

## ***A COMPELLING INTEREST:***

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

---

**James Murphy**, *Education Reform Now*

**Virginia Carr Schneider**, *Georgia State University*

## TABLE OF CONTENTS

## PAGE

<b>EXECUTIVE SUMMARY</b>	<b>2</b>
<b>INTRODUCTION</b>	<b>4</b>
<b>RACE-CONSCIOUS ADMISSIONS: A BRIEF HISTORY</b>	<b>4</b>
<b>A SUMMARY OF THE SUPREME COURT’S DECISIONS IN SFFA V. HARVARD AND SFFA V. UNC - CHAPEL HILL</b>	<b>5</b>
<b>THE IMPACT OF BANS ON RACE-CONSCIOUS ADMISSIONS</b>	<b>6</b>
Impact on Institutions of Higher Education	
Impact on Students	
Resegregation of Flagship Campuses	
<b>EVALUATING INSTITUTIONAL AND STATE RESPONSES TO BANS ON RACE-CONSCIOUS ADMISSIONS</b>	<b>9</b>
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	
<b>FINDINGS</b>	<b>18</b>
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	
<b>RESPONDING TO THE RULINGS</b>	<b>19</b>
<b>STATE POLICY RESPONSES TO THE SUPREME COURT DECISIONS</b>	<b>20</b>
Guidance and Communications	
Data Transparency	
College Readiness	
Recruitment	
Admissions Policies and Practices	
Higher Education Funding	
<b>CONCLUSION</b>	<b>31</b>
<b>REFERENCES</b>	<b>32</b>

## 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 decisions 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 these decisions 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 state policymakers—including governors, legislators, and departments of education and higher education—can employ to mitigate the harm the the court's decisions could

have on IHEs and on underrepresented students of color.

- **A Summary of the Supreme Court's Decision**

- In its majority opinion, the Supreme Court held that Harvard 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 decision 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 state policymakers can take action in response to the decision. We identify six 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
    - Recruitment
    - Admissions Policies and Practices
    - Higher Education Funding

## 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 their potential impact; and
5. A menu of options that policymakers can pursue to mitigate the harm that the decision 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. The 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.<sup>1</sup> 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

---

<sup>1</sup> 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).

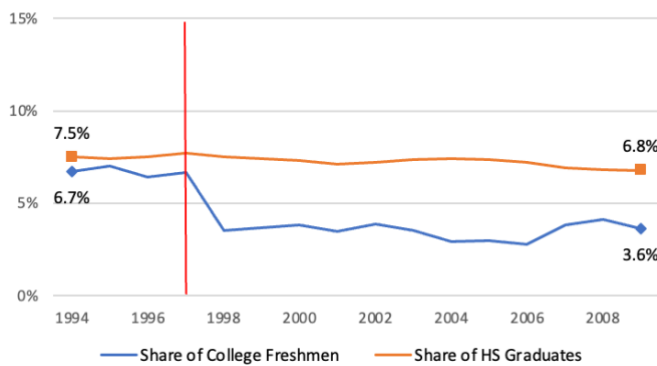


have affected admissions processes (the year after the passage of the bans). The green lines on the Texas graphs indicate the year RCA was reinstated at UT Austin.

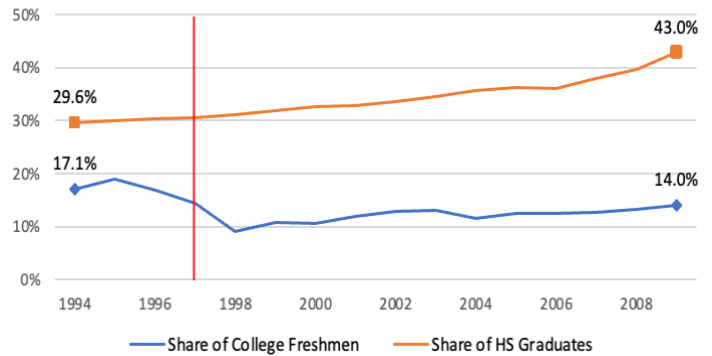
In California, the gap between the share of high school graduates who were Black and the share of college freshmen who were Black **quadrupled** from 1994 to 2009. The effect was also substantial for Hispanic students. In 1994, Hispanic students made up about 30% of high school graduates and 17% of college 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**

