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The Chronicle of Higher Education

Academe Today

The Chronicle of Higher Education

Date: January 31, 1997

Section: Students

Page: A28

LAW-SCHOOL FINDINGS

Minority Enrollment Would Drop Without Preferences, Study Says

By Kim Strosnider

A new study has found that minority enrollment in law schools would plunge without the use of affirmative action in admissions.

The study, based on a review of thousands of applications to law schools, found that if admissions decisions had been made only on the basis of grades and scores on the Law School Admission Test -- the primary criteria used to evaluate white applicants -- only 3 per cent of the applications from black students would have resulted in admissions offers. Currently, 26 per cent of black students' applications to law schools -- many of which use affirmative action -- result in offers of admission; the figure for white applicants is the same.

If affirmative action were abandoned, the study found, the "admit rates" of other minority groups would fall as well: to 15 from 26 per cent for Asian-American applicants; to 9 from 32 per cent for Mexican-Americans; and to 6 from 24 per cent for Puerto Ricans.

The study was conducted by Linda F. Wightman, now an associate professor of education at the University of North Carolina at Greensboro. At the time she analyzed the data, she was vice-president for testing, operations, and research at the Law School Admission Council.

Dr. Wightman studied thousands of applications to law schools in 1991. She then followed 23,000 successful applicants through their bar examinations, surveying 6,000 of them more than once.

In an interview, she said the study should generate support for affirmative action by showing that most students admitted under such policies succeed. "The most important impact that a study like this will have is to put real data in people's hands to replace the anecdotes," she said.

The study did find differences in the rates at which students admitted as a result of affirmative action were admitted to the bar. Dr. Wightman divided students into two groups: those who would have been admitted had law schools made decisions based solely on grades and test scores, and those who probably would have been rejected without an affirmative-action policy.

Slightly more than 90 per cent of the black law-school graduates who would have been admitted on the

basis of grades and test scores passed the bar, while the figure for those who would not have been admitted on the basis of those criteria was 72.9 per cent. For white students admitted on the basis of grades and test scores, the bar-exam passing rate was 96.6 per cent.

The gap between bar-passage rates for Puerto Ricans was also large: 95.5 per cent for those who would have been admitted on the basis of grades and test scores and 72.5 per cent for those who would not.

For other minority groups, the rates were similar for those admitted without regard to race and those admitted under affirmative-action policies: 94.2 and 88.2 per cent, respectively, for Asian-American graduates and 92 and 87 per cent for Mexican-American graduates.

Dr. Wightman's study will appear in the April edition of the *New York University Law Review*. Once it is published, reprints will be available through electronic mail from Kathy McGeady, of the Law School Admission Council, at kmcgeady@lsac.org

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Title: Minority Enrollment Would Drop Without Preferences, Study Says

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The Chronicle of Higher Education

Date: January 31, 1997

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Ignoring Advice, U. of Houston Offers Race-Based Scholarships

By Peter Schmidt

The University of Houston System plans to continue offering scholarships based on race, despite warnings by the Texas Attorney General that the federal courts have barred it from doing so.

The system's chancellor, William P. Hobby, last week said he intended to keep such scholarship programs in place because the question of their legality remained unsettled. "The whole matter is still up in the air," he said.

The chancellor's decision was one of several developments that appeared to be putting pressure on Attorney General Dan Morales to do more to help the state's public colleges deal with a controversial court decision that threatens their affirmative-action efforts.

At issue is the precise meaning of a ruling by the U.S. Court of Appeals for the Fifth Circuit in *Hopwood v. State of Texas*. That decision, which the Supreme Court let stand in July, held that the goal of maintaining a diverse student body did not justify the use of racial preferences in admissions at the University of Texas law school.

In August, Mr. Morales sent guidelines to Texas colleges indicating that the *Hopwood* ruling barred the use of racial preferences in admissions and financial-aid decisions. The Texas Higher Education Coordinating Board and several individual colleges initially agreed to accept his advice, even though it was not delivered in the form of a formal legal opinion. Some legal experts accused Mr. Morales of interpreting the court's decision too broadly.

Several black and Hispanic activists have criticized Mr. Morales for seeming too eager to curtail affirmative-action programs. At the same time, the coordinating board has repeatedly asked him to put his interpretation of *Hopwood* in a formal legal opinion. Such an opinion not only would carry more legal weight, but would put the Attorney General solidly in the corner of the board and the colleges if they were sued for taking actions he advised.

So far, Mr. Morales has not given colleges "a legal opinion that carries the force of law, that forces us to do things a different way," said Teri Flack, a spokeswoman for the coordinating board.

Leonard Rauch, the board's chairman, noted that many race-based scholarship programs in Texas are

required under state law. "We want to know whether we should follow the Legislature or follow Morales," he said.

Last week, a spokesman for the Attorney General said Mr. Morales was considering giving the colleges more-formal legal guidance.

Lawyers for the Houston system have never accepted the Attorney General's interpretation of the *Hopwood* decision. Noting that the Fifth Circuit's decision applies only to Louisiana, Mississippi, and Texas, they have advised Houston officials to keep race-based scholarships in place until the matter is settled nationally.

The coordinating board this month appeared to clear the way for other colleges to take a similar stand. Voicing frustration over Mr. Morales's failure to provide it with a formal legal opinion on *Hopwood*, it said individual colleges and universities should decide for themselves what state and federal law requires. Although the board initially said it would stop using race as a factor in its own scholarship programs, thus far it has taken no formal action to do so.

Robert M. Berdahl, president of the University of Texas at Austin, said last week that his institution would continue to follow Mr. Morales's guidelines. But Ray M. Bowen, president of Texas A&M University, said he and his peers had asked Mr. Hobby about the legal rationale for keeping race-based scholarships in place.

"Emotionally, I hope he is right," Dr. Bowen said. "I think the position he takes is interesting, and I hope it sustains and becomes the norm in the state."

The Center for Individual Rights, a non-profit legal group in Washington that helped represent the white law students who sued Texas in *Hopwood*, warned last week that public colleges that disregard Mr. Morales's advice run the risk of being sued. "It sounds strange to me that state institutions should be disregarding the advice of the state Attorney General," said the group's spokesman, Robert D. Alt. "It would also seem to me to be something of a dangerous maneuver."

Mr. Rauch asserted that following the Attorney General's guidance on *Hopwood* would be "a detriment" to colleges in his state. "Some of the better minority students will not go to school in Texas, because they can't get the scholarships they need," he said.

Lisa Guernsey contributed to this article.

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The Chronicle of Higher Education

Academe Today

The Chronicle of Higher Education

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IN THE STATES

Texas Attorney General Bars Affirmative Action at Colleges

By Lisa Guernsey

Texas Attorney General Dan Morales issued an opinion last week ordering public colleges in the state to stop considering race in any institutional policies.

The opinion reiterates advice he gave to the colleges last summer, but, unlike those guidelines, it holds the force of law. He wrote it in response to prompting by the University of Houston System for answers to questions about financial-aid programs and for a legally binding opinion. Without an opinion from the Attorney General, the system would continue to offer race-based financial aid, the system's chancellor, William P. Hobby, had said.

Mr. Morales based his opinion on a 1996 decision of the U.S. Court of Appeals for the Fifth Circuit, which includes Texas, Mississippi, and Louisiana. It held that a race-based admissions program at the University of Texas at Austin's law school could not be legally justified, either as a remedy for past discrimination or as a way to achieve diversity.

Mr. Morales wrote that the decision's "restrictions would generally apply to all internal institutional policies, including admissions, financial aid, scholarships, fellowships, recruitment and retention, among others."

In answer to a question from Mr. Hobby about race-restricted scholarships that are privately sponsored, Mr. Morales wrote that such programs would have to be analyzed individually to determine how closely they are "entwined" with state practices.

In some cases, where college involvement would be minimal, Mr. Morales said, such programs might be legal.

In a statement last week, Mr. Hobby said the Houston system was now "bound" by the opinion. "We will make any adjustments we need to comply with the Attorney General's ruling," he said.

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IN THE STATES

Number of Minority Students Applying to U. of Cal. Plunges

By Karla Haworth

The University of California system has received a record high number of applications for admission next fall, but the number of minority applicants has dropped sharply, according to data released last week.

The nine-campus system received 46,682 applications, an increase of 1.6 per cent over last year. Although the number of white applicants grew by 1 per cent and the number of Asian-American applicants by nearly 3 per cent, the number of black applicants dropped almost 11 per cent. Applications were down 15 per cent for American Indians, 5 per cent for Mexican Americans, and 7 per cent for Latinos.

Richard C. Atkinson, president of the university system, said he was pleased about the record number of applicants. Still, he said, "I am concerned about the decline in applications among underrepresented students. We are hopeful that our effort to expand university outreach to better prepare all California students for university study will reverse this decline."

Some observers attributed the decline to attacks on affirmative action in California. Last fall, voters passed an amendment to the state constitution that, if upheld in the courts, would bar public colleges and other state agencies from using racial preferences in, among other activities, admissions and hiring. A federal judge has blocked the state from enforcing the measure, known as the California Civil Rights Initiative, until courts decide whether it is constitutional.

In 1995, the University of California's Board of Regents voted to end racial and gender preferences in hiring, admissions, and contracting throughout the system. Before the vote, university officials predicted that adoption of such a policy would lead to drops in black and Hispanic enrollment and increases in Asian-American enrollment.

The plan to eliminate racial preferences in admissions was to have taken effect last month, but university officials said they would continue to use race as a factor in admitting students for next fall because of the challenges to the law.

Last week university officials attributed the drop in minority applications to changes in student aspirations, better student aid at other colleges, and several other factors, which Dennis Galligani, assistant vice-president for student academic services, described as "complex."

Bo Thoreen, legislative director of the University of California Student Association, said the affirmative-action debate had discouraged minority students from applying to the university.

"There's been a real change in the climate," he said. "This is, in all likelihood, a result of the intangible effects of C.C.R.I. and the regents' eliminating race and gender from their considerations."

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NOTA BENE

"Color Blindness and the End of Affirmative Action"

At an early age, Bryan K. Fair was a self-described "expert on racial poverty."

Recalling his childhood, he says that when he should have been learning to read, write, and play with other kids, he was "hungry, cold, and learning about being black." Mr. Fair, the author of *Notes of a Racial Caste Baby: Color Blindness and the End of Affirmative Action* (New York University Press; 211 pages; \$24.95), was born in 1960, the eighth of ten children of a single mother in a poor, black neighborhood in Columbus, Ohio.

The family received welfare to supplement her meager income, and as the food stamps ran out, meals of spaghetti or chili at the beginning of the month became sugar or mayonnaise sandwiches by its end.

Now an associate professor of law at the University of Alabama, Mr. Fair uses his life experience to begin a defense of the justice and necessity of "remedial affirmative action." The author benefited from affirmative-action programs at Duke University and at the law school at the University of California at Los Angeles.

He sharply challenges the notion that affirmative action is equivalent to reverse racial discrimination. No affirmative-action policy in the United States excludes white men from any occupation, limits them to unskilled jobs, or denies them educational opportunities, he argues. None prevents them from voting or dilutes their voting strength to below that of their percentage in the population, he adds.

Mr. Fair writes that Americans who criticize the programs of the last three decades "cannot close their eyes to the other eighteen decades of their constitutional history when a rigid color line was the rule and white men and their families were America's affirmative action babies."

For him, "color blindness" is a myth that permits Americans to continue to live as if they were in a fairy tale. "It allows us to act as if our history never happened," he writes.

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Lawsuit Challenges Affirmative Action at U. of Washington

By Douglas Lederman

The lawyers who successfully challenged the race-based admissions policy at the University of Texas School of Law filed a similar suit last week against the University of Washington's law school.

A non-profit law group in Washington, D.C., the Center for Individual Rights, sued the university's School of Law on behalf of Katuria E. Smith, a white applicant who was denied admission to the school in 1994.

The lawsuit, which was filed in federal court, claimed that the law school had violated Ms. Smith's Constitutional right to equal protection by using different admissions standards for white and minority students. The complaint said Ms. Smith had been denied admission even though she had graduated *cum laude* from the University of Washington's undergraduate business school and scored in the 95th percentile on the Law School Admission Test. Ms. Smith subsequently enrolled in the law school at Seattle University.

Said Michael S. Greve, executive director of the Center for Individual Rights: "It's inconceivable to us that there is any reason for the rejection other than race discrimination."

Mr. Greve said that the law center had yet to find proof that the Washington law school had used lower admissions standards to admit minority students than it did for white students. But he said that under its former dean, Wallace Loh, the school in a few years had more than doubled its proportion of students from minority groups, to about 40 per cent in 1994.

"The only way to do that, as everybody knows, is to lower admission standards," he said.

Officials reached last week at the law school and in the university's news office were unaware of the lawsuit.

The Center for Individual Rights represented some of the white students who were plaintiffs in *Hopwood v. State of Texas*, in which the U.S. Court of Appeals for the Fifth Circuit last March barred the Texas law school from using race as a factor in admissions.

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Title: Lawsuit Challenges Affirmative Action at U. of Washington

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UMass Students Seize Building in Protest on Minority Issues

Amherst, Mass. — A group of students at the University of Massachusetts took over an administration building here last week, protesting what they said was the university's slow progress in recruiting and retaining minority students and professors.

After a campus rally, the students seized the controller's office in the Goodell Building and were still inside after four days. Estimates of the number of students involved in the takeover ranged from 60 to 175, depending on whether students or administrators were counting.

The protesters issued a list of 16 demands calling for, among other things, a scholarship fund for low-income students. "We wish the administration would act more promptly on this," said Cassandra Jean-Denis, a sophomore. She spoke via cellular phone from inside the building, whose service had been cut. Outside, students set up a World-Wide Web page to promote their cause.

Patrick J. Callahan, a university spokesman, said minority enrollment had increased by 5.3 percentage points since 1992, when a group of students negotiated an agreement with the university. Now minority students account for 16.3 per cent of the enrollment. The campus has also hired more minority professors, he said.

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Lawsuit Attacks Race-Based Policies in U. System of Georgia

Litigation could affect admissions policies, desegregation programs, and black colleges

By Patrick Healy

The University System of Georgia was thrust back into the desegregation wars last week, when 11 residents of the state filed a class-action lawsuit charging that racial segregation persisted at the system's 19 universities because of such policies as affirmative action.

The seven white and four black plaintiffs, among them alumni and students of the universities, demanded that the system eliminate the racial identifiability of its historically black and predominantly white colleges and that the campuses stop considering race in admissions, hiring, and other decisions.

The lawsuit is a significant addition to college civil-rights cases because it intertwines both desegregation and affirmative action. It is also in the hands of lawyers who have broad experience fighting government policies based on race.

The plaintiffs claimed that the university system perpetuated the separation of students by race through affirmative-action policies that were meant to weed out vestiges of segregation. They said these "token" remedies, such as remedial education and race-conscious admissions practices, reinforced the racial identifiability of the system's universities. In 1994 at least 88 per cent of the students at the three historically black universities were black, while white students made up between 71 and 97 per cent of the populations at the 16 predominantly white universities, according to the complaint.

"The remedy they have now is obviously not effective," Matthew C. Billips, one of three lawyers representing the plaintiffs, said of the colleges. "All it does is discriminate against innocent applicants on the basis of race while having no effective consequence on eliminating segregation."

Stephen R. Portch, chancellor of the university system, credited campus affirmative-action efforts with increasing educational options for all Georgia college students. He said he found the lawsuit "puzzling"

because its goals appear to be at cross-purposes.

"On the one hand it says you shouldn't use race in admissions, and on the other hand it says we have institutions at which we have to change the racial compositions of our students," Dr. Portch said.

The system's campuses continue to move away from the days of segregation, the chancellor said, noting that some public white universities have student populations that come close to reflecting the state population of Georgia, which is 27 per cent black. He said all students have the freedom to choose colleges that are best for them, and that no vestiges of segregation remain to inhibit their choice.

The plaintiffs believe otherwise. Their lawsuit claimed that because so many of the students at the three black colleges are black, all 19 universities continue to be racially identifiable. It charged that the system allowed the black colleges to admit large proportions of black students who need remedial education, thereby allowing these campuses to retain an "access" mission that is popular with black students and faculty members.

Dr. Portch said the system had not tried to steer black students to these colleges. Of the more than 30,000 black students who attend system universities, only about 28 per cent are enrolled at the three historically black institutions.

