of a discriminatory practice, adopted to correct or compensate for past or present discrimination or to prevent discrimination from recurring in the future." (U.S. Commission on Civil Rights, Statement on Affirmative Action, October 1977).

Affirmative action is still the law of the land in the United States. In 1978, the Supreme Court ruled in *The University of CA Regents vs. Bakke*, that the attainment of a "diverse student body" was "clearly a permissible goal for an institution of higher education" and that diversity of minority viewpoints furthered "academic freedom, a special concern of the First Amendment."

Again, in 1995, in the *Adarand Constructors Inc. vs. Pena* case, the Supreme Court upheld affirmative-action programs, as long as the programs met the most "searching constitutional scrutiny." A landmark case, this allowed affirmative action to continue to be used as a tool to equalize society, as long as it is adequately justified and narrowly drawn to pass constitutional tests of scrutiny.

Florida needs affirmative action as a tool to overcome our history of discrimination. As recently as June 11, 1998, the state of Florida signed an agreement with the federal government to increase minority access to our state's higher-education institutions, as well as retention, graduation and articulation of these students. Though the federal government hasn't found the One Florida plan illegal, officials are concerned that, without affirmative action, the goals of the partnership will not be reached. They are monitoring the situation closely for fear that even more minorities will be excluded from our flagship universities.

The federal government has pointed out that disparities exist in every level of our state's education system. In school systems that are 40 percent African-American, 95 percent of the special-education students are African-American boys. Certainly, this is not a college track. In our state university system, women earn only 5 percent of the recent doctoral degrees in engineering, and they make up 13 percent of the tenured faculty. Affirmative action is one of the tools we can use to increase these numbers.

I agree that our current system is not working to its capacity. But I think that we should improve affirmative-action programs not discard them. We could do this by adding some of the governor's proposals to our current system. Let's supplement our current system with outreach programs, more PSAT courses, mentoring programs and additional Advanced Placement classes. These could help all students in Florida without jeopardizing our students' ability to attend the college of their choice.

Florida ranks 47th in the country in the number of its 19-year-olds who attend college, and we cannot afford to let a single additional student miss out on an opportunity for higher education. Eliminating tools that can help fix these problems is not a solution.

Q: According to a recent article in Time magazine, the end of Affirmative Action in UC college admissions has meant that many minorities are not being admitted to the very top UC schools – and other top schools – and are instead “cascading” down to other good, but not necessarily “the best”, colleges and universities. Does the President support California’s Proposition 209, which has caused this new phenomenon of “cascading”?

A: The Clinton Administration strongly opposes state and local initiatives to eliminate affirmative action programs that expand opportunities for minorities. The Administration opposed Proposition 209 in California and filed amicus briefs opposing Prop. 209, which currently prohibits state affirmative action programs. The Clinton Administration opposed a similar initiative in Houston, which was defeated and an initiative in Washington that is similar to Prop. 209. In all these cases, representatives of the administration have spoken out strongly against these initiatives as unfair barriers to equality that move our country in the wrong direction.

We need to make sure that we continue to use federal law to the maximum extent we can to promote an integrated educational environment. And we need to support states that are developing innovative ways to reach the same goal.

Finally, we need to continue to provide more targeted resources to improve educational opportunities for all children, while demanding accountability for raising student achievement. The President’s Educational Excellence for All Children proposal includes accountability measures he announced in his State of the Union Address that for the first time will hold school districts and states accountable for real results. The federal government spends about \$15 billion a year on our public schools -- the President’s proposal would fundamentally change the way we spend that money, to support what works and stop supporting what doesn’t. The legislation would require states and school districts to identify failing schools and intervene to turn them around, empower parents by issuing school report cards, put qualified teachers in the classroom, adopt and enforce sound, fair discipline policies; and end social promotion the right way -- helping all students meet challenging standards by supporting those who need extra help; reducing class size; and providing after-school and summer school learning programs.

Q: Isn’t this policy better for all involved, as the students end up in an academic environment where they are more comfortable and for which they are more academically well-prepared?

A: Affirmative action has been, and should remain, an important part of achieving the goal

of bringing qualified minority students into higher education. But it is only a partial remedy. It should be just one strategy among many that helps to ensure that every child has the opportunity to achieve at high standards—that every child's right to a quality education is protected.

Some colleges are already making positive changes in their application processes, including greater emphasis on individualized review of student applications, granting more personal interviews and reassessing the appropriate weight for test scores within the context of grades in school and other academic indicators. A number of states and schools are also working to develop efforts to reach out to students who otherwise might be lost in the shuffle. Some states are pursuing plans that will expand the pool of qualified applicants by attracting top graduates from every high school. And some universities are even creating and operating public charter schools that are designed specifically to prepare mostly minority students for college through a rigorous academic program.

The Administration's GEAR UP program builds partnerships with schools in low-income communities designed to link up colleges with middle-school and high-school students to help them make the critical decisions they need to prepare for college.

All of these efforts—public and private—hold great promise. But we have much more to do.

We can create a system that guarantees that every student has a quality education at high standards that is built on the strength of our diversity. But it will require us to put an end to the stark inequities that continue to exist in the quality and quantity of educational opportunities as a result of racial, ethnic, and economic status.

What is so striking is how many different forms this inequity takes—from the number and quality of guidance counselors in a school, to the availability of Advanced Placement courses or the capacity of some students to pay for test-preparation services, to the availability of computers, to the size of classes and the quality and safety of a school building itself.

As we near the end of the 20th century—we, as a nation, cannot afford to allow intolerance or inequity to interfere with the ability of any citizen to acquire the most critical commodity—a quality education. A quality education must be considered a key "civil right" for the 21st century.

