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Texas Top 10% Admissions Law: Paragons for Policy Change

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Abstract

In this article, I evaluate and analyze the Texas Top 10% Admissions Law and answer the question whether Texas H.B. 588 is needed given the recent *Gratz v. Bollinger* and *Grutter v. Bollinger* cases. I argue that either failing to change this policy or eliminating the policy altogether would result in negative consequences for the state's institutions of higher education or minority students respectively. Then, I offer a set of policy recommendations the Texas Legislature can use in adapting the policy. Last, I offer a set of policy paragons useful when deciding whether to maintain, eliminate, or change education policy.

Texas Top 10% Admissions Plan: Paragons for Policy Change

Educational policy analysis, research, and literature have been subject to significant changes since the early 1960's. Since this time, categories of policy research and analysis have emerged in the literature; these can be combined into two major categories: research related to the policymaking process and research related to the evaluation and analysis of policy.

Researchers practicing the former want to understand the policymaking process to assist in the development of future policies while researchers practicing the later analyze and evaluate the effectiveness of policies in order to develop or incorporate these findings into potential adaptations of the policy or future policies. Wildavsky (1987) made an important distinction between policy analysis and policy evaluation; he stated that policy evaluation "is not necessarily analysis of policy. Telling people they have not achieved intended objectives does not necessarily help them discover what should be done" (p. 7). The focus of this paper is on both the evaluation *and* analysis of a statewide policy affecting higher education; however, this first part will focus primarily on policy evaluation while the second part will focus primarily on policy analysis.

Like the categorization of research and policy analysis offered above, three distinct frames of policy evaluation and analysis can be deduced from the literature as well: rational (e.g., Wildavsky, 1987), political (e.g., Majone, 1989; Moore, 1998), and nihilistic (e.g., revised-garbage can model) frames. Each of these frames maintains certain views and assumptions about the policy world. For example, in the rational frame, policymakers are expected to think rationally about the decision-making process. People, according to the rational frame, will specify the pros and cons of resolutions and examine alternatives in the decision-making process. Those who adhere to the political frame, though, think policy is subject to debate and discourse, and rationality does not exist in the policy process. Rather, the process is one of bargaining for hegemonic power or the maintenance of such authority, and policy merely serves as a vehicle to exercise such authority. The nihilistic frame is a derivative of the political frame; yet, it sounds more fatuous. Those who adhere to this frame think that there is no rationality in the process. Further, supporters of the nihilistic frame disagree with the supposition that the end result of the

decision-making process is political power and hegemonic authority. Rather, they suggest that a situation will arise where a policy window for change or innovation presents itself and the answer meets the problem; the policy solution and policy problem are linked haphazardly together.

While much research and literature in recent years have focused on using political and other contemporary understandings, the purpose of this paper is to illustrate the use of several frames in policy evaluation and analysis. The contention offered is that the use of multiple perspectives in the analysis of policy may provide for a richer and deeper understanding than would be possible through the constrained use of one perspective. Additionally, this policy analysis serves to understand the purpose of the legislation, the policy tool used for such purpose, and as a critique of the implementation of the legislation. Lastly, I would like to present a set of educational policy change paragons policymakers can use when deciding whether to maintain, adapt, or abolish education policies. I derive these policy paragons largely based on findings resulting from the policy evaluation and analysis.

Policy Case

Throughout the 1990's, affirmative action in college and university admissions came under increased scrutiny, if not attack (Tienda & Niu, 2004b). During this period, statewide initiatives such as Proposition 209 in California and Initiative 200 in Washington, as well as legal decisions (e.g., *Hopwood, et al. v. State of Texas, et al.*, 78 F.3d 932 5th Cir., 1996) eliminated or invalidated the use of race or affirmative action in educational settings. These social, political, and legal events challenged higher education institutional and state leaders to seek alternative methods of increasing the diversity of their student bodies while staying within the boundaries of the law. The following examines the implementation of one such state political response (Texas H.B. 588). Further, this paper poses and answers important questions related to the legislation. For example, "In light of recent U.S. Supreme Court cases *Grutter v. Bollinger, et al.*, 539 US 306 (2003) and *Gratz, et al. v. Bollinger, et al.*, 539 US 244 (2003) is it still necessary to maintain Texas H.B. 588?"

