



A COMPELLING INTEREST:

How Federal Policymakers Can Respond to the Supreme Court's Rulings on Race-Conscious Admissions

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TABLE OF CONTENTS
PAGE

EXECUTIVE SUMMARY	2
INTRODUCTION	4
RACE-CONSCIOUS ADMISSIONS: A BRIEF HISTORY	4
A SUMMARY OF THE SUPREME COURT’S DECISIONS IN SFFA	
V. HARVARD AND SFFA V. UNC - CHAPEL HILL	5
THE IMPACT OF BANS ON RACE-CONSCIOUS ADMISSIONS	6
Impact on Institutions of Higher Education	
Impact on Students	
Resegregation of Flagship Campuses	
EVALUATING INSTITUTIONAL AND STATE RESPONSES	
TO BANS ON RACE-CONSCIOUS ADMISSIONS	9
High School Outreach and Programming	
Admitting and Enrolling a Diverse Class	
<i>Percentage Plans</i>	
<i>Holistic and Comprehensive Review</i>	
<i>Dropping Legacy Preferences</i>	
<i>Dropping Test Requirements</i>	
Funding Students’ Education	
FINDINGS	18
Threats Posed by the Supreme Court’s Rulings	
Declines in Access and Diversity	
Misinterpretation, Overcorrection, and Chilling Effects	
Continued Assaults on Civil Rights and Diversity	
RESPONDING TO THE RULINGS	19
FEDERAL POLICY RESPONSES TO THE SUPREME COURT DECISION	20
Guidance and Communications	
Data Transparency	
College Readiness	
Admissions Policies and Practices	
Higher Education Funding and Taxation	
CONCLUSION	28
REFERENCES	29

EXECUTIVE SUMMARY

Colleges and universities across the country employ race-conscious admissions (RCA) practices to increase and maintain diversity, craft full and fair assessments of applicants, and reckon with the historical and ongoing effects racism has on access to opportunity. The use of RCA has been severely restricted by the Supreme Court's decision in *SFFA v. Harvard* and *SFFA v. UNC-Chapel Hill*. **The Supreme Court did not make a ruling on diversity this week, however; it made a ruling on one tool for increasing diversity at some colleges.**

Diversity remains part of the core mission of most institutions of higher education (IHEs), and it does so because in a multicultural democracy learning, working, and living with people from a range of backgrounds and identities makes us and our society better equipped to succeed.

Based on the experiences of states that banned RCA, we can expect the decision to lead to a decline in enrollment of underrepresented students of color, particularly at highly selective institutions and state flagship universities, where the competition for a limited number of spots is especially keen.

If the harm to diversity on campuses is to be mitigated, it will take the combined effort of federal and state policymakers, the presidents of IHEs, the CEOs of corporations and nonprofits, and other civic and educational leaders.

In addition to providing background on the rationale and the impact of bans on RCA, this brief evaluates the effectiveness of a range of responses made by IHEs to these bans and offers a range of options federal policymakers—including the Department of Education, the Department of Justice, and legislators—can employ to mitigate the harm the court's decision could have on IHEs and on underrepresented students of color.

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- **A Summary of the Supreme Court's Decision**
 - In its majority opinion, the Supreme Court held that Harvard's and UNC's use of RCA violates the Equal Protection Clause of the 14th Amendment.
 - Notably, the opinion focused on admissions decisions and said nothing about the wide range of race-neutral/race-blind practices and strategies that can increase diversity.
 - The Court ruled that admissions offices can consider an applicant's personal experience with race and racism.
- **The Impact of Bans on Race-Conscious Admissions**
 - Bans on RCA in California, Florida, and Texas led to immediate and lasting gaps between Black and Hispanic students' share of high school graduates in each state and the share of students in these racial groups enrolling in the state's flagship universities, even with efforts to use "race-neutral" approaches to increasing diversity.
 - In California, the gap between the share of high school graduates who were Black and the share of college freshmen who were Black **quadrupled** from 1994 to 2009. The effect was also substantial for Hispanic students.
 - In Florida, we see an immediate drop off in Black college enrollment following the 2000 ban, but Hispanic students felt a larger impact over time, with their gap growing from just over 4 percentage points in 1994 to just over 7 percentage points by 2009.
 - In Texas, the gap in the share of college freshmen compared to high school graduates for Black

and Hispanic students grew by a factor of 1.3 and 1.6, respectively.

- Bans had an admissions “chilling effect” on Black and Hispanic students, resulting in fewer applications from these student groups to flagships.
- Bans lead to URM applicants being concentrated in more accessible colleges, where their degree attainment has declined, causing suppressed wages later in life.
- **Evaluating Institutional and State Responses to Bans on Race-Conscious Admissions**
 - In response to bans on RCA, IHEs in several states initiated or placed greater emphasis on a range of practices designed to increase enrollment of underrepresented students of color, including:
 - *High School Outreach and Programming*
 - *Percentage Plans*
 - *Holistic and Comprehensive Review*
 - *Dropping Legacy Preferences*
 - *Dropping Test Requirements*
 - *Scholarship Programs*
 - While many of these efforts require more evaluation, research findings have generally found them to be somewhat effective in boosting campus diversity but not nearly effective enough to make up for the harm that bans on RCA do.
- **Threats Posed by the Supreme Court’s Decisions**
 - The threats posed by these rulings to diversity and access are not limited to the immediate impact of no longer allowing admissions officers to consider

race as one among many factors in deciding who to admit among a pool of highly qualified applicants.

- Lacking strong guidance on the impact of the decisions and what they will *and will not* change in existing admissions practices designed to increase access and diversity, the rulings could be subject to misinterpretation, overcorrection, and chilling effects that will magnify the harm caused by eliminating RCA.
- The decision could provide encouragement to the continued assaults on civil rights and diversity, particularly if institutional and political leadership do not provide a strong response to the decision that demonstrates their commitment to diversity.
- **State Policy Responses to the Supreme Court Decisions**
 - There are many ways that federal policymakers can take action in response to the decision. We identify five areas and multiple actions under each that can be taken in order to push back against the Supreme Court’s decision and help protect diversity on campus.
 - Guidance and Communications
 - Data Transparency
 - College Readiness
 - Admissions Policies and Practices
 - Higher Education Funding and Taxation

INTRODUCTION

Colleges and universities across the country employ race-conscious admissions (RCA) practices to increase and maintain diversity, craft full and fair assessments of applicants, and reckon with the historical and ongoing effects racism has on access to opportunity. This report provides:

1. An overview of the rationale for and justification of considering the race and ethnicity of applicants as one of many factors in whether to offer admissions as well the consequences of banning that consideration;
2. Descriptions of so-called “race neutral” mechanisms employed by institutions of higher education (IHEs) for maintaining racial diversity in higher education, with an emphasis on public institutions in states that have banned the use RCA;
3. A synthesis of available evidence on the effectiveness of race-neutral mechanisms so that states and institutions can create well-informed policies in response to the elimination of RCA;
4. A summary of the Supreme Court’s decision and its potential impact; and
5. A menu of options that policymakers can pursue to mitigate the harm that the majority opinion is likely to have on diversity on college campuses and on students attending or applying to selective colleges and universities.

IHEs, state governments, and third-party, non-governmental actors, such as philanthropic and advocacy organizations, all have a role to play in the response to a national ban on RCA. This brief provides information and a summary of policy options that will be most relevant to policymakers working in state government, including governors, legislatures, departments of education and higher education, and local educational agencies (LEAs).

RACE-CONSCIOUS ADMISSIONS: A BRIEF HISTORY

Colleges began using RCA in the 1960s as a necessary tool for counteracting IHEs’ histories of racial exclusion, and the practice has been a target of conservative politics for decades. The current assault from the political right on RCA is one element of a larger push to roll back well-established civil rights protections.