-0400 (EDT)

Received: by aamta.compuserve.net(Lotus SMTP MTA SMTP v4.6 (462.2 9-3-1997)) id 85256686.0014AC84 ; Sun, 20 Sep 1998 23:45:48 -0400

Date: Sun, 20 Sep 1998 21:56:10 -0500

From: leslie.m.gray@ac.com

Subject: Fwd: nphc: FW: Sharing Information with You! (fwd)

To: metanoia10@aol.com, alwilliamsa@dtus.com, ilie.wood@us.michelin.com, edi.morrill@us.michelin.com, mirvin@dtus.com, yolanda116@aol.com, dharrell@nea.org, aellingt@yazaki-na.com, fisherme@mattel.com, kneebub@aol.com, shauna.cromer-ncros06@us.michelin.com, kimberly.k.jones@lmco.com, ayg66@aol.com, faiserson@aol.com, latinoed@aol.com, lgray9823@aol.com, lmhacket@yahoo.com, craig.m.robinson%aain@notes2.compuserve.com, marli167@aol.com, alec167@aol.com, jdrasaan@arches.uga.edu, armand.robinson@haworthinc.com, bigfootcr@aol.com, cmwaddles@aol.com, t-clark@nwu.edu, aurelia.crews@lexis-nexis.com, zanzblue@aol.com, nnmorris@mmm.com, phdtobe@asu.edu, indyelle13@aol.com, welch.135@osu.edu, llowery@msn.com, jeffries@polsci.purdue.edu

Message-id: <86256686.000FFD4B.00@aamta.compuserve.net>

MIME-version: 1.0

Content-type: text/plain; charset = US-ASCII

Content-disposition: inline

Content-transfer-encoding: 7BIT

X-Lotus-FromDomain: ACIN@CSERVE

Interesting stats on Affirmative Action, please read --
Chuck Smoot

In a message dated 9/19/98 8:40:29 AM Pacific Daylight Time, ktj@umich.edu writes:

- > September 9, 1998
- > The New York Times
- >
- > Study of Affirmative Action at Top Schools Cites Far-reaching Benefits
- > by Ethan Bronner
- > <http://www.nytimes.com/yr/mo/day/news/national/affirm-impact.html>
- >
- > A major new study of the records and experiences of tens of thousands of
- > students over 20 years at some of the nation's top colleges and
- universities
- > concludes that their affirmative action policies created the backbone of
- the
- > black middle class and taught white classmates the value of integration.
- >
- > The study, which challenges much of the conservative thinking about
- > affirmative action, is to be released Wednesday by Princeton University
- > Press in a book titled, "The Shape of the River: long-term consequences
- > Considering Race in College and University Admissions." It was written
- by
- > two former Ivy League presidents, William Bowen of Princeton University,
- an
- > economist, and Derek Bok of Harvard University, a political scientist.
- >
- > Examining grades, test scores, choice of major, graduation rates,
- careers

- > and attitudes of 45,000 students at 28 of the most selective schools,
- the
- > authors say that although they are both advocates of race-conscious
- > admissions policies, they wanted to test the assumptions underlying such
- > policies.
- >
- > Having completed the work, they said it should put to rest major
- objections
- > to such policies, especially that both whites and blacks are ultimately
- > cheated by them.
- >
- > With its rich database and carefully calibrated tone, the study will
- most
- > likely lead the charge in a liberal counteroffensive to recast the
- debate
- > over affirmative action, which in the last two years has been rolled
- back
- in
- > California and Texas and is under serious challenge in Michigan and
- > Washington.
- >
- > The study begins by documenting the problem clearly: blacks who enter
- elite
- > institutions do so with lower test scores and grades of those of whites.
- And
- > as they work their way through liberal arts colleges like Princeton and
- Yale
- > and state schools like the Universities of Michigan and North Carolina,
- > black students receive lower grades and graduate at a lower rate.
- >
- > But after graduation, the survey found, these students achieve notable
- > successes. They earn advanced degrees at rates identical to those of
- their
- > white classmates. They are even slightly more likely than whites from
- the
- > same institutions to obtain professional degrees in law, business and
- > medicine. And they become more active than their white classmates in
- civic
- > and community activities.
- >
- > Blacks and whites report fairly substantial social interaction at
- college,
- > which they say helped them relate to members of different racial groups
- > later in life. Finally, the more selective the college, the more likely
- were
- > blacks who attended it to graduate, earn advanced degrees and earn high
- > salaries.
- >
- > Bowen and Bok say in their book that a "race-neutral" admissions policy
- > would be disastrous for American society, reducing black percentages at
- top
- > schools to less than 2 percent from the current 7 percent.
- >
- > AS an illustration of what that would mean, they constructed a rough

profile

- > of 700 black students admitted in 1976 under race-conscious policies. Of the
- > 700, 225 obtained professional degrees or doctorates; 70 are now medical
- > doctors, 60 are lawyers, 125 are business executives and more than 300 are
- > civic leaders. Their average annual earnings are \$71,000.
- >
- > A more troubling question, the authors acknowledge, regards the white
- > students whom these black students displaced. Would society have been better
- > off if they had attended instead of the blacks?
- >
- > "That is the central question," the authors write, "and it cannot be
- > answered by data alone." It is a clash of principle versus principle, not
- > principle versus expediency." They come down firmly on the side of admitting
- > the blacks, saying that society needs them because of the scarcity of black
- > professionals.
- >
- > But they added a statistical argument and illustrated it with an analogy to
- > parking spaces for handicapped drivers drawn from a forthcoming article by
- > Thomas J. Kane. "Eliminating the reserved space would have only a minuscule
- > effect on parking options for non-disabled drivers," Kane writes. "But the
- > sight of the open space will frustrate many passing motorists who are
- > looking for a space. Many are likely to believe that they would now be
- > parked if the space were not reserved."
- >
- > Bowen and Bok point out that if more than have of the blacks accepted at
- > selective colleges had been rejected, the probability of acceptance for
- > another white applicant would rise only 2 percent, to 27 percent from 25
- > percent.
- >
- > One commonly voiced objection to affirmative action that the authors seek
- to
- > demolish is the assertion that since blacks admitted through race-sensitive
- > policies do not keep up with their white colleagues, they end up failed
- and
- > stigmatized.
- >
- > But Bowen and Bok say their data contradict that assertion. They found that
- > the black dropout rate for the elite institutions practicing affirmative
- > action was 25 percent, much lower than the national black dropout average
- of

- > 60 percent. The more selective the college, the lower the black dropout
- > rate.
- >
- > (Excerpts from the article. For the full article, please go to:
- > <http://www.nytimes.com/yr/mo/day/news/national/affirm-impact.html>)

Message Sent To:

MileeB72@aol.com
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mjackson@IMAP4.ASU.EDU
Alease N. White/OMB/EOP
dcottingham@pirnie.com

Message Sent To:

wilebo @ huskynet.com@INET@LNGTWY
Tawana F. Webb/OMB/EOP
Wanda F. Watson/OMB/EOP
Shanice C. Stokes/ONDCP/EOP
Essence P. Washington/OPD/EOP



Essence P. Washington

09/21/98 02:56:44 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc:

Subject: Fwd: nphc: FW: Sharing Information with You! (fwd)

Interesting

----- Forwarded by Essence P. Washington/OPD/EOP on 09/21/98 02:57 PM -----



Alease N. White

09/21/98 08:45:24 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Fwd: nphc: FW: Sharing Information with You! (fwd)