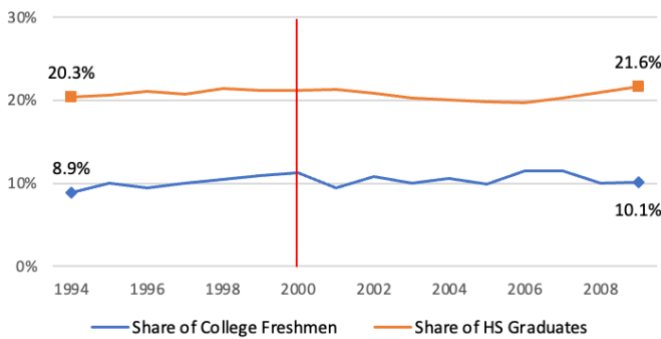


**Hispanic Students**

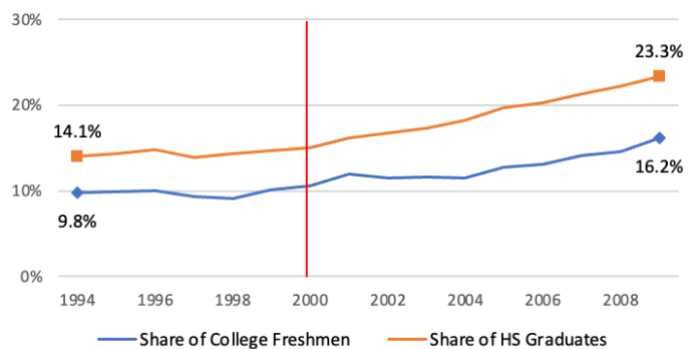


## FLORIDA

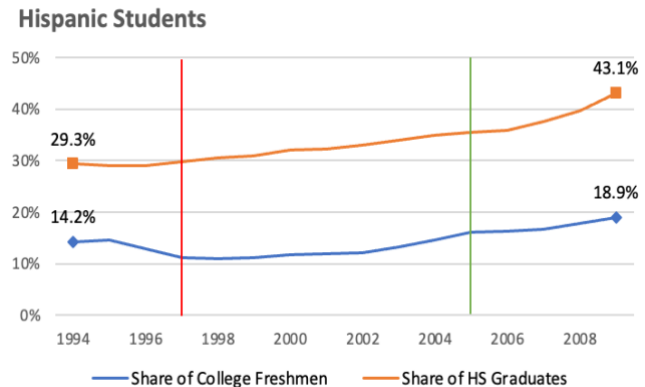
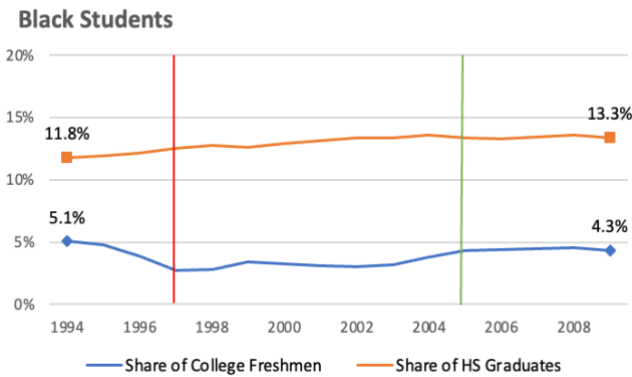
**Black Students**



**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) evaluates 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.

## **STATE 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 state policymakers could pursue in response to the Supreme Court’s decision to ban the consideration of race in college admissions. State policymakers include governors, legislatures, departments of education and higher education, administrators of public university systems, and LEAs. We identify policy options for federal policymakers 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 speak most directly to 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 options are grouped under six categories: guidance and communications, data transparency, college readiness, recruitment, admissions policies and practices, and higher education funding.

## **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 is equally important for these institutions and practitioners to understand what the decision does not affect in their practices as it is 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 and overcorrection of the decision.

**1.1. Quickly, repeatedly, and publicly reaffirm a commitment to enrolling diverse classes on college campuses and reckoning with the historical and present effects of racism in the admissions process.** To prevent both a chilling effect on applications from Black, Latino, and Native students and a misinterpretation of the Supreme Court's decision, it will be imperative for governors, state departments of education and higher education, legislators, school district leaders, and other public officials to make it clear that diversity remains a core value in all educational institutions, from pre-K through college and graduate programs, because diversity enriches the experiences of all students.

**1.2. Request guidance from the U.S. Department of Education and the U.S. Department of Justice to be released before the start of the school year in August 2023.** If they have not done so already, state departments of education and higher education may want to contact the U.S. Department of Education to express a need for federal guidance on the impacts and implications of the Supreme Court's decision for both IHEs and LEAs. The vast majority of secondary and postsecondary institutions will not have access to anyone with the level of expertise to explain how the Supreme Court's decision will affect them, but state departments of education may have such resources and can provide the support educational institutions will need.

**1.3. Indicate that the state will be releasing guidance on the implications of the Supreme Court’s decision for IHEs and LEAs in their state.** A simple notification that guidance—building on that from the Department of Education—is coming could prove effective in preempting misguided and incorrect reactions to the decision, which could harm students and students of color in particular.

**1.4. Provide guidance for IHEs, LEAs, practitioners, and nongovernmental educational agencies before August 2023.** It will be important for IHEs and LEAs to have guidance from state departments of education and higher education to create uniform policies and practices in postsecondary and secondary institutions and to inform those institutions that they can and should act with the authority of the state behind them. Policymakers may find it useful to consult with education leaders and campus counsels in states such as California that have already created guidance in response to state-level bans on RCA at public institutions (e.g., University of California, 2015). In many areas, the guidance may be that the decision has no impact on practices or policies because much of what institutions do to promote diversity remains wholly legal. Thus, the guidance is designed, in part, to avoid chilling lawful behavior and to preempt overreach and misinterpretation among state policymakers, LEAs, and practitioners. This guidance should follow federal guidance from the Department of Education and/or Department of Justice.

Subjects that will be helpful to address in guidance include the following:

- 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

**1.5. 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 (e.g., holistic admissions, test optional policies).** 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.

Professional development for secondary school counselors could preempt confusion and misinterpretation of the Supreme Court’s decision regarding the college and career guidance they provide students.

## **2. Data Transparency**

To understand the impact the Supreme Court’s decision will have on admissions, researchers and advocates will need a much clearer understanding of how it affects not only enrollment but also 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. Such data have informed practices in those states and helped IHEs stem the harm that ending RCA 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 RCA but also what needs to be done.