Access and Affirmative Action

To understand the historical events leading to the enactment of the legislation will require consideration of two additional interrelated terms—*access* and *affirmative action*. *Access* is understood from multiple perspectives such as participation in postsecondary education through community colleges (Cohen & Brawer, 2003; Dougherty, 1994), participation and success or admission to and graduation from public institutions of higher education (Texas Higher Education Coordinating Board, 2000), and admission to selective institutions of higher education (Bowen & Bok, 1998; Massey, Charles, Lundy, & Fischer, 2003). *Access* can be further understood through the college admissions process (Niu, Tienda, & Cortes, 2004; Tienda, Cortes, & Niu, 2003), financing of a college education (see Heller, 2002; St. John, 2003), and cultural or social forms of capital that promote admission to higher education (Tierney & Hagedorn, 2002). Bowen and Bok (1998) suggested that the controversy related to affirmative action in college admissions is a problem that concerns selective institutions of higher education rather than less prestigious institutions. After all, these less selective institutions are more apt to admit diverse students if they apply. Although affirmative action promotes access in general, in accordance with Bowen and Bok's conceptualization, affirmative action promotes the access of specific students (such as underrepresented students) to specific institutions (more precisely, selective institutions). Therefore, an analysis of selectivity in Texas higher education is warranted.

Most public institutions of higher education in Texas maintain low selectivity (Tienda & Niu, 2004b), perhaps, because the state has attempted to maintain a significant degree of access to its public colleges and universities. Only a couple of four-year public institutions of higher education (The University of Texas at Austin and Texas A&M University) are considered either *very competitive* or *highly competitive* by the Barron's Index standards (Tienda & Niu, 2004b). This means that most of the state's public institutions would accept most students that apply, and only these two public flagship institutions maintain selective admissions standards. Therefore, in keeping with Bowen and Bok's contention that affirmative action programs are a pressing reality at selective institutions, an analysis of policy related to affirmative action and access would

suggest primarily researching the policy's effects at these two public flagship institutions of higher education.

President Lyndon B. Johnson developed affirmative action when he issued the Equal Employment Opportunity Executive Order No. 11246 (1964) that stated federal contractors "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin." (p. 339). The interpretations of the executive order have broadened the understanding of the intent of the executive order. As a result, it has since been understood as a concept that gives preference to underrepresented minorities instead of a concept that merely attempts to create an environment of non-discrimination. However, since then, affirmative action programs developed at colleges and universities have been challenged in the courts as evidenced in *Defunis, et al. v. Odegaard, et al.*, 416 US 312 (1974). In this case, the U.S. Supreme Court ruled that the case was moot because Defunis was in his final semester of law school and the decision would have no bearing on his graduation from the institution. In effect, the Supreme Court sidestepped the issue in this case; however, the Court did reverse the decision of the Washington State Supreme Court, which had ruled in favor of the law school's affirmative action admissions program. However, Justice Douglas' dissenting opinion points the way to subsequent Supreme Court decisions in the matters (Hendrickson, 1999).

Later, the U.S. Supreme Court ruled on the use of race in higher education admissions in *Regents of the University of California v. Bakke*, 438 US 265 (1978). The Court ruled that the University could not use a quota system or set aside a certain number of admittees specifically for minority students. The University was also prohibited from using a dual admissions process; one for White students and another for minorities (*University of California v. Bakke*, 438 US 265 1978). The Opinion of the Court, written by Justice Powell, however, stated that the use of race as a "plus factor" in admissions was an acceptable practice to promote racial diversity as long as race was not the sole decision factor. This would serve as the vehicle for institutional use of affirmative action admissions policies. However, in 1996, the 5th Circuit Court of Appeals in

Hopwood v. State of Texas, 78 F.3d 932 invalidated any and all use of race or ethnicity in college and university admissions programs within its jurisdiction. It has been said to have been an unprecedented lower-court decision because for the first time in the history of American jurisprudence an inferior court overruled a U.S. Supreme Court decision (Brown, Lane, & Hendrickson, 2003). This decision acted as a watershed event changing the landscape of affirmative action programs of admission at colleges and universities within the 5th Circuit Court's jurisdiction. Public institutions of higher education in Texas could no longer use race or ethnicity in their college admissions decisions. As a result, the Texas Legislature enacted legislation to deal directly with the Circuit Court's ruling.