Today, the most common justification for RCA is that it is a critical tool for IHEs to recruit, admit, and retain a diverse student body. Colleges and universities have long recognized the value of having a racially and ethnically diverse student body. Exposure to diversity has been shown to positively impact students’ educational outcomes (Gurin, Dey, et al., 2022), cultural awareness, and political participation (Johnson and Lollar, 2002). White racial homogeneity in higher education reinforces income inequality by increasing the earnings gap between graduates from highly selective schools and everyone else and legitimizes this gap as meritocratically deserved (Mijs, 2023). Major American business enterprises, the HR Policy Association, and the

US Military also recognize the value of a diverse, well-educated pool of graduates from which to recruit and argue in favor of universities' consideration of race in admissions for this reason (Brief for Major American Business Enterprises; Brief for HR Policy Association; Brief for the US Military). Beyond promoting diversity in higher education, RCA is also an important tool that helps admissions offices to fairly assess applicants' academic talent and potential for success and to account for the ongoing impact race has on the admissions processes. It is not just that racism restricts access to equal opportunity; seemingly "race-neutral" practices, such as providing a legacy preference or a significant admissions edge to recruited athletes, give disproportionate advantages to White students (Desai, 2022; Arcidiacono, Kinsler, et al., 2022). Given that the most visible and measurable aim of RCA is racial and ethnic diversity among applicants, admits, and enrolled students, diversity is the primary focus of this brief.

How to achieve and maintain diversity in higher education has been the subject of several legal battles in recent decades. The Supreme Court's 1978 decision in *Regents of the University of California v. Bakke* ruled the practice of using racial quotas to ensure diversity unconstitutional but held that the use of race as one of several admissions criteria was permissible. In what is broadly understood as the controlling opinion, Justice Powell held that the case established that diversity was a compelling government interest that a university could constitutionally pursue through narrowly tailored race-conscious admissions. The opinion held that IHEs could lawfully consider a student's race alongside many other personal and academic characteristics to create and maintain diversity on their campuses. However, Justice Powell rejected the argument that remedying "societal discrimination" constituted a compelling interest that could justify RCA.

Decided in 2003, *Grutter v. Bollinger* and *Gratz v. Bollinger* affirmed Justice Powell's diversity rationale for RCA, further solidifying the now four-and-a-half-decade-old legal precedent for the narrowly-tailored consideration of race as one among many factors in the admissions process. The Supreme Court's 2016 decision in *Fisher v. Texas* explicitly upheld *Grutter* by finding that the University of Texas' use of race as a consideration in the admissions process was narrowly tailored to serve a compelling state interest and therefore did not violate the Equal Protection Clause (*Fisher v. University of Texas*).

A SUMMARY OF THE SUPREME COURT'S DECISIONS IN *SFFA V. HARVARD* AND *SFFA V. UNC - CHAPEL HILL*.

In its majority opinion, the Supreme Court held that Harvard and UNC's RCA policies violate the Equal Protection Clause of the 14th Amendment, the "core purpose" of which, Chief Justice John Roberts writes in his opinion, is to "do away with all governmentally imposed discrimination based on race." What Chief Justice Roberts discussed throughout the opinion was the formal consideration of an applicant's racial identity in admissions decisions. The opinion cited the use of data on the race of applicants who made it through the first stages of the admissions process and were identified as strong candidates for admission. It was at this

stage, when the applicant pool needed to be further reduced, that admissions officers considered applicant race to make admissions choices. The Supreme Court determined that this latter consideration of race to make individual admissions decisions violated the Constitution. It is absolutely essential to note that the Court did not rule that racial diversity is no longer a compelling interest or that race-blind approaches to enrolling a diverse class violate the Equal Protection Clause. Moreover, the court explicitly stated that universities can consider each applicant's personal experience with racism. Although the Court used a personal statement as an example, universities may be able to obtain this information through more indirect means that reduce the onus on individual students to provide it through personal statements.

THE IMPACT OF BANS ON RACE-CONSCIOUS ADMISSIONS

Although the practice has until now been deemed permissible under the United States Constitution, several states have banned RCA through a mix of ballot initiatives (California, Michigan, Washington, Nebraska, Arizona, Oklahoma), legislation (New Hampshire, Idaho), and executive orders (Florida). Texas does not currently have a formal ban, but the 1996 *Hopwood* decision effectively banned RCA until it was overturned by *Grutter* in 2003. During this period, the state's flagship universities stopped using race as a factor in admissions. Post-*Grutter*, the University of Texas at Austin, but not Texas A&M, reinstated the consideration of race in admissions.

The 10 states that either currently ban RCA or have banned the practice, give us an idea of what to expect when admissions officers can no longer consider the race of an applicant, although it is important to be cautious about how much we can expect the past to predict what the impacts of the decision will be. This decision is different in scope and scale: they apply to public and private institutions, and they will be nationwide.

Impact on Institutions of Higher Education

- Admissions offices may need to adjust existing admissions processes and find new ways of attracting and maintaining a racially diverse student body.
- In seeking alternatives, IHEs must be careful to design new policies and formal guidance that are in compliance with the ban to avoid legal challenges, which often means coordinating with state officials to design policies and solicit guidance.
- IHEs spend large amounts of time and resources implementing complex, race-neutral alternatives meant to maintain racial diversity but that largely do not reach that goal (Bleemer, 2019).
- IHEs and academic departments in states with bans that go beyond RCA have lost a critical tool to effectively recruit, hire, and retain faculty of color, resulting in a rate of faculty of color hiring that has not kept pace with the growth of the pool of talented and qualified candidates of color (University of California Task Force on Faculty Diversity, 2006). This compromises IHEs' ability to create equal learning environments because faculty representation has important positive impacts on student outcomes, particularly for students of color (Llamas, Nguyen, et al., 2021; Fay, Hicklin Fryar, et al., 2021).

Impact on Students

- Bans had an admissions “chilling effect” on Black and Hispanic students, resulting in fewer applications from these student groups (Harris and Tienda, 2010).
- Bans have led to significant declines in the share of underrepresented minority (URM) students among admits and enrollees at public universities (Long and Bateman, 2020; Liu, 2022).
- Bans lead to URM applicants being concentrated in more accessible colleges, where their degree attainment has declined, causing suppressed wages later in life (Bleemer, 2022).
- Negative admission and enrollment impacts were felt the most strongly at “flagship” and “elite” public universities and were found to persist nearly two decades post-ban (Long and Bateman, 2020).
- Bans have decreased the share of Black and Hispanic students who receive a degree from selective colleges (Hinrichs, 2014).
- Bans have decreased the enrollment of underrepresented students of color in graduate programs, particularly engineering, natural, and social science programs (Garces, 2013).

Resegregation of Flagship Campuses

Because a major concern with eliminating RCA is the ability of colleges to attract, enroll, and retain underrepresented students of color, or underrepresented minorities (URM), we highlight evidence on this point here. Using currently available ethnic and racial categories used by the Department of Education, we define URMs as students who identify as African-American/Black, Latino/Hispanic, American Indian or Alaska Native, and Native Hawaiian or other Pacific Islander. This definition of underrepresented students of color is conventionally used at many IHEs, but it should be noted that these broad categories fail to capture significant differences within racial groups, and that many academic studies focus solely on Black and Hispanic students in their analyses.

The graphs on the following page show the gap between the share of public high school graduates who are Black or Hispanic and the share of college freshmen who were Black or Hispanic over the period 1994–2009 for California, Florida, and Texas.¹ While Black and Hispanic students’ share of high school graduates in each state generally grew over time, the rate of students in these racial groups entering college did not keep pace following RCA bans, and even shrunk in some cases. Red lines are placed on each graph at the year each state’s ban would

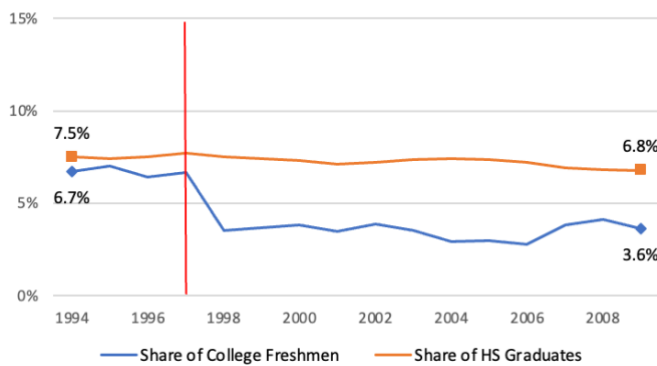
¹ The share of college freshmen is calculated using each state’s top two public flagship universities. Data for high school graduates include only public schools in each state. In California, these are UC Berkeley and UCLA. In Florida, these are Florida State University and the University of Florida. In Texas, these are Texas A&M and UT Austin. The year 2009 was chosen as the end point because that is the last year for which the Integrated Postsecondary Education Data System (IPEDS) has publicly available high school completion data. College enrollment data are from IPEDS. Data on high school graduates are from NCES’s Institute of Education Sciences’ Common Core of Data (CCD).

have affected admissions processes (the year after the passage of the bans). The green lines on the Texas graphs indicate the year RCA was reinstated at UT Austin.