----- Forwarded by Alease N. White/OMB/EOP on 09/21/98 08:44 AM -----



Vondell Carter <vcarter@yazaki-na.com>

09/21/98 07:24:36 AM

Record Type: Record

To: See the distribution list at the bottom of this message

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Subject: Fwd: nphc: FW: Sharing Information with You! (fwd)

Date: Mon, 21 Sep 1998 07:12:43 -0400
From: "Aaron Ellington" <aellingt@yazaki-na.com>
Subject: Fwd: nphc: FW: Sharing Information with You! (fwd)
To: vcarter@yazaki-na.com
MIME-version: 1.0
Content-type: MESSAGE/RFC822

Received: from sxhaa.compuserve.net ([149.174.177.78]) by yazaki-na.com; Sun, 20 Sep 1998 23:44:42 -0400

Received: from aamta.compuserve.net (nthnsaae.ibmnotes.compuserve.com [149.174.177.80]) by sxhaa.compuserve.net (8.8.8/8.6.12) with SMTP id XAA13275.; Sun, 20 Sep 1998 23:41:14



JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

November 10, 1999

Ms. Norma V. Cantu
Assistant Secretary for Civil Rights
U.S. Department of Education
330 "C" Street, S.W., Suite 5000
Washington, DC 20202

Ms. Suong Mai Cavalli
Chief Civil Rights Attorney
U.S. Department of Education
61 Forsythe Street, SW, Suite 19T70
Atlanta, Georgia 30303

Dear Ms. Cantu and Ms. Mai Cavalli:

Yesterday, Governor Jeb Bush announced his plan for *One Florida*—a plan to end racial, ethnic and gender-based preferences, set-asides and quotas in our State's government enterprises and in the allocation of state contracts, while increasing diversity. With respect to the Florida/OCR Partnership Agreement, it continues to be the policy of this Administration to support equal education opportunities for all Floridians; to prohibit discrimination in education because of race, creed, color or national origin; and, to promote the full realization of equal educational opportunities throughout the State. Through Executive Order 99-281, Governor Bush has requested that the Board of Regents implement a policy prohibiting the use of racial or gender set-asides, preferences or quotas in admissions to all Florida institutions of higher education, effective immediately. A copy of the Order is enclosed.

Also, I have enclosed a copy of our Equity in Education Plan. This comprehensive plan has been developed in consultation with, and with the cooperation of, the chancellor of our State University System, Chancellor Adam W. Herbert. As you will note, our Plan includes a new Talented 20 program, which guarantees admission to one of Florida's state universities to students in the top 20% in each Florida public high school graduating class who have completed a college preparatory curriculum. This plan will increase the number of students, including those who are minority and economically disadvantaged, admitted into one of our public universities.

Every student in the top 20% of his/her class will also be given priority in need-based financial aid awards. To assist financially needy Talented 20 students, the Governor is recommending an increase of 43% in Florida's need-based scholarship programs. In addition, a new Profile Assessment process will be utilized in lieu of the alternative admission process, and will supplement the Talented 20 program.

NOV 16 1999
CC

Ms. Norma V. Cantu
Ms. Suong Mai Cavalli
November 10, 1999

Through the Equity in Education Plan, we will ensure that even more high school minority students are challenged academically and are prepared for being admitted to the university system without remediation, and in accordance with the system's standards. Our goal is to equip all of Florida's students for higher education by ensuring that care has been exercised at every level of their secondary experience by providing them and their schools with the necessary resources to succeed. Our state's success in higher education depends on our students' preparation and success at the secondary level.

Florida is prepared to do more than any other state in the nation to enhance diversity at the post-secondary level without having to rely on the policies of the past.

We look forward to your cooperative support of this Plan in the new millennium.

Sincerely,



Carol A. Licko
General Counsel

Enclosures: Plan
Executive Order 99-281

c: Dr. Adam W. Herbert w/o enclosures
Regina E. Sofer w/o enclosures

01/18/20

00:28

8502017175

GEN COUNSEL

JAN-14

16:55

Free:

PAGE 03



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
ATLANTA OFFICE, SOUTHERN DIVISION
61 FORSYTH STREET, SW
SUITE 19T70
ATLANTA, GEORGIA 30303

January 14, 2000

Chancellor Adam W. Herbert
 State University System of Florida
 325 West Gaines Street
 Suite 1514
 Tallahassee, Florida 32399-1950

Dear Chancellor Herbert:

Subsequent to our meeting of December 7, 1999, with you, members of your staff and the Governor's office, we indicated that we would continue our review of the Governor's Executive Order and the Equity in Education Plan in light of the existing Florida/United States Office for Civil Rights (OCR) Partnership Report and Commitments (Partnership Commitments) and provide you with some preliminary feed-back before the next Board of Regents meeting scheduled for January 21, 2000. During our December 7 meeting, OCR was provided with additional information and statistical projections for enrollments under the Talented 20% Program. We were also given a copy of the draft report of the Talented 20 Implementation Task Force. The draft report sets out in greater detail guidelines for the implementation of the Talented 20 Program, the Profile Assessments Program, and the coordination process between the State University System (SUS) institutions, school districts, Florida Department of Education and the Chancellor's office.

First, with regard to elementary and secondary programs, our preliminary view is that the Governor's Executive Order and the Equity in Education Plan advance the goals of the Partnership Commitments. In particular we note many specific initiatives targeted toward low achieving elementary and secondary public schools in Florida that correlate directly with the Partnership Commitments. Some of these areas include: 1) promoting staff development for teachers; 2) hiring qualified teachers; 3) aligning academic instruction with graduation standards; 4) raising GPA, high school competency test scores, and 10th grade access to the PSAT; 5) increasing support for the College Reach Out Program; and, 6) providing and ensuring equity in programmatic areas and funding support to low-performing schools under the A+ Plan and through the work of the Equity in Education Opportunity Task Force. In addition, at the community college level, the Governor's Equity in Education Plan supports the Partnership Commitments by recommending increased support for retention and remediation reduction programs, and efforts to increase the graduation rates to 4-year programs.

01/18/2000 08:28 0502017175

JAN-14-00 16:53 From:

GEN COUNSEL

PAGE 84
7-318 P.02/04 Job 149

Chancellor Herbert

Page 2

At the SUS level, the Partnership Commitments were intended to expand access to higher education and increase the retention and graduation of minority students in the SUS, as well as to enhance the programs at Florida A & M. To achieve this, the SUS continued the use of alternative admission program as a means of broadening the opportunities of all students, including minorities, to attend the SUS. Under the Partnership Commitments, alternative admission criteria must take into account an applicant's academic ability, but consideration may also be given to the applicant's creativity, talent, and character. The SUS articulated a continuing goal of diversity in the composition of the student population in the SUS. Alternative admissions criteria have been used by the SUS to provide access to a diverse group of students, minority and non-minority, who otherwise would not have been eligible under traditional admission criteria.