This will not be possible, given current practices in many states. Although some state agencies, such as the State Council of Higher Education for Virginia, collect and publish a significant amount of data about college admissions, in many states, finding admissions data even on public institutions is challenging. Obtaining and publishing complete data on all private IHEs is even more rare. State departments of education and higher education could begin collecting and publishing disaggregated data for every step of the college admissions process, including applications, admits, and enrollments. As we have shown elsewhere, the vast majority of colleges and universities already collect this disaggregated data and will continue to do so in the future, so it presents an absolutely minimal additional burden on IHEs to share that information (Murphy, 2022). In the immediate future, disaggregation could be by existing categories in state databases, 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**

Preventing this decision from having the same degree of negative impact on diversity that earlier bans on RCA had will almost certainly depend on the efforts of policymakers, IHEs, and secondary schools. 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.

**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 to 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 who have been prepared to apply, be 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). State investments in hiring counselors and providing professional development to ensure they have the necessary skills to provide college and career 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.

### **4. Recruitment**

The Supreme Court's rulings should not be taken to affect any part of the enrollment process other than admissions decisions directly. There is no need to craft a race-blind recruitment or enrollment strategy. Indeed, a recruitment and enrollment process more keenly attuned to attracting and yielding students of color could increase the likelihood of preserving existing levels of diversity.

**4.1. Require IHEs to report the name and location of every high school that admissions officers visit on recruiting visits and require all public high schools to report the name of every IHE that sent an admissions officer to visit on a recruiting visit.** A recent study of state flagship universities revealed “socioeconomic, racial, and geographic disparities in [their] recruiting patterns,” with most of the universities in study visiting “more out-of-state than in-state” locations and targeting “affluent, predominantly White localities” (Salazar et al., 2021). States could shine a light on recruiting practices by requiring data collection from all IHEs that receive federal or state funding and from high schools, and publishing that information on the state’s Department of Education website.

**4.2. Encourage the expanded use of geographic data for recruitment purposes.** Enrollment tools, such as the College Board’s Landscape tool, which uses a variety of measures to provide a much richer sense of an applicant’s neighborhood and school context than any application form can, have shown promising effects in pilot programs. Census-tract data could be used in recruiting and marketing efforts to make sure that a diverse pool of students are being extended an invitation to apply, and they could be used in efforts to increase “yield,” that is, the percentage of admitted students who enroll. Census-tract-level data could be used to determine state and institutional aid—both of which are powerful tools for encouraging enrollment—and to identify students for summer bridge programs, mentoring, or other practices that can increase enrollment and completion.

**4.3. Increase the enrollment of more community college transfer students at four-year IHEs by simplifying and aligning the transfer process into public and private institutions.** Many students of color begin their education at community colleges with the intention of transferring to a four-year institution, but only 31% of degree-seeking community college students transfer to a four-year institution and a mere 14% go on to earn a bachelor’s degree (CCRC, 2021). White students are twice as likely to transfer as Black and Latino students are (CCRC, 2021). Boosting transfer rates could be one pathway to increasing campus diversity, but doing so will require removing the formidable barriers to transfer.

One significant barrier experienced by transfer students is the lack of a clearly articulated pathway from a two-year IHE to a four-year IHE in many states (CCRC, 2021). Another is the relatively small number of transfers from community colleges that most highly selective IHEs, in particular, admit each year. Legislators could provide stronger motivations for public and private IHEs to admit more transfer students, as well as require IHEs to provide clearer pathways to transfer, including a full transfer of credits earned at a community college to all institutions that receive state financial aid dollars.

## **5. 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.

**5.1. Ban the use of a legacy preference in admissions.** The 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. However, the evidence suggests that legacy applicants are disproportionately White and that legacy applicants have a significantly higher rate of admission to highly selective IHEs (Arcidiacono et al., 2019). Legacy applicants at Harvard, for instance, are five times more likely to be accepted than non-legacy applicants.

Eliminating legacy preferences is a way of reducing reliance on criteria that reward inherited advantage over individual talent and potential. 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 to increase diversity, legislatures could respond to the ban on RCA by following the example of Colorado, which banned the use of legacy preferences at all public IHEs in 2021, or the example of the University of California system and almost all Florida and Texas public universities, which eliminated legacy preferences after their state banned RCA.

**5.2. 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, state 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.

**5.3 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 attorneys general 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.

**5.4. Encourage the expanded use of geographic data in admissions processes.** Enrollment tools, such as the College Board’s Landscape tool, which uses a variety of measures to provide a much richer sense of an applicant’s neighborhood and school context than any application form can, have shown promising effects in pilot programs. For instance, at IHEs using census-tract data in their admissions process, applicants from the most socioeconomically challenging schools and neighborhoods saw a 5-percentage point increase in their chance of admission compared to similar applicants from the year before the IHE began using the census-tract tool. These increased chances of admission for students from challenging environments did not, however, translate into more socioeconomically, racially or ethnically diverse classes (Mabel et al., 2022). The lack of impact on enrollment could be a function of affordability; thus, it could be more effective to use census-tract data to determine state and institutional aid and identify students for summer bridge programs, mentoring, or other practices that can increase enrollment and completion.

**5.5. Create percentage plans that guarantee a spot for top-ranked students in every public high school in a state.** As discussed in Section 3, the effectiveness of percentage plans to make a large, aggregate change in enrollment demographics remains an unsettled issue. However, percentage plans can have a significant impact on the opportunities of students of color, which, given the lack of evidence for negative effects of percentage plans, means they could still

provide benefits, making their implementation worthwhile. One way to enhance the benefit of percentage plans would be to raise the bar for students who attend high schools receiving Title I funding, high schools where more than 50% of students receive free or reduced-price lunch, or high schools that have sent very low numbers of students to public, four-year IHEs. Percentage plans would not be feasible for private IHEs that draw from a national and international pool of applicants.