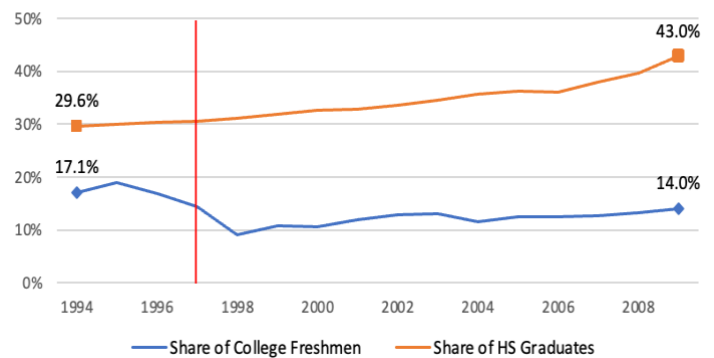
In California, the gap between the share of high school graduates who were Black and the share of college freshmen who were Black **quadrupled** from 1994 to 2009. The effect was also substantial for Hispanic students. In 1994, Hispanic students made up about 30% of high school graduates and 17% of college freshmen in California, whereas in 2009, their share of high school graduates had grown to 43%, but their share of college freshmen shrunk by 3 percentage points. In Florida, we see an immediate drop off in Black college enrollment following the 2000 ban, but Hispanic students felt a larger impact over time, with their gap growing from just over 4 percentage points in 1994 to just over 7 percentage points by 2009. Similar patterns emerged in Texas, where the gap in the share of college freshmen compared to high school graduates for Black and Hispanic students grew by a factor of 1.3 and 1.6, respectively.

CALIFORNIA

Black Students

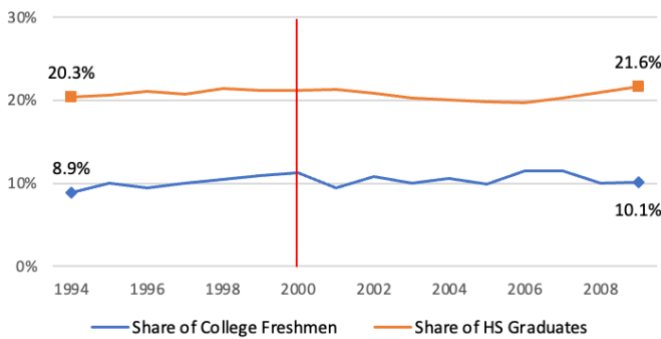


Hispanic Students

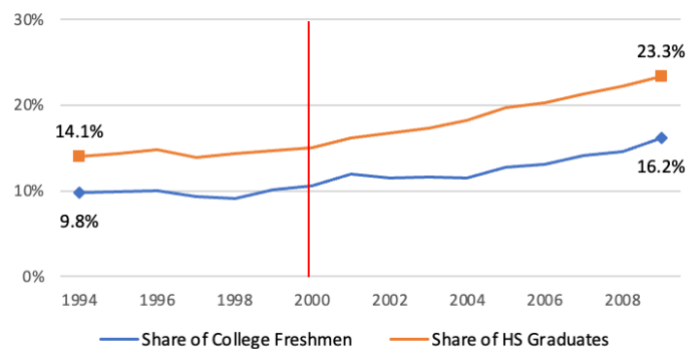


FLORIDA

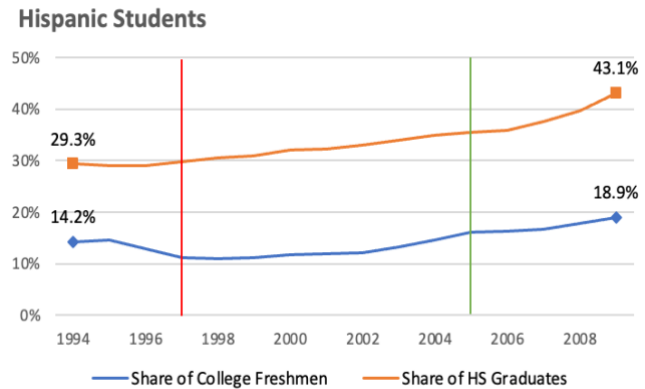
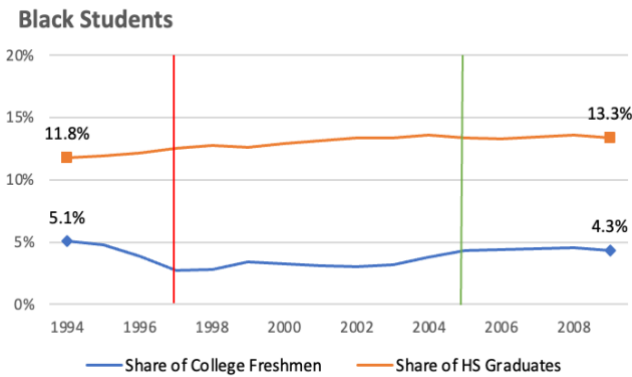
Black Students



Hispanic Students



TEXAS



EVALUATING INSTITUTIONAL AND STATE RESPONSES TO BANS ON RACE-CONSCIOUS ADMISSIONS

Because many university systems and individual institutions in states with RCA bans remained invested in enrolling a racially and ethnically diverse student body, they turned to so-called “race-neutral” alternatives to attract and enroll URM students. These alternative approaches have been implemented at each stage of a students’ journey into and through college, beginning with pre-college outreach and support, then admissions and enrollment, and finally student retention. Many programs and policies address more than one stage simultaneously. Although systematic evaluations of alternatives to RCA are relatively scarce due to their complexity and availability of data, we present existing evidence of the policies’ ability to generate diverse student bodies in the absence of RCA.

High School Outreach and Programming

In several states with bans on RCA, IHEs responded by trying to increase the size and diversity of their admissions pipelines under the assumption that a larger, more diverse pool of applicants would be necessary to enroll a more diverse class.

California

The 1995 resolution banning affirmative action in the University of California (UC) system simultaneously stipulated the creation of a task force to recommend ways to better prepare and increase the enrollment of disadvantaged students. The resulting recommendations, made in 1997, were to:

- “(a) expand the existing student-centered programs; (b) invest in new partnership programs that would bring 50 underperforming high schools and their feeder schools into partnerships with local UC campuses to help strengthen their academic offerings and

effect whole school reform; (c) expand informational outreach; and (d) create a research and evaluation team, composed in part of UC faculty, to oversee the progress of the outreach efforts.” (Kidder and Gándara, 2016)

In the short term, UC doubled its outreach expenditures from \$60 million to \$120 million, but these numbers have since fallen back to 1996 levels (Kidder and Gandara, 2017). It is unclear whether the spike in expenditures translated to a substantial, albeit short-lived, spike in URM enrollment. Kidder and Gandara (2017) point to this steep drop-off in state funding as a cautionary tale “for any institution depending on state funding for its diversity efforts and a major barrier to the feasibility of substantially expanding programs” (p. 28).

Texas

The Longhorn Opportunity Scholarship (LOS) at UT Austin and the Century Scholarship (CS) at Texas A&M began in 1999 and 2000, respectively, in response to Texas’ 1997 ban on affirmative action. These programs target 110 low-income high schools that historically sent few graduates to the state’s flagship universities and include the following key design features:

- Increased targeted recruitment of URM students
- Academic support for students enrolled in the programs
- Generous scholarships designed to cover tuition and fees when supplemented by Pell grants

LOS and CS have had significant positive effects on the likelihood that students from participating schools apply to the relevant university. UT’s LOS program also increased the likelihood that students in participating high schools graduate from UT, and participants had higher earnings 12 years post-high school (Andrews, Ranchhod, et al., 2020). UT discontinued the LOS, but it is unclear what the reason for doing so was.