Top 10% Plan

Several months after the *Hopwood* Circuit Court of Appeals decision, the Texas State Legislature passed H.B. 588. Selingo (2000) wrote in a *Chronicle of Higher Education* article, "In the fall of 1996, six months after a federal court barred Texas colleges from considering race in admissions decisions, a group of professors, legislative aides, and civil-rights activists gathered in the office of State Rep. Irma Rangel" (p. A32). Their decision to meet was based primarily "to prevent minority enrollments from plummeting in the wake of the ruling in *Hopwood v. Texas*. College presidents held emergency meetings to figure out ways around the decision...." (p. A32).

The legislation gave any student who graduated in the top 10% of their public or private high school automatic admission to any public institution of higher education of the students' choosing. The legislation read:

Each general academic teaching institution shall admit an applicant for admission to the institution as an undergraduate student if the applicant graduated in one of the two school years preceding the academic year for which the applicant is applying for admission from a public or private high school in this state accredited by a generally recognized accrediting organization with a grade point average in the top 10 percent of the student's high school graduating class. (See H.B. 588, n.p.)

The intent of the policy is to provide underrepresented students an opportunity to gain admission to the state's two public flagship institutions of higher education given the *Hopwood* Circuit Court decision. The goal of the legislation is to sustain the level of higher education underrepresented access while maintaining the boundaries established by the case law. An ancillary and noble goal was to increase the level of underrepresented minority access. The policy evaluation question driving this evaluation is "Has H.B. 588 been effective in achieving its intended goals in Texas?"

Criticisms and Benefits of H.B. 588

State policymakers and academic scholars either have criticized or supported the legislation. Below, each criticism is analyzed and deliberated based on the merits of the argument using appropriate research. Some criticisms are based on nothing more than anecdotal evidence failing to use empirical research while other criticisms are based on a growing body of research. The criticisms offered are that H.B. 588 relies on a racially segregated system of K-12 education to promote desegregation in higher education, relies on only one point of information (high school class rank), causes a "crowding out" effect of some of the best and brightest students, exacerbates the "brain drain" effect, and reduces the level of institutional autonomy. Conversely, the benefits of H.B. 588 are that it levels the playing field for students who graduate from low resource high schools, still utilizes a measurement of merit, and does not explicitly use race as a factor in the admissions process (Tienda & Niu, 2004b).

Reliance on a racially segregated system. One major criticism of H.B. 588 is that it is predicated on a segregated system of education (Loury, Glazer, Kain, Kane, Massey, & Tienda, 2003; Tienda & Niu, 2004a; Frankenberg, Lee, & Orfield, 2003). This means that if the policy is to have the best possible results, the K-12 education system needs to be highly segregated by race and ethnicity. The logic used here is that the more highly segregated the system remains the greater the statistical chances are that a person of an underrepresented population group will graduate in the top 10% of their school. This greater likelihood, then, leads to a greater statistical likelihood the student will apply and consequently gain admission. This process will lead to the student's college choice decision where many factors are considered by the student and parents

or guardians. Therefore, enrollment at a college or university is the function of the decisions to apply, be admitted, and subsequently matriculate at the college (Tienda, Leicht, Sullivan, Maltese, & Lloyd, 2003).

