The Elimination of Affirmative Action: California’s Degraded Educational System†

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I am the Dean of the Graduate School of Education at the University of California at Berkeley, the top-ranked education school in the nation. Since receiving my doctoral degree from the University of Kansas in 1972, I have served as a Professor of Psychology and/or Education at five public universities, including three in the University of California system. I have also served as Senior Officer and Director of the Office of Bilingual Education and Minority Languages Affairs in the United States Department of Education. I have written extensively on educational policy issues, in particular on multilingualism, multiculturalism, and diversity in education, and on the education of Latinos in the United States. My curriculum vita is attached as Exhibit A.1

I have prepared this report on an expedited basis at the request of Scheff & Washington, PC, which represents students who intervened as defendants in Grutter v. Bollinger,2 a case challenging the affirmative action admissions policies at the University of Michigan Law School. I have not testified as an expert in the last four years and am not being paid for my services in this case.

The elimination of affirmative action admissions policies in the University of California system has severely intensified problems of inequality in access to post-secondary and professional education in this state. The number of black, Latino, and Native American students enrolled in the system has dropped, and the system as a whole has begun to segregate into elite campuses with more white and Asian students and less elite campuses with more black and Latina/o students. This circumstance is educationally unacceptable for all: for those of us who teach and who train teachers, for white and Asian students, and for minority students and their communities.

It has proven impossible to compensate for the elimination of affirmative action through other means, though attempts to do so have been made. The impact has been particularly destructive in the most competitive graduate and professional schools in the University of California system - including my own program and the law schools on the Berkeley and Los Angeles campuses.

For decades, the growing emphasis on standardized test scores in post-secondary admissions has compounded the distortions imposed on K-12 education by race-related social and educational inequities. The elimination of affirmative action has made the overemphasis on tests into an even more pernicious guarantee of unequal opportunity for minority students, and especially those students whose primary language is not English. My colleagues and I have called for the elimination


1. Exhibit A is not included in this publication, but is on file with the author.

2. 137 F. Supp. 2d 821 (2001)
of the SAT in University of California undergraduate admissions, as well as for other measures to expand access and opportunity for Latina/o and other minority students. I have attached as Exhibits B and C, respectively, an article I co-authored entitled How Can Public Universities Still Admit a Diverse Freshman Class? The Case of Latinos, the SAT, and the University of California, from the Summer/Fall 1999 issue of the Journal of College Admission and Report Number Five of the Latino Eligibility Task Force, for which I served as chair, entitled Latino Student Eligibility and Participation in the University of California – YA BASTA.

Measures such as those outlined in Exhibits B and C are best seen as complementing affirmative action policies. They cannot replace them. Affirmative action once served to temper educational inequality; in its absence, the inequities are harsher. Exhibit D to this report is a section of a November 1999 draft report by Professors Patricia Gándara and Deborah Bial entitled Paving the Way to Higher Education: K-12 Programs for Underrepresented Youth, together with the bibliography for the entire report. The report was commissioned by the National Postsecondary Education Cooperative, which commissioned me to review it. The section which is attached discusses some of the elements and dynamics of educational inequality that produce disparities in access to higher education, including inequalities of familial, cultural and social capital; inequality of resources in neighborhoods and communities; lack of peer support for academic achievement; racism; inequalities in K-12 schools, including unequal distribution of well-qualified teachers; segregation of Black and Latino students; poor high school counseling; low expectations and aspirations; high drop out rates; and limited financial resources.

Opponents of affirmative action in higher education often characterize these policies as being "too little, too late" and/or as masking deficiencies and inequalities in K-12 education. As I am unaware that any proponents of that view have involved themselves in efforts to improve K-12 education for minorities, I have found the argument to be disingenuous and even cynical. More importantly, it rests on a falsely bifurcated conception of the relationship between efforts in the K-12 and post-secondary arenas. Efforts to increase opportunities, to improve the quality of education, and to raise the level of educational achievement of and for minority students are all part of the same urgent and imperative project.

To flesh out just one aspect of the interaction among them, the real possibility of attending the University of California at Berkeley or Los Angeles was until recently a source of hope and motivation for disadvantaged high school students throughout California. It was the promise of a high-quality, affordable college education. That sense of possibility affected so-called overachievers most of all, but was not limited to them. Without affirmative action, it seems (and is) even more difficult to overcome the barriers, and it makes less sense to try.

3. Eugene Garcia, R.E. Jorgensen & C. Ormsby, The Case of Latinos, the SAT, and the University of California, 164 J. C. Admis. 5 (Summer/Fall 1999); Latino Student Eligibility and Participation in the University of California – YA BASTA! Rep. No. 5, Latino Eligibility Task Force (July 1997). The Exhibits B and C are not included in this publication, but are on file with the author.

4. Patricia Gándara & Deborah Bial, Paving the Way to Higher Education: K-12 Intervention Programs for Underrepresented Youth (Nov. 1999) (unpublished manuscript, on file with the author). Exhibit D is not included in this publication.
Another predictable consequence of the end of affirmative action in California is that fewer highly qualified minority educators are graduating from the programs at Berkeley and Los Angeles and throughout the system. Students in inner-city and other largely segregated schools are thus being deprived of black, Latino/a, and Native American teachers who are more sensitive to the needs and cultures of minority youth and who have served as their role models.

K-12 education in California was not without grave problems and challenges before the elimination of affirmative action. But the Regents' decisions and the ballot initiative that ended affirmative action here have made those problems far more pervasive and urgent, and have exerted great and grave pressure on the morale of students and teachers throughout the state's primary and secondary schooling system.

In sum, the elimination of affirmative action has degraded education at all levels in California; efforts to soften its effects have failed; the result is an intensifying crisis for Latina/o and other minority students of all ages.

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The sources I have relied on are identified in Exhibits B-D; I have also relied on widely publicized admissions and enrollment figures from the University of California system and on my observations and those of my colleagues and students.