In 2010, Texas launched a high school advising program called Advise TX, which places recent college graduates from UT Austin, Texas A&M, and others into underserved high schools as full-time college advisors. Advisers serve up to two years as AmeriCorps service members, working one-on-one with students to match them with postsecondary opportunities that fit their academic and career goals (Texas Higher Education Coordinating Board, 2022). Evaluation results indicate that the program has significant positive effects on college enrollment for Hispanic and low-income students at two-year institutions, although there appears to be no impact on persistence after initial enrollment (Bettinger and Evans, 2019).

Michigan

The University of Michigan launched its Wolverine Pathways (WP) Program in 2015, which provides supplemental school-based college preparation to students who live in Detroit, within the boundaries of the Southfield or Ypsilanti public school districts, or who attend one of the program’s partner schools in Grand Rapids. All students who complete the program are admitted

to either the Ann Arbor or Dearborn campus and receive four-year, full-tuition scholarships after the application of all applicable state and federal aid. Students apply for the program in 6th or 9th grade, and they must maintain “strong academic performance” while in the program (Wolverine Pathways, University of Michigan, 2022). A recent evaluation of the WP Program shows that URM student participants were up to 3.5 times more likely to be admitted to and up to 4.7 times more likely to enroll at UM Ann Arbor (University of Michigan, 2023, January).

There are also a few high school advising programs in Michigan, one through the University of Michigan and the national College Advising Corps, and one through AmeriCorps and the Michigan College Access Network. These programs are similar to Advise Texas in that they also use a near-peer advising model, placing recent graduates in select high schools across the state to serve as full-time college advisers. The University of Michigan-based program began in 2010 and currently has 16 advisers in 16 high schools (University of Michigan, 2023, March). The advisers work alongside school personnel to foster a college-going culture at the high schools and contribute to the mission of the national College Advising Corps, which is to “increase the number of low-income, first-generation, and underrepresented students entering and completing higher education” (Michigan College Advising Corps, 2023). These advising programs have yet to be systematically evaluated.

Other States

Flagship universities in other states with RCA bans, such as the Universities of Arizona and Oklahoma, also report having increased their outreach and recruitment efforts to URM and other socioeconomically disadvantaged students. The specifics of these efforts are not publicly available but are said to include increased active recruitment of minority students and wide dissemination of information about financial aid opportunities (McNutt, 2017; KOLD News 13, 2014).

Admitting and Enrolling a Diverse Class

Percentage Plans

Percentage plans are perhaps the most well-known “race-neutral” alternative to RCA. California, Texas, and Florida all more or less guarantee admission to a state university for public high school graduates who finish in the top X% of their school. The specifics of implementation vary by state. For example, to be eligible under this provision in California and Florida, students must also have completed a set of required courses. More details on each percentage plan are provided below, followed by a discussion of their effectiveness. Generally speaking, percentage plans have been only modestly effective, largely due to implementation and space challenges at flagship universities, as well as concerns that these policies are not really expanding opportunities for a new pool of applicants.

TEXAS: Top 10% Plan

Following the *Hopwood* decision in 1996, the Texas legislature passed House Bill 588, which required “each public college and university to admit automatically any student who has graduated in either of the two preceding academic years with a grade-point average in the top 10% of the student’s graduating class” (Pinhel, 2008). The law primarily affects the state’s two flagship universities, the University of Texas at Austin and Texas A&M. Prompted by pressure from UT Austin, in 2010, the state legislature passed a change to the top 10% plan, which allowed UT Austin to cap automatic admissions under the plan at 75% of each entering class of students. As a result, UT Austin’s actual percentage plan changes year to year. They automatically admit students from the top 1% first, then the top 2%, and so on, until the 75% cap is reached. This effectively means that many students in the top 10% of their high school graduating classes are not offered automatic admission to the flagship. In each of the last 5 years, UT Austin has only automatically admitted the top 5–6% of high school classes (Office of Admissions, n.d.). The original law included a provision that would remove the 75% cap if and when the Supreme Court rules against the consideration of race in college admissions. There is currently a bill in the Texas Senate to repeal this provision, allowing the cap to stand in the event of such a ruling (Subcommittee on Higher Education, 2023).

CALIFORNIA: Eligibility in the Local Context

In 1999, three years after the ban went into effect, the UC Board of Regents instituted the “Eligibility in the Local Context” (ELC) policy, which ensured that the top 4% of public high school graduates from each high school in the state, determined by their GPA, were automatically eligible to attend a UC university. This was a shift from long-standing pre-ban policy (California’s Master Plan for Higher Education) that made the top 12.5% of all high school graduates statewide eligible for admission to the UC system. In 2012, this plan was expanded to the top 9% of high school graduates. Under the ELC plan, students complete one systemwide application for admission to the UC system and indicate which campus(es) they wish to attend. Although the top 9% of students are automatically accepted into the UC system, the campus to which they are ultimately admitted depends on the available space at each campus. Students must complete a set of designated courses in high school in order to be eligible for ELC. The UC system also has a statewide 9% plan that functions in a similar manner. The 2022 guidelines from UC’s Board of Admissions and Relations with Schools (BOARS) stipulate that “California resident applicants that meet the minimum admission requirements for the statewide 9% or local (ELC) 9%, who have not been admitted at any of the campuses of their choice shall be offered a space at other UC campuses where space is available” (Board of Admissions and Relations with Schools, 2022). The California State University (CSU) system accepts the top third of students statewide.

FLORIDA: Talented 20

In 1999, Governor Jeb Bush signed an executive order titled the One Florida Initiative banning RCA in the state. Soon after, Bush established the Talented 20 Program, which guarantees the top 20% of each high school graduating class admission to the State University System (SUS). As in California, students are eligible for the program only if they have completed a set of high school courses required by the university system. In Florida, students must also submit test scores from either the SAT or ACT, although neither is part of the formula determining admission eligibility. Under the Talented 20 Program, students' actual admission and matriculation to an SUS institution depends on fiscal and space limitations (Marin and Lee, 2003). The University of Central Florida (UCF) also has its own percentage plan. The Top 10 Knights program at UCF guarantees admission to applicants who are in the top 10% of their high school graduating class and meet a minimum test score.

Summary of Percentage Plan Effectiveness

The success of percentage plans at increasing or maintaining enrollment of underrepresented students of color in higher education depends on the availability of sufficient numbers of URM students in the relevant decile of high school classes. However, Black and Hispanic students continue to be underrepresented in the top 10% of high school classes (Long, 2007).

Evaluations of percentage plans are concentrated in California and Texas and produce somewhat mixed evidence that is muddied by changing demographics across states with these plans in place. Without adequately controlling for minority population growth, studies may misattribute enrollment growth to percentage plans, when the growth could have been caused by demographic shifts. In California, Bleemer (2019) finds the initial 4% ELC policy increased total URM enrollment by about 9%, or just over 250 students, at the most selective colleges. This effect largely disappeared following the 2012 reform that increased the threshold to 9% and changed the way UC determined high school students' centile rank.

Andrews, Imberman, et al. (2010) evaluates the impact of the Top 10% Plan in Texas using data that unfortunately do not include race and ethnicity, but the results help us understand how students' application behavior changes in response to the policy generally. After Texas began using high school class rank transparently in admissions processes, students in the top 10% of their class became more likely to apply to UT Austin and less likely to apply to an out-of-state or less selective school, signaling an increased belief that they would be admitted to the state's most selective flagship due to the policy change. Lower-ranked students were more likely to apply to Texas A&M or an out-of-state college after the policy change, perhaps reflecting an assumption that they would not be admitted to UT Austin. Harris and Tienda (2010) evaluate the Top 10% Plan's ability to restore Hispanic and Black representation in the flagships following the RCA ban. Unlike Bleemer's (2019) evaluation in California, they find that after accounting for statewide demographic changes, the plan did not significantly increase URM admission rates from immediate post-ban levels, even after four years.