The Executive Order and the Equity in Education Plan, at the SUS level, appear to add another avenue for admission to the SUS through the implementation of a new Talented 20% Program and to replace the Alternative Admission Program with the Profile Assessment Program. Under the Talented 20% Program students who do not meet traditional admission criteria will, under certain conditions, be guaranteed admission to one of the ten institutions in the SUS. This guarantee is extended to the top 20% of each graduating class from each public high school in Florida. Under the Profile Assessment program, up to 10% of each entering freshman class in the SUS can include students who do not meet traditional admission criteria, do not qualify under the Talented 20% Program, but who have demonstrated through their academic abilities and other factors that they can carry out a successful academic program in the SUS. Twenty five factors, including first time in college, geographic location, graduation from a low-achieving school, and socio-economic factors, may be considered for those students admitted under the Profile Assessment.

In sum, our preliminary assessment is that the Executive Order and the Equity in Education Plan can be reconciled with the Partnership Commitments' overall goal of expanding access for minority students to higher education. However, we do have some concerns as to the implementation of the Talented 20% Program and the Profile Assessment Program. If the Plan is adopted, we will need to work together to incorporate the elements of the Plan into the Partnership Commitments in a way that will continue to reinforce the spirit and goals of the Commitments. To this end, the monitoring provisions of the Partnership Commitments would be revised to seek information regarding the impact of the Plan, once it is implemented, on the various sections of the Commitments, particularly with respect to its impact on access to higher education for minority students. For example, OCR will ask for information on how the Talented 20% Program and the Profile Assessment Program will impact access to minority students in each of the individual SUS institutions at the undergraduate level.

01/18/2000 08:28 8502017175

GEN COUNSEL

JAN-14-00 15:56 From:

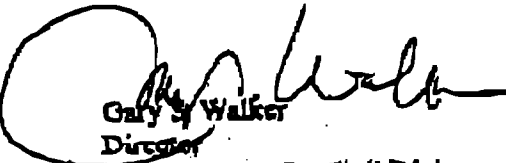
PAGE 05
7-318 P.04/04 Job-743

Chancellor Herbert
Page 3

With respect to graduate and professional schools, it is OCR's understanding that you have proposed a delay in implementing the Governor's Plan until academic year 2001-2002. If your recommendation is accepted, there would be no immediate impact on the provisions in the current Commitments related to access for minority students to graduate and professional schools. Thus, the State would continue to implement those provisions per the current Commitments for academic year 2000-2001. If our understanding is not correct, however, please contact me immediately so that we can discuss this issue before your January 21 meeting. Once the Governor's Plan is implemented at the graduate and professional schools level, OCR will ask for information on how the plan will impact access to minority students in graduate and professional programs.

I am confident that OCR and the State can continue our work to ensure that the fundamental goals of the Partnership Commitments are fulfilled. Please keep us informed of all developments in the implementation of the executive order and the Equity in Education Plan, and with the work of the Partnership Team. Please be advised that we are in receipt of the 1999 Florida/United States Office for Civil Rights Partnership Agreement Interim Report, dated December 30, 1999. We will review this report and respond to the Partnership Team after the completion of our review. If you have any questions or concerns, please feel free to contact me directly.

Sincerely,


Gary S. Walker
Director
Atlanta Office for Civil Rights
Southern Division

c: Carol A. Licko
Regina E. Sofer



JEB BUSH
GOVERNOR

FOR IMMEDIATE RELEASE
JANUARY 18, 2000

STATE OF FLORIDA
Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

CONTACT: ELIZABETH HIRST
(850) 488-5394

GOVERNOR BUSH ENCOURAGED BY CLINTON/GORE ADMINISTRATION'S APPROVAL OF ONE FLORIDA EDUCATION PLAN

TALLAHASSEE - Governor Jeb Bush today praised the U.S. Department of Education's Office of Civil Rights ("OCR") for its review and approval of his Equity in Education Plan, including the Talented 20 percent Program. In a letter dated January 14, 2000, on the eve of the Martin Luther King, Jr. holiday weekend, Mr. Gary S. Walker, Director of the Atlanta Office of Civil Rights, Southern Division, determined that "the Governor's Executive Order and the Equity in Education Plan advance the goals of the Partnership Commitments as set forth in the existing Florida/OCR Partnership Report regarding Florida's higher education system."

"The letter from the U.S. Department of Education's Office for Civil Rights is encouraging in that it will allow us to pursue the One Florida strategy to enhance diversity in our state university system," said Governor Bush.

In his letter, Mr. Walker stated, "In sum our preliminary assessment is that the Executive Order and the Equity in Education Plan can be reconciled with the Partnership Commitments' overall goal of expanding access for minority students to higher education."

Governor Bush asked OCR to review his Executive Order and his Equity in Education Plan in light of the state's existing Partnership Agreement. OCR has reviewed the Plan, and has met with representatives of the state university system and Governor Bush's office. OCR has completed its preliminary review and has agreed that Governor Bush's Equity in Education Plan includes specific initiatives targeted toward low achieving elementary and secondary public schools in Florida that advance the goal of increasing diversity in Florida's colleges and universities.

"I thank the OCR for its prompt response, and I look forward to working cooperatively with OCR through the Partnership to assure that together we reach the overall goal of expanding access for minority students to higher education," said Governor Bush.

Governor Bush's One Florida Plan was announced on November 9, 1999, and will enhance diversity and opportunity in the state's university system and in state procurement efforts.

###

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DATE	1/18/00
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FROM	WATSON
TO	STEARNS
FAX #	850-488-5394
TELEPHONE #	850-488-5394



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

JAN 19 2000

The Honorable Corrine Brown
United States House of Representatives
2444 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Carrie Meek
United States House of Representatives
401 Cannon House Office Building

Dear Representatives Brown and Meek:

This is in reference to Representative Brown's telephone call to me on January 19, 2000. During our conversation, Representative Brown stated that she is concerned that the Office for Civil Rights' January 14, 2000 letter to Chancellor Herbert regarding Governor Bush's Executive Order/Equity in Education Plan (the "Plan"), is being interpreted by some State officials as an endorsement of the Governor's Order ending the use of race-based affirmative action in the State of Florida. During our conversation, I clarified that this is not the intent of the January 14 letter. I explained further what is in fact the purpose, scope and intent of that letter. Per Representative Brown's request, I am providing that explanation in writing to her and Representative Meek.