The criticism leveled here requires a significant investment in research to understand the complexities of instituting such a plan. However, one way to respond to this is to ascertain the degree of existing segregation in Texas. Leicht and Sullivan (2000) suggested that such condition of segregation does exist in Texas. They wrote, "By state constitution and statute, during the early Twentieth Century, the Texas school system and its state universities had operated under a Jim Crow-style, *de jure* segregation of white and black students" (p. 3). The authors further stated, "Hispanic students were not segregated *de jure*, but *de facto* segregation was common. Towns often had a separate 'Spanish' school" (2000, p. 3). Recent examination of the Office of Civil Rights (OCR) decisions during the late 1970's found that the state had failed to fully remove vestiges of a racially segregated public system of higher education (Leicht & Sullivan, 2000). According to the authors, there have been recent OCR decisions up until 1999 that continue to claim the state has been unsuccessful at reintegrating Texas' education systems. Therefore, this serves as evidence that a system of racial or ethnic segregation exists in the Texas K-12 education system and the likelihood of achieving the goals of the policy as written is high given these conditions.

However, apart from the empirical question of segregation as an existing condition, there is a philosophical question that needs to be addressed. Should the state use a racially or ethnically segregated K-12 education system against itself to promote a racially or ethnically desegregated system of higher education? This question cannot be answered using empirical research. Rather, the question begets another question: Do the ends justify the means? The answer is dependent upon each person's interpretation of what is more valuable: *equity* or *equality*. However, the use of race or ethnicity to desegregate a system of education has been determined to be an acceptable practice according to the federal judiciary. Given the recent judicial interpretations legalizing a state's compelling interest in a diverse student body, the

answer to the above question would suggest that it would be fruitful for the state to seek the positive effects associated with desegregation of higher education using the policy.

Reliance on one point of information. Another criticism of H.B. 588 is it uses only one point of information (class rank) to determine admissions without regard to race, ethnicity, grade point average, standardized test scores, difficulty of high school curricula, extracurricular activities, student involvement, letters of recommendation, personal statements, interviews, etc. Although the research did not indicate this was a major criticism, I felt it was important to include it here. There was, however, criticism in the literature that closely paralleled but did not fully encompass this criticism; percentage plans undervalue standardized scores (Leicht & Sullivan, 2000). The criticism stems from the belief that students should be judged holistically using multiple factors.

The criticism generates the following question, “What kind of message does this admissions policy send to high school students?” Some would argue that this could potentially shift student interest and focus away from extracurricular involvement, standardized exam scores, and other educational aspects toward class rank as achieved through grade point averages. Yet, grade point averages do not matter to the extent a student is underachieving in comparison to fellow students. Thus, someone who has a 2.0 grade point average, yet, graduates in the top 10% of their class would gain admission while someone who earned a 3.7 grade point average but did not graduate in the top 10% of their class at their high school would not gain admission through this policy.

This is a difficult argument to counter; however, research indicates there are strong relationships between class rank and a number of student characteristics. According to the literature, evidence exists for a relationship between class rank and grade point average as well as class rank and performance on standardized exams (Lavergne & Walker, 2003; Micceri, 2001). This would suggest that if value is placed on one over the other, there could be negative consequences associated with these differentiated valuations. Thus, it is possible students who are told not to value their standardized examination scores or their grade point averages may as

a result do poorly on class rank as well. However, little is understood about these relationships; it is unknown whether these are only relationships or whether these relationships represent causality? Because these relationships are not fully understood (Kane, 2000), I argue that this criticism does not justify repealing the law.

The “Crowding Out” and “Brain Drain” effects. A couple of related criticisms that have received much attention in the media are that H.B. 588 causes both “Crowding Out” and “Brain Drain” effects. This means that the best and brightest students are being crowded out of the two most prestigious public flagship universities in Texas (Tienda & Niu, 2004b). Media accounts abound that have declared high quality students from resource wealthy school or feeder high schools who fail to graduate in the top decile of their high school class are being crowded out by top 10% students even though these non-top 10% students may possess better grade point averages or standardized test scores than their counterparts (Blum & Clegg, 2003). Therefore, it is possible that students from feeder schools who originally would have been admitted to the public flagship institutions are no longer admitted. As a result, high quality non-top 10% students who are no longer admitted in the states public flagships may attend higher education in a different state, which gives rise to the related criticism (“Brain Drain” effect).

