

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

A Statement by the United States Commission on Civil Rights

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U.S. Commission on Civil Rights

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- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin;
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**Toward an Understanding of Percentage Plans in Higher Education:
Are They Effective Substitutes for Affirmative Action?**

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

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

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

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

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

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

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

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

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

⁵ *Id.*

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

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

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

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

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

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

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

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

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

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

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

TABLE 2
UT-Austin (Undergraduate) Admissions Statistics

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

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

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

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

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

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

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

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

¹² Ibid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²¹ *Id.* at 2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³² *Id.* at 1.

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

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

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

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

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

³³ *Id.* at 3.

³⁴ *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Statement of Chairperson Mary Frances Berry

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

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

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

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

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

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

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

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

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



EXECUTIVE OFFICE OF THE GOVERNOR

Executive Order 99-281

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

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

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

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

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

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

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

Section 1: Non-Discrimination in Government Employment

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

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

(c) Unless otherwise affirmatively required by law or

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

Section 2: Non-Discrimination in State Contracting

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

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

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

Section 3: Non-Discrimination in Higher Education

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

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

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

Section 4: No Legal Cause of Action

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

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



Jeb Bush
Governor

ATTEST:
/s/ Katherine Harris
Secretary of State

Attachment B

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

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

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

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

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

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

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



THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Policies of The Regents

POLICY ENSURING EQUAL TREATMENT ADMISSIONS (SP-1)

Approved July 20, 1995

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

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

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

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

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

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

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

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

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

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

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



Policies of The Regents

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

Approved July 20, 1995

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

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

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

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

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

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

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

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

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



FOR IMMEDIATE RELEASE
Friday, March 19, 1999
Terry Lightfoot (510) 987-9194
terry.lightfoot@ucop.edu

BOARD OF REGENTS ADOPTS NEW ELIGIBILITY PLAN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

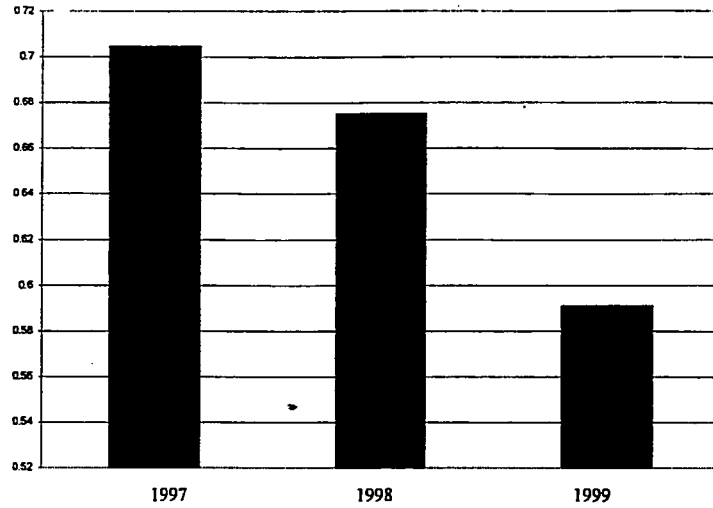
In 2001, eligibility will be granted to the top 4 percent of students at each high school. In 2003, the visual and performing arts requirement will be among one of 15 UC-required courses.

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Attachment E

University of California Enrollment of California Resident Freshmen*

Graph Expresses Percentage of American Indian Enrollment, 1997-1999



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

Attachment F

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

University of California Los Angeles*

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

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

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

University of California at Berkeley*

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

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

Attachment G

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

University of California Los Angeles*

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

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

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

University of California at Berkeley*

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

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

Attachment H



THE SECRETARY OF EDUCATION
WASHINGTON, D.C. 20202

February 7, 2000

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

Dear Dr. Berry:

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

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

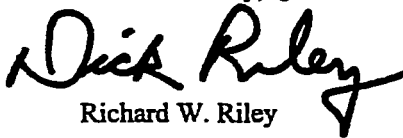
I regret that some individuals and press accounts have misread and misinterpreted the January 14, 2000 letter from the Office for Civil Rights to Florida Chancellor Adam Herbert. That letter provided preliminary feedback, at the Chancellor's request, regarding the narrow issue of whether the Governor's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

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

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

Yours sincerely,

A handwritten signature in black ink that reads "Dick Riley". The signature is written in a cursive, slightly slanted style. The first name "Dick" is written in a larger, more prominent script than the last name "Riley".

Richard W. Riley

Enclosure

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