On January 14, 2000, Gary Walker, Director of our Atlanta Office for Civil Rights, sent a letter to Chancellor Adam W. Herbert of the State University System of Florida that provides preliminary feedback regarding the Governor's Plan in light of the existing Florida/United States Office for Civil Rights Partnership Report and Commitments (Commitments). The letter addresses the State's ability to continue to fulfill the Partnership Commitment's overall goal of expanding access to minority students to educational opportunities if the Governor's Plan is adopted. With respect to postsecondary education programs, the letter states:

[O]ur preliminary assessment is that the Executive Order and the Equity in Education Plan can be reconciled with the Partnership Commitments' overall goal of expanding access for minority students in higher education. However, we do have some concerns as to the implementation of the Talented 20% Program and the Profile Assessment Program. If the Plan is adopted, we will need to work together to incorporate the elements of the Plan into the Partnership Commitments in a way that will continue to reinforce the spirit and goals of the Commitments.

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

Our Mission is to Ensure Equal Access to Education and to Promote Educational Excellence throughout the Nation.

Representatives Corrine Brown and Connie Meek – page 2

Our January 14 letter was directed at the important but narrow issue of Florida's obligations under its Partnership Commitments. However, as the Commitments do not require the use of race-based affirmative action, the letter does not address the issue of affirmative action or the Governor's decision to end its use in the State of Florida. We recognize that the Governor's plan has raised substantial concerns regarding the elimination of race-based affirmative action. As we discussed, the Department strongly supports appropriately-tailored affirmative action measures consistent with the President's policy of "mend it, don't end it." It is the Department's position that, under the Constitution and Title VI of the Civil Rights Act of 1964, it is permissible in appropriate circumstances for colleges and universities to consider race in making admissions decisions. They may do so to promote the educational benefits of diversity consistent with Justice Powell's landmark decision in *Regents of the University of California v. Bakke*. They may also do so to remedy the continuing effects of discrimination. As Secretary of Education Richard Riley stated in his "Dear Colleague Letter" dated March 19, 1997, regarding the passage of California's Proposition 209, which generally prohibits the use of affirmative action, "I continue to believe that appropriately-tailored affirmative action measures are educationally sound tools to remedy the effects of prior discrimination and to foster diversity at educational institutions." I am enclosing a copy of the Secretary's March 1997 letter for your information.

With respect to the more narrow issues addressed in the Partnership Commitments, we will continue to work with the State of Florida to ensure that the goals of the Commitments are in fact fulfilled. I hope this letter is helpful in addressing your concerns. Please feel free to contact me if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond C. Pierce". The signature is fluid and cursive, with the first name "Raymond" being more prominent than the last name "Pierce".

Raymond C. Pierce
Deputy Assistant Secretary
For Civil Rights

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-_____

February 18, 2000

Chancellor Adam W. Herbert
State University System of Florida
325 West Gaines Street
Suite 1514
Tallahassee, Florida 32399-1950

Dear Chancellor Herbert:

It is our understanding that the Board of Regents voted on February 17, 2000, at its meeting in Orlando to adopt the proposed rule changes to the admission procedures to the State University System (SUS). The rule changes implement in part the Governor's One Florida Initiative to eliminate the consideration of race in admissions to the SUS, and implement the Talented 20 and the Profile Assessment Programs.

As I indicated to you in my letter dated January 14, 2000, the Atlanta Office is monitoring the Florida/OCR Partnership Report and Commitments that are intended to expand minority access to higher education and increase the retention and graduation of minority students in the SUS. As stated in my letter, OCR has concerns as to the implementation and potential impact of the Talented 20 and the Profile Assessment Program. I indicated that should the proposed rule changes to the admissions procedures be adopted, OCR would need to meet with you and the Partnership Team to discuss how you propose to ensure that the goals of the Partnership Commitments would be met at the undergraduate and graduate level, particularly in light of the Board's recent decision. Our discussion will necessarily include, but not be limited to: (1) the impact of the 19 course credit requirement for college admission on minority students; (2) plans for ensuring access for minority students to the flagship institutions in Florida; and, (3) graduate and professional school admissions.

I am proposing that we meet within the next two weeks on this matter. My staff and I are available on the following dates: February 29, March 1 or 2. Please let me know whether your schedule can accommodate such a meeting on these dates. We can of course meet in your office or will be agreeable to hosting a meeting here in Atlanta. I look forward to hearing from you. You may reach me at (404) 562-6350.

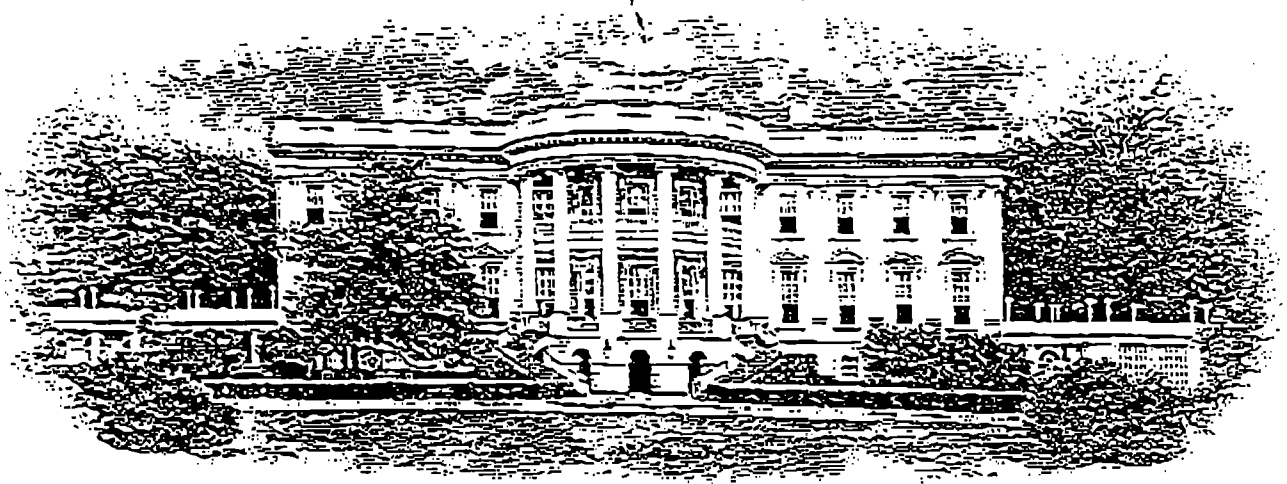
Sincerely,

for Susan Bowles
Gary S. Walker
Director
Atlanta Office for Civil Rights
Southern Division

cc: Regina Sofer
Carol Licko

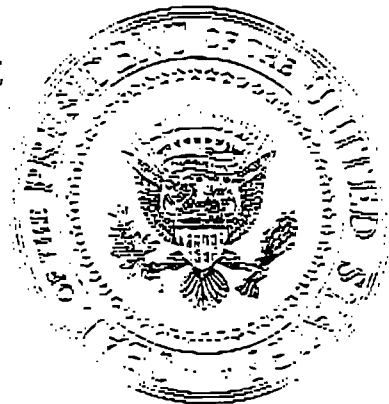


The White House



Office of the Counsel to the President

Facsimile Transmission Cover Sheet



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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