As a result of the “Crowding Out” effect, some have suggested there is a consequent “Brain Drain” effect occurring where these best and bright students leave the state to attend higher education elsewhere (Wolfson, 2004; Tienda & Niu, 2004b). However, both of these assumptions are not founded in the research. Tienda and Niu conducted research that does not support these hypotheses (2004b). On the contrary, according to their findings, there is evidence that seems to suggest that H.B. 588 is keeping some of the state’s best and brightest students in Texas (Tienda & Niu, 2004c). Further, when analyzing institutional research data for The University of Texas at Austin, researchers found that the top 10% students are *overachieving* and *outperforming* other students admitted through alternative admissions policies even though these non-top 10% students may have higher grade point averages and/or 200-300 point advantages on standardized exams (Lavergne & Walker, 2003). This report by Lavergne and Walker (2003)

highlighted the apparent limitation of the use of standardized test scores and greater effectiveness of the use of class rank as a predictor of academic success in college.

Reduction of institutional autonomy. One last major criticism that has received little attention in the literature, which I believed would be important to include here is that the law reduces the institution's autonomy to select the students they want to admit and teach. This criticism is warranted as evidenced in that almost 70% of The University of Texas at Austin and over half of students at Texas A&M University are admitted under the top 10% law (Tienda & Niu, 2004b). This has led to fewer and fewer opportunities to choose students based on a range of factors (Wolfson, 2004). Current predictions estimate that if all students who graduated in the top 10% of their schools were to gain admission to The University of Texas at Austin and Texas A&M University, these institutions would have to increase their enrollments by 1.5 times their current level (Loury, et al., 2003). As an example, this would equate to an additional 75,000 students at an already overcrowded University of Texas at Austin. Although unlikely, the potential that 100% of students admitted to The University of Texas at Austin and Texas A&M University could be top 10% students is possible. If this were to happen, I propose that it could pose a potential threat to other forms of diversity such as international and out-of-state student diversity among other forms of diversity. These groups of diverse students promote academic and intellectual growth of fellow students and provide economic rewards to the institutions; therefore, this particular problem deserves attention.

Inefficient criticism. Researchers have suggested that attempting to create racial or ethnic diversity through percentage plans remains rather inefficient when compared to affirmative action programs (Loury, et al., 2003). Affirmative action programs have been the most effective means of increasing diversity in higher education. Therefore, affirmative action programs should be reinstated. Research shows that percentage plans have had limited success at increasing the enrollments of minority students to higher education though (Loury, et al., 2003). Nonetheless, if the policy has had a positive effect, it would be reasonable to maintain the policy.

Unintended positive consequences. The legislation appears to have had positive unintended consequences that the state has been unable to accomplish in the past. The law has provided for the following unintended consequences: “increase[d] geographic diversity... development and strengthening of institutional ties between secondary schools and the public flagships...and further affirmed that class rank is a more reliable predictor of college success than test scores” (Tienda & Niu, 2004b, p. 2). A major concern about K-12 education and postsecondary education has been the apparent divide that exists between them. Few examples exist where institutional ties are inherently visible. This policy appears to have provided the mechanism for acquiring these networking relationships. Another unintended positive consequence that poses significant benefits is related to the geographic diversity that has been evidenced at the flagship institutions. That is, these institutions are increasing the diversity of their students by the geographic location these students indicate that they originate. Although not as unintended as the other findings, the research not only affirmed the use of class rank, but indicated that it is a more reliable indicator of college success than what most college admissions programs tend to rely on (e.g., test scores). The implication is that admissions programs should continue the use of class rank as an admissions requirement given its success at predicting college grades.

To Keep or Not to Keep

As critics and supporters of H.B. 588 have mounted for a showdown in the upcoming Texas Legislative session, it is important to consider whether the legislation is necessary given the recent U.S. Supreme Court cases involving The University of Michigan undergraduate college and law school. These cases further complicate the evaluation and decision-making process. The Supreme Court in *Gratz, et al. v. Bollinger, et al.*, 539 US 244 (2003) invalidated the use of a particular admissions policy in which race or ethnicity acted as a decisive factor in the admissions process. The Supreme Court in *Grutter v. Bollinger, et al.*, 539 US 306 (2003) legalized any institutional policy that considers race or ethnicity in its admissions as long as it was not based on a point system and race or ethnicity did not act as a decisive factor in the admissions decision.