#### **5.6. Require public universities or private universities that receive revenue from state aid to consider attendance of a public high school in the state as a “plus factor” in admissions.**

“Plus factor” is a term of art in college admissions, referring to a factor in a highly qualified applicant’s profile that could provide an advantage in the highly competitive admissions process at some IHEs. Plus factors considered at some IHEs include athletic ability, legacy status, residency in a low-population state, low-income status, and more. Plus factors certainly do not guarantee admission, but they can make a significant difference when a high number of qualified students are competing for a limited number of seats in a freshman class. Highly selective IHEs enroll a high percentage of students from private high schools where tuition can be more than \$50,000 a year and which are often much less diverse than the colleges to which they feed so many of their very wealthy students (Murphy, 2021). This benefit could be reduced by giving an explicit “plus factor” to in-state applicants who attend public high schools. This effect could be enhanced by increasing the plus factor for students who attend a high school that receives federal Title I funding or a high school that has historically sent very few students to the IHE to which an applicant has applied.

**5.7. Permanently remove any IHE requirement of admission exam scores for admission and for state or institutional aid.** Racial, ethnic, and socioeconomic gaps in admissions exam scores persist, and requiring exam scores may suppress applications from underrepresented students of color. After COVID reduced access to testing, the vast majority of four-year IHEs dropped the requirement that students submit exam scores, and they have, with few exceptions, continued to do so, even as testing opportunities became widely available once again (Carey, 2023). Almost all four-year IHEs give students the option to submit a score for consideration in the application process. For some applicants, show them at their best, but not for all. Bills have been introduced in Tennessee (Stockard, 2022) and Texas (Menchaca, 2023) to make all public universities require applicants to submit test scores. In Tennessee, the University of Tennessee’s board of trustees reinstated testing requirements after the bill was introduced. In Colorado, on the other hand, the legislature passed a bill in 2021 that allowed public universities to decide whether to require test scores (CDHE, 2021). Illinois went a step further that same year when the state passed legislation making all public IHEs test optional (Bauer-Wolf, 2021).

However, IHEs’ policies on the use of test scores in determining whom to offer institutional aid and how much to offer are not always clear. At a minimum, legislation could require IHEs to publish how exam scores are used in admissions and financial aid. A stronger stance would

require any institution that is test optional in admissions to also be test optional in awarding institutional aid. The strongest stance would also remove the requirement for test score submission from any state-administered grants. As noted in Section 3, the evidence for test optional policies' ability to increase diversity is limited, in no small measure, because widespread adoption at highly selective IHEs is still fairly new, and there has been too little research on the impact of test optional policies at more accessible IHEs that admit more applicants than they reject. It could greatly benefit future policy development regarding admissions exam policy if states conduct research on the impact of test optional policies at IHEs in their state.

**5.8. Encourage or require IHEs to conduct an admissions audit to reassess existing admissions processes, practices, and criteria.** In recent years, advocates for college access have been calling attention to a range of potential barriers to campus diversity, including early admissions plans, legacy preferences, testing requirements, athletic preferences, and curricular requirements. Consider the example of calculus. Anderson and Burdman found that “calculus is favored by many admissions offices as a sign of rigor... [and] for many admissions officers, calculus on a transcript carries prestige and a presumption of intelligence.” The problem, they found, is that only about half of all high schools offer calculus, and, worse yet, only 38% of high schools where students are predominantly Black or Latino offer it. The Supreme Court’s decision offers an opportunity for IHEs and states to reassess admissions practices, identify barriers to access, and retool operations in ways that better align with their institutional mission and with high school curricula.

## **6. Higher Education Funding**

State-based financial aid and funding for public IHEs could play an important role in the response to the decision, which made no ruling about institutional funding or financial aid.

**6.1. Increase funding for need-based state grants, increase state funding for public IHEs in order to increase affordability, fund institutional aid for students with need, and curtail funding for state merit aid programs that disproportionately benefit wealthy White students.** Paying for college is a serious challenge for many students, as the federal Pell Grant and state aid have not kept pace with the cost of attendance of most four-year colleges. Persistent wealth and income gaps make affordability an even more widespread challenge for underrepresented students of color (Levine, 2022). In 2012, the percentage of students with very high need (i.e., they have zero expected family contribution to paying for college) was 29% for White students and 37% for Asian American students, but it was 47% for Hispanic students and 60% for Black students (Office of Planning, Evaluation, and Policy Development, 2016).

Increasing need-based aid from states and IHEs could help lower this barrier to access. One way to increase funding for need-based aid and to help close enrollment gaps may be to eliminate state merit scholarships that disproportionately award money for college—money that comes from

state coffers—to students White and Asian American students and thus exacerbate racial, ethnic, and socioeconomic gaps in college attendance (Dynarski, 2000; Lee, 2020).

**6.2. Include robust weights in performance- and outcome-based funding to incentivize institutions to maintain and increase racial and ethnic diversity through all legal mechanisms.** Performance-based funding (PBF) has become a popular form of determining state appropriations for public IHEs; under PBF, states tie a portion of higher education funding to student outcomes, such as retention and completion. A growing body of research has shown that existing “PBF policies have done little to improve degree completion and have resulted in unintended consequences that are likely to widen racial and economic educational disparities” (Rosinger et al., 2021). Given the popularity of PBF policies among many state policymakers, they are unlikely to be phased out soon. If they are not to further exacerbate the effects of a ban on RCA, it will likely be necessary to include robust weights in PBF to incentivize the enrollment and completion of underrepresented students.