Mr. Billips, the plaintiffs' lawyer, contended that state and college officials, both black and white, had tacitly agreed to support affirmative-action measures to protect their self-interests and avoid a more forceful approach to desegregation.

The lawsuit states: "The use of race in admitting students at these institutions has been employed for the purpose and has had the effect of deflecting attention from the need for realistic desegregation; persuading influential black legislators and citizens to not seek a truly desegregated higher education system; and as a token effort designed to appease black citizens rather than achieve an effective end to the on-going racial identifiability of institutions of public education."

Since 1989, when the federal government declared the Georgia system desegregated, the state has avoided the sort of legal battles that Alabama, Louisiana, and Mississippi have faced over the future of their public black colleges. Georgia also watched as Maryland and Texas were successfully sued over affirmative-action programs that were defended as remedies to past segregation.

Now the Georgia system finds itself in court accused on both fronts -- of perpetuating vestiges of racial segregation, and of violating civil rights in its attempt to wipe out the vestiges. As one lawyer for the university system said in anticipation of the lawsuit, "We thought we'd escaped and done everything right in Georgia."

The system received a warning last April, however, that its campuses could be vulnerable to this kind of lawsuit. Michael Bowers, the Republican Attorney General of Georgia, told the campuses to stop using race as a factor in admissions decisions, citing recent rulings by the U.S. Supreme Court and other federal judges that put limits on government affirmative-action programs. He also said he would not defend policies that he believed were illegal.

After a review, the system decided to keep the programs. Dr. Portch said last week that the campuses had developed "contingency plans" for admissions if a court order forced them to disband their affirmative-action programs.

Regardless of his past concerns about admissions policies, Mr. Bowers said he would defend the system, as "required" under state law. He declined to comment on the lawsuit, except to note that he still believed the state was bound by court decisions that restricted affirmative-action programs.

Experts on desegregation cases were skeptical last week about some of the plaintiffs' claims. But they also believe that Georgia and other states are vulnerable to this kind of lawsuit because they have not done enough to desegregate.

"Racial identifiability of campuses continues to be a problem that we can't overlook," said N. Joyce Payne, who studies black-college issues at the National Association of State Universities and Land-Grant Colleges. "When you look at the extent to which both sets of institutions have integrated in these states, it suggests we haven't done a great job."

Robert Davis, a law professor at the University of Mississippi, disputed the plaintiffs' claim that the racial identifiability of campuses was evidence of persistent segregation. He said the Supreme Court decision in 1992 that established guidelines for higher-education desegregation did not order states to close historically black colleges simply because many black students chose to attend them.

"There have to be additional policies that the state is responsible for to support a complaint that vestiges remain," Mr. Davis said. "Racial percentages of students, in and of themselves, are not enough."

Several experts also doubt that a college-desegregation plan could be effective without measures such as race-based admissions or financial-aid policies. Both are used in Alabama, Mississippi, and several other states for this purpose. Robert Kronley, a desegregation analyst at the Atlanta-based Southern Education Foundation, said Georgia would not be well served if it scrapped those policies.

"If our ultimate objective is to provide for student-centered education for all students, where student choice of institutions and their success in them are not governed by race, we have to understand that there's going to be some utility in race-sensitive remedies," Mr. Kronley said.

The plaintiffs contend that such remedies have violated the civil rights of prospective students and employees of the system who are not black. Two of the plaintiffs are white students who applied for admission to the University of Georgia and were rejected, they claim, because of an affirmative-action plan that admitted minority students with test scores that were lower than theirs.

The lawyers plan to argue that race-conscious admissions practices at the system's colleges do not comply with the 1995 Supreme Court decision, in the case *Adarand Constructors Inc. v. Peña* that the Georgia Attorney General has also cited. Last year, the U.S. Court of Appeals for the Fifth Circuit used that decision to rule that the University of Texas at Austin law school had used an illegal affirmative-action plan to benefit black applicants.

As a result, all public universities in Texas plan to stop using race as a factor in their admissions and financial-aid decisions.

The lawsuit alleged that while white students had been barred from Georgia's premier public universities because of affirmative action, black students had been segregated into three campuses that specialize in remedial education. The complaint cited 1994 data showing that entering freshmen did not have average combined SAT scores of more than 708 at any of the three black colleges, whereas no other four-year institution had an average score below 822.

While not proposing specific desegregation remedies, the suit suggested potential ones by charging that the university system had failed to develop proper policies. The complaint implied that systemwide admission, recruitment, and retention policies could be designed to end the racial identifiability and "academic inferiority" of the black colleges. The suit also asserted that duplication of academic programs and lax faculty hiring and tenure practices had preserved segregation.

The plaintiffs' lawyers asked for an immediate injunction to bar system campuses from using race as a criterion in admissions and faculty-employment decisions.

The complaint was filed in the U.S. District Court for the Southern District of Georgia by A. Lee Parks, a white lawyer who received national attention in 1995 after he persuaded the Supreme Court to strike down majority-black voting districts in Georgia.

The plaintiffs themselves are an unusual mix. They include a black alumna of a predominantly white public college who teaches in an after-school enrichment program; a white teacher who is an alumna of a historically black college in the Georgia system, Fort Valley State University; a white instructor at Fort Valley State; two white students who claim they were rejected for admission to the University of Georgia because of racial preferences given to minority students; and a black couple who had a child enrolled in a system institution.

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Universities Report Less Minority Interest After ...

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* Universities Report Less Minority Interest After Action to Ban Preferences

By PETER APPLEBOME

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AUSTIN, Tex., March 18 -- After decisions to dismantle affirmative action programs at public universities in California and Texas, applications from blacks and Hispanic students are down significantly at both states' most prestigious universities and professional schools, leading to fears that the initiatives will result in a long-term decline

* in minority enrollment.

Following a Federal court decision in the Hopwood reverse-discrimination case here and the California Board of Regent's decision to ban affirmative action in admissions, both states are seeing

* sharp declines in minority applications, with the greatest drops in applications to medical and law schools and flagship campuses like the one here.

Students and college officials attribute the drop to tighter admissions standards, worries on the part of prospective students about

* a smaller minority presence on campus and the elimination of race-based scholarships.

Though many students say the new policies will not affect their college choices, others say they think the door to higher education is not as open as it once was.

"My mother would not allow me to apply to U.T. because of the Hopwood decision," said Tanya Holloway, an Austin high school senior who is black. "She didn't think I would get fair treatment there."

Total undergraduate applications to the campus here fell 13 percent, which officials attribute partly to a new essay required on the application. Applications from blacks fell 26 percent. Applications from Hispanics fell 23 percent.

The University of Texas Law School, against which Cheryl Hopwood and three other white students filed a lawsuit claiming that they had not

not admitted because minorities had got preferential treatment in admissions, saw applications from blacks fall 42 percent this year.

In California, though a record number of students applied to the
* state university system, the number of minority applicants fell for the second year in a row: the number of black applicants fell 8.2 percent; for Hispanic applicants, the drop was 3.7 percent, and for American
* Indian applicants, 9 percent. Minority applications to medical school plummeted 23 percent this year.

Applications to the California system rose 1.6 percent over all, with the biggest increase, 5.1 percent, coming from Asian-Americans. Asian-Americans had been excluded from race-based initiatives because of their disproportionately high numbers in higher education, and many had complained that the affirmative action initiatives in the California system had denied them the educational opportunities they had rightly earned.

The affirmative action ban goes into effect for professional schools this year and for undergraduate applicants next year. But education experts say it has received so much attention it is affecting students at both levels already.

Supporters and critics of affirmative action agree that the immediate result of ending the programs could be to reduce diversity at the top public universities of two of the nation's most diverse states.

"In general, many of our fears have been borne out," said the University of Texas president, Robert M. Berdahl, who becomes Chancellor of the University of California at Berkeley this summer. "We only have applications to go by for now, but the pattern we're seeing is very sobering. We're still committed to achieving diversity in education. I'm not saying it will be impossible, but we will lose ground, and it will be some time before we recover what we've lost."

At the University of Texas, whites make up 65 percent of the student body, Hispanics 15 percent, blacks 4 percent and Asian-Americans 12 percent. Of the state's 18-year-olds, 51 percent are white, 32 percent Hispanic, 14 percent black and 2 percent Asian-American.

"There is no question in my mind that what's happening in both states is related to Hopwood and the Regents' decision," said Deborah Carter, associate director in the office of minorities in higher
* education at the American Council on Education.

But not everyone agrees about the repercussions.

Ward Connerly, the University of California regent who proposed the
* end to affirmative action, said the drop in minority applications had been expected and reflected the degree to which racial preferences had unfairly shaped admissions.

"This is just basic logic," Mr. Connerly said. "If you've been given a substantial preference based on race and you take it away, the numbers are going to drop. But just because you're not going to get a preference doesn't mean you're not welcome."

Source: New York Times, March 19, 1997

He said it was more important to focus on improving educational opportunities for blacks and Hispanics across the board, rather than on giving preferences to a few.

The Texas Attorney General, Dan Morales, who has been bitterly criticized for his narrow interpretation of what is allowed under the Hopwood ruling, said part of the blame should rest on the alarmist message being put out by Texas universities.

"What these university administrators ought to be saying is, 'We are committed; we are steadfast; we are going to continue this march toward diversity regardless of whether Hopwood is out there,' " Mr. Morales said. "That is what should be communicated to these applicants instead of the predictions of doom and gloom, the predictions of resegregation."

- * Some minority students are torn, fearing a decrease in diversity and a lessening of their own prospects but are mindful that some will think that being admitted under affirmative action programs tarnishes their own credentials.

"It scares me personally because I wonder what it will mean for me," said Carolina Ornelas, a University of Texas senior who plans to apply to pharmacy school. "But then you wonder if you got in because of your record or because of race. So it helps and it hurts."

Education officials in both states say they are increasingly concerned about the long term.

"I think that a lot of people hostile to affirmative action who see our entering class next year might have second thoughts," said Michael Sharlot, dean of the University of Texas Law School. "We're a public law school with the function of preparing people to serve not just as providers of legal services but as civic leaders. For us to go from the leading provider of Mexican-American and black lawyers in the country to a vastly reduced role is just awful."

One of every 11 Mexican-American lawyers in the United States was trained at the University of Texas Law School, Mr. Sharlot said. This year, applications from Hispanic students are down 14 percent, matching the overall decline, while black applications are down 42 percent.

The affirmative action program at the Texas law school, like the University of California's program, had allowed for the admission of black and Hispanic students with lower entrance-test scores and grades.

Although the Hopwood case threw out any use of race as a consideration in admissions, the Texas Attorney General interpreted the ruling to also ban race-based scholarships. Admissions officers say that has hindered the recruitment of minorities.

- * Bruce Walker, the university's admissions director, said the decline in minority applications was a marked departure from recent, relatively stable trends, but he was wary of drawing long-term lessons.

"We think some applicants got scared off by the essay," Mr. Walker said. "We expect the numbers to come back. How much they'll come back

for minorities right now is anyone's guess."

It is not yet clear whether the application trends will translate
* into lower minority acceptances and enrollments. Some black and Hispanic students bound for college are apparently applying instead to less prestigious state schools and to private ones, national education experts say.

"I looked back at our trends over the last 24 years," said Dr. Michael Drake, Associate Dean of Admissions at the University of California at San Francisco School of Medicine, where applications from underrepresented minorities dropped to 493 this year from 638 last year and 722 in 1995. "If you look at the drop from 722 to 493, that has never happened in our history."

* Interviews in California and Texas with minority high school students thinking about college and with university students thinking about graduate and professional schools provided a wide range of responses.

Marlen Whitley, a black student recently elected as the student body president at the University of Texas, said he planned to go to law school. Before the Hopwood ruling, he had Texas high on his list. Now he plans to look elsewhere so he can "get away from all the drama that's happened here."

Similarly, Bruce Rideaux, a senior from Beaumont, Tex., said that if he were applying to college now, he would probably not apply to the University of Texas. "There are 50,000 students here and so few of them are black," Mr. Rideaux said. "With all this going on, I probably would have gone to a predominantly black or a smaller university."

At Oakland Technical High School in California, Ernestina Gallegos, a Hispanic senior with a 3.65 grade point average, said she was applying to the elite schools in the University of California system. She said she doubted that the affirmative action debate would affect her chances.

"Sometimes affirmative action is kind of biased," she said. "I've seen kids with really low S.A.T.'s and G.P.A.'s get in, while other kids who worked really hard got left out. I didn't think about it. It wouldn't be a problem for me whether or not affirmative action would be there."

But Michael Lampkins, a senior with a B plus average who is black, said he had always wanted to go to U.C.L.A. but now doubted that he could get in. He is applying to historically black schools instead.

"I think the Regents are kind of going back to that good old separate but equal," Mr. Lampkins said.

What the ultimate impact on educational opportunity will be is unclear. Still, Mr. Connerly, a fierce opponent of affirmative action, and Dr. Berdahl, a staunch defender, both agree that affirmative action addresses just part of the problem.

In Texas, Dr. Berdahl said, there are 36,000 18-year-old African-Americans. Of those, 24,000 graduate from high school, 12,000 go

to school past high school, 6,000 take the Scholastic Assessment Test, and only 1,000 get scores that make them competitive at the University of Texas.

"Clearly, if affirmative action at best can help one thirty-sixth of the kids, the only solution ultimately is to enlarge the number of kids in the pool," he said. "If society is saying affirmative action isn't the answer, then it's up to us to take ownership of the problem and enlarge the pool. In the end, that's the only answer."

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U. of Mass. Accepts Students' Demands to End 6-Day Sit-In

Amherst, Mass. -- Student protesters at the University of Massachusetts ended a six-day takeover of an administration building this month after winning many of their demands.

About 175 students who had taken over the Goodell Building emerged after the administration agreed to 21 demands, including increasing the enrollment of minority students, offering more financial aid to needy students, and giving minority students a greater voice in the selection of minority professors.

University administrators said they would work toward a goal of having minority students make up 20 per cent of the undergraduate student body. Now, about 16.3 per cent of the students are members of minority groups. The state's minority population is about 12.4 per cent.

Patrick J. Callahan, a campus spokesman, said the students had been granted amnesty, because they had engaged in "good faith" discussions with officials and behaved responsibly while occupying the building.

Jubilant students said their protest had been aimed at forcing officials to make more progress on goals they had set in 1992 with a coalition of minority students.

The Massachusetts Association of Scholars issued a statement asking "Who's in charge?" and criticizing the university for giving in to the students' demands.

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WAYS & MEANS

U. of California Regent Pushes for Anonymous Applications

A member of the University of California's Board of Regents has proposed that the university system begin tracking applicants by their Social Security numbers instead of their names to avoid giving admissions officers clues to their race.

Ward Connerly, the architect of a successful campaign last year to approve an anti-affirmative-action referendum in California, said he thought the university should stop even asking applicants for their names or their gender. Such information should become relevant, he said, once students have been admitted to the university.

Mr. Connerly said the proposal arose from his concern that admissions officers would scrutinize applicants' names in an attempt to determine their race, thus making an end run around the regents' policy, approved in June 1995, that aims to remove race as a factor in the admissions process.

Rick Malaspina, a spokesman for the university's president, Richard C. Atkinson, said Dr. Atkinson would review Mr. Connerly's proposal, especially to see what complications might arise if names were dropped from applications. He said the university tracks all material relating to an application -- including transcripts and test scores -- by the applicants' names.

Mr. Connerly contended that an admissions officer often could guess an applicant's race or ethnicity just by glancing at his or her name. "Jamal Washington" is probably a black guy," he said. "Pablo Gonzales" is probably Latino."

Robert Laird, director of undergraduate admissions at the Berkeley campus, told the *San Jose Mercury News* that "erasing a person's name leaves us open to satire and mockery."

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New Lawsuits May Help Decide Legality of Affirmative Action

*Some experts expect more bans on racial preferences;
others predict a repudiation of the "Hopwood" ruling*

By Douglas Lederman

The other shoe has dropped. Ever since last March, when the U.S. Court of Appeals for the Fifth Circuit barred the University of Texas law school from using race as a factor in admissions, college officials have held their breath, wondering when and where the next affirmative-action lawsuit would land and what effect it would have.

They now have an answer to the first question: The University of Washington School of Law and the University System of Georgia were hit this month in federal courts with separate lawsuits challenging admissions policies that take race into account (*The Chronicle*, "A Lawsuit Against Georgia University System Attacks a Range of Race-Based Policies" and "Suit Challenges Affirmative Action at U. of Wash." March 14).