The *Grutter* case overruled the 5th Circuit Court's *Hopwood* decision; thus, reestablishing the use of race or ethnicity in the college admissions process, albeit in a limited manner. The question before the Texas Legislature is whether to maintain or abolish H.B. 588 given these recent Supreme Court decisions.

Policy Alternatives

Many policy alternatives and suggestions have been proposed; these policy proposals are examined thoroughly in the following sections in light of the growing body of research on percentage admission plans. I conclude that some of these policy recommendations have no support in research while some recommendations have limited support in research. The conclusions drawn indicate that these alternatives fail to address all aspects of the state's higher education goals or pose a threat to the state's higher education gains achieved thus far. The policy alternatives and recommendations examined here comprise of repealing the legislation, leaving the legislation as written, modifying the legislation by applying it only to The University of Texas System or to the top 5%. Then, I offer a set of recommendations that may prove theoretically and empirically more effective policies in educational practice.

Repeal the law. Some people proposed repealing the Top 10% law according to Flores (2003). This call largely stems from the belief that the Supreme Court decisions have answered the policy question related to affirmative action. The proponents argue that the Supreme Court has allowed the use of race or ethnicity in college and university admissions; therefore, there is no need for an alternative method to increase underrepresented student participation in public higher education. People who disagree with this argument state that the evidence supports H.B. 588; the policy contributes to the positive benefits for the state on more than one dimension of diversity. These benefits include improved racial, ethnic, and cultural minority student enrollments; additional diversity of students by geographic residency; and more diversity based on economic class or income level.

Second, knowledge of the law appears to affect student enrollments positively. Not only did knowledge of the law significantly influence college intentions and the likelihood of actual

enrollment in four-year institutions, it also influenced the likelihood of enrollment in two-year colleges even though the policy was targeted at selective institutions (Tienda, Cortes, & Niu, 2003). The positive benefits here outweigh the negative consequences that many people have associated with the policy.

Furthermore, the law appears to have had the additional benefits of “increase[d] geographic diversity...the development and strengthening of institutional ties between secondary schools and the public flagships...and further affirmed that class rank is a more reliable predictor of college success than test scores” (Tienda & Niu, 2004, p. 2). The legislation appears to have had positive unintended consequences that the state has been unable to accomplish in the past. A major concern about K-12 education and postsecondary education has been the apparent divide that exists between them. Few examples exist where institutional ties between these institutions are visible; this policy appears to provide the environment for these networking relationships. Another unintended positive consequence that poses significant benefits is related to the geographic diversity that has been evidenced at the flagships. That is, these institutions are increasing the diversity of their students by the geographic location these students indicate that they originate. Although not as unintended as the other findings, the research not only affirmed the use of class rank, but indicated that it is a more reliable indicator of college success than what most college admissions programs tend to rely on (i.e., test scores). The implication is that admissions programs should continue the use of class rank as an admissions requirement given its success at predicting college grades.

Another concern is the connection between the law’s effects and the state’s *Closing the Gaps* master plan goals. *Closing the Gaps* represents the state’s master plan for higher education and it called for the achievement of four major goals (Texas Higher Education Coordinating Board, 2000). The first goal listed centered on greater participation at all levels of higher education, including two- and four-year institutions by all ethnic and racial groups, but more specifically, by underrepresented minorities (Texas Higher Education Coordinating Board,

2000). If the goals of the state's master plan for higher education are promoted by this policy, why should the state eliminate the policy? It appears counterproductive to abolish the policy.