## 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.



## REFERENCES

- Ackerman, T. (2004, January 10). Texas A&M abolishes legacy program. *Houston Chronicle*. <https://www.chron.com/news/houston-texas/article/Texas-A-M-abolishes-legacy-program-1959293.php>
- American School Counselor Association. (2022). School Counselor Roles & Ratios. <https://www.schoolcounselor.org/About-School-Counseling/School-Counselor-Roles-Ratios>
- Andrews, R. J., Imberman, S. A., & Lovenheim, M. F. (2020). Recruiting and supporting low-income, high-achieving students at flagship universities. *Economics of Education Review*, 74, Article 101923. <https://doi.org/10.1016/j.econedurev.2019.101923>
- Andrews, R. J., Ranchhod, V., & Sathy, V. (2010). Estimating the responsiveness of college applications to the likelihood of acceptance and financial assistance: Evidence from Texas. *Economics of Education Review*. <https://doi.org/10.1016/j.econedurev.2009.04.004>
- Angrist, J., Autor, D., & Pallais, A. (2020). Marginal effects of merit aid for low-income students. SEII Working Paper. <https://seii.mit.edu/research/study/marginal-effects-of-merit-aid-for-low-income-students/>
- Arcidiacono, P., Kinsler, J., & Ransom, T. (2022). Legacy and athlete preferences at Harvard. *Journal of Labor Economics*. <https://doi.org/10.1086/713744>
- Atkinson, R. C., & Geiser, S. (2009). Reflections on a century of college admissions tests. *Educational Researcher*. <https://doi.org/10.3102/0013189X09351981>
- Bastedo, M. N., Howard, J. E., & Flaster, A. (2016). Holistic admissions after affirmative action: Does “maximizing” the high school curriculum matter? *Educational Evaluation and Policy Analysis*. <https://doi.org/10.3102/0162373716642407>
- Bauer-Wolf, J. (2021). Illinois public colleges required to be test-optional under new law. *Higher Ed Dive*. <https://www.highereddive.com/news/illinois-public-colleges-would-go-test-optional-under-new-bill/599980/>
- Bennett, C. T. (2022). Untested admissions: Examining changes in application behaviors and student demographics under test-optional policies. *American Educational Research Journal*. <https://doi.org/10.3102/00028312211003526>
- Bettinger, E. P., & Evans, B. J. (2019). College guidance for all: A randomized experiment in pre-college advising. *Journal of Policy Analysis and Management*. <https://doi.org/10.1002/pam.22133>
- Bleemer, Z. (2019). Diversity in university admissions: Affirmative action, top percent policies, and holistic review. Research & Occasional Paper Series, Center for the Study of Higher Education, UC Berkeley. <https://cshe.berkeley.edu/publications/diversity-university-admissions-affirmative-action-percent-plans-and-holistic-review>
- Bleemer, Z. (2020). The impact of Proposition 209 and access-oriented UC admissions policies on underrepresented UC applications, enrollment, and long-run student outcomes. UC Office of the President.
- Bleemer, Z. (2022). Affirmative action, mismatch, and economic mobility after California’s Proposition 209. *The Quarterly Journal of Economics*. <https://doi.org/10.1093/qje/qjab027>
- Board of Admissions and Relations with Schools. (2022). Guidelines for implementation of university policy on undergraduate admissions. University of California Academic Senate. <https://senate.universityofcalifornia.edu/files/committees/boars/documents/guidelines-implementation-of-ug-admission.pdf>
- Brief for HR Policy Association. (2022). *SFFA v. Harvard* and *SFFA v. UNC - Chapel Hill*. [https://www.supremecourt.gov/DocketPDF/20/20-1199/232191/20220729135455179\\_Brief.pdf](https://www.supremecourt.gov/DocketPDF/20/20-1199/232191/20220729135455179_Brief.pdf)
- Brief for Major American Business Enterprises. (2022). *SFFA v. Harvard* and *SFFA v. UNC - Chapel Hill*. [https://www.supremecourt.gov/DocketPDF/20/20-1199/232357/20220801135424028\\_Nos.%2020-1199%2021-707%20-%20Brief%20for%20Major%20American%20Business%20Enterprises%20Supporting%20Respondents.pdf](https://www.supremecourt.gov/DocketPDF/20/20-1199/232357/20220801135424028_Nos.%2020-1199%2021-707%20-%20Brief%20for%20Major%20American%20Business%20Enterprises%20Supporting%20Respondents.pdf)