Opinions on the potential impact of the cases are as varied as views on the legality and morality of affirmative action itself.

Some legal experts predict that federal courts will continue to rein in the use of racial preferences. Others believe the courts will find that the judges in the Texas case exceeded their authority in declaring invalid the Supreme Court's 1978 decision in *Regents of the University of California v. Bakke*.

What is most needed, almost all observers agree, is a case that can give the Supreme Court the chance to decide whether *Bakke* is still the law of the land. An appeals-court decision that clashes with the Texas ruling would give the highest Court the conflict over legal interpretation that it typically seeks to resolve.

"If the Fifth Circuit was right, there are no legitimate affirmative-action plans," says Samuel Issacharoff, a professor at the University of Texas who helped defend the law school in *Hopwood v. Texas*. "If the Fifth Circuit was wrong, we have to figure out what it is that *Bakke* still allows for."

The present situation, in which colleges in Texas, Mississippi, and Louisiana must hew to the more-restrictive standard laid down by the Fifth Circuit while institutions in the rest of the country are still abiding by *Bakke*, is untenable, Mr. Issacharoff says.

Both the critics and supporters of affirmative action say it was inevitable that more lawsuits would be filed in the wake of *Hopwood*, since it left unresolved so many questions about an area of law -- the use of race in admissions -- that had been largely unexplored in the courts for two decades.

In striking down an admissions policy that the Texas law school had already discontinued, the three-judge panel of the Fifth Circuit declared that colleges could no longer rely on the *Bakke* decision to justify using racial preferences to achieve a diverse student body.

The Fifth Circuit's ruling declared that the law school, which altered its policy as the case went to trial in 1994, had illegally used separate committees to evaluate black and Mexican-American applicants on the one hand and all other applicants on the other, and had set different minimum standards for the two groups.

It also undercut Justice Lewis F. Powell's opinion in the *Bakke* case, which, while barring colleges from setting quotas or using separate standards or processes to admit minority students, allowed them to use race as a "plus" factor, as long as minority applicants were compared directly to non-minority applicants.

In the months since the *Hopwood* decision, officials of many colleges have reviewed their affirmative-action policies. But few outside the three states in the Fifth Circuit have altered policies aimed at enhancing the diversity of their students.

"Most of the institutions are very deeply committed to promoting and protecting student diversity," says Martin Michaelson, a lawyer in Washington, D.C., who works with many colleges. "You do not see an abandonment of those efforts."

However, college officials have taken pains to distinguish their own admissions policies from those rejected in the *Hopwood* decision and to compare them favorably to the sort upheld in the *Bakke* case.

"It is my sense that few, if any, schools have the type of program that Texas had prior to the district court's opinion," says Carl C. Monk, executive director of the Association of American Law Schools. Most affirmative-action programs, he and others say, assess applicants individually, rather than as members of a specific group, and use the same standards and procedures for all applicants.

"It is extraordinarily clear that the admissions system in use at Texas in 1992 was unconstitutional," says Barbara B. Aldave, dean of the law school at St. Mary's University in Texas. But she freely acknowledges that St. Mary's is disregarding the Fifth Circuit's edict against using race in any way, on the basis that an appeals court "cannot overrule the Supreme Court."

She adds: "We and most other schools honestly do what Justice Powell says you can legally do: take race and ethnicity into account as a 'tipping' factor."

Michael S. Greve, of the Center for Individual Rights, the non-profit law group that represents the white student who is suing the University of Washington's law school, says lawyers who want to challenge affirmative-action programs have many options. "It's like shooting fish in a barrel, in that there are more institutions than we could possibly handle," he says.

Mr. Greve predicts that other federal courts will agree that "*Bakke* is not the law of the land," given the recent decisions in which the Supreme Court and other federal courts have made it much more difficult to justify the use of preferences based on race. Many college officials note, however, that those key cases involved contracting and hiring decisions in fields other than education, and that the courts have typically

shown more support for the use of race-based measures in education itself.

Even if other courts are unwilling to go as far as the *Hopwood* panel, Mr. Greve says, they will find that many colleges that claim they abide by the *Bakke* standard actually give far more weight to race than they admit. Much of the coming legal wrangling, he and others say, may be fought over how closely these specific affirmative-action programs comply with the standards set out in *Bakke*. "A lot of times, what they say they're doing is one thing, when what they're really doing is another," Mr. Greve says.

Officials at the University of Washington law school insist that their program will stand up to such scrutiny, now that, with the help of Mr. Greve's center, Katuria A. Smith has sued them.

Ms. Smith applied to the university's law school in 1994 and was rejected because of its "racially discriminatory procedures and practices," according to her lawsuit.

The suit does not specify what those practices were, and the dean, Roland L. Hjorth, would not comment beyond a written statement that the law school considers race as "one among many factors." The statement said: "We are confident the policy will withstand careful legal scrutiny and we intend to defend it vigorously."

Mr. Hjorth's predecessor, Wallace D. Loh, who is named in the lawsuit, outlined the university's admissions process in a 1995 opinion piece in *The Seattle Times*. The law school, he wrote, considers each applicant individually, looking at academic credentials and at "factors believed to enhance the richness of the student body and the educational environment," including such things as "racial origin," activities or accomplishments, and "special talents."

Using that process, the law school increased the proportion of minority students in its entering classes from 17 per cent in 1989 to 33 per cent in 1995, when Dr. Loh left to become an administrator at the University of Colorado at Boulder.

Such an approach would not pass muster under *Hopwood*, but, by assessing each applicant individually and weighing race as one among several factors, it could provide a good test of whether the *Bakke* standard is still the law, legal experts say.

If the University of Washington becomes the test case, history will repeat itself. In 1974, the Supreme Court was asked to decide whether the university's law school had illegally denied admission to a white student, Marco DeFunis, while minority students with lower grades and test scores had been admitted. A trial court ruled in Mr. DeFunis's favor and ordered him admitted to the law school; an appeals court later reversed that decision. But because Mr. DeFunis was in his last semester at Washington's law school, the Supreme Court declared that the case was moot and declined to rule on its merits.

Four years later, the Justices issued the decision in *Bakke* that is now under fire.

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The Kansas City Star Thursday, March 27, 1997

Judge Clark's despair

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Some players in the Kansas City school desegregation case greeted this week's court ruling with great enthusiasm, but there is little in this ruling for students, parents and taxpayers to celebrate. As he relinquishes his jurisdiction over the case, U.S. District Judge Russell G. Clark offers an appalling picture of the Kansas City school system, declares that rapid corrective action is needed, and says he doesn't think the district's leaders are up to the job.

The judge's damning summary: "While there is some good teaching and learning going on in (Kansas City) schools, there is a great deal of poor teaching and little learning in many schools."

Surveying this wreckage, Missouri Attorney Jay Nixon declared: "Obviously, we won." But this doesn't change the fact that public education is, ultimately, a state responsibility. If the school district collapses, the state will have to pick up the pieces.

Clark approved an agreement that allows the state to buy itself out of the desegregation case, but the missing ingredient in this agreement was a long-range plan to keep the district opera-

tional. Even as Nixon was congratulating himself, state legislators were trying to figure out what to do next.

District officials said they were "very encouraged and gratified" by the judge's order. That's an odd reaction, to say the least, to the judge's dismal summary of the district.

Clark pointed to the lack of such basics as an instructional program, a school security plan and "true budgeting." He complained about classes being too large. The administration is also too large, he said, and district costs were way out of line with other school systems.

It is hard to know what to make of Clark's suggestion that state officials or a "special master" should step in to save the Kansas City district. The agreement he was approving, after all, was supposedly designed to restore local control to the district.

Clark's order gives district and state officials some time to make massive reforms and put together responsible plans for the future of Kansas City's schools. But, as he points out, there's no time to waste.

The Dallas Morning News Thursday, March 27, 1997

AFFIRMATIVE ACTION

Race should be part of admission 'basket'

Norma Cantu's warning should be taken as a challenge to improve matters in Texas. She's the U.S. Education Department official who told Texas Attorney General Dan Morales that state universities do not need to stop using race or ethnicity as one of several factors in determining admission or offering financial aid.

After the recent Hopwood vs. Texas ruling, which concerned a previous University of Texas Law School admissions practice, Mr. Morales ruled that state universities could not use race as a variable in recruiting and admitting students or awarding them with financial aid. What applied to UT Law School must be true statewide, he said.

Several Texas college presidents balked, warning of a brain drain. They feared minority students may leave Texas to go elsewhere. They also worried that minority applications to state universities would decline.

Some preliminary data support their concern. Texas A&M University, for example, reports that African-American applications are down 10 percent from 1995. Hispanic applications are also down 7 percent. Overall applications are up at A&M, however.

This data is worth considering as Texas officials respond to Ms. Cantu's letter. Texas cannot afford a brain drain, especially since minority students are a fast-growing part of Texas' population.

Likewise, the state cannot afford to lose up to \$1.8 billion in federal education aid over its lack of affirmative action policies. Ms. Cantu, who says the Hopwood case concerns only University of Texas Law School policies, warns that Texas should maintain affirmative action policies at other state universities. Otherwise, Texas may violate the 1964 Civil Rights Act, which would trigger a loss of federal higher education aid.

So what needs to happen?

Attorney General Morales should confer with Ms. Cantu, as well as with university officials, in drafting new guidelines. Race should not be the only factor guiding an admission or scholarship. But state schools should be able to include race as one of several factors used to determine admissions and financial help.

Almost all states do that now anyway. Why should Texas be in an unfavorable position? Ms. Cantu's letter creates an opportunity to ve all Tex students forward.

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New Graduate-Admissions Policy at U. of Cal. Is Called Biased

By Peter Schmidt

Several civil-rights groups charged last week that the University of California -- through its new policy of not using racial and gender preferences in graduate-school admissions -- is illegally relying on other criteria that systematically discriminate against minority and female applicants.

In a complaint filed with the U.S. Education Department's Office for Civil Rights, the groups alleged that the university's graduate and professional schools have begun violating federal civil-rights laws by emphasizing admissions criteria that favor "non-minorities and males." The criteria include consideration of standardized-test scores, past professional experience, and the reputation of the institutions at which the applicants received their undergraduate education.

"We are seeing declines in the enrollment of women and minorities in U.C. medical schools, in colleges of engineering, in law schools, and in business schools," said Joseph Jaramillo, a lawyer for the Mexican American Legal Defense and Educational Fund. His organization was joined in filing the complaint by the NAACP Legal Defense Fund, the California Women's Law Center, and a San Francisco-based group called Equal Rights Advocates.

The advocacy groups alleged that the discriminatory impact of the university's policies is amplified by pressure on its officials to bring about significant declines in minority and female enrollments, to show that the university is complying with bans on racial and gender preferences approved by the Board of Regents in July 1995.

Susan Thomas, a lawyer for the university, called this assertion "unfounded" and "unfair."

University officials were analyzing the complaint last week and declined to respond. They maintained, however, that the admissions standards used by the graduate programs were not discriminatory. And they said the university was seeking other ways to insure diversity in these programs, which stopped using race- and gender-based preferences in January.

The advocacy groups have asked the Office for Civil Rights to investigate the university system and to prohibit it from using graduate-admissions policies that are biased against minority and female applicants. Although the university has long used admissions criteria on which many minority candidates do poorly, the effect had been softened by affirmative-action preferences that helped disadvantaged applicants, the complaint said.

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Texas Colleges Told They May Consider Race in Admissions

By Douglas Lederman

Colleges in Texas are not bound by a federal appeals-court ruling last March that barred the University of Texas law school from using race as a factor in admissions, the Education Department's top civil-rights official said in a letter last week.

But the analysis by Norma V. Cantu, Assistant Secretary for civil rights, was swiftly dismissed as flawed by several legal observers.

Ms. Cantu's statements came in a letter in which she responded to questions from a group of Texas legislators about the decision by the U.S. Court of Appeals for the Fifth Circuit in *Hopwood v. Texas*. Besides striking down the Texas law school's affirmative-action admissions process, the three-judge panel also declared invalid the Supreme Court's 1978 decision in *Regents of the University of California v. Bakke*, which permitted colleges to use diversity to justify the use of racial preferences.

Most legal observers have interpreted the Fifth Circuit's ruling to bar all colleges in the state from considering race in admissions. Texas's Attorney General issued a formal opinion advising colleges to stop using race in admissions and financial-aid decisions, and most public and some private institutions in the state have complied.

But in response to a question from state lawmakers about whether or not *Hopwood* applied to public and private colleges in Texas, Ms. Cantu said *Bakke* was still the law of the land, even in Texas. She cited a friend-of-the-court brief that the Justice Department filed this winter in a similar lawsuit challenging the admissions process at the University of Texas's College of Education, which a federal court dismissed this month. The brief, Ms. Cantu said, argued that the *Hopwood* ruling applied only to the Texas law school, "and should not be used to invalidate the affirmative action admission program" used by the education college to attract a diverse student body.

Ms. Cantu's assessment brought predictable ridicule from the Center for Individual Rights, a non-profit legal group that helped represent the white plaintiffs in the *Hopwood* case. "If Ms. Cantu were in the private sector and wrote a letter like that to one of her clients, there is ironclad cause for legal malpractice," said Michael S. Greve, the center's executive director.

Even lawyers at the University of Texas who fought the *Hopwood* ruling said that while they wished the

decision did not apply to them, they dared not follow Ms. Cantu's advice. "In studying both the Fifth Circuit opinion and the Attorney General's advisory opinion, I think it has broader application than simply at the law school," said Ray Farabee, general counsel to the University of Texas system.

Samuel Issacharoff, a law professor at Texas who helped to defend the law school, noted that the Fifth Circuit threatened compensatory and punitive damages against college officials who defied the court and considered race. "*Hopwood* is the positive law of the Fifth Circuit, and any institution that would disregard it does so at tremendous, tremendous peril," he said.

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Keep campuses diverse

OUR VIEW Recent challenges are undermining gains. Pursuing college diversity is constitutional and right.

Nobody said overcoming the nation's shameful history of racial segregation and discrimination would be easy. But the errors of educators, meanderings of courts and opportunism of politicians don't help.

Take the University of Texas Law School, the most prestigious in the nation's second-largest state. It's caught between a runaway federal appeals court, a politically ambitious attorney general and a business-as-usual federal bureaucracy.

Texas Law School was off-limits to non-whites for most of its 114-year history. But under court orders and federal prodding, the school admitted minorities starting in 1950, eventually establishing an aggressive affirmative action program to attract them.

But the school blew it. As if a law school couldn't find a good lawyer, officials in the school established precisely the kind of racial quota system which had been outlawed by the Supreme Court in 1978.

Unfortunately, it took a 1992 lawsuit by four unsuccessful white applicants to get the error corrected. Texas Law's selection process was redesigned to conform to the Supreme Court's guidelines, which permit

racial diversity to be one factor among many considered in admissions decisions.

The case had a life of its own, however. Last year, two appeals court judges usurped the high court's prerogative and rewrote the law. Rejecting a still-valid and recently restated Supreme Court decision, they ordered the school to end affirmative action.

Now Texas Attorney General Dan Morales, who's widely suspected of having his eye on higher office, has gone the runaway judges one better. He's advised all state colleges and universities to do the same.

Last week the U.S. Department of Education told Texas officials just the opposite: They could lose \$500 million in federal education money unless they maintain affirmative action programs. Cited: A 1992 court ruling requiring continued effort to root out discrimination and make Texas campuses more accessible to minorities.

The need for ongoing efforts is dramatized by a sharp drop-off this year in applications from blacks and Hispanics at all of

Don't force diversity

OPPOSING VIEW Clean up misguided affirmative action. Put race beyond the reach of bureaucrats.

By Terence J. Pell

The action of a mid-level civil rights bureaucrat last week demonstrates that the administration's policy of "mend it, don't end it" actually is more accurately described as massive resistance.

Norma Cantu, the Clinton appointee in charge of the Education Department Office for Civil Rights, threatened to cut off federal aid to the state of Texas unless it continues racial preference programs struck down last year by a U.S. Court of Appeals in the case of *Hopwood vs. Texas*.

Cantu shows how easily the idea of mending affirmative action can get turned on its head. Instead of deferring to the courts' authority to weed out unconstitutional racial preference programs, Cantu fights to preserve all forms of affirmative action, no matter how illegal.