Less research has been conducted to evaluate Florida’s Talented 20 program, but Marin and Lee’s (2003) study suggests that the program has had little to no impact on the admission and enrollment of URM students. Based on institutional and interview data, the authors argue that the program did not draw in new applicants or enrollees because the vast majority of URM students admitted under Talented 20 would have been admitted to the state’s university system anyway.

Holistic and Comprehensive Review

Holistic or comprehensive review processes are commonly used by four-year IHEs and are particularly common, if not universal, at the highly selective institutions and state flagship universities, which are the institutions most likely to feel the most impact from the court’s rulings on RCA. In a holistic review process, admissions committees include, as part of their search for students that are likely to succeed at an institution and contribute to the campus community, a “consideration of multiple, often intersecting, factors—academic, nonacademic, and contextual—that, in combination, uniquely define and reflect accomplishments and potential contributions of each applicant in light of his or her background and circumstances” (Coleman and Keith, 2018).

Schools employing these practices commit to evaluating student applications in light of their individual socioeconomic and academic contexts, rather than quantitative measures of academic performance alone. Rigorous evaluations of comprehensive or holistic review processes exist only in California, likely due to data availability and transparency regarding how the processes work. More research in other settings is needed to fully understand the impact of these policies on URM enrollment. Below, we provide more detail on the structure of comprehensive and holistic review policies in post-ban states and summarize the existing findings on their effectiveness.

Prior to the 1999 executive order banning RCA, Florida IHEs had the option to admit students who did not meet test score and GPA requirements under a “Profile Assessment” process, which included consideration of race and gender. After 1999, this process could no longer include race and gender as factors, but public universities in the state are allowed to consider factors such as: “a combination of test scores and GPA that indicate potential for success, improvement in high school record, family educational background, socioeconomic status, graduation from a low-performing high school, graduation from an International Baccalaureate program, geographic location, military service, special talents and/or abilities, or other special circumstances” (State University System of Florida, 2020).

Each year, Florida’s public universities can admit up to 10% of its freshmen through this process, in which admissions committees cite individual characteristics—besides race, test scores, or GPA—that they believe would make the student successful in college (Klein, 2000).

In 2002, the UC system switched from a two-tiered admissions system in which half of the admitted students were admitted based on grades and test scores alone to a “comprehensive

review” process in which students’ achievements are evaluated in light of the opportunities available to them (Bleemer, 2019). As of 2012, six UC campuses have implemented a slightly different process called “holistic review,” in which teams of trained evaluators create a single score based on a combination of comprehensive review criteria. Students’ academic performance is considered in relation to their individual talents and disadvantages, and no one factor plays a deciding role in their acceptance or denial. Bleemer (2019) finds that holistic review increased URM enrollment by around 11 percentage points, a larger positive impact than the results of UC’s ELC (percentage plan) program.

Dropping Legacy Preferences

After banning race in admissions, several schools have also done away with legacy preferences, or the practice of advantaging students in the admissions process if their parents or other relatives are alumni of the school. There has been growing pressure for more schools to follow suit, especially with the anticipation of a federal ban on RCA. Legacy preferences have been characterized as an undeserved advantage for wealthy, White, and connected students because they disproportionately advantage higher-income White students (Howell and Turner, 2004; Arcidiacono, Kinsler, et al., 2022). The UC system in California eliminated legacy preferences when the state instituted a ban on RCA. Texas A&M also dropped its legacy preference in 2004 after public pressure pointed out the hypocrisy of banning race but not legacy status in the admissions process (Ackerman, 2004). The impact of removing legacy preferences on racial representation or diversity has not yet been systematically studied, although Johns Hopkins University has indicated that in the wake of its elimination of legacy preferences, it increased enrollment of underrepresented students significantly (Daniels, 2020).

Dropping Test Requirements

Another practice gaining traction in admissions, in part due to its potential to increase diversity, is going “test-optional” or “test-blind.” The former means that students have the option to have their test scores considered as part of their application package or not, and the latter means that test scores are not considered in the admissions process for any student. The COVID-19 pandemic forced hundreds of universities to move to test-optional or test-blind admissions because of students’ lack of access to SAT/ACT testing, although the trend to drop test requirements began before the pandemic. Almost all IHEs have remained test optional, even as access to testing has returned, and the vast majority of IHEs no longer require the submission of test scores, at least for the immediate future. There is a strong likelihood they will not return to requiring test scores. In 2020, the UC and Cal State systems stopped considering SAT and ACT scores in admissions following a lawsuit (Jaschik, 2021). Research on the impacts of test-optional and test-blind admissions produces somewhat mixed evidence, but some studies show that test-optional policies are associated with higher numbers of URM and Pell Grant recipient applications and enrollments (Bennett, 2021; Schultz and Backstrom, 2021). More research is

needed to uncover the long-term effects of these policies on student body composition, graduation rates, etc., and to determine if the existing findings are applicable at large, public university systems.

Funding Students' Education

Given the financial challenges of paying for college, which are more likely to impact student groups with lower average incomes, some states and institutions have introduced scholarships meant to boost and sustain diversity among the student body by targeting socioeconomically disadvantaged populations. Some of these programs also specifically target racial minorities, and several currently face court challenges.

The University of Michigan (UM) launched the High Achieving Involved Leader (HAIL) scholarship program and the Go Blue Guarantee in 2016 and 2018, respectively. Both are full-tuition scholarships for high-achieving, low-income students but have important structural differences. HAIL eligibility is based on free and reduced lunch status from public school records, while the Go Blue Guarantee requires proof of income below \$65,000 and assets below \$50,000 (Go Blue Guarantee Eligibility, n.d.). California offers a financial aid promise structured similarly to the Go Blue Guarantee, called the Blue and Gold Opportunity Plan, which requires FAFSA completion and proof of income below \$80,000. Preliminary experimental evidence from the two Michigan programs suggests that while both programs increase the likelihood of application, admission, and enrollment, the HAIL scholarship is significantly more effective at drawing low-income students, likely because it is an unconditional guarantee of free tuition for four years of college (Burland, Dynarski, et al., 2022). This finding aligns with research showing that scholarship programs without income requirements and burdensome verification processes have stronger effects on enrollment than those with such design features (Li and Gándara, 2020).

The University of California (UC) launched the Native American Opportunity Plan in the fall of 2022, which covers all tuition and fees for undergraduate and graduate students enrolled in federally recognized Native American, American Indian, and Alaska Native tribes (University of California, n.d.). The policy has received some criticism for excluding Native American students who are not formally enrolled in a federally recognized tribe. California universities are also free to support race- or gender-specific scholarships offered by outside, non-governmental entities by providing “information, incidental logistical support, and access to campus facilities,” as long as the university does so on a non-discriminatory basis and does not control or administer the private program (University of California, 2016). The University of California has yet to release an impact report on the Native American Opportunity Plan.

Founded in 2016, the University of South Florida (USF) Black Leadership Network funds need- and merit-based scholarships for low-income and first-generation Black students at USF. The

program aims to increase access to USF, comprehensively support students during their time at USF, and encourage them to stay involved with the network after they graduate (Peace, 2023). Florida State University (FSU) also has a minority-focused scholarship program, the Leslie N. Wilson-Delores Auzenne Assistantship, which began in the 1980s and is designed to encourage and support minority students seeking graduate degrees in fields in which they are historically underrepresented. The program has recently come under scrutiny for its original language, which says only students belonging to a racial/ethnic minority group are eligible. Following civil rights complaints from Chris Rufo, a fellow at the Manhattan Institute and newly appointed board member of the New College of Florida, FSU acknowledged that the language was outdated and has changed the eligibility description on its website to say that the program is “available for all new and currently enrolled graduate students” and that preference may be given to applicants “who are historically underrepresented” (Jean, 2023). So far, both programs have avoided formal lawsuits.