- Brief for the US Military. (2022). *SFFA v. Harvard and SFFA v. UNC - Chapel Hill*. [https://www.supremecourt.gov/DocketPDF/20/20-1199/232531/20220801183329801\\_20-1199%20and%2021-707\\_Brief%20of%20Amici%20Curiae%20Former%20Military%20Leaders.pdf](https://www.supremecourt.gov/DocketPDF/20/20-1199/232531/20220801183329801_20-1199%20and%2021-707_Brief%20of%20Amici%20Curiae%20Former%20Military%20Leaders.pdf)
- Burland, E., Dynarski, S., Michelmore, K., Owen, S., & Raghuraman, S. (2022). The power of certainty: Experimental evidence on the effective design of free tuition programs. National Bureau of Economic Research. <https://www.nber.org/papers/w29864>
- Carey, K. (2023). The SATs are: a) dying; b) already dead; c) alive and well; d) here forever. *Vox*. <https://www.vox.com/23700778/sat-act-standardized-tests-college-high-school>
- Carter, R. (2022). *Civil-rights complaint filed over Oklahoma colleges' discrimination*. <https://www.ocpathink.org/post/independent-journalism/civil-rights-complaint-filed-over-oklahoma-colleges-discrimination>
- Center for Educational Outreach, University of Michigan. (2023). Michigan College Advising Corps. <https://ceo.umich.edu/mcac/>
- Coleman, A., & Keith, J. L. (2018). *Understanding holistic review in higher education admissions: Guiding principles and model illustrations*. College Board and Education Counsel. <https://professionals.collegeboard.org/pdf/understanding-holistic-review-he-admissions.pdf>
- College Board. (2019). *Landscape*. <https://professionals.collegeboard.org/landscape>
- Colorado Department of Higher Education. (2021). *College admission use of national test scores*. <https://cdhe.colorado.gov/college-admission-use-of-national-test-scores#:~:text=Some%20private%20colleges%20and%20universities,part%20of%20the%20admission%20process>
- Community College Research Center (CCRC). (2021). *Community College Transfer*. Columbia University. <https://ccrc.tc.columbia.edu/media/k2/attachments/community-college-transfer.pdf>
- Daniels, R. (2020). Why we ended legacy admissions at Johns Hopkins. *The Atlantic*. <https://www.theatlantic.com/ideas/archive/2020/01/why-we-ended-legacy-admissions-johns-hopkins/605131/>
- Desai, S. (2018). College sports are affirmative action for rich white students. *The Atlantic*. <https://www.theatlantic.com/education/archive/2018/10/college-sports-benefits-white-students/573688/>
- Donastorg, M. (2022). How the supreme court decision on affirmative action could impact HBCUs. *The Plug*. <https://tpinsights.com/supreme-court-affirmative-action-hbcus/>
- Dynarski, S. (2000). Hope for Whom? Financial Aid for the Middle Class and Its Impact on College Attendance. National Bureau of Economic Research. <https://www.nber.org/papers/w7756>
- Elwood, K. (2023). Appeals court upholds Thomas Jefferson High School's admission policy. *Washington Post*. <https://www.washingtonpost.com/education/2023/05/23/thomas-jefferson-admissions-policy-upheld/>
- Fay, D. L., Hicklin Fryar, A., Meier, K. J., & Wilkins, V. (2021). Intersectionality and equity: Dynamic bureaucratic representation in higher education. *Public Administration*. <https://doi.org/10.1111/padm.12691>
- Fisher v. University of Texas. (2016). *Oyez*. <https://www.oyez.org/cases/2015/14-981>
- Garces, L. M. (2013). Understanding the impact of affirmative action bans in different graduate fields of study. *American Educational Research Journal*. <https://doi.org/10.3102/0002831212470483>
- Go Blue Guarantee Eligibility. (n.d). *Financial aid | University of Michigan*. <https://finaid.umich.edu/apply-aid/new-undergraduates/michigan-residents/go-blue-guarantee-eligibility#:~:text=As%20approved%20by%20the%20U%2DM,notification%20process%20each%20academic%20year>
- Government Accountability Office. (2020). Racial Disparities in Education and the Role of Government. <https://www.gao.gov/blog/racial-disparities-education-and-role-government>
- Gratz v. Bollinger. (n.d.). *Oyez*. <https://www.oyez.org/cases/2002/02-516>
- Griffin, D., & Birkenstock, N. (2022). "I was going to work full-time at Roses Department Store": The need for college readiness with Black and Latinx students. *Journal of College Access*. <https://scholarworks.wmich.edu/jca/vol7/iss1/5>
- Grutter v. Bollinger. (n.d.). *Oyez*. <https://www.oyez.org/cases/2002/02-241>