February 8, 2000

Chancellor Adam W. Herbert
State University System of Florida
325 West Gaines Street
Suite 1514
Tallahassee, Florida 32399-1950

Dear Chancellor Herbert:

I am writing to share with you a February 7, 2000, letter sent by Secretary Richard Riley to Chairperson Mary Berry of the U.S. Commission on Civil Rights. The enclosed letter addresses some confusion in press accounts about the Department of Education's views regarding Governor Jeb Bush's Executive Order 99-281 and his One Florida Education Plan.

Secretary Riley and I do not believe that there is any misunderstanding between this Department and your office on the issues discussed in Secretary Riley's letter. However, we wanted to be sure that you received a copy of the letter in which the Secretary states unequivocally that the Department neither approved nor endorsed the Governor's Plan to eliminate affirmative action. The Department's Office for Civil Rights will continue to work with your office to address these and other issues to ensure that the goals of our Civil Rights Partnership Commitments and Agreement are fulfilled.

You should feel free to share Secretary's Riley's letter with others, especially if you think it would help to dispel any continuing misperception regarding our position on this matter.

Sincerely,

A handwritten signature in cursive script, reading "Judith A. Winston".

Judith A. Winston

Enclosure



THE SECRETARY OF EDUCATION
WASHINGTON, D.C. 20202

February 7, 2000

Dr. Mary Frances Berry
Chairperson
United States Commission on Civil Rights
624 Ninth Street, NW
Washington, DC 20425

Dear Dr. Berry:

In response to your request, I am writing to address any confusion that may have arisen about the Department of Education's views regarding Governor Jeb Bush's Executive Order 99-281, and his One Florida Education Plan (the Governor's Plan). The Governor's Plan, in part, recommends that the Board of Regents implement a policy to prohibit the use of racial and gender set-asides, preferences or quotas in admission to all Florida higher education institutions.

Let me assure you that the Department has not endorsed or approved the Governor's Plan. To the contrary, this Department continues to support strongly the use of appropriately tailored affirmative action programs under the Constitution, Title VI of the 1964 Civil Rights Act and Title IX of the Education Amendments of 1972. Such affirmative action programs are educationally sound and vital tools for remedying the effects of prior discrimination and for fostering the educational benefits of diversity at educational institutions. Our position on this issue is consistent with the President's policy of "mending, not ending" affirmative action and is supported by applicable law including the Supreme Court's 1978 decision in Bakke v. Regents of the University of California.

I regret that some individuals and press accounts have misread and misinterpreted the January 14, 2000 letter from the Office for Civil Rights to Florida Chancellor Adam Herbert. That letter provided preliminary feedback, at the Chancellor's request, regarding the narrow issue of whether the Governor's Plan conflicts with Florida's existing obligations under its Civil Rights Partnership Commitments and Agreement (the Agreement) with the Office for Civil Rights. The Agreement was developed to help Florida meet its duty to eliminate the vestiges of prior segregation in its higher education system as required by the Supreme Court in U.S. v. Fordice. As the letter indicates, the Office for Civil Rights' preliminary assessment is that the Plan can be reconciled with the Partnership Commitments; however, there remain important areas of concern that need to be addressed by the State. For example, the Governor's Plan is currently silent as to whether students eligible for admission would be admitted to Florida's flagship universities and how the Plan will affect admissions at Florida's graduate schools. These concerns are important to me and to the Department, and I can assure you that the Office for Civil Rights will continue to monitor and work with the State to address these and other issues to ensure that the goals of the Agreement are fulfilled.

Page 2 - Dr. Mary Frances Berry

Because the January 14 letter addresses the narrow issue of the consistency of the Governor's Plan with the Agreement, the letter did not address the Governor's policy decision to end affirmative action. Therefore, as I indicated above, the letter should not be misinterpreted as an endorsement of the Governor's Plan to eliminate affirmative action. On the contrary - even apart from the issue of compliance with the Agreement - we are concerned about the negative effects that eliminating affirmative action may have on minority access to all of Florida's institutions of higher education. It is very important that minority students have real access to these educational opportunities and that schools reflect the diversity that is the strength of academic discourse.

Members of my staff have attempted to make this clear to Florida State officials and in response to inquiries from members of Congress, the press and others (see enclosed letter to Representatives Brown and Meek). I welcome any assistance you are willing to provide to underscore our position on this matter, and I hope this letter will be helpful in that regard. Please feel free to share it as appropriate. If you have any questions or concerns, please contact me.

Yours sincerely, .



Richard W. Riley

Enclosure



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS**

JAN 19 2000

**The Honorable Corrine Brown
United States House of Representatives
2444 Rayburn House Office Building
Washington, D.C. 20515**

**The Honorable Carrie Meek
United States House of Representatives
401 Cannon House Office Building**

Dear Representatives Brown and Meek:

This is in reference to Representative Brown's telephone call to me on January 19, 2000. During our conversation, Representative Brown stated that she is concerned that the Office for Civil Rights' January 14, 2000 letter to Chancellor Herbert regarding Governor Bush's Executive Order/Equity in Education Plan (the "Plan"), is being interpreted by some State officials as an endorsement of the Governor's Order ending the use of race-based affirmative action in the State of Florida. During our conversation, I clarified that this is not the intent of the January 14 letter. I explained further what is in fact the purpose, scope and intent of that letter. Per Representative Brown's request, I am providing that explanation in writing to her and Representative Meek.