Programs in Oklahoma and Wisconsin have not fared as well legally. Twelve colleges in Oklahoma participate in the Louis Stokes Alliances for Minority Participation (LSAMP) program, which is a National Science Foundation program that awards scholarships to underrepresented minorities pursuing degrees in Science, Technology, Engineering, and Mathematics (STEM) (National Science Foundation, 2015). The OK-LSAMP program began in 1994, 18 years prior to Oklahoma’s ban on affirmative action. In 2022, a group of medical professionals called “Do No Harm” filed a federal civil rights complaint against the consortium of universities participating in the scholarship program, claiming that the program violates federal law by allowing students to be “illegally discriminated against and excluded from the OK-LSAMP program on the basis of their race, color, and national origin” (Carter, 2022). The state of Oklahoma has filed a brief in the case supporting Do No Harm.

Wisconsin, a state with no affirmative action ban on the books, is also experiencing legal challenges to its’ public universities’ minority scholarship programs. In 2021, a conservative law firm in Wisconsin filed a lawsuit against the Minority Undergraduate Retention Grant Program because it uses taxpayer funds and accepts only students of particular racial/ethnic groups. A similar scholarship program at the University of Wisconsin is also under scrutiny for its racial eligibility requirements (Kremer, 2021). A circuit court judge dismissed the original lawsuit on September 16, 2022, but the Wisconsin Institute for Law and Liberty plans to appeal the case (Meyerhofer, 2022).

FINDINGS

It is clear that the most effective means of maintaining diversity in higher education is still the ability to consider race in admissions. Numerous scholars have compared the effectiveness of race-neutral alternatives in post-ban states, and nearly all conclude that while some approaches can mitigate diversity loss to some degree, none are nearly as effective as RCA (Long, 2007; Reardon et al., 2015; Bastedo, Howard et al., 2016; Kidder and Gandara, 2016; Bleemer, 2023).

In response to bans on RCA, states and institutions have experimented with a variety of policy options to enroll racially diverse student bodies. A growing amount of evaluative research reveals that among the most promising approaches are:

- 1) Programs that combine a **funding guarantee** (most effective when unconditional and administratively simple) and **academic support** for high school students in schools with historically low college-going rates (see Texas' Longhorn Opportunity Scholarship and Century Scholarship and Michigan's Wolverine Pathway Program and HAIL Scholarship).
- 2) Holistic or comprehensive review processes in which admissions offices **systematically consider individual characteristics** outside of GPA and test scores **to determine a students' potential** for college success (see Bleemer, 2023).

Although they are perhaps the most well-known “race-neutral” admissions alternative, the evidence on the effectiveness of percentage plans is less compelling. The plans may have marginal positive impacts on URM enrollment, but it is still somewhat unclear whether they are granting access to a new group of students who would not have been admitted after all. Additionally, in Texas and California in particular, design features that cap enrollment under the plans likely hamstringing their effectiveness. There is no evidence that percentage plans can have negative effects on URM enrollment.

Threats Posed by the Supreme Court's Rulings

We might group the threats posed by the Court's rulings into two categories: the intended negative impact of the actual rulings and the unintended negative impact of the responses to the rulings, although some critics of Students for Fair Admissions might quibble with whether those impacts are unintended.

Declines in Access and Diversity

If the past is precedent, the most immediate and salient threat posed by the Supreme Court's decision is to diversity on campus and to students of color, particularly those applying to highly selective institutions, flagship universities, and other IHEs that historically have been less

accessible to Black, Hispanic, and Native students. As we show in the discussion above, bans on RCA are followed by declines in applications, admits, and enrollments from underrepresented students of color, which not only hurts students of color but also has negative effects on college campuses, enrolled students, and racial divides in the broader society.

Misinterpretation, Overcorrection, and Chilling Effects

The Supreme Court did not rule on the value of diversity or on the entire range of tools institutions use to combat racism and encourage integration and inclusivity. It ruled on one tool to achieve those ends. There is a danger, however, that policy makers, IHEs, LEAs, practitioners who work with students applying to college, community-based organizations, philanthropies, and other organizations will misinterpret—perhaps willfully in some cases—the decision to cover race-blind practices that remain absolutely legal. In a similar vein, IHEs and other institutions might be so concerned about the threat of civil rights complaints that they will essentially overcorrect and perversely create even greater barriers to admission for students of color. The decision could also have chilling effects on students of color. As noted above, bans on RCA in some states led to declines in applications to state flagships from Black and Hispanic students. A ban on RCA could have a second chilling effect on students of color if they or their advisors take the rulings as a prohibition on their free speech and their right to present their full selves in their application.

Continued Assaults on Civil Rights and Diversity

Recent events, such as the murder of George Floyd, have been a painful but necessary reminder for many White Americans that the civil rights struggle is far from over, and there is much work to be done to rid our institutions of the pernicious effects of racism. There are, however, groups such as SFFA that see things quite differently, and the Supreme Court’s decision is likely to embolden these small but astonishingly well-funded groups in their efforts to roll back 60 years of hard-fought civil rights gains and undermine the strength and diversity of a whole range of institutions.

RESPONDING TO THE RULINGS

The threats to and attacks on diversity these rulings represent do not need to go unanswered. Institutions can take many steps to preempt them or mitigate the harm they may cause. In their consideration of possible responses to the decision, federal and state policymakers, the presidents of IHEs, the CEOs of corporations and nonprofits, and other civic leaders will be well served if they recall **the Supreme Court did not make a ruling on diversity**. It made a ruling on one tool for increasing diversity at some colleges.

The Supreme Court’s majority opinion is not a ruling on the desirability of racially and

ethnically diverse college campuses, on the legality of pursuing a diverse student body, or on the importance of accounting for the powerful social effects of racism in shaping educational opportunity. As noted earlier, diversity remains a priority for most IHEs, businesses, the military, and students, who understand that in a multiracial democracy everyone benefits from multiracial institutions. In a recent survey of high school juniors, 85% of respondents identified a diverse student body as a “must-have” or “appealing” feature of a campus community, making it the most popular factor in the survey (Patch, 2023).

As we laid out in section three, IHEs will have a range of options for pursuing campus diversity should the Supreme Court ban the consideration of race in the college admissions process. They will have a responsibility to pursue these options if they are to maintain merely current levels of enrollment for underrepresented students of color. Given the evidence that no “race-neutral” alternative or even combination of alternatives to RCA admissions has been found to have the power of RCA to increase the enrollment of underrepresented students of color (Bleemer 2023, Feingold 2020), the challenges to preventing the further segregation of IHEs are considerable. IHEs need not, however, be solely responsible for defending diversity in higher education. Indeed, leaving the response to the Supreme Court’s decision solely in the hands of IHEs could prove harmful, since most colleges’ and universities’ top priority is, understandably, themselves

A successful response to a ban on RCA will almost certainly depend on a broad range of actors, including administrators, faculty, and staff at IHEs; federal and state policymakers, such as departments of education and lawmakers; and practitioners, such as school counselors, superintendents, and community-based organizations. The response will likely need to be broad in its scope, too, focused on college admissions but not limited to it, since everyone involved in the college admissions process—from students to admissions officers to enrollment management and financial aid officers up to the university president and boards of trustees—operates and lives within a much larger institutional and social ecosystem, where who you are is also about where you come from, what you want, and where you are going. Contrary to the approach to college admissions that Students for Fair Admissions endorses, students are not a set of numbers that colleges choose to approve or deny.

FEDERAL POLICY RESPONSES TO THE SUPREME COURT’S DECISIONS BANNING THE CONSIDERATION OF RACE IN COLLEGE ADMISSIONS

In the remainder of this brief, we identify a range of policy options that federal policymakers, including the Department of Education, the Department of Justice, and Congress, could pursue in response to the Supreme Court’s decision to ban the consideration of race in college admissions. We consider policy options at the state level in a separate brief. The absence of policy options directed at IHEs should not be confused with any form of abnegation of their responsibilities and opportunities for protecting diversity on campuses. IHEs will be crucial

partners in policymakers' efforts to respond to the Supreme Court's decision. The policy options most directly address undergraduate admissions processes, but much of what is suggested here would apply to graduate programs, which will also be impacted—perhaps even more sharply—by the end of RCA.