- Gurin, P., Dey, E., Hurtado, S., & Gurin, G. (2002). Diversity and higher education: Theory and impact on educational outcomes. *Harvard Educational Review*.  
<https://doi.org/10.17763/haer.72.3.01151786u134n051>
- Harris, A. (2021). *The state must provide: Why America's colleges have always been unequal—and how to set them right*. Ecco Press.
- Harris, A., & Tienda, M. (2010). Minority higher education pipeline: Consequences of changes in college admissions policy in Texas. *The Annals of the American Academy of Political and Social Science*.  
<https://doi.org/10.1177/0002716209348740>
- Hinrichs, P. (2014). Affirmative action bans and college graduation rates. *Economics of Education Review*.  
<https://doi.org/10.1016/j.econedurev.2014.06.005>
- Howell, C., & Turner, S. E. (2004). Legacies in black and white: The racial composition of the legacy pool. *Research in Higher Education*. <https://doi.org/10.1023/B:RIHE.0000027390.19997.f4>
- Jaschik, S. (2021). No SAT or ACT scores at U of California. *Inside Higher Ed*.  
<https://www.insidehighered.com/admissions/article/2021/05/17/u-california-will-not-consider-sat-or-act-scores-future>
- Jean, T. (2023). Tucker Carlson says FSU scholarship promotes ‘race hatred’; university updates language. *Tallahassee Democrat*. <https://www.tallahassee.com/story/news/local/fsu-news/2023/02/08/fox-news-host-tucker-carlson-calls-out-fsu-for-minority-scholarship/69880934007/>
- Johnson, S. M., & Lollar, X. L. (2002). Diversity policy in higher education: The impact of college students’ exposure to diversity on cultural awareness and political participation. *Journal of Education Policy*. <https://doi.org/10.1080/02680930210127577>
- Kidder, W. C., & Gándara, P. (2016). *Two decades after the affirmative action ban: Evaluating the University of California’s race-neutral efforts*. University of California, Los Angeles.  
<https://escholarship.org/uc/item/55j5z74v>
- Klein, B. (2000). College program has little impact. *Tampa Bay Times*.  
<https://www.tampabay.com/archive/2000/09/03/college-program-has-little-impact/>
- KOLD News 13. (2014). AZ’s Affirmative Action ban’s effect on the UA. *KOLD Channel 13*.  
<https://www.kold.com/story/25325750/azs-affirmative-action-bans-effect-on-the-ua/>
- Kremer, R. (2021). State minority scholarship program faces legal challenge for race discrimination. *Wisconsin Public Radio*. <https://www.wpr.org/state-minority-scholarship-program-faces-legal-challenge-race-discrimination>
- Lee, J. (2020). Moving HOPE Forward into the 21st Century. Georgia Budget & Policy Institute.  
<https://gbpi.org/moving-hope-forward-into-the-21st-century/>
- Lee, N., Resnick, P., and Barton, G. (2019). Algorithmic bias detection and mitigation: Best practices and policies to reduce consumer harms. Brookings Institute. <https://www.brookings.edu/research/algorithmic-bias-detection-and-mitigation-best-practices-and-policies-to-reduce-consumer-harms/>
- Levine, P. & Ritter, D. (2022). The racial wealth gap, financial aid, and college access. *Brookings Institute*.  
<https://www.brookings.edu/blog/up-front/2022/09/27/the-racial-wealth-gap-financial-aid-and-college-access/>
- Li, A. Y., & Gándara, D. (2020). The promise of “free” tuition and program design features: Impacts on first-time college enrollment. In L. W. Perna & E. J. Smith (Eds.), *Improving research-based knowledge of college promise programs*. American Educational Research Association.  
<https://doi.org/10.2307/j.ctvxw3phv.13>
- Liu, H. (2022). How do affirmative action bans affect the racial composition of postsecondary students in public institutions? *Educational Policy*, 36(6), 1348–1372. <https://doi.org/10.1177/0895904820961007>
- Llamas, J. D., Nguyen, K., & Tran, A. G. (2021). The case for greater faculty diversity: Examining the educational impacts of student-faculty racial/ethnic match. *Race Ethnicity and Education*.  
<https://doi.org/10.1080/13613324.2019.1679759>

- Long, M. C. (2007). Affirmative action and its alternatives in public universities: What do we know? *Public Administration Review*. <https://doi.org/10.1111/j.1540-6210.2007.00715.x>
- Long, M. C., & Bateman, N. A. (2020). Long-run changes in underrepresentation after affirmative action bans in public universities. *Educational Evaluation and Policy Analysis*. <https://doi.org/10.3102/0162373720904433>
- Mabel, Z., Hurwitz, M. D., Howell, J., & Perfetto, G. (2022). Can Standardizing Applicant High School and Neighborhood Information Help to Diversify Selective Colleges? *Educational Evaluation and Policy Analysis*. <https://doi.org/10.3102/01623737221078849>
- Marin, P., & Lee, E. K. (2003). *Appearance and reality in the Sunshine State: The Talented 20 Program in Florida*. Harvard University.
- McNutt, K. S. (2017). Oklahoma public colleges improve diversity, but cannot consider race in admissions. *The Oklahoman*. <https://www.oklahoman.com/story/news/politics/2017/08/06/oklahoma-public-colleges-improve-diversity-but-cannot-consider-race-in-admissions/60583584007/>
- Menchaca, M. (2023). Texas Senate subcommittee OKs bill to require colleges to consider SAT, ACT in admissions. *Austin American-Statesman*. <https://www.statesman.com/story/news/education/2023/04/19/texas-legislature-senate-bill-518-panel-advances-oks-require-act-sat-college-admissions/70126158007/>
- Meyerhofer, K. (2022, September 26). Conservative law firm to appeal judge's dismissal of lawsuit arguing minority retention grant discriminates against white students, others. *Milwaukee Journal Sentinel*. <https://www.jsonline.com/story/news/education/2022/09/26/will-lawsuit-targeting-wisconsin-college-grant-students-color-tossed/8092310001/>
- Mijs, J. J. (2023). Learning about inequality in unequal America: How heterogeneity in college shapes students' beliefs about meritocracy and racial discrimination. *Research in Social Stratification and Mobility*. <https://doi.org/10.1016/j.rssm.2023.100814>
- Mulhern, C. (2022). Beyond Teachers: Estimating Individual Guidance Counselors' Effects on Educational Attainment. [http://papers.cmulhern.com/Counselors\\_Mulhern.pdf](http://papers.cmulhern.com/Counselors_Mulhern.pdf)
- Murphy, J. (2021). The Real College Admissions Scandal. *Slate*. <https://slate.com/news-and-politics/2021/06/private-schools-competitive-college-advantage-problems.html>
- Murphy, J. (2022). The Future of Fair Admissions Issue Brief 3: Transparency And Accountability. Education Reform Now. <https://edreformnow.org/2022/11/28/the-future-of-fair-admissions/>
- National Science Foundation. (2015, February 4). Award Abstract # 0902027. Oklahoma Louis Stokes Alliance for Minority Participation. [https://www.nsf.gov/awardsearch/showAward?AWD\\_ID=0902027](https://www.nsf.gov/awardsearch/showAward?AWD_ID=0902027)
- Office of Planning, Evaluation and Policy Development and Office of the Under Secretary. (2016). *Advancing Diversity and Inclusion in Higher Education*. <http://www2.ed.gov/rschstat/research/pubs/advancing-diversity-inclusion.pdf>
- Office of Admissions. (n.d.). *Admission decisions*. The University of Texas at Austin. <https://admissions.utexas.edu/apply/decisions#fndtn-freshman-admission>
- Patch, W. (2023). 2023 Niche Spring Survey of Juniors. Niche. <https://www.niche.com/about/enrollment-insights/2023-spring-junior-survey/>
- Peace, L. (2023). USF Black Leadership Network helps students excel beyond the classroom. *Tampa Bay Times*. <https://www.tampabay.com/news/education/2023/04/11/usf-black-leadership-network-helps-students-excel-beyond-classroom/>
- Pinhel, R. (2008). *Texas top 10% law*. Research Report for Connecticut's Office of Legislative Research. <https://www.cga.ct.gov/2008/rpt/2008-R-0116.htm>
- Reardon, S., Baker, R., Kasman, M., Klasik, D., & Townsend, J. (2015). Can Socioeconomic Status Substitute for Race in Affirmative Action College Admissions Policies? Evidence From a Simulation Model. ETS. [https://www.ets.org/Media/Research/pdf/reardon\\_white\\_paper.pdf](https://www.ets.org/Media/Research/pdf/reardon_white_paper.pdf)
- Regents of the University of California v. Bakke. (n.d.). Oyez. <https://www.oyez.org/cases/1979/76-811>
- Rosinger, K., Shamekhi, Y., Choi, J., Voorhees, N., Ortagus, J., & Kelchen, R. (2021). Performance Funding For Higher Education: Current Evidence, Unanswered Questions, And How New Data Can Inform Policy. InformEd States.