While Cantu's defiance is singular in its audacity, it is in keeping with the administration's general failure to "mend" affirmative action. Despite Clinton's promise to "review" all racial preferences, almost no federal preference has been changed. Even programs that impose a 100% race quota have escaped unscathed.

If Cantu was serious about mending affirmative action, she would carry out her sworn duty to obey judicial decisions, not evade them. The Supreme Court permitted programs that are closely tailored to remedy identifiable actions of previous discrimination. However, few existing affirmative action programs fit this description.

Instead, they purport to address "societal" discrimination and to promote "diversity" — goals so vague it's impossible to tell when or if they ever will be met. Such programs are indistinguishable from permanent set-asides — "spoils" designed only to mollify angry constituents. This is the sort of affirmative action program the *Hopwood* court struck down in Texas and that Cantu now wishes to resurrect through bureaucratic intimidation.

"Mend it, don't end it" has become the slogan of the '90s that "Separate but equal" was to the 1950s. Just as proponents of racial segregation then tried to evade Supreme Court decisions they didn't like, proponents of affirmative action are now engaged in a similar, futile effort to turn back the clock. It is high time to make a clean sweep and to put race beyond the reach of the state — once and for all.

Terence J. Pell is a lawyer with the Center for Individual Rights, which litigated *Hopwood vs. Texas*, and a former deputy assistant secretary for policy in the Education Department Office for Civil Rights.

Texas' top institutions. The story's the same in California, where politically driven attacks on affirmative action have sent a message that minorities aren't welcome.

In a nation that institutionalized racism for centuries, the relatively recent commitment to equality is far too fragile to abandon all affirmative action. Non-quota pursuit of campus diversity is constitutional. And it's the right thing to do.

'This is not a time for race-baiting'

Lee, Ellis respond to Gramm in college admissions debate

JO ANN ZURIGA
Houston Chronicle

B26A

U.S. Rep. Sheila Jackson Lee and state Sen. Rodney Ellis joined forces Friday to support affirmative action in admission policies at Texas universities.

"This is not a time for race-baiting, but instead a time to look at what is best for our state and our nation," Lee said.

"We should not be dividing ourselves over simple questions. Do we need diversity? Yes. Is diversity legal? Yes," she said at a news conference held at Texas Southern University.

Lee and Ellis' response was the latest in a flurry of events this week surrounding the Hopwood ruling, which found as unconstitutional the University of Texas law school's



'We should not be dividing ourselves over simple questions. Do we need diversity? Yes. Is diversity legal? Yes.'

U.S. Rep. Sheila Jackson Lee

former practice of considering whites and minorities separately.

It started Monday when Norma Cantu, assistant secretary for civil rights in the U.S. Department of Education, sent state Attorney General Dan Morales a letter disagreeing with his position that the Hopwood ruling should apply to all state colleges, not just UT law school.

On Thursday, U.S. Sen. Phil

Gramm, in a letter to Education Secretary Richard Riley, demanded that the education department change its position.

Lee and Ellis on Friday were responding to Gramm's remarks.

They said they conducted the conference at the historically black campus to show how vestiges remain of "separate, but equal" institutions of earlier segregation when

race was not neutral.

Ellis said a coalition of state legislators last month wrote a letter to the Department of Education to determine the amount of funds that are at stake if the "race-neutral" policies in Title VI of the Civil Rights Act of 1964.

The legislators pointed to a statistical analysis prepared by the Higher Education Coordinating Board that found such "race-neutral" policies will result in a 40 percent to 50 percent reduction in minority enrollment at Texas colleges.

"If there is a direct assault of Title VI, there will be a resurrection of the civil rights movement unprecedented," Ellis said.

Title VI of the Civil Rights Act prohibits discrimination by universities who receive federal

BOSTON GLOBE MAR 30 1997 C 6

Education secretary will give keynote at literacy event

U.S. Secretary of Education Richard M. Riley will be the keynote speaker at a symposium on literacy that will feature prominent figures in American education on May 12 at the John F. Kennedy Library in Boston.

"Literacy in America/Making the Grade for Our Children," sponsored by The Boston Globe as part of the newspaper's celebration of its 125th anniversary in 1997, will feature two panel discussions. The first will be a critical look at the issue of literacy and its public policy implications; the second an exchange on what kinds of teaching techniques have worked well and how to construct successful programs.

Gail Harris of Boston's WABU-TV (Ch. 68) will be the moderator of the event on Monday, May 12, from 2:30 p.m. to 5:30 p.m. at the library.

Globe chairman and publisher William O. Taylor expressed the hope that the symposium would be a significant contribution to the cause of literacy.

"We have attracted some of the nation's leading experts on literacy, and we hope to raise the level of discussion on the subject at this symposium," he said.

In addition to the secretary of education, panelists will be:

■ Thomas W. Payzant, superintendent of Boston Public Schools.

■ Carol Raseo, director, America Reads, a national

literacy campaign of the U.S. Department of Education.

■ Lester C. Thurow, professor of management and economics, Massachusetts Institute of Technology.

■ Jeanne S. Chall, professor emerita, Harvard Graduate School of Education.

■ Dr. Rosemina Indrisano, chairman, department of developmental studies and counseling at Boston University.

■ Betsy Nelson, executive director, Boston Partners in Education, an organization that trains volunteers to assist in schools.

■ Dr. Perri Klass, medical director, Reach Out and Read, Boston Medical Center, which supplies young patients with books.

■ Sara Lawrence Lightfoot, professor and author, Harvard Graduate School of Education.

■ Mary Curtis, director, Literacy Center, Father Flanagan's Boys' Town.

The symposium will have a live audience of some 400 at the John F. Kennedy Library, and will reach a national audience through the Massachusetts Corporation for Educational Telecommunications, or MCET. The event will be broadcast live to all schools in Massachusetts, as well as to MCET's membership in 27 other states.

MCET provides daily satellite broadcasts to students and educators.

The Chronicle of Higher Education

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Guarding Diversity Programs From Political and Judicial Attack

By Derrick Bell

The recent jubilation felt by supporters of affirmative action in the wake of a U.S. district judge's order enjoining enforcement of California's anti-affirmative-action initiative, Proposition 209, should not replace the deep concern that followed last year's decision in *Hopwood v. State of Texas*. In *Hopwood*, the United States Court of Appeals for the Fifth Circuit found the state's interest in diversity insufficiently compelling to justify considerations of race in the law-school admissions process. I believe that even while they fight to protect existing affirmative-action programs, advocates must devise new approaches to achieve and maintain diversity in student bodies, faculties, and administrative ranks.

In fact, I believe that we must insulate our diversity programs from political and judicial attack by eliminating racial and gender classifications and giving greater emphasis to characteristics that we know, from our affirmative-action experience, can predict academic success for many who do not have high grades and test scores.

Despite the too-common view that admissions officers drag minority-group students off the streets without regard to qualifications, thereby excluding more-qualified whites, most affirmative-action programs actually follow the advice from testing services not to place undue reliance on test scores. They do review other predictors of academic success. These include, as Leigh Taylor, dean of the Southwestern University School of Law and chairman of the Law School Admissions Council, has put it: "life experience, community service, motivation, character, demonstrated leadership ability, and educational disadvantages overcome."

A diverse student body, which even die-hard opponents of affirmative action concede has value, can be sought through a balancing of social and economic background, geographical location, and consideration of the applicants' interests, viewpoints, and experiences. In short, affirmative action can become officially what it actually is in practice at many schools: a program that brings in students previously excluded by class, as well as by race.

More than two decades ago, I sounded a similar call for revised direction when school-desegregation efforts encountered increasing resistance that was no longer limited to people deeply committed to racially segregated schools. For the most part, my advice was ignored until it was too late for civil-rights advocates to use the waning legal leverage of the 1954 *Brown v. Board of Education of Topeka* decision to gain political support for new strategies giving priority to educational effectiveness, rather than simply assuming that racially balanced schools would achieve that result.

Affirmative-action programs are now caught in a morass of opposition and uncertainty similar to that

engendered by school-desegregation programs. Even discounting the Fifth Circuit panel's obvious distaste for minority-admissions programs, one must wonder, after reviewing the Supreme Court majority's hardly more supportive decisions in recent affirmative-action cases, whether the Fifth Circuit doesn't have an accurate fix on the future of these programs. More than ample evidence exists to suggest a general retreat on civil rights, one that keeps anti-discrimination laws on the books, but leaves them as politically unenforceable as was the Equal Protection Clause of the Fourteenth Amendment during most of the first century of its existence.

Adopted in the post-Civil War years to protect the citizenship rights of blacks, the Equal Protection Clause for almost a century proved to be of far greater value to major financial interests — such as railroads and other corporations — than it was to black citizens. Aided by favorable judicial interpretations that viewed corporations as "persons" covered by the Equal Protection Clause, these entities used the provision to insulate their exploitation of land, labor, and resources from states seeking to rein it in.

Now, in affirmative-action litigation, we again see courts interpreting the Equal Protection Clause to shield white majorities from the modest efforts by Congress and state legislatures to remedy some racial discrimination, discrimination that is continuing and growing more open, more blatant.

What accounts for this cyclical pattern of advancement and loss in black rights? The Derrick Bell Pre-Memorial Principle of Racial Loss and Gain offers one answer. The principle has two parts.

The first is the *racial-loss phenomenon*: Society is always willing to sacrifice the rights of black people to protect important economic or political interests of whites. The classic example is the Framers' decision to ignore the contradiction posed by the Constitution's guaranteeing freedom to all while containing provisions recognizing and protecting slavery, which were accepted to insure the support of slave owners.

The Hayes-Tilden Compromise is another example of this phenomenon. To resolve a serious dispute between the North and South over which candidate had won the Presidential election of 1876, a special commission negotiated a settlement that awarded the Presidency to Rutherford B. Hayes, while returning political control to the South and thus ending Reconstruction. The plan averted a renewal of the Civil War, but sacrificed the newly gained rights of Southern blacks.

Then there is *Plessy v. Ferguson*. The Supreme Court's "separate but equal" ruling is infamous less because it gave segregation the status of Constitutional law than because it sacrificed black rights to gain the support of whites for business-oriented economic policies toward the end of the 19th century — policies that were harming a great many white people. In effect, whites were comforted in their economic distress by government assurance, via Jim Crow laws, that they retained a social status superior to that of blacks.

The second part of my principle is the *racial-gain phenomenon*: The laws — and society — recognize the rights of blacks and other people of color only when such recognition serves some economic or political interest of greater importance to whites than helping members of minority groups. Lincoln's reluctant issuance of the Emancipation Proclamation to help the faltering effort to save the Union is an example of this in action. Similarly, after World War II, when the United States was trying to win the allegiance of mostly non-white, third-world nations, it discovered that practicing Jim Crow at home made it tough to advocate democracy abroad. The *Brown v. Board of Education* decision, by promising to close the gap between the country's ideals and its practices, provided an immediate boost to America's foreign-policy efforts.



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Sadly, then, the presence of affirmative action serves as a smokescreen for the real causes of job anxiety. The growing reliance on automation, the importation of cheap foreign labor, and the deportation of jobs to third-world countries all have worsened Americans' prospects for secure jobs. And yet in the Clinton Administration, only the former Secretary of Labor, Robert Reich, was willing to point an accusatory finger at the nation's largest corporations, whose downsizing tactics are ruining the lives of millions in order to maintain or enhance profit levels. As a result, we see growing numbers of once-employed and now-unemployed or under-employed skilled workers -- white-collar, blue-collar, executive, and professional.

Clinton urged to join admissions debate

senators ask president to take stand to protect rights of minority students applying for college

By Nicola Fov
EXPRESS-NEWS AUSTIN BUREAU

A21

AUSTIN — A group of state senators, led by Sen. Gregory Luna, D-Antonia, is urging President Clinton to protect the rights of minority students by stepping into the debate over the use of racial preferences at Texas state universities.

In a letter dated Thursday, 12 senators asked the president to take a stand against the possible "re-segregation" of state colleges.

Frank Madia, D-San Antonio, and Judith Zaffirni, D-Laredo, were among those to sign the letter.

"We are currently witnessing an unprecedented free fall of minority applicants and admissions in Texas public universities that will take us back to the days of negligible minority participation in publicly funded education," their letter said.

A similar letter was sent to Clinton and signed by members of the House Mexican American Caucus.

In an interview, Luna said he urged Clinton would stand behind

recent comments by assistant Education Secretary Norma Cantu that appeared to suggest Texas universities could lose federal aid if they follow Texas Attorney General Dan Morales' ruling that they must eliminate race and ethnicity as criteria for admissions.

But earlier this week, the Education Department shied away from the position, saying reports had mischaracterized letters from Cantu to state officials.

Education officials indicated to U.S. Sen. Phil Gramm this week

that Texas was not at risk of losing its \$1.8 billion in federal funds.

Meanwhile, Morales continued to take heat over his opinion that a 5th Circuit Court of Appeals ruling that the University of Texas Law School admissions policy discriminates applied to all state colleges.

"I realize that Attorney General Morales has a different opinion," Luna said. "I'm disappointed, and I think he's had bad advice. He's tied himself into a corner."

During testimony this week to the Senate Education Committee,

Morales stood his ground.

He also offered to meet with the U.S. Education Department to work out any disputes that may have resulted from his ruling.

The committee gave approval to a bill that seeks to use academic and socioeconomic factors in university admissions decisions.

Although a few expressed doubts, senators generally were optimistic the bill would allow universities to achieve diversity while not using ethnicity and race as specific criteria for admissions.

Applications by minorities down sharply

State's largest universities see drop in wake of Hopwood case

By LYDIA LUM
Houston Chronicle

Minority applications to some of Texas' largest universities have dropped dramatically this year, and officials are blaming the decline on race-neutral policies in admissions financial aid.

Educators believe that as scholarships are given out in the coming weeks, black and Hispanic applicants may opt for out-of-state schools, which still consider ethnic-

"There's no chance we can go on using successfully in drawing and minorities if things continue this way," said Michael Sharlet, dean of the University of Texas School of Law, where the Hopwood case began.

In that case, the 5th U.S. Circuit Court of Appeals last year found unconstitutional the UT law school's former admissions policy, which had considered whites and minorities separately.

That ruling has been interpreted to mean that race can no longer be considered in admissions and financial aid decisions at public colleges in Texas.

Educators warn that surveys may be skewed because college applicants don't have to disclose their ethnicity. At Texas A&M University, for instance, the number of applicants not disclosing their race has climbed 104 percent. Texas colleges still solicit the information for Department of Education statistics.

But officials still are alarmed by a 48 percent drop in black applicants to the UT law school, Sharlet said. Meanwhile, educators aren't as alarmed at the 15 percent decrease in Hispanic applicants because it is in line with the overall national decline, he said.

Sharlet said that despite intense

recruiting efforts, "obviously, we weren't as effective. Some of our competitors are bad-mouthing us, telling minorities not to come to Texas, because they are not welcome."

"This is definitely a case of blaming the victim," he said.

Not everyone agreed with Sharlet's assessment. Geoff Henley, a UT law school graduate, said the race-neutral policies "mean just one thing, and that's openness."

Speaking to a civil rights advisory group this past weekend in Austin, Henley recounted how law school officials used to separate applicant files based on ethnicity.

"We like the notion of equal opportunity, but equal protection applies to everyone," he said. "That's not a bad thing. That's not a novel thing, either."

Joseph Horn, a UT psychology professor, told the Austin panel that a majority of UT students as well as a majority of Americans echoed Henley's view.

Horn cited several national polls that indicated a majority of the public rejected racial preferences. He also said a 1993 poll of UT students showed that 76 percent believed that minorities should not be given preferential treatment.

Horn called the Hopwood ruling an "important reaffirmation of sound democratic government."

"An aversion to race preferences makes good sense and is good law," he said.

But University of Houston law professor Laura Rothstein, also speaking to the group in Austin, said she already has had a taste of what a classroom is like with fewer minorities.

She said that because only two black students are in her property law class this year, the discussion on housing discrimination was much less fiery than in years when more minorities attended.

"The issue of race didn't come up as it has in the past because there was no one there to bring it up," Rothstein said. "All of the students in my

that loss. Affirmative action doesn't just benefit minorities, it benefits all students."

At the UH Law Center, the number of black applicants dropped by 39 percent this year, said Rothstein, also head of the admissions committee. She said the decline among

Hispanic applicants was 18 percent.