The policy options are grouped under five categories: guidance and communications, data gathering, college readiness, recruitment, admissions policies and practice, and higher education funding and taxation.

1. Guidance and Communications

The Supreme Court's decision will lead to significant changes in the practices and policies of some IHES and many LEAs, as well as the work of people who directly support students through the college admissions process, including school counselors, teachers, principals, and coaches at community-based organizations. *It will be just as important for these institutions and practitioners to understand what the decision does not affect in their practices as it will be to understand what will be affected.* Much of what IHEs, LEAs, and practitioners do to promote diversity remains wholly legal. Guidance must be designed to prevent the decision from having a chilling effect on lawful behavior and to curb overinterpretation of and overcorrection for the opinion.

1.1. Quickly, repeatedly, and publicly reaffirm a commitment to diversity on college campuses and a dedication to closing bachelor's attainment gaps between underrepresented students of color and their peers. To prevent both a chilling effect on applications from Black, Latino, and Native students and a misinterpretation of the Supreme Court's decision, it would likely be useful for the Biden Administration, the Department of Education, and members of Congress to clarify the value of enrolling diverse classes at IHEs.

1.2 Announce that guidance will come from the Department of Education before August 2023. There are approximately 25,000 high schools in the United States and more than 3,000 IHEs. The vast majority of them will not have access to anyone with the level of expertise to explain how the Supreme Court's decision will affect them. A simple notification that guidance is coming could prove effective in preempting misguided and incorrect reactions to the decision, which could harm students and students of color in particular.

1.3. Provide guidance for IHEs, LEAs, practitioners, and nongovernmental educational agencies from the Department of Education before August. The Supreme Court's decision may be the end of the consideration of race in the admissions process, but it is also the start of significant change in the practices and policies of some IHES and most LEAs. It will be important for IHEs and LEAs to have guidance from the Department of Education in order to

create uniform policies and practices in postsecondary and secondary institutions and to let those institutions know that they can and should act with agency authority behind them. In many areas, the guidance may be that the decision has no impact on practices or policies, but it could well be worth spelling that out to preempt overreach and misinterpretation among state policymakers, LEAs, and practitioners. In order to reduce the likelihood of misinterpretation or overcorrection, the guidance could remind IHEs about existing obligations under federal law, including Title VI & Title VI's implementing regulations, which affirmatively require universities to prevent racially hostile learning environments & prohibit admissions policies that produce a substantial racial disparate impact. Subjects that will be helpful to address include:

- Specifics of what can still be included and what cannot be included in applicants' admissions files, which are considered by admissions committees
- Application platforms
- Recruitment practices and programs
- Summer bridge programs
- Financial aid practices
- Scholarship programs
- Offices of Diversity, Equity, and Inclusion
- Affinity groups
- Faculty hiring
- Campus climate efforts

1.4. Provide a grace period of one academic year to all IHEs to bring policies into compliance with the Supreme Court's decision. Given the very brief period of time between the release of the opinion and the start of the admissions cycle, which begins as soon as August 2023 at some institutions with rolling admissions procedures, IHEs that employ RCA may face a significant challenge in adapting the admissions procedures in the 2023-24 cycle, particularly if guidance is delayed or lacking. The Department of Education could announce that while it expects compliance with the court's decision, it will not bring enforcement actions for admissions decisions made during the first admissions cycle. This grace period might discourage misinterpretation of the opinion made by admissions officers.

1.5. Starting in July 2023, build awareness among IHEs, LEAs, practitioners, and nongovernmental educational agencies about practices and policies that may boost ethnic and racial diversity on college campuses, including, but not limited to, those outlined in Section 3. These efforts could be part of a robust communications campaign to ensure that guidance and awareness reach all constituencies. Well-resourced IHEs likely have the information they need to respond as robustly as they wish to the end of RCA. Less wealthy institutions may not, and LEA and practitioners likely will not. The Department of Education could build a clearinghouse, much like the What Works Clearinghouse, but for promoting racial

diversity and reckoning with institutional racism.

2. Data Transparency

To understand the impact the decision will have on admissions, researchers, and advocates will need a much clearer understanding of how it affects not just enrollment but applications and admits. Data gathering could also have a deterrent effect by shining light on practices that likely serve as counterforces to increasing diversity.

2.1. Increase transparency and accountability in college admissions by expanding data collection, disaggregating it by race and ethnicity, and making the data easily accessible.

None of the research findings about the impact of the end of RCA in California, Texas, or elsewhere would have been possible without public universities in those states collecting, disaggregating, and publishing data about who applied, who was admitted, and who enrolled at state IHEs. These data have informed practices in those states and helped IHEs stem the harm that ending RCAs inflicts on the enrollment of underrepresented students of color. Disaggregated admissions data have made it possible for states, IHEs, researchers, and policy advocates not only to see what happened with the loss of RCAs but also what needs to be done.

This will not be possible, given the current procedures used in the Integrated Postsecondary Education Data System (IPEDS) administered by the National Center for Education Statistics (NCES). IPEDS collects admissions data for applicants, admits, and enrollments, but only that last group is disaggregated by race, ethnicity, and Pell-eligibility. As we have shown elsewhere, the vast majority of colleges and universities already collect racially/ethnically disaggregated data for applicants and admits and they will continue to do so into the future, so it presents an absolutely minimal additional burden on IHEs to share that information (Murphy, 2022). Either the Department of Education’s NCES or Congress could foster greater transparency in college admissions by requiring the collection and publication of richer data. In the immediate future, disaggregation could be by existing racial and ethnic categories in IPEDS, but expanding categories to capture the considerable variation within racial categories would provide an even richer picture of admissions practices.

2.2. Increase transparency and accountability in college admissions by collecting data on applications by legacies and on early admissions programs, disaggregating it by race and ethnicity, and making the data easily accessible.

Expanded collection of disaggregated data around legacy preferences and early admissions programs—two practices that research has shown can reduce the enrollment of underrepresented students—could help IHEs and researchers understand their impact and drive efforts to increase diversity on campus. It would also provide insight into the beneficiaries of these admissions programs, particularly at IHEs that have historically been less accessible to students of color.

3. College Readiness

Inequitable access to high-quality education is one of the problems that RCA helps address by providing a fairer assessment of each applicant's academic talent and potential. While much of the responsibility for college readiness falls on the shoulders of state policymakers and LEAs, there is also a role for the federal government here.

3.1. Improve access to dual enrollment, early college, Advanced Placement, and other rigorous courses that increase preparedness for and enrollment in higher education. One of the reasons Black, Latino, and Native students continue to be underrepresented at four-year IHEs is the persistence of inequitable access to educational opportunities (Government Accountability Office, 2020). If the responsibility for increasing diversity on college campuses is left solely on higher education, the effort is likely to fail. Legislation increasing equitable access to high-quality primary and secondary education and to rigorous coursework would likely expand the pool of students of color prepared to apply, get admitted, and succeed in college (Griffin et al., 2017).

3.2. Improve access to high-quality college and career counseling. In many American public high schools, school counselors are responsible for hundreds of students, and college and career counseling is only one of their responsibilities. In most states, student-to-counselor ratios far exceed recommended levels, and not all counselors receive the necessary training to provide expert advice through the college application process, including how to handle one of its most byzantine aspects: financial aid (American School Counselor Association, 2022). A high-quality school counselor can have significant positive effects on college-going (Mulhern, 2022). Federal investments in college and career counselors, including professional development to ensure they have the necessary skills to provide guidance, could help offset the effects of a ban on RCA, particularly if those investments are focused on high schools that receive Title I funding or enroll large populations of students of color.

3.3 Require all recipients of TRIO and GEAR UP funding to participate in training about the impact of the court's decision on their work and on the students they advise.

4. Admissions Policies and Practices

There is great potential for admissions reforms that could help boost diversity at IHEs, particularly those that have historically excluded applicants of color. While many of these changes may be made voluntarily by IHEs, policymakers can provide crucial support and impetus for implementing them.