On January 14, 2000, Gary Walker, Director of our Atlanta Office for Civil Rights, sent a letter to Chancellor Adam W. Herbert of the State University System of Florida that provides preliminary feedback regarding the Governor's Plan in light of the existing Florida/United States Office for Civil Rights Partnership Report and Commitments (Commitments). The letter addresses the State's ability to continue to fulfill the Partnership Commitment's overall goal of expanding access to minority students to educational opportunities if the Governor's Plan is adopted. With respect to postsecondary education programs, the letter states:

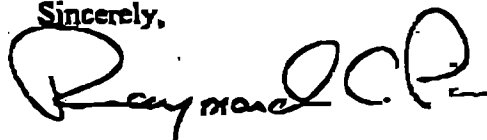
[O]ur preliminary assessment is that the Executive Order and the Equity in Education Plan can be reconciled with the Partnership Commitments' overall goal of expanding access for minority students in higher education. However, we do have some concerns as to the implementation of the Talented 20% Program and the Profile Assessment Program. If the Plan is adopted, we will need to work together to incorporate the elements of the Plan into the Partnership Commitments in a way that will continue to reinforce the spirit and goals of the Commitments.

Representatives Corrine Brown and Connie Meek - page 2

Our January 14 letter was directed at the important but narrow issue of Florida's obligations under its Partnership Commitments. However, as the Commitments do not require the use of race-based affirmative action, the letter does not address the issue of affirmative action or the Governor's decision to end its use in the State of Florida. We recognize that the Governor's plan has raised substantial concerns regarding the elimination of race-based affirmative action. As we discussed, the Department strongly supports appropriately-tailored affirmative action measures consistent with the President's policy of "mend it, don't end it." It is the Department's position that, under the Constitution and Title VI of the Civil Rights Act of 1964, it is permissible in appropriate circumstances for colleges and universities to consider race in making admissions decisions. They may do so to promote the educational benefits of diversity consistent with Justice Powell's landmark decision in *Regents of the University of California v. Bakke*. They may also do so to remedy the continuing effects of discrimination. As Secretary of Education Richard Riley stated in his "Dear Colleague Letter" dated March 19, 1997, regarding the passage of California's Proposition 209, which generally prohibits the use of affirmative action, "I continue to believe that appropriately-tailored affirmative action measures are educationally sound tools to remedy the effects of prior discrimination and to foster diversity at educational institutions." I am enclosing a copy of the Secretary's March 1997 letter for your information.

With respect to the more narrow issues addressed in the Partnership Commitments, we will continue to work with the State of Florida to ensure that the goals of the Commitments are in fact fulfilled. I hope this letter is helpful in addressing your concerns. Please feel free to contact me if you have any further questions.

Sincerely,



Raymond C. Pierce
Deputy Assistant Secretary
For Civil Rights

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

March 19, 1997

Dear Colleague:

I am writing to address certain questions that may be raised in the wake of the passage of the California Civil Rights Initiative, Proposition 209, regarding the responsibilities of California's school districts and colleges under educational programs and civil rights laws administered by this Department. I want to confirm that the passage of Proposition 209, which would generally prohibit affirmative action under state law for women and racial minorities, has not changed the obligation of school districts and colleges to abide by federal civil rights statutes in order to remain eligible to receive Department funding, nor has it changed the obligations of schools participating in a small number of federal programs administered by the Department to consider race, as appropriate, under the terms of those programs. In addition, I want to express my continuing support for appropriately-tailored affirmative action measures, which are important tools in our efforts to ensure that all students achieve to high standards.

As a preliminary matter, please be advised that the implementation of Proposition 209 has been enjoined by the federal district court hearing the constitutional challenge to Proposition 209 brought in the case entitled Coalition for Economic Equity v. Wilson, pending the outcome of the case. Regardless of the outcome of the constitutional challenge to Proposition 209, all school districts and colleges, including those receiving funding from the Department of Education, must ensure that they adhere to the requirements of the federal civil rights laws. Students and other beneficiaries of programs administered by schools and colleges receiving Department of Education funds are protected from discrimination on the basis of race, color, or national origin, as guaranteed by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d. These institutions also must ensure that students and employees are not subjected to discrimination on the basis of gender pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. 1681. School districts and colleges have an affirmative duty under these federal civil rights statutes to eliminate the effects of prior discrimination on the basis of race, color, national origin, or gender. The passage of Proposition 209 has not changed the obligation of school districts and colleges to abide by these federal civil rights statutes in order to remain eligible to participate in Department programs.

To ensure that school districts and colleges in California comply with the requirements of Title VI and Title IX, the Department's Office for Civil Rights (OCR) will continue to investigate complaints that these federal statutes have been violated and, if Proposition 209 does go into effect, will assess its implementation in light of federal statutory requirements. By its terms, Proposition 209 does not affect any activity that is necessary to maintain eligibility for federal funding. Of course, institutions that are implementing compliance plans that have been approved by OCR under Title VI or Title IX must continue to comply with those plans in order to remain eligible for Departmental funding.

Page 2 - Dear Colleague Letter

There are two Department programs that include race-targeted measures regarding the selection of beneficiaries, in addition to others that include race-targeted recruitment and outreach efforts. Under the Department's Magnet Schools Assistance Program, race-targeted measures often may be necessary to meet the desegregation purposes of the program, 20 U.S.C. 7201. The Department also administers the Program to Encourage Minority Students to Become Teachers, which was enacted by Congress as part of the Higher Education Act, 20 U.S.C. 1112a, et seq., to encourage students from minority backgrounds to become elementary or secondary school teachers. California colleges and school districts have received grants under these programs.

The Department of Education continues to be available as a resource to provide technical assistance to educational institutions in California to enable them to meet their obligations under federal civil rights statutes and to maintain eligibility for federal financial assistance. Enclosed is a list of Department employees who may be contacted for that assistance.

In closing, let me assure you that just as I remain committed to fulfilling the mandates of both Title VI and Title IX by requiring the elimination of discrimination based on race, national origin, or gender, I continue to believe that appropriately-tailored affirmative action measures are educationally sound tools to remedy the effects of prior discrimination and to foster diversity at educational institutions. The number of colleges with affirmative action admissions and financial aid programs attests to the experience of many frontline educators that diversity is needed to improve the quality of education for all students.

Yours sincerely,


Richard W. Riley

Enclosure

LIST OF DEPARTMENT OF EDUCATION CONTACT PERSONS

1. Program to Encourage Minority Students to Become Teachers

Ms. Vicki Payne
Office of Postsecondary Education
Higher Education Programs
Institutional Development & Undergraduate Education Service
U.S. Department of Education
Washington, D.C. 20202
202-260-3291

2. Magnet Schools Assistance Program

Mr. Steven L. Brockhouse
Office of Elementary & Secondary Education
School Improvement Programs
U.S. Department of Education
Washington, D.C. 20202
202-260-2476

3. Office for Civil Rights

Mr. Stefan Rosenzweig
Office for Civil Rights
U.S. Department of Education
50 United Nations Plaza
Room 239
San Francisco, CA 94102
415-437-7700

Mr. Gary Jackson
Office for Civil Rights
U.S. Department of Education
915 Second Ave.- Room 3310
Seattle, WA 98174
206-220-7880

Ms. Cathy Lewis
Office for Civil Rights
U.S. Department of Education
Washington, D.C. 20202
202-205-8217

Fla. Minorities Plan: An Addition Challenge

By KENNETH J. COOPER
Washington Post Staff Writer

Gov. Jeb Bush (R) has been promising to pull off what would be a remarkable feat of addition by subtraction: End affirmative action but simultaneously increase minority enrollment at public colleges in Florida.