UH still is accepting applications for first-time freshman students. But so far, the interest from blacks and Hispanics has kept pace with that of last year, officials said, crediting the diversity mostly to the fact that more than 65 percent of its students come from Harris County.

But elsewhere, the number of undergraduate minority applicants has fallen.

At UT-Austin, applications from blacks fell 24 percent and from Hispanics by 22 percent. Also, UT officials warned against pinning all of the blame on the Hopwood case publicity, saying that a new essay requirement probably deterred many not-so-serious students.

The total number of UT applicants fell 13 percent, including 14 percent for whites.

Yet Texas A&M President Ray Bowen said any drop for whatever reason could be significant because of the scarcity of minorities on some campuses.

At Texas A&M this year, applications from blacks fell 10 percent and from Hispanics 7 percent. Bowen called the drop in black applicants "especially critical," since blacks now make up only 3 percent of current enrollment.

"There's no question that Hopwood is upsetting people," Bowen said. "People are thinking they shouldn't bother to apply here when Harvard and everyone else is making them better offers."



The Chronicle of Higher Education

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DAILY NEWS

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Number of Minority Students Admitted to U. of Texas Law School Plummets

By KARLA HAWORTH

The number of minority students offered admission to the University of Texas at Austin's law school plummeted this year, university officials said Wednesday. The plunge was particularly marked among black students, who saw their number drop from 65 last year to just 5 this year. Officials blamed the decline on a 1996 court decision that banned affirmative action at the university.

The law school has completed 79 per cent of an expected 1,000 admission offers, said Michael Sharlot, the law school's dean. He said the remaining 21 per cent probably would not change the overall statistics. Mr. Sharlot said he expected the rest of the offers to be made within two weeks.

In 1996, the law school made 1,105 offers of admission. Of those, 841 went to white students, 93 to Asian-American students, 70 to Mexican-American students, 65 to black students, 11 to American-Indian students, and 25 to other minority students, according to the law school.

Out of the 791 offers extended so far this year, 674 are white students, 75 Asian-American students, 18 Mexican-American students, 7 American-Indian students, 5 black students, and 12 other minority students.

"I'm very unhappy," Mr. Sharlot said in an interview Wednesday. "This is a school that for the past decade has produced more Mexican-American and African-American lawyers than any other school in the United States. To go from playing such a significant role in producing leaders of the bench and the bar to being almost kept out of the process is tragic, especially for a state school of law."

Officials attributed the decline in offers of admission to minority



students to last year's ruling by the U.S. Court of Appeals for the Fifth Circuit in *Hopwood v. Texas*. In that case, four white applicants sued the University of Texas law school, saying that they had been denied admission even though they had achieved higher grade-point averages and Law School Admission Test scores than had minority applicants who had been accepted.

The appeals court subsequently barred the law school from considering race in admissions. After the *Hopwood* ruling, the University of Texas at Austin, like other public colleges in the state, revised its admissions policies, for both undergraduate and law-school applicants. The university now gives more consideration to students' essays, personal achievements, and special circumstances they faced in high school.

Last week, University of Texas officials also attributed to the *Hopwood* decision a big drop in the number of undergraduate applications from minority students. The officials reported a 13-per-cent drop in all applications, but applications from black students were down 24 per cent and those from Hispanic students fell 22 per cent.

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Class Action: Need, as a Substitute For Race Preferences, Is Just as Hot an Issue

Texas Warmed to the Idea, Then Projections Showed Minorities Falling Behind --Convolutions at Lowell High

By G. Pascal Zachary

The fight over class may not be a class act.

When a federal court last year stopped Texas from admitting students to its universities on the basis of race, the state hardly flinched. It figured minority enrollments could still be maintained at current levels by switching to preferences for poor or socially disadvantaged students.

But some now worry this won't be the case. Recently, a panel of sociologists, advising Texas Education Commissioner Kenneth Ashworth, predicted that substituting income or a mix of socioeconomic factors for race would cut the number of blacks and Hispanics admitted to state universities by half.

A class-based system would draw on a pool of blacks and Hispanics roughly equal to the current number of applicants. But half of the pool would be considered to be no more disadvantaged than whites in the same situation — and thus would likely lose spots to whites who traditionally have better grades and test scores.

The finding has touched off a furor among those already upset by the growing legal assault on traditional affirmative-action programs, and it is fueling attempts by some Texas legislators to either circumvent or blunt class-based affirmative action. In the state House, one pending bill would require admission of the top 10% of each high school, assuring the entry of students at largely black and Hispanic schools regardless of their national test scores. The Senate is pondering a radical proposal that would set aside fully 40% of university admissions for poor or disadvantaged students, but would widen the definition of

such disadvantage so much that many middle-class minorities would still have a chance to qualify.

State Sen. Royce West, an African-American Democrat from Dallas, defends the tactic, saying he only supports class-based preferences as a means of increasing the chances that more minorities will be enrolled. "I won't divide middle-class and lower-class minorities," he says. "I won't do that."

Not everybody in the Lone Star State feels that way, of course. "It is inappropriate that a wealthy minority child be given a preference over an impoverished Anglo," says Texas State Sen. Teal Bivins, a white Amarillo Republican who believes a class-preference system is workable.

Clearly, the idea of substituting class for race in education is a hot one. Most civil-rights advocates hate the concept, but the courts are increasingly pushing for alternatives to sweeping race-based programs. Earlier this week, in fact, a three-judge panel on San Francisco's Ninth Circuit Court of Appeals upheld California's ban, enacted by voters last year, on racial and gender preferences in state hiring and school-admissions policies.

A vanguard of educators, fearing legal challenges, is already moving toward class criteria. Last year, an elite public high school in San Francisco adopted needs-based criteria for admitting a fifth of its freshmen; the University of Virginia has opened to all low-income students a scholarship previously only available to blacks; and Colorado asked its biggest university to award certain scholarships on the basis of socioeconomic background, not race.

Substituting class for race is

appealing to some people because it preserves the most desirable feature of affirmative action — improving opportunities for the needy — and removes the most controversial aspect — apportioning benefits according to the size of racial and ethnic groups. Last October, presidential candidate Robert Dole endorsed the idea. House Speaker Newt Gingrich has spoken favorably about it. Even some Democrats, such as Sen. Joseph Lieberman of Connecticut, are intrigued.

Proponents insist that class-based preferences offer a way out of the political quagmire of affirmative action, and they also point to the need to more directly address a widening education gap between more-affluent students, of any race, and poorer ones. According to a study of government and university data by Thomas Mortenson, an educational analyst in Iowa City, Iowa, a youth whose family income was in the top quartile was four times more likely in 1979 to have earned a bachelor's degree than one whose family income was in the bottom quartile. By 1994, the wealthier youth was 10 times more likely to gain a degree than the poor one.

"Switching to class from race would be a grand bargain that satisfies both liberals and conservatives," says Richard Kahlenberg, a fellow at the Center for National Policy and author of "The Remedy: Class, Race and Affirmative Action."

But as the Texas episode shows, most members of minority groups and most liberals are strongly opposed to any system that markedly decreases preferences for blacks and Hispanics, even if they are middle class.

More...

They feel the effects of discrimination are still so pervasive and myriad that even well-off members of minorities need special consideration.

So controversial is the subject in liberal communities that some who support the notion are reluctant to say so. "It's a great idea because it would extend opportunity to those who need it," says one liberal member of Congress. "But I won't even mention it in public because the civil-rights lobby — my friends and supporters — would clobber me."

Practical problems also loom. A massive infusion of low-income students into public universities would require "a costly increase in financial aid," says Thomas Kane, a Harvard University economist who has studied the question. In Texas alone, aid levels will have to double or even triple to absorb more low-income students. Moreover, few children who are truly impoverished, in a rural backwater or a devastated inner city, have the preparation needed to survive at an elite college or high school.

"If we use class, we can admit all the minority students we want, but my fear is that we will end up admitting the lowest-income, least-educated, least-prepared minority students," says Mr. Ashworth, the Texas education commissioner. This could worsen a "negative stereotype, that the minorities we have aren't ready to compete," he adds.

Nonetheless, schools that wish to maintain diverse enrollments may have no alternative but to adopt class-based admissions. The federal courts, led by the U.S. Supreme Court, seem bent on permitting racial preferences only to remedy proven discrimination. The scramble in Texas came after a federal appeals court ordered the University of Texas Law School to stop taking the race of its applicants into account. The University of Colorado this year stopped awarding black-only financial aid, fearing a legal challenge.

"There are ways to reach disadvantaged students without using race as a factor," says Gale Norton, Colorado's attorney general.

But finding those ways takes work — and a willingness to stick with the race-neutral rules in the face of entrenched opponents who may resort to subterfuge. Indeed, the experience of San Francisco's Lowell High School illustrates just how hard it is for government to maintain its resolve even when it publicly adopts class preferences.

Unlike other public schools in the city, Lowell admits students competitively, based on a combination of test scores and grades. A 1983 court order, however, mandated that the district achieve better racial balance in its schools. One effect was to limit Chinese-American students, who made up the largest group of high-scoring applicants, to roughly 40% of the class. This meant that hundreds of Chinese applicants with higher scores than whites and other Asians were denied entry. Many black and Hispanics, meanwhile, were admitted with lower scores than either whites or Asians.

In response to a lawsuit, the school board last year established a single cutoff score for all races, but set aside 20% of the freshman class for those with lower scores. The criteria for selection in the set-aside group was supposed to be a mix of socioeconomic factors that included living in public housing, income level and "extenuating" circumstances, such as a violent trauma. To be considered for admissions under this value-added program, an applicant still had to post a minimum test score.

The plan, initially at least, defused the controversial test-score issue which had upset Chinese-Americans. Some blacks and Hispanics also embraced it, under a theory that it would help ease what some saw as the "stigma" attached to such students who had been admitted with lower test scores.

Monique Woodford, an African-American who was admitted to Lowell without the aid of affirmative action, ran into the stigma as a sophomore. She recalls a Chinese-American classmate telling her, "People don't expect you to do any good. You're only here to fill a quota." The new system would be

less likely to be viewed as a free ride for blacks, Ms. Woodford, now a senior, thought.

To select its "value-added" students, an admissions committee, composed of parents, students, teachers and administrators, devised a detailed numerical formula. Four points were given for poverty and another four points for social disadvantage, out of a maximum of 13 points. For example, a student could gain two points if family income fell below \$18,600 (for a family of four), another two points for living in public housing or qualifying for a free school lunch.

The new process resulted in about 55 disadvantaged white and Asian students winning admission to Lowell, virtually none of whom would have been admitted under the old formula. Lilian Meng, a Chinese-American, was accepted a year ago despite having a score that would have disqualified her in the past. The daughter of Chinese immigrants who don't speak English, Ms. Meng speaks English impeccably. When she received her acceptance letter, "I was so surprised I screamed at the top of my lungs."

But the school district was purposely vague about how black and Hispanic students would be treated under the set-aside program. In a motion adopted by the school board, the district was given authority to give "special consideration" to minority students. In interviews, district officials now concede that, in fact, all 136 black and Hispanic applicants who were admitted under the set-asides were exempted from socioeconomic screening. This group accounted for 78% of all blacks and Hispanics admitted last year.

"They never went through the process," confirms Marsha Cohen, who chairs Lowell's admissions committee. She says the district told her that "in order to have enough" black and Hispanic students, "it made no sense to review their files."

That decision smacks of hypocrisy to some. "The new system is a facade," says Amy Chang, who helped Chinese-Americans mount a lawsuit against the earlier admission process. "Whatever criteria they use

More...

whether it's socioeconomic or not — should be race-blind."

School officials defend the decision, saying the new program didn't restrict their authority to admit students on the basis of race alone. Steve Philips, a schoolboard member and an African-American, says flatly that "the point is not to weed out middle-class blacks." (Of Lowell's 2,700 students, 10.6% are Hispanic and 4.7% are black, significantly below the percentages of the city's school-age population).

This month, Lowell once again reviewed applicants for the fall. This time, the admissions committee scored black and Hispanic students for socioeconomic factors, but the data — relevant for all other students in the set-aside program — were ignored. Black and Hispanic students defend the practice, saying they feel isolated even with the additional numbers from racial preferences. "We still need a lot more of 'us' around," says Allier Zelaya, a senior whose parents hail from Nicaragua.

But Lowell's experience underscores the suspicion of some that class-based preferences might be used simply as a cover for the continuation of race-preferences in admissions. "There's a lot of mendacity going on," asserts Mr. Kahlenberg, an advocate of the class-based approach.

In Texas, for instance, lawmakers openly talk about trying to craft an admissions formula that will "zero out" the effect of the legal ban on race preferences. In order to do so, however, they must define socioeconomic disadvantage so broadly that even many middle-class blacks and Hispanics may safely fall under the rubric and thus receive an admissions boost. Criteria proposed in the pending Senate bill include "whether the applicant is bilingual," attended a "low-performing" high school, or is "a resident of a geographic region of the state in which recognized socioeconomic indicators" are below average.

At the University of Colorado, officials are trying to blunt the effect of the shift away from explicit race preferences by adding money to a pool of funds for which black candidates must now compete with

all other groups. The one-third increase is designed to leave black recipients with the same amount of scholarships, says Jerry Sullivan, director of financial aid.

Not all of these programs are trying to evade the impact on racial minorities. The University of Virginia is quietly biting the bullet: of 53 former "black-only" scholarships given out last fall, nine went to whites, three to Asians and one to a Hispanic. "In the climate of today we have to broaden the recipients, and be more sensitive to other low-income and socially disadvantaged populations," says John Blackburn, Virginia's dean of admissions.

But, overall, doubts about the experiments in class-based preferences abound. The regents of California's university system, for example, have ordered the campuses to stop using racial criteria next year. But Ward Connerly, a regent and well-known opponent of race-based affirmative action, doesn't trust the admissions officials. He wants the names of applying students removed from applications so the admissions staff won't be able to detect Hispanic surnames.

Rep. Charles Canady, the sponsor of federal legislation to ban racial preferences, likes class preferences but fears that they will be used by affirmative-action advocates to simply extend the life of racial ones. And that, the Florida Republican says, "would be a mistake."

Now for the Real School Work

BB approval clears the way for addressing problems of learning

The painters started work at Vine Street Elementary School near Hollywood Wednesday, just hours after 71% of the voters surprisingly approved a \$2.4-billion repair and construction bond measure for the Los Angeles Unified School District. Proposition BB was the first L.A. school bond measure to overcome the Proposition 13 requirement of approval by two-thirds of those voting, a hurdle that until Tuesday had seemed insurmountable.

Mayor Richard Riordan's reelection bid had been expected to draw a low turnout of mostly conservative voters who tend to distrust the beleaguered school district and traditionally oppose any property tax hike. But Riordan, a longtime advocate of public education who often backs his views with his personal checkbook, actively urged support of the bond measure. The Los Angeles school board also reduced skepticism by approving a citizens oversight committee to help ensure that the bond money would be efficiently spent as the voters intended.

Latino voters helped propel Proposition BB to victory, going to the polls at more than double their rate of participation in the last mayoral election and eclipsing the percentage of black voters for the first time in the city's history. Many first-time Latino voters were motivated, according to exit polling for Spanish-language media, by last year's federal welfare reform, which cut off government assistance to many legal immigrants, and by the 1984 statewide voter approval of Proposition 137, which would ban public services, including education, to illegal immigrants. (It is now stalled in the courts). Latino voters are a natural constituency for the public schools here because their children make up nearly 70% of LAUSD enrollment.

In the San Fernando Valley, there was one divisive, last-ditch effort to defeat the proposition. A group led by Assemblyman Tom McClintock (R-Northridge) cynically warned that the bond measure would discourage efforts to break up the massive school district. More voters were apparently persuaded by another Valley political leader, former Assemblyman Richard Katz, who tirelessly helped direct the political campaign that supported the measure.

Proposition BB funds will cost the average homeowner roughly \$66 per year, allowing the district to pay for pressing physical needs such as wiring every classroom for computers, providing air-conditioning at the hottest schools, performing maintenance work that has been put off for years and building classrooms to meet rising enrollments.

When a new school superintendent is chosen soon, he or she can concentrate more on the district's 670,000 students and less on how to fix leaking roofs, broken toilets, falling ceiling tiles and cracked asphalt on deteriorating campuses.

The retiring superintendent, Sid Thompson, says he used to lie awake at night trying to figure out how to make the numbers add up. Now that Proposition BB has passed, the real work of educational repair also can begin.