Last, the abolition of the legislation creates the following predicament: the elimination of the top ten percent plan could have a powerful psychological effect amongst prospective minority students as well as from low-income backgrounds. That is, the elimination of the legislation could send the message to minority and underrepresented groups that they no longer have access to institutions of higher education even though the reality is not so. As a result, these underrepresented populations may not seek to apply to these institutions; consequently, they will not be admitted to these public flagships. Research supports the finding that students from low socioeconomic backgrounds tend to be negatively sensitive to policies that increase college prices (St. John, 2000). The literature indicates that after the *Hopwood* decision, students must have had a similar psychological response because the numbers of minority students that were admitted decreased (Hurtado & Cade, 2001). These two policy changes above have provided temporal evidence for a negative impact of policy changes on student enrollment. A similar policy change creating or giving the appearance of a barrier to college could produce similar negative responses in minority college enrollments again.

Whatever the problems associated with the policy proposal, the policy seems to have some support in the Texas Legislature. Thus, the political feasibility of eliminating H.B. 588 is moderate-to-high given that many in the state legislature appear to support some form of change to the policy. Furthermore, the Governor appears to have backed away his support for the policy (Fischer, 2005). The financial feasibility of this policy proposal is non-existent since the policy does not add, eliminate, or change financial structures.

Leave the law as written. Other legislators propose leaving the legislation as written. These legislators argue that the policy's effects have remained largely positive for the state and changing or eliminating the policy could have potentially negative consequences for minority enrollment. The proposal to leave the legislation as written may cause other problems that warrant consideration, though. One such problem is the lack of institutional autonomy in

admissions decisions evident at both The University of Texas at Austin and Texas A&M University. This criticism is warranted as evidenced in that almost 70% of The University of Texas at Austin and over half of students at Texas A&M University are admitted under the Top 10% law (Tienda & Niu, 2004). This has led to fewer opportunities for these institutions to choose students based on a range of factors (Wolfson, 2004). Current predictions estimate that if all students who graduate in the top 10% of their schools were to be admitted to The University of Texas at Austin and Texas A&M University, these institutions would have to increase their enrollments significantly to make room for these students (Loury, et al., 2003).

Both the interests of institutions of higher education and the state require evaluation and consideration here. One possible solution is to cap the percentage of students admitted to the two public flagship institutions under the Top 10% law. Furthermore, the lack of incentives for increasing the number and percentages of students who graduate in the top 10% requires attention. The state should seek funding incentives to increase public higher education participation by underrepresented students. Without the supplementary economic incentives or proposals, the policy's effects will continue to be visibly limited. Therefore, the proposal to leave the law as written without any adaptations could pose a threat to higher education institutions. The political feasibility of leaving the policy as written is high given that it would require no action from the Legislature. The financial feasibility of this particular proposal is non-existent since the proposal does not add, eliminate, or change any financial structures.

Apply the law solely to The University of Texas System. A third proposal offered is to make the legislation applicable to The University of Texas System institutions only (Covici, 2004). This plan is similar to the California Master Plan for Higher Education of the 1960's that created three tier levels of higher education institutions: The University of California System, California State University System, and the Community Colleges of California. Although the proposal sounds plausible, there are problems associated with its applicability to Texas. First, not all institutions within the University of Texas System are equal in quality. Therefore, it would take a significant investment from the system and the state to increase the number, range, and quality of

programs offered at the eight sister-component institutions of which only three are classified as Doctoral/Research Universities I or II, according to the Carnegie Classification System (Carnegie Foundation for the Advancement of Teaching, 2000). Second, it would omit Texas A&M University, Texas Tech University, The University of North Texas, and other public institutions of higher education—these institutions are interested in recruiting and admitting the best and brightest students as well. Further complicating matters are private institutions of higher education that will not support this particular legislation as well. These private institutions fear being considered second tier to The University of Texas System. As a result, the political feasibility of the proposal is low and the financial feasibility appears low given the significant investment required for effective policy implementation.

Rewrite it as the top 5% plan. Another policy recommendation is to limit the policy to the top 5% of high school graduates instead of the top 10%. This policy would reduce the total number of students who are admitted automatically to an institution of their choice. The policy would suppress some of the concerns related to the lack of institutional autonomy; however, it would not answer the question. The possibility still would exist that all students who would graduate in the top 5% of their high school could want to seek admission to either The University of Texas or Texas A&M University on any given year. In such case, the percentage of students these institutions would need to accommodate would still be