4.1. Ban the use of a legacy preference in admissions. While research on the impact of providing an advantage in the college admissions process to applicants whose relatives are alumni of that IHE is limited by the fact that universities have carefully guarded data about just how many applicants, admissions, and enrollments come from legacies, the evidence suggests that legacy applicants are disproportionately White and that legacy applicants have a significantly higher rate of admission at highly selective IHEs (Arcidiacono, Kinsler, et al., 2022). Legacy applicants at Harvard, for instance, are five times more likely to be accepted than non-legacy applicants. The legacy of segregation, both de facto and de jure, at many highly selective institutions means that White legacy applicants have a multi-generational advantage over their non-White peers. Racial and ethnic gaps in bachelor's degree attainment also contribute to the disadvantage that legacy preferences represent for students of color. Given that legacy preferences harm a university's capacity for increasing diversity, Congress could respond to the ban on RCA by passing the Fair College Admissions for Students Act. Sponsored by Sen. Jeff Merkley (D-OR) in the Senate and Rep. Jamaal Bowman (D-NY) in the House, the legislation would bar all universities that receive funds from federal financial aid from providing a legacy preference.

4.2. Introduce legislation protecting the freedom of speech of applicants and the integrity of college applications. In the Court's majority opinion, Chief Justice John Roberts acknowledges that "all parties agree, nothing in this opinion should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise." The consensus that students should be allowed to tell their stories and that admissions offices should be allowed to take them into consideration is encouraging. Roberts cautioned that "universities may not simply establish through application essays or other means the regime we hold unlawful today...The student must be treated based on his or her experiences as an individual—not on the basis of race." The upshot is that universities may consider how race impacted an applicant's life, but cannot use that information to recreate the sorts of practices Harvard and UNC engaged in.

What is less clear is how universities will operationalize these instructions. There is a risk that certain institutions or state agencies misinterpret (unintentionally or maliciously) the opinion to be stating that an applicant's race or ethnicity can only appear in essays and may try to expunge all other elements of an application essay that might reveal something about their race or ethnicity. This would be inconsistent with the opinion. It is also a fool's errand, as impractical as it would be unfair, since so many components of an application have the potential to be revelatory with respect to race and ethnicity, including essays, extracurricular activities, memberships, high school, ZIP code, and name. Any effort to remove racialized elements from an application would prevent an applicant from presenting their whole self, which could end up transforming a ban on RCA into a new form of discrimination in which only some applicants could present an authentic application. It would also limit their free speech.

Additionally, there are practical considerations regarding attempts to redact every instance in an application that could potentially reveal something about an applicant's race. Some universities receive more than 50,000 applications every year, and a few receive more than 100,000. Who would carry out the work of going through every single application? Artificial intelligence is not a plausible answer, given the propensity of algorithms to reproduce and reinforce biases (Lee, Resnick, et al., 2019). More importantly, who would determine what to redact, and how would they make those determinations about what items are racially revelatory and which are not?

In states with bans on RCA, some institutions remove an applicant's self-reported racial identity from the materials that readers consider in the admissions process. It is conceivable that some institutions or states may go much farther and require the redaction of every marker of race from application materials. To forestall such an effort, which would likely be harmful for students and IHEs alike and which would be utterly impractical, federal policymakers could act to provide legal protection for the integrity of college applications and the free speech of applicants. This may include introducing legislation that would bar IHEs, governing bodies of IHEs, accreditors, and states from redacting any information from application materials or from redacting any information other than the applicant's self-identified race and ethnicity, as indicated on their application.

4.3 Provide legal protection for admissions practices that could boost diversity without including explicit data about an applicant's race. There is a range of so-called "race-neutral" practices that some IHEs currently use to increase the enrollment of underrepresented students of color, which are covered in Section 3 of this brief. Percentage plans, recruitment strategies based on census tract data (College Board, 2019), test optional policies, and holistic admissions processes can all help mitigate the harm that the ban on RCA will likely do to diversity and to students of color, as can recruitment practices, campus climate efforts, scholarship, summer bridge programs, and other efforts that explicitly take race into account without providing a consideration of race in the admissions process itself.

The majority opinion said nothing about race-neutral approaches to enrolling diverse classes, which presumably means they remain completely legal, but these strategies may be subject to further legal attacks.. On April 13, 2023, Edward Blum, the founder and president of SFFA, sent an email to members announcing what could easily be read as a promise for further attacks on diversity in higher education. "From what has been distressingly proposed by dozens of college officials in the event the Court eliminates race and ethnicity in the admissions process," he wrote, "our work will not be over—it will be the end of the beginning, rather than the beginning of the end." In May 2023, a federal appeals court upheld the consideration of a student's zip code in the admissions process of Thomas Jefferson High School, a well-known magnet school in northern Virginia (Elwood, 2023). These attacks on geographic enrollment tools may be the next stage in the ongoing assault on gains made by the civil rights movement. Banning the

consideration of geography is deeply impractical, given the incentives that many public IHEs have to enroll in-state residents and the priority many private IHEs place on enrolling students from all 50 states and from other nations. There is, however, the potential chilling effect of the decision on multiple race-neutral strategies, leading admissions offices to abandon perfectly legal practices on which the decision has no bearing. Legislators or attorney generals could affirm a state’s commitment to diversity and clarify that race-neutral practices designed to promote diversity are consistent with state law by either passing legislation or providing guidance that explicitly protects the use of race-neutral practices in the admissions process and of race-conscious practices outside of the admissions process to boost diversity on campus.

5. Higher Education Funding and Taxation

The Supreme Court made no ruling about federal incentives for diversity or increasing support for institutions that support underrepresented students.

5.1. Provide relief on the endowment tax for institutions that maintain or increase the number and percentage of Black and Latino students enrolled. In 2017, Congress passed a bill that, for the first time, began taxing the multi-billion dollar endowments of wealthy private universities, based on the endowment dollars per enrolled student. It is a tax with little nuance that affects a few IHEs and does nothing to increase access or affordability in higher education. Indeed, some wealthy universities have protested that the tax has taken away resources that could be used for need-based financial aid. Admissions reform advocates have argued that if that is the case, then let universities prove it by providing some relief on the endowment tax to IHEs that increase the number and share of underrepresented students they enroll (Dannenberg, 2023).

5.2 Increase financial support for Minority Serving Institutions. One potential outcome of the end of RCA is an increase in applications to historically Black colleges and universities (HBCUs), Hispanic-serving institutions (HSIs), and other minority-serving institutions (MSIs). Shirley Morgan, a board member at Morgan State University, speculates that “anticipating that they may encounter a hostile environment, [the end of RCA] can drive [students of color] away from institutions, even if the institutions have declared that they want to try to attract a diverse student population (Donastorg, 2022). The court’s decision provides an opportunity for the federal government to reaffirm its commitment to MSIs through a show of verbal and financial support in the form of increased funding. The Biden administration has taken significant steps to increase support for MSIs, but this sector has long suffered from federal, state, and philanthropic underfunding and would benefit from larger investments (Harris, 2021).

CONCLUSION

Based on what happened in states where RCA was banned at public IHEs, none of these options, or even a combination of options for responding to a ban on RCA will completely make up for the harm done to campus diversity. As we have seen, the end of RCA in Florida, California, and Texas was followed by an increase in the gaps between the share of high school graduates who were students of color and the share of students of color at state flagships. The effect of the Supreme Court's decision on RCA at all IHEs, public and private, is harder to predict, particularly at highly resourced private colleges and universities that draw students from all 50 states. There is little reason for optimism unless IHEs, federal and state policymakers, secondary schools, philanthropic organizations, and community-based organizations undertake a dedicated, resourced, and multi-pronged approach to maintaining and expanding diversity on selective college campuses.

There is, however, reason for resistance against this attack on diversity and on students of color, and there are resources for pushing back. As we have laid out in this brief, there is wide support for enrolling in diverse classes in higher education and clear benefits for all students from attending colleges that enroll in diverse institutions. We have also shown that when states impose bans on RCA, it has negative effects on not only enrollment but also applications to college and even long-term earnings for underrepresented students of color. Finally, this brief provides a range of options for federal policymakers to show their commitment to diversity and to provide support for IHEs, LEAs, and, most importantly, students as they pursue college campuses that look more like America.

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