AMERICAN STATESMAN (AUSTIN, TX)

APR 10 1987

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Uphold affirmative action

The courts have been busily dismantling the progress toward educational integration. We have gone backward so fast that it is almost as though the 1954 Brown vs. Board of Education ruling had just happened. Do we have to wait for the reappearance of separate "white" and "colored" drinking fountains before we figure out we're going in the wrong direction?

Harvard Graduate School of Education researchers have found that the nation's schools are becoming resegregated at a clip unequalled since Brown vs. Board. The New York Times reported this week. As the federal courts have made it easier to abandon desegregation, integration has deteriorated in the public schools. Aiding the retrograde movement is the probability that many parents don't see integration as an educational goal, some analysts told the Times.

But integration of the schools and improvement of educational opportunity are inseparable. Segregation is bad for American education and bad for America.

This society needs to reaffirm affirmative action as a remedy for the lingering effects of past practices and to help ensure that America is one nation, not several.

Efforts are needed at every level to put our national feet back on the path of progress. If there were no other indicator of how quickly progress can be reversed, this one would suffice: Last year the University of Texas law school offered admission to 88 Asian Americans, 70 Mexican Americans, 11 Native Americans, 66 African Americans and 26 other minorities. This year, the school has made nearly 80 percent of its admission offers for the fall, and offers

went to only 78 Asian Americans, 18 Mexican Americans, seven Native Americans, five African Americans and 12 other minorities.

That precipitous plunge is primarily due to one appeals court ruling. In 1986, the 5th U.S. Circuit Court of Appeals held that a separate admissions committee to consider black and Mexican American applicants was discriminatory. Texas Attorney General Dan Morales followed it up with a disputed interpretation of the ruling that has prohibited Texas colleges and universities generally from using race as a factor in admissions and financial aid policies.

Certainly UT and other institutions should explore every creative way to give consideration to minorities without violating the law, including giving weight to those who have financial need, or are the first in their family to go to college, or who have some special ability.

But more than that, the Legislature should challenge the court ruling by enacting laws that attempt to overcome the

The Legislature should challenge the court ruling by enacting laws that attempt to overcome the high bar the court has raised to affirmative action.

high bar the court has raised to affirmative action. Morales himself has endorsed a measure by state Rep. Irma Rangel, D-Kingsville, that would allow a student's race to be considered under certain circumstances. It would allow the Legislature to declare that past acts of discrimination have a residual effect today. Colleges and universities could then consider race or ethnicity in admissions for five years.

Go for it. If the courts turn it back, pass another bill. Meantime, Congress and the president should work together on laws that will overcome the courts' determined attempt to turn back the clock.

The Chronicle of Higher Education

Academe Today

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U.S. and Texas Officials Clash Over Affirmative-Action Ruling

By Douglas Lederman

Almost to a person, college officials in Texas hope that Norma V. Cantu is right. But most of them believe she's wrong.

In a series of letters to state officials in Texas last month, Ms. Cantu, the Assistant Secretary of Education for civil rights, contended that a year-old federal appeals-court ruling barring the University of Texas law school from using race as a factor in admissions did not prohibit other colleges in the state from doing so.

That conclusion clashes with the view of many legal observers and — most important to the college officials — the formal guidance of the Texas Attorney General, Dan Morales, who has declared that the ruling of the U.S. Court of Appeals for the Fifth Circuit in *Hopwood v. State of Texas* prevents all public colleges in the state from taking race into account in decisions about admissions and financial aid.

Ms. Cantu also suggested in her letters that the federal government could cut off aid to Texas colleges if an impending desegregation review by the Education Department's Office for Civil Rights finds vestiges of past discrimination in the Texas higher-education system and if the state — citing the *Hopwood* decision — refuses to use racial preferences to correct it.

"I hope her opinion has the effect of softening the stance within the Attorney General's office," said Ray M. Bowen, president of Texas A&M University. But Mr. Morales, he said, "sets the boundaries for what we can do legally. He's not just another person out there with an opinion. Ms. Cantu's opinion is important, but she doesn't have the power of policy for us on this matter right now."

Advocates for affirmative action, many of whom have complained that Attorney General Morales acted too swiftly and broadly in banning the use of affirmative action in admissions and financial-aid decisions, welcomed Ms. Cantu's advice.

Mr. Morales himself sent a letter to Education Secretary Richard W. Riley last week challenging Ms. Cantu's interpretation as "legally flawed." He offered to "personally brief you — point by point — on the Fifth Circuit's decision and to explain why your Department's interpretation of the *Hopwood* ruling is in error."

Senator Phil Gramm, a Texas Republican, went further in his own sharply worded letter to Mr. Riley. He urged the Secretary to "retract immediately" Ms. Cantu's position, which he said had put the state's colleges in a "withering legal crossfire" by suggesting that aid could be cut off. "Which of two feuding branches of our government are they to follow, risking punitive action from the other? In her zeal to pursue a political agenda, will Ms. Cantu be available to pay the fines and serve the sentence for contempt if she is successful in forcing Texas universities to flout the federal court's ruling?"

In an interview, Ms. Cantu said she was "in no way asking any Texas university to ignore the Fifth Circuit." But her letter does say that Texas colleges may still use racial preferences to promote diversity among their students, as permitted by the U.S. Supreme Court's 1978 decision in *Regents of the University of California v. Bakke*, which the Fifth Circuit judges ostensibly overruled.

Ms. Cantu cited a brief that the U.S. Justice Department filed in January opposing an affirmative-action lawsuit filed by a white student who had been rejected by the University of Texas College of Education. In it, the Justice Department argued that the Fifth Circuit panel did not need to consider the validity of the *Bakke* ruling to decide the *Hopwood* case. The court therefore exceeded its authority in declaring that *Bakke* no longer is the law in the Fifth Circuit, Ms. Cantu and lawyers for the Justice Department contended, and so colleges can continue to abide by the 1978 decision.

Some legal experts said Ms. Cantu's position was reasonable. "It's a very aggressive position that you'd take in trying to change the decision or narrow it, but it's not irrational," said Harry Reasoner, a Houston lawyer who helped represent the University of Texas in the *Hopwood* case.

Most legal observers interviewed last week said Ms. Cantu's legal analysis was off base. "When a circuit court decides a legal issue, it's the law of the circuit, and every district court, every other panel of the Fifth Circuit, is bound by that," said Gabriel J. Chin, an assistant professor of law at Western New England College law school.

Other scholars said lawyers cannot pick and choose among court decisions to decide which ones to follow. "If the Fifth Circuit had told School Board A that it could not consider race in deciding which students should attend which school, Norma Cantu would be furious if School Board B said, 'We're not the named party in that suit, so we don't have to desegregate,'" said M. Michael Sharlot, dean of the University of Texas law school.

Even if Ms. Cantu is correct from a purely philosophical standpoint, Mr. Chin and others said, colleges in Texas would be mistaken to follow her advice, given the Attorney General's conflicting guidance and the Fifth Circuit's threat of legal damages for institutions or individuals that disregard its ban on racial preferences. "Texas is not going to say, 'We're told we might face personal, unlimited liability, but, what the heck, let's disobey because Norma Cantu says we can,'" said Mr. Chin.

Most troubling to some legal experts was the suggestion in Ms. Cantu's letters that Texas colleges risk losing federal funds if they abide by *Hopwood*. In a letter responding to questions from state legislators, she wrote that if the government were to find that Texas colleges were still discriminating against minority students, "an institution or higher-education system that failed to take appropriate remedial measures" could lose all federal aid.

While the *Hopwood* decision leaves open the possibility that colleges could use affirmative action to eliminate vestiges of discrimination, it sets strict limits on their doing so. So Ms. Cantu could be setting up a situation, legal observers say, in which the federal government orders a Texas college to use race-based preferences to end discrimination in a way that the *Hopwood* court does not permit.

"I really wonder about the appropriateness of the Department of Education imposing a financial penalty on a school" for obeying a federal court order, said Deborah C. Malamud, an assistant professor of law at the University of Michigan.

She and others also said it was possible that Ms. Cantu had invoked the idea of a cutoff of federal funds -- which most consider unlikely -- precisely to invite a legal challenge by Texas that might get the issues in *Hopwood* back before the federal courts. Texas, they said, could seek a court order giving it relief from even the threat of a cutoff, forcing a court to decide whether the Fifth Circuit's ruling barred Texas colleges from using racial preferences.

A spokesman for the Education Department, Rick Miller, said the agency had no plans for any cutoff of funds to Texas colleges. "If one was perceived, it certainly wasn't intended," he said. He would not comment on any possible intention on Ms. Cantu's part to force a fight in the courts.

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The Chronicle of Higher Education

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Related document:

The full text of a statement by the U.S. Education Department finding that various scholarships offered by Florida Atlantic University for minority students do not violate federal anti-bias laws.

Florida Atlantic U. Alters Race-Based Aid at Urging of U.S.

By Douglas Lederman

Florida Atlantic University has altered several scholarship programs that it had reserved exclusively for minority students. The scholarships will now be available to students of all races — a change made at the urging of the U.S. Education Department.

The change was described in a letter from the department's Office for Civil Rights outlining its agreement with the university. The letter was released last week by the Washington Legal Foundation, a non-profit public-interest center that had complained to the department in 1990 about a scholarship program at Florida Atlantic that was reserved exclusively for black students.

The foundation argued that the Martin Luther King Scholarship, which the university had created to increase the representation of black students, unconstitutionally discriminated against whites. The complaint prompted a review of minority scholarships by the civil-rights office in the Bush Administration. In December 1990, the office declared all race-exclusive scholarships to be illegal. The Clinton Administration reversed that stance in 1994.

During its review of the King scholarship, the Education Department discovered three other scholarship programs at Florida Atlantic that had been set aside for non-white students. Two were limited to black, Hispanic, Asian, and American Indian students and the third to black South Africans.

In the letter to the Washington Legal Foundation, the civil-rights office said it had told Florida Atlantic officials that they could "strengthen the legal support" for the scholarship programs by using race as one factor in awarding them, rather than as a requirement for eligibility. The Clinton Administration's 1994 policy on race-based scholarships permits a college to limit scholarships to members of one race, but only if it does so in a narrowly tailored way that fosters diversity and does not restrict access to financial aid for other students.

A spokeswoman for Florida Atlantic, Lynn Laurenti, said that in deciding to alter the programs last fall, the university had agreed to "give this method of increasing our minority enrollment a fair try."

She added: "We believe that using race as a weighted factor will still permit us to build our minority population."

Under terms of the agreement, Florida Atlantic will open the King scholarship to all students, who will be assessed based on their financial need, grade-point average, record of community service, and race. A program for minority engineers will also be opened to all students. Another program aimed at talented minority students will be opened to all students from disadvantaged backgrounds, and the scholarship for black South Africans will be available to South African students of all races.

Richard A. Samp, a lawyer with the Washington Legal Foundation, said he wondered whether Florida Atlantic's change in policy would actually result in a change in practice.

"They changed the program in theory, but we'll have to see whether there is any change in who ends up getting the scholarships," he said. Florida Atlantic is just beginning to assess the first group of students who will be considered for the scholarships under the new criteria.

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NOTE BOOK

New Mexico Urged to End Separate Minority-Student Offices

If a group of conservative scholars gets its way, minority students at the University of New Mexico will have to go through college without separate student-services offices for American Indian, black, and Hispanic students.

The New Mexico Association of Scholars, which is affiliated with the National Association of Scholars, says such services amount to university-sponsored segregation and create a "balkanized" campus. The association asked the university's Board of Regents to abolish the offices. The board has not responded.

"The university shouldn't divide its people up by ethnicity," says Dick Tomasson, chairman of the New Mexico group and a former sociology professor at the university.

University administrators say the offices are justified as retention tools for minority students, many of whom are the first in their families to attend college. Orcilia Zuniga Forbes, vice-president for institutional advancement, says these students and their families are "not familiar" with the ways in which a large university functions and need help in understanding financial aid and course listings.

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AFFIRMATIVE ACTION LIMITS LIKELY AFTER COURT RULING

Schools and colleges that were already scaling back affirmative action programs may be forced to limit them even further, in light of a federal appeals court ruling this week.

From student aid to high school outreach, many observers believe schools must continue to shift their emphasis from race-based programs to efforts that target a larger segment of "disadvantaged" students.

The U.S. Ninth Circuit Court of Appeals on Tuesday upheld California's Proposition 209, which outlaws affirmative action in public college admissions and state hiring (ED, April 8). The decision is expected to spur similar initiatives in up to a dozen other states.

Supporters of race and gender preferences are discouraged by a nationwide erosion of diversity in student enrollment at schools and colleges, while foes say affirmative action is all but dead.

"Racial and gender preferences are on their way out," said Jennifer Nelson, executive director of the American Civil Rights Institute (ACRI) in Sacramento, Calif. ACRI founder Ward Connerly, a regent at the University of California, spearheaded the state's constitutional amendment outlawing affirmative action.

Down But Not Out

But Reginald Wilson, senior scholar for the American Council on Education, says there is still room for affirmative action in education.

"The announcement of its death is premature," Wilson said.

"But certainly it does not bode well. [Affirmative action] is being narrowly defined and will be harder to implement."

Wilson pointed to the scholarships only for black students at the University of Maryland, which the U.S. Fourth Circuit Court of Appeals rejected in *Podberesky v. Kirwan* (38 F.3d 147) because the school did not link recent racial problems to past segregation (ED, Oct. 31, 1994).

After the U.S. Supreme Court declined to review the case, the university opened the scholarships to all

students.

Wilson said the result has been that about half of the free tuition now goes to black students.

Such scholarships won't disappear, Wilson said, but schools "may say, 'We'll give them to disadvantaged students instead.' Other states will do the same thing."

He said that's a setback for black students. "It will narrow down the number of minorities that will have the opportunity to go to these fine schools."

Complaint Brought Changes

A conservative group that challenged Maryland's minority scholarships, the Washington Legal Foundation, also prompted the Education Department to investigate minority student aid at a Florida university in a case that ED settled recently.

Florida Atlantic University's Martin Luther King Scholarship was restricted to black applicants since 1984, but the school recently changed its criteria so that race is only one factor in deciding who gets the aid.

ED's Office for Civil Rights said the race-based scholarship was "legally supportable," but OCR advised the school that using race as a "plus factor," instead of making race the sole eligibility criterion, could "strengthen the legal support" for the program.

The university's new criteria for the scholarship include financial need, grade point average and community service.

OCR says the new policy complies with ED's five-point guidance on race-targeted financial aid, specifically a section that says schools may use student aid to promote diversity as long as the program is "narrowly tailored" (ED, Feb. 24, 1994):

Changing Climate

But that policy is in doubt elsewhere. At the University of Texas, officials are blaming a 23 percent drop in minority applications partly on a 1996 federal court ruling that struck down a university law school admissions policy that considered race as a factor.

The U.S. Fifth Circuit Court of Appeals ruled in *Hopwood v. Texas* (95-1773) that diversity doesn't justify using race as an admissions factor (ED, March 21, 1996).

Norma Cantu, ED's assistant secretary for civil rights, has said colleges may still consider race and ethnicity in admissions, student aid and dropout prevention to promote diversity (ED, March 27). But Texas Attorney General Dan Morales says state colleges can consider those factors only if bias is still present and the remedies are "narrowly tailored."

The Supreme Court declined to review *Hopwood* because the law school already had abandoned the policy, although two justices expressed an interest in hearing a case involving an active issue (ED, July 2, 1996).

The justices might grant themselves that opportunity next year in *Board of Education of Piscataway v. Taxman* (96-679), in which a white teacher is challenging a New Jersey school board's decision to fire her in favor of a black teacher with the same seniority and qualifications (ED, Jan. 22).

The High Court has asked the Clinton administration for its opinion in the case, but the justices have not yet decided whether to grant a review.

Even if the justices accept the case, however, arguments wouldn't take place until the Court's 1997-98 term.

Helping Hand Retracted

Absent any more guidance from the Court, Nelson said the national trend to curtail affirmative action also will eliminate outreach programs targeted only at minorities.

She said about 30 percent of the University of California's outreach programs in high schools are aimed only at minorities.

Isabelle Garcia, a lobbyist for the National Education Association, said students and educators still need programs to overcome barriers. "Affirmative action is still as important in education today as it was yesterday," she said.