Bush says Florida can boldly do what no state has done before by adopting his "Talented 20" rule, which would loosely guarantee admission to high school seniors in the state who graduate in the top 20 percent of their class. Texas has a similar 10 percent rule which, after three years, has just about restored undergraduate minority enrollments to the levels they had reached before a federal court banned affirmative action in the state. And California has adopted a 4 percent rule that will take effect in 2001.

But if Florida is to succeed in enrolling more minority students, it will take more than Bush's Talented 20 program. In fact, according to statistics provided by Bush's office and the Florida Board of Regents, at least 40 percent fewer minority students would become eligible for admission under the new rule than the number enrolled this year through affirmative action.

But that doesn't mean Florida colleges won't be able to increase their minority enrollments; only that they may have to resort to a variety of other measures to do so. According to aides to the governor and the board of regents, colleges are being granted license to do almost anything—short of directly considering race or ethnicity in admissions—to attract minority students. Using geographic distribution, income and other factors that could act as proxies for race are all being considered.

"If any university feels that it does not have sufficient skill, experience or ideas to maintain a diverse student body in a race-neutral fashion," said Chancellor Adam Herbert, an African American who headed Bush's transition team and has staked his reputation on the success of the governor's plan, "I will personally provide technical assistance to them." Currently, minority students make up about one-third of the total enrollment in Florida's public colleges.

In Texas, California and Washington, states where affirmative action has been banished by court decision or referendum, minority enrollments dropped immediately, particularly at selective colleges such as the University of Texas in Austin and the University of California at Berkeley.

In Florida, Bush has proposed his plan to end affirmative action in a bid to head off a more far-reaching referendum drafted for next year's ballot and to prevent a political

backlash that could damage the presidential prospects of his brother, Texas Gov. George W. Bush (R). Various aspects of Florida's new admissions plan will require final approval next year by the board of regents, the state Board of Education or the legislature.

Some critics have characterized such guaranteed admissions rules as an unconstitutional disguise for continued affirmative action. "It is pretty clear these are a means once again to use race as a factor," said David Gersten, vice president of the Center for Equal Opportunity.

The arithmetic of ending affirmative action in the nation's fourth-most populous state goes something like this: First, subtract 2,000 minority students whose race or ethnicity helped get them into college. Then add 400 to 1,200 from the top fifth of their high school classes who otherwise would not be academically eligible for admission, resulting in a net loss of 800 to 1,600 minority students.

Exactly how many minority students, primarily Hispanics or African Americans, might benefit from the Talented 20 rule remains somewhat uncertain because the "guarantee" of admission comes with a big caveat: Beneficiaries must also have completed 19 required courses in high school.

Florida Gov. Jeb Bush (R).
FILE PHOTO BY WINSTON LUZER—REUTERS



Bush's office found that 400 minority seniors in the top fifth of their classes last year had taken the 19 courses, while 800 lacked either foreign language or science courses. His plan raises the possibility of allowing the latter students to enroll and make up their missing course work during the first two years of college.

But even if these students are included, Bush's goal of increasing minority enrollment will require colleges to admit more than 800 additional minority students who otherwise would not qualify, presumably by substituting other social factors for race or ethnicity.

"Universities will still have the option to use other criteria, and they will unintentionally correlate with race," explained Brian Yablonski, a policy analyst in Bush's

office.

Several factors under consideration would capture disproportionate numbers of minorities, such as socioeconomic status (being poor), geography (coming from an inner city or rural area), parental education (being a first-generation college student) and educational disadvantage (attending low-performing schools, where minorities constitute 74 percent of students).

Florida colleges can also target their recruitment efforts to minorities and offer \$4 million in minority scholarships, activities not permitted under broader legal bans affecting Texas and California.

Bush's plan has the backing of state college presidents, including Frederick Humphries of historically black Florida A&M University. Charles Young, acting president

of the University of Florida, initially expressed reservations about the impact on minority enrollment at the state's flagship school, but has changed his opinion.

Civil rights groups have also mostly laid back for strategic reasons, seeing Bush's plan as preferable to the likely passage of a statewide referendum banning affirmative action. The plan's most vocal critic thus far has been Rep. Corrine Brown (D-FL), an affirmative action supporter and member of the Congressional Black Caucus.

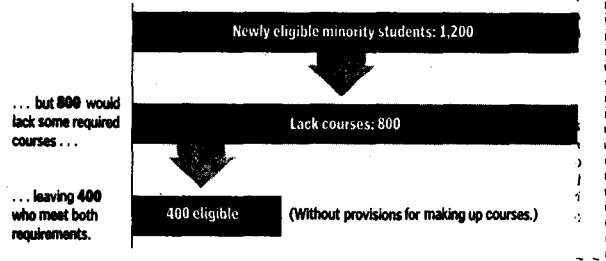
For undergraduates, the ban would take effect for students entering college next fall. But concerns expressed by Brown and others about minority enrollment in law school and other graduate programs prompted Herbert to delay ending affirmative action at that level for one more year.

The Math of Putting 'Talented 20' in College

Florida Gov. Jeb Bush's "Talented 20" plan combined with current course requirements would leave as many as 1,600 fewer minority students eligible for state public colleges. However, the plan might allow those students to make up the required course work after they have enrolled.

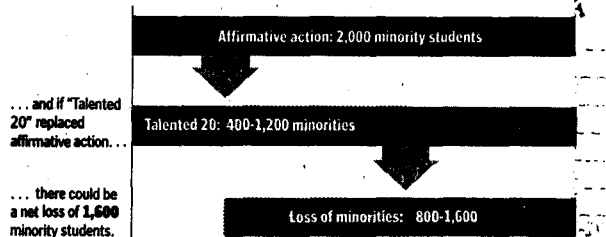
Two sets of requirements

1,200 minority students would be newly eligible under Bush's standard for admission because they graduated in the top 20 percent of their high school class...



Affirmative action vs. top 20 percent

2,000 minority students were admitted to Florida state universities for the 1999-2000 school year under current affirmative action rules...



SOURCES: Florida Board of Regents, Office of Gov. Jeb Bush

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