[https://static1.squarespace.com/static/5d9f9fae6a122515ee074363/t/60abf3734f311e7d724ce96f/1621881716349/InformEdStates\\_Brief\\_PerformanceFunding.pdf](https://static1.squarespace.com/static/5d9f9fae6a122515ee074363/t/60abf3734f311e7d724ce96f/1621881716349/InformEdStates_Brief_PerformanceFunding.pdf)

Salazar, K. G., Jaquette, O., & Han, C. (2021). Coming Soon to a Neighborhood Near You? Off-Campus Recruiting by Public Research Universities. *American Educational Research Journal*.

<https://doi.org/10.3102/00028312211001810>

Schultz, L., & Backstrom, B. (2021). *Test-optional admissions policies: Evidence from implementations pre- and post-COVID-19*. Nelson A. Rockefeller Institute of Government.

<https://files.eric.ed.gov/fulltext/ED613855.pdf>

State University System of Florida. (2020). *Admission of undergraduate first-time-in-college, degree-seeking freshmen*. [https://www.flbog.edu/wp-content/uploads/6.002FTICAAdmissionsTechnicalchange2018\\_08\\_17.pdf](https://www.flbog.edu/wp-content/uploads/6.002FTICAAdmissionsTechnicalchange2018_08_17.pdf)

Stockard, S. (2022). Kelsey postpones ACT requirement bill after backing down on UT ‘wokeism’.

*Tennessee Lookout*. <https://tennesseelookout.com/2022/02/08/kelsey-postpones-act-requirement-bill-after-backing-down-on-ut-wokeism/>

Students for Fair Admissions v. University of North Carolina (2022). Transcript of Oral Argument.

[https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2022/21-707\\_m64n.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2022/21-707_m64n.pdf)

Subcommittee on Higher Education. (2023). Bill analysis. Texas Legislature Online.

<https://capitol.texas.gov/tlodocs/88R/analysis/html/SB025381.htm>

Texas Higher Education Coordinating Board. (2022). *Advise TX*. <https://www.highered.texas.gov/our-work/empowering-our-students/exploring-college-options/advise-tx/>

University of California. (n.d.). *Native American opportunity plan*. UC Admissions.

<https://admission.universityofcalifornia.edu/tuition-financial-aid/types-of-aid/native-american-opportunity-plan.html>

University of California Task Force on Faculty Diversity. (2006). *The representation of minorities among ladder rank faculty*. <https://www.ucop.edu/academic-personnel-programs/files/faculty-diversity-task-force/report.pdf>

University of California. (2016). *Guidelines for enhancing diversity at UC in the context of Proposition 209*. <https://diversity.ucsf.edu/sites/default/files/2021-09/prop-209-summary-2013.pdf>

University of Michigan. (2023, March 21). College Advising Corps.

<https://collegeadvisingcorps.org/partners/university-of-michigan/>

University of Michigan. (2023). Impact spotlight report: Wolverine pathways program evaluation.

<https://report.dei.umich.edu/wp-content/uploads/2023/01/wolverine-pathways.pdf>

University of Michigan. (n.d.). *Go Blue Guarantee*. <https://goblueguarantee.umich.edu/>

Wolverine Pathways, University of Michigan. (2022, February 2). *About the program*.

<http://wp.web.itd.umich.edu/about-the-program/>

---

*Education Reform Now (ERN) is a non-partisan, nonprofit think tank and advocacy organization that promotes increased resources and innovative reforms in K-16 public education, particularly for students of color and students from low-income families. We seek forward progress in public education—at the federal, state, and local level—developing and advocating for new, bold ideas and mutually reinforcing policies in elementary, secondary and post-secondary education.*