—Dave Boyer

NATIONAL

Associated Press

04-15 1:05a

Riley sees federal education funds at work in Vermont

With AP Photo
By AARON NATHANS
Associated Press Writer

SOUTH BURLINGTON, Vt. (AP) - U.S. Education Secretary Richard Riley pushed for higher standards at an education conference in South Burlington. "If we as a nation and the state of Vermont want to increase the educational capacity of young people, we have to understand the meaning of standards," said Riley, who was in Vermont Monday to check up on how the state was using federal education funds.

Riley was at a daylong education and work force development conference attended by educators from across Vermont.

Goals 2000, a federal program designed to improve student academic achievement, was signed into law three years ago. Vermont is one of nine states that are allowed to waive program requirements under certain circumstances and put the money where it sees fit.

Several Vermont politicians were at the conference, vocal among them Sen.

James Jeffords, chairman of the Senate Labor and Human Resources Committee.

Some point to Jeffords' committee as an important step in endorsing Riley's proposed funding for education.

It is estimated that Vermont will have \$1.6 million to work with this year in Goals 2000 money, up from \$1.2 million last year.

Riley met with representatives of three Vermont schools to hear firsthand how their programs were working.

Montpelier High School representatives explained to Riley their internship program, which has University of Vermont students co-teach the class with the teacher as mentor.

"We consider our interns co-professionals instead of students," said Ed Pelkey, English teacher at Montpelier High School.

Peacham's elementary school explained its "reading recovery" program that helps students catch up in reading classes, as well as a student community service program.

The Goals 2000 money has allowed Peacham to also have teachers make a

home visit for each student at least once a year.

And the Winooski School District uses Goals 2000 money to fund such programs as community involvement in strategic planning and establishing learning standards.

Robert Pequignot, principal of the John F. Kennedy Elementary School in Winooski, said the Goals 2000 funds are important to activate the state's resources.

"We certainly have a great number of resources and training in the state, if you have money," Pequignot said.

Jeffords spoke about the challenges ahead in education, saying the U.S. was lagging behind countries like Japan, Singapore and Germany.

"We have a real education crisis in this country, and we haven't made much progress toward solving it," said Jeffords.

Riley said math and science education could use some improvement, but gave U.S. students high marks in reading.

"As I move around the country, there's a real change taking place," Riley said. "The American people are getting very serious about education." ■

The New York Times

April 15, 1997

In Shift, U.S. Tells Texas It Can't Ignore Court Ruling Barring Bias in Collage Admissions

By PETER APPLEBOME

A month after warning Texas that it could lose federal financing if it ended affirmative-action programs in its university system, the Department of Education has reversed itself and now says that Texas and two neighboring states must comply with a year-old federal court decision banning the use of race as a factor in admissions and scholarships.

The change of heart came after Texas

education officials found themselves caught between conflicting Education Department and federal court directives, and after Texas political representatives in Washington had reacted furiously to what they saw as an Education Department directive to ignore a federal court order banning affirmative action. Separately, Walter Dellinger, the acting solicitor general of the United States, wrote an unusual retort to the Education Department, saying the appeals court

decision banning affirmative action was the law in Texas.

The Education Department's reversal also comes at a time when there are increasing indications that efforts to roll back affirmative action could produce a drop in minority enrollment at prestigious universities and professional schools.

At the University of Texas Law School, for instance, of the 791 students admitted thus far for the fall 1997 class.

about 80 percent of the class, just 5 were black and 18 were Mexican-American. Last year 65 blacks and 70 Mexican-Americans were admitted. Undergraduate acceptances at the university, the state's most prestigious public university, fell from 421 blacks and 1,568 Hispanic applicants in 1996 to 314 blacks and 1,333 Hispanic applicants this year.

The change in the Education Department's position on affirmative action in the Texas university system is being viewed as an embarrassment for the department and a setback for critics of the 1996 Hopwood vs. Texas ruling in which the 5th U.S. Circuit Court of Appeals said that Texas and the two other states in its jurisdiction, Louisiana and Mississippi, could not use race as a factor in admissions and scholarships.

The Clinton administration has been a consistent supporter of affirmative-action policies. Officials in both the Education and Justice Departments say that they believe the Hopwood case was wrongly decided, but that for now it is the law in the 5th Circuit.

The mixed signals in Texas reflect the uncertainty nationally about the future of affirmative action. Many experts say the mixed signals make it increasingly important for the Supreme Court to clarify its views on when and in what forms affirmative action is permissible.

Michael Sharlot, dean of the University of Texas Law School, said, "It's enormously important, not just in the selfish view of Texas, which is just being transformed by following the Hopwood decision, but in terms of how important the question is for the whole

country."

The current controversy began with a March 18 letter to Texas legislators from Norma Cantu, assistant secretary of education for civil rights and a former regional director of the Mexican-American Legal Defense Fund.

Earlier, the Texas attorney general, Dan Morales, had delivered a broad opinion that said the Hopwood decision banned any use of race in admissions and scholarships in the 5th Circuit. The Hopwood ruling said that the Supreme Court's 1978 Bakke decision, which allowed race as one factor among others, was no longer valid. The Supreme Court declined to hear the case, leaving Hopwood in effect only in Texas, Louisiana and Mississippi.

Ms. Cantu, in a statement that drew widespread skepticism from legal experts, said Hopwood applied only to the facts in place at the University of Texas Law School in 1992 when the suit was filed. And she warned that the federal government could cut off \$500 million in higher education aid if a planned review of desegregation efforts in Texas by the Education Department found vestiges of segregation and if the state failed to use all possible remedies, including affirmative action, to correct them.

The letter created enormous confusion among state officials wondering how to deal with conflicting positions. Sen. Phil Gramm, R-Texas, in a letter of his own to Education Secretary Richard Riley, said Ms. Cantu's directive had left the state "in a withering legal crossfire," and threatened to hold up financing for the Education Department if Ms. Cantu's

letter was not retracted.

"In her zeal to pursue a political agenda, will Ms. Cantu be available to pay the fines and serve the sentence for contempt if she is successful in forcing Texas universities to flout the federal court's ruling?" Mr. Gramm's March 27 letter read.

Last Thursday, citing "confusion" about the federal government's position on the Hopwood ruling, Dellinger wrote a letter to the general counsel of the Education Department saying Hopwood was the law in Texas and must be followed.

On Friday, Ms. Cantu reversed herself and wrote State Sen. Rodney Ellis, a Democrat, that, absent further legal review, the Hopwood ruling prohibited race-conscious affirmative action for the purpose of insuring diversity.

An Education Department spokesman, Rick Miller, said Ms. Cantu's original letter reflected different court rulings on affirmative action, and though its view of affirmative action in Texas was incorrect, it reflected only a difference of legal interpretation. There was no intended threat to withhold federal aid. "There was never a partisan or political agenda," he said.

But Terry Pell, a lawyer with the Center for Individual Rights, which filed the Hopwood case on behalf of applicants who did not gain admission to the University of Texas Law School, said Ms. Cantu's letter was an effort to ignore a federal court order.

"She told them to essentially forget Hopwood and follow Bakke or I cut off your federal funds," Pell said. "She was telling them to disobey the law." ■

Chicago Tribune

April 15, 1997

U.S. CEDES TO COURT ON AFFIRMATIVE ACTION

EDUCATION DEPARTMENT REVERSES RULING ON RACE-BASED ADMISSIONS

By New York Times News Service
Web-posted Tuesday, April 15, 1997;
6:02 a.m. CDT

A month after warning Texas that it could lose federal financing if it ended affirmative-action programs in its university system, the Department of

Education has reversed itself, saying Texas and two neighboring states must comply with a year-old federal court decision banning the use of race as a factor in admissions and scholarships.

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And Texas representatives in Washington had reacted furiously to what they saw as an Education Department directive to ignore a federal court order banning affirmative action.

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Associated Press

04-15 12:37p

Clinton honors Robinson, recognizes Woods' victory

By SONYA ROSS
Associated Press Writer

NEW YORK (AP) - Using baseball's Jackie Robinson and golf's Tiger Woods as examples, President Clinton today urged young people to "do just what the champions do" and prepare for the day when they, too, transcend barriers in pursuit of their dreams.

The president went to Andries Hudde Junior High School in Brooklyn to address an anti-smoking rally. Somehow, he wed that message to his other purpose

for being in the city: to observe the 50th anniversary of Robinson's rise to first baseman for the Brooklyn Dodgers, which integrated baseball.

"In the days when Jackie Robinson broke into baseball, someone had to make a decision that this racial prejudice was a stupid, dumb thing," Clinton said. "But ... he still had to play baseball. He had to maintain his dignity, waiting for that chance and never knowing for sure it was going to come.

"Think what a downer it would have

been," Clinton asked the students, if they were offered the chances given to Robinson and Woods - and they had failed to develop their skills in baseball or golf.

"Even with no barriers, not everybody is going to be able to play baseball like Jackie Robinson did," the president said. "But you can all have some dream. You've got to do just what the champions do. You have to work for it. And you've got to take care of your mind and your body."

show the use of certain drugs among teens is increasing. For instance, a recent University of Michigan study showed that among 8th graders marijuana use tripled from 6 percent to 18 percent between 1991 to 1996.

"There is not a scientifically sound study that shows DARE prevents kids from using drugs," said Joel H. Brown, director of Educational Research Consultants, Berkeley, Calif.-based firm that conducted the three-year study for the state education department.

"Kids want to have real discussions of drugs—not just hear 10 ways to Just Say No," said Brown, adding that the \$3 million study, though confined to California youths, was the biggest of its kind in the nation. "When kids get old enough they reject those messages and the ones bringing the message."

Brown's findings are similar to those in several other studies.

In 1991, a report prepared by the Chapel Hill, N.C.-based Triangle Research Institute for the U.S. Justice Department concluded that DARE was largely unsuccessful in preventing drug

use among youngsters, despite the program's popularity.

In a 1993 study, the U.S. General Accounting Office issued a report criticizing the federal government for failing to introduce drug-awareness programs that identified strategies other than those using the no-use theme.

Officials at DARE America and the California Department of Education strongly dispute Brown's contentions.

Ralph Lochridge, spokesman for DARE, said numerous studies, including one released two years ago by Ohio State University, show that DARE is succeeding in getting kids to resist drugs over the short term. The failure results from a lack of involvement among parents and community groups to reinforce what DARE is teaching, he said.

"DARE is not a magic bullet—it's just one little piece," Lochridge said. "The problem is that the parents of these kids are Baby Boomers who experimented with drugs themselves. They are reluctant to send a clear message about the dangers of drug use."

Jana Kay Slater, a research and evaluation consultant for the California Department of Education, said the department decided against publishing Brown's report and that it did not agree with all its conclusions.

The Justice Department report on crime prevention programs recommends that more drug-prevention and other anti-crime efforts devote more resources to communities where substance abuse and violence occur more frequently.

The report said some programs showed promise, including increased police patrols in high-crime areas, drug treatment in prisons and home visits by social-service workers for infants in troubled families.

Officials at DARE say they already have launched a pilot program called DARE Plus, an after-school program that offers chess, gardening clubs, tutorial help and recreational activities in several inner-city schools.

The programs are being operated in New York, Los Angeles, Washington, D.C., and at Dett School on Chicago's Southwest Side. ■

The Sacramento Bee

04/15/97; Section: MAIN NEWS

TEXAS AFFIRMATIVE ACTION BAN OK'D

By Peter Applebome
New York Times

A month after warning Texas it could lose federal financing if it ended affirmative-action programs in its university system, the U.S. Department of Education has reversed itself and now says Texas and two neighboring states must comply with a year-old federal court decision banning the use of race as a factor in admissions and scholarships.

The change came after Texas education officials found themselves caught between conflicting Education Department and federal court directives, and after Texas political representatives in Washington had reacted furiously to what they saw as an Education Department directive to ignore a federal court order banning affirmative action.

Separately, Walter Dellinger, the acting solicitor general of the United States, wrote an unusual retort to the Education Department, saying the appeals court decision banning affirmative action was the law in Texas.

The Education Department's reversal also comes at a time when there are increasing indications that efforts to roll back affirmative action could produce a drop in minority enrollment at prestigious universities and professional schools.

At the University of Texas Law School, for instance, of the 791 students admitted thus far for the fall 1997 class, about 80 percent of the class, just five were African American and 18 were Latino. Last year 65 African Americans and 70 Latinos were admitted.

The change in the Education Department's position on affirmative action in the Texas university system is being viewed as an embarrassment for the department and a setback for critics of the 1996 Hopwood vs. Texas ruling, in which the 5th U.S. Circuit Court of Appeals said that Texas and the two other states in its jurisdiction, Louisiana and Mississippi, could not use race as a factor in admissions and scholarships.

One of the plaintiffs in the case was

Cheryl Hopwood, a white graduate of California State University, Sacramento, who was rejected for admission to the University of Texas Law School.

The Clinton administration has been a consistent supporter of affirmative action policies. Officials in the Education and Justice departments say that they believe the Hopwood case was wrongly decided, but that for now it is the law in the 5th Circuit.

The mixed signals in Texas reflect the uncertainty nationally about the future of affirmative action. Last week, a three-judge panel of the 9th U.S. Circuit Court of Appeals upheld California's Proposition 209, a 1996 initiative that prohibits discrimination and preferences based on race or gender in the employment, contracting and educational programs of state and local agencies.

The current controversy began with a March 18 letter to Texas legislators from Norma Cantu, assistant secretary of education for civil rights, and a former official of the Mexican-American Legal

Defense and Educational Fund.

Earlier, Texas Attorney General Dan Morales had delivered a broad opinion that said the Hopwood decision banned any use of race in admissions and scholarships in the 5th Circuit. The Hopwood ruling said that the Supreme Court's 1978 Bakke decision, which allowed race as one factor among others, was no longer valid. The Supreme Court declined to hear the case, leaving Hopwood in effect only in Texas, Louisiana and Mississippi.

In the Bakke case, four justices said

it was illegal for the University of California, Davis, Medical School to discriminate in favor of minorities in the admissions process. Four other justices said such affirmative action was legal to make up for past discrimination.

Cantu, in a statement that drew widespread skepticism from legal experts, said Hopwood applied only to the facts in place at the University of Texas Law School in 1992 when the suit was filed. And she warned that the federal government could cut off \$500 million in higher education aid.

The letter created enormous confusion among state officials wondering how to deal with conflicting positions. Sen. Phil Gramm, R-Texas, in a letter of his own to Education Secretary Richard Riley, said Cantu's directive had left the state "in a withering legal cross-fire," and he threatened to hold up financing for the Education Department if Cantu's letter was not retracted.

On Friday, Cantu reversed herself and wrote that, absent further legal review, the Hopwood ruling prohibited race-conscious affirmative action. ■

The New York Times

04/16/97; Edition: Late Edition - Final; Section: Section B; National Desk; Page 9, Column 1

Mixed Results for Public School Proponents

By PETER APPLEBOME

JACKSON, Miss. — No one is saying that the future of public education comes down to a group started by 20 parents here in Mississippi's capital.

But as big-city schools continue to lose white and middle-class minority students and as alternatives to public education like systems using school vouchers continue to hover on the horizon, there is an intriguing glimpse of American education in that group, Parents for Public Schools.

The group, which got its start in 1989 at a gathering of mostly affluent white parents in the living room of Dick Molpus, who was then Mississippi's Secretary of State, began with a simple idea: If parents want to support and nurture public schools, they should put their children in them. Out of that idea has grown a national organization that now includes minority parents and has 50 chapters in 22 states. The chapters work on a long-term basis to upgrade public education in entire communities or school districts.

Despite some successes, however, Parents for Public Schools is also a case study in the limits of good intentions when it comes to revitalizing public education.

Although the group's growth is a signal that many others want to embrace its philosophy that healthy public schools are fundamental to the nation's future, even here in Jackson the percentage of whites in the schools continues to dwindle.

In the 1988-89 school year, black

students made up 77 percent of the district, and white students 23 percent. Now the district's 32,414 students are 87.7 percent black and 11.6 percent white. Of the four elementary schools with a substantial white enrollment — where much of the group's energy was originally focused — all have seen a significant decline in the percentage of whites in recent years.

And such declines are occurring throughout the country, as highlighted by a recent study by the Harvard Graduate School of Education, which found the fastest rate of school resegregation since the Supreme Court's landmark 1954 ruling in *Brown v. Board of Education*.

"There are a lot of people in the country in a lot of different roles who are in a sense desperate for ways to make public education work, so I think an organization like this has enormous potential," said M. Hayes Mizell, a member of the group's board who works on education with the Edna McConnell Clark Foundation in New York. "But a broad philosophical kind of support for education will only take you so far. And that's why unless you really come to grips with an improvement agenda, and you really strike at the heart of what education is all about, the general notion of supporting public education can take you only so far."

In some ways, the growth of Parents for Public Schools has been remarkable. Its 50 chapters are in places as diverse as Greenville, S.C.; Waco, Tex.; Ellenville, N.Y.; Teaneck, N.J.; Los Angeles, Cincinnati and Cleveland. Beyond

enrolling their children in local public schools, members of the group focus on concerns like bond issues, overcrowding or alternative schools. Through conferences, literature and joint planning, members share information on common education problems and strategies for addressing them.

In Cincinnati, the chapter helped organize support for two successful bond issues in recent years, and has organized a public rally for public education.

Brewster Rhoads, vice president of the Cincinnati chapter, said, "I think it's absolutely essential that parents become more involved than they've ever been, not just in supporting their own kids' school, but also in making sure that the community at large rededicates itself to making sure that public schools work."

In Jackson, members of Parents for Public Schools say the continued shift in the racial balance of the schools reflects in part the growth of the black population.

"If it wasn't for Parents for Public Schools, this would probably be an all-minority district today," said Kelly Butler, the group's executive director. "We put a thumb in the dike even if we didn't completely reverse the tide."

Consequently, the group has changed its focus from recruiting white parents to building alliances of parents of different races and economic backgrounds to find solutions to problems in the schools.

Here in Jackson, for example, the chapter president is white but the chairman of the task force that deals with specific issues is black, and the board is

Classified staff positions, which receive an hourly wage and differ from exempt staff, are not included in the policy.

Classified jobs have been a sore spot

because they are rare and valued by current employees," said Jane H. Baillargeon, Staff Affairs chairwoman.

If faculty spouses fill classified jobs,

she said, that cuts into opportunities for current employees to advance to higher paying positions. ■

Associated Press

4-15 10:49p

Republicans take House speaker to school over his proposals

By DENNIS CONRAD

Associated Press Writer

SPRINGFIELD, Ill. (AP) - Republicans took House Speaker Michael Madigan to school Tuesday. And before it was over, the Democrat who has ruled the Illinois House for 13 of the last 15 years suffered two embarrassing defeats.

With GOP lawmakers largely resisting, his proposals on homework and dress codes fell short of passage in the chamber where Democrats have a slim two-seat majority.

The bills would have required school boards to draw up their own policies on uniforms and dress codes and a policy regarding doing homework, said Steve Brown, Madigan spokesman.

Madigan complained to reporters afterward about the lack of support from Republicans but also reiterated his support for an idea popular with many GOP lawmakers in talks over what should be in a school-funding reform measure.

"I'm prepared to vote to eliminate teacher tenure as part of a broad legislative package," he said.

Madigan had begun pushing the

homework and class uniform ideas since he was sworn in as speaker in January. The proposals flew out of a House committee last month on bipartisan 13-1 and 14-0 roll calls.

With Republicans ridiculing the bills and suggesting Madigan had no serious plan for reforming education, the proposals received only as many as 52 favorable votes on the House floor - eight short of the 60 necessary.

GOP critics noted that Madigan could not name one school district that doesn't now have a dress code policy and said his homework proposal did not even have a provision to ensure enforcement.

"When I first heard about this bill, I had visions of homework police riding forth ... knocking on the doors of children at 8:30 at night and saying, 'I'm here to inspect your homework,'" cracked Rep. William Black, R-Danville. "If you don't have it, you may be guilty of a felony."

Madigan said his bills were defeated because Republicans had decided to make it a "party position" during a closed-door meeting before the votes.

"What I'd like to know, what are they for?" the Chicago lawmaker said. "They

haven't spoken in favor of the governor's (school-funding reform) plan, as I have."

Republican Gov. Jim Edgar has embraced a proposal that would cut property taxes \$1.5 billion and generate \$1.9 billion through state taxes or budget cuts. The extra \$400 million would go for schools to assure that per pupil spending in all districts is at least \$4,225 - a widely accepted minimum standard.

Brian Timponi, a spokesman for House Minority Leader Lee Daniels, R-Elmhurst, said Edgar's proposal is not a full plan because the details have not been fleshed out. And Timponi said Daniels does not believe in raising general taxes to produce a net gain in revenue for school operations.

Timponi said Daniels has said any reform package should include property tax relief, combined state and local per-pupil spending of at least \$4,225 using existing state resources, a \$1 billion public works program for schools paid with higher gambling taxes, and accountability measures such as an overhaul of the teacher tenure law.

Madigan used a parliamentary maneuver to reserve his right to call his bills again in the session. ■

Associated Press

4-16 1:05a

House approves two bills aimed at diversifying schools

By PAULINE ARRILLAGA

Associated Press Writer

AUSTIN (AP) - The Texas House has approved two bills that aim to diversify enrollment at public universities in the wake of a court ruling eliminating race as a factor in college admissions.

Supporters said the measures would ensure that all students, regardless of race

or ethnicity, are granted the opportunity to attend college.

But opponents called the legislation a back-door approach to restoring race-based preferences akin to those struck down last year by a federal appeals court.

"We're giving preferences, and that's exactly what the Hopwood case was all

about," said Rep. Charlie Howard, R-Sugar Land, referring to the lawsuit in which four white students argued the University of Texas law school's admissions policy unfairly favored minorities.

The 5th U.S. Circuit Court of Appeals agreed, and state Attorney General Dan Morales has since directed all public

universities to adopt race-neutral policies for admissions, financial aid and scholarships.

A bill that Morales said would fit that mold was tentatively approved by the House Tuesday.

The measure establishes uniform admission procedures under which universities would be required to admit applicants who graduated in either the top 10 or 25 percent of their classes.

After filling those slots, universities would have to consider, in addition to academic performance, race-neutral factors such as economic status and family background.

Proponents said the measure would give students of all backgrounds a better chance at gaining admission to college.

"This measure is about opportunity. It cuts across all ethnic lines," said Rep. Hugo Berlanga, D-Corpus Christi.

The bill's sponsor, Rep. Irma Rangel, D-Kingsville, said, "This bill has nothing to do with picking one student over another."

But Rep. Frank Corte said the bill sends the message that social status takes priority over academics.

"We're telling the young people across

the state that they don't have to do good in high school to go to college," said Corte, R-San Antonio, who tried unsuccessfully to amend the bill to require universities to automatically admit students who score high on standardized tests.

Morales, who ignited a furor among minority groups when he said the Hopwood ruling must apply to all public universities, called Rangel's measure a good compromise.

"It would really be helpful in terms of addressing the fallout of the 5th Circuit decision," he said. "The bill would be constitutional and would withstand a legal challenge."

Al Kauffman, regional director of the Mexican American Legal Defense and Educational Fund, which represents minority interests in lawsuits against the state, also praised the measure.

"It will allow students from all around the state to attend Texas colleges and universities," he said.

The Senate passed a similar bill last week. Rangel's measure still faces final approval by the House before heading to the Senate for consideration.

Another bill that also attempts to

diversify colleges and universities won final House approval.

That measure would require colleges and universities to admit a certain number of undergraduates through open enrollment, meaning the only requirement for admission would be a high school diploma or the equivalent.

Colleges with more than 30,000 students would have to admit 1 percent of their undergraduates through open enrollment, while schools with fewer than 30,000 students would be required to admit 2 percent through the process.

The bill's sponsor said it targets students who, for example, make good grades but fair poorly on standardized tests or who had to work through high school to supplement their family's income.

"All we're asking is for a few hundred students out of a few hundred thousand to be given a shot," said Rep. Tony Goolsby, R-Dallas.

But others said the bill, like Ms. Rangel's, would reward bad students.

"It sends a horrible message to kids that work hard ... a D-minus equals their efforts," said Rep. Joe Nixon, R-Houston. ■

Associated Press

4-16 2:11a

Women likely to join Citadel boards

By BRUCE SMITH

Associated Press Writer

CHARLESTON, S.C. (AP) - The Citadel's governing board is encouraging women to run for board seats but will not actively recruit candidates, board chairman Jimmy Jones says.

The board wants to become more diverse but "it's not going to be an affirmative action seat. It's going to be someone who desires to step forward and seek it as the men have," he said.

The school announced Tuesday two women will join the formerly all-male Advisory Council to the Board of Visitors, which has no legal authority over college policy.

The women have been approached but have not yet accepted the seats. Retired Army Gen. Jack Merritt, the council chairman, said he hoped to release the

names by the end of the week.

The Citadel, after a protracted court fight, dropped its all-male admissions policy last year and enrolled four female cadets. Two of the women dropped out after a semester, alleging they had been hazed and harassed.

The military college said 35 women have now been accepted for the class of cadets that will enroll this August.

While the advisory council can invite women members, members of the Board of Visitors are, under state law, elected by alumni or state lawmakers or appointed by the governor.

"If someone is qualified, we would welcome them," Jones said.

The board includes seven Citadel graduates elected by the General Assembly, three members elected by

alumni and one at-large member appointed by the governor.

As a practical matter, there has never been a female voting member, though state Education Superintendent Barbara Nielsen is an ex-officio member.

Jones said there is a vacant alumni seat and the next election for a lawmaker-appointed seat is next year.

While the school was first opened to female cadets just last fall, women have attended night and graduate classes since the 1960s.

"We have a great, great group of female graduates from the professional and business college and the graduate school," Jones said. "We are certainly hopeful someone can be identified in that group of people and they will seek the opportunity to serve The Citadel." ■

The New York Times

04/23/97; Edition: Late Edition - Final; Section: Section B; National Desk; Page 7, Column 4

Seeking New Approaches for Diversity

By PETER APPLEBOME

Bans on affirmative action in California and Texas are producing the most concerted efforts since the landmark Bakke ruling in 1978 to develop alternative approaches that will maintain diversity in higher education without using race as a factor.

In Texas, for example, the Legislature is considering two measures — one that will admit the top 10 percent of graduates from all state high schools, another that will use a combination of rankings of high school seniors and consideration of economic disadvantage to maintain racial and ethnic diversity.

Because nearly all high schools in the state are dominated by a single race — black, white, or Hispanic — using a percentage of graduates of all high schools would allow the relative segregation to foster diversity in higher education. Some form of the legislation is considered likely to pass, and Dan Morales, the Texas Attorney General, said he considered the legislation constitutional and consistent with court directives banning the use of race in admissions.

Experts disagree heatedly on whether accounting for economic disadvantage or coming up with innovative admissions plans can substitute for race. But evidence is mounting that the bans on affirmative action in Texas and California, and under consideration elsewhere, will sharply cut the number of minority students at prestigious undergraduate and professional schools. "Texas had two choices," said State Senator Royce West, a Democrat, about the aftermath of last year's ruling by the United States Court of Appeals for the Fifth Circuit in Hopwood v. Texas, barring the use of race as a factor in admissions. "We could just follow Hopwood and say, 'To hell with diversity,' or we could be pro-active and creative in trying to zero out its effects, which is what we're doing. I don't believe affirmative action is dead in the U.S. But it is broken, and we're trying to fix it."

At the University of Texas Law School, where the Hopwood suit was filed in 1992 by four whites who had been denied admission, about 800 students, or 80 percent of the fall 1997 class, have been admitted so far. Of those 800 students, only 6 are black and 18 are Mexican-American. Last year 65 black students and 70 Mexican-Americans were admitted.

Undergraduate acceptances at the entire University of Texas fell to 314 black and 1,333 Hispanic applicants this year, from 421 black and 1,568 Hispanic applicants in 1996.

In California, although affirmative action in undergraduate admissions does not end until next year, white applicants to the University of California system, the state's most demanding, rose 10.4 percent this year. The number of Asian applicants rose 10.8 percent but applications fell 7.7 percent for blacks and 5.8 percent for Hispanics. In California medical schools, applications from black students have dropped by a quarter and by Hispanic students by a third over the last two years.

Some experts say it is too early to deduce long-term effects and that the declines in Texas and California could mean minority applicants are going elsewhere. But studies indicate that other bans on affirmative action would have a similar impact.

For instance, a national study of law school admissions by Linda F. Wightman, published in April's New York University Law Review, found that admissions based on just test scores and grades would return law schools to the overwhelmingly white classes not seen since the 1960's.

Ms. Wightman's study, for example, found that 26 percent of black law school applicants are currently admitted. Using just test scores and grades, 3 percent would be, she said. Now, 32 percent of Hispanic applicants are admitted, compared with Ms. Wightman's estimate of 9 percent in the future.

Similarly, a recent analysis of trends at the University of California by Jerome Karabel, a sociologist at the University of California at Berkeley, concludes: "Colorblind policies are likely to lead to a substantial resegregation of American higher education."

The main alternative being discussed is affirmative action based on class and criteria other than race.

"Using race per se is no longer sustainable from a moral, political or legal perspective, so we need to look to alternatives," said Richard Kahlenberg, a fellow at the Center for National Policy who wrote "The Remedy: Class, Race and Affirmative Action," (Basic Books, 1996).

"If you come up with a definition of class that is comprehensive and looks at a variety of factors, you can come up with a system that is fair and provides racial diversity."

But skeptics say class and economic disadvantage are already used in admissions and that the question is not whether you can include poverty or other factors, but whether you can use race as well.

And many experts say that even though blacks and Hispanics tend to be disproportionately poor, using class without race will do little to foster racial and ethnic diversity.

Thomas Kane, an economist at the John F. Kennedy School of Government at Harvard University, says that black and Hispanic students are three times as likely as whites to have family incomes below \$20,000. But because they

are a minority of the population and of students with high grades and high test scores, only one in six students who are likely to be admitted to a selective institution using a low-income preference will be black or Hispanic.

"If colleges think that class will keep the same racial diversity on campus, they are kidding themselves," he said.

The Texas House of Representatives has passed a plan that would admit all students in the top 10 percent of their high school class to the state university of their choice. Proponents say it would make the relatively segregated high schools an engine of integration in higher education, would reward merit, and would insure diversity not just in terms of race but between rural and urban areas throughout the state.

A more complicated plan, approved by the State Senate, would require that half of university admissions be based solely on a combination of test scores, grades and class rank: 40 percent on academic qualifications and broadly defined economic or social disadvantages and 10 percent on other factors, ranging from athletic to musical abilities.

"They're both steps in the right direction," Mr. Morales said. ~~"I consider them race-neutral and believe they would withstand any constitutional challenge."~~

Both measures affect undergraduate admissions at state schools, not professional schools, where insuring diversity in small law or medical school classes is considered much more challenging.

Michael Sharlot, the dean of the University of Texas Law School, said one measure being contemplated would identify college seniors who had performed better in college than had been anticipated by their initial test scores. Those students would then be given a stipend to pay for an L.S.A.T. prep test, which can cost as much as \$800. The students would be selected on a race-neutral basis. But one assumption behind the plan is that minority members often do not perform as well as white students on standardized tests.

No money has been set aside for any of the measures.

Using economic disadvantage in admissions, for instance, would put new burdens on universities to provide financial aid. And, as has already happened in California where competition for top state schools is far greater, they could run into political opposition if minority applicants take slots that traditionally go to white students, or the children of alumni. And Mr. Karabel said that in California, where schools are more diverse, the Texas plans would either have little effect or would likely benefit Asian students rather than blacks and Hispanics.

California universities have vowed to work to attract minority students but the Board of Regents, not the State Legislature, holds most of the power to shape university policies. The regents have been key opponents of affirmative action.

But even two attorneys who represented the plaintiffs in the Hopwood case, Steven W. Smith and Terry Pell, said the outlines of the plans before the Texas Legislature seemed appropriate and that the goal of insuring genuine diversity in higher education was a worthy one.

"I don't think the goal should be to sneakily get around Hopwood," said Mr. Pell, an attorney with the Center for Individual Rights. "But I think states should be trying a lot of different approaches, being pro-active and aggressive and not throwing up their hands and saying the only alternative is test scores or race."

But critics of the Hopwood decision say that although some of the alternatives are worthy, they cannot overcome the limitations of excluding race as a factor.

"These are good approaches," said Michael A. Olivas, a law professor at the University of Texas, "but they won't produce the kind of diversity you had before Hopwood. In the end, race is the only proxy for race."

05:15 EDT April 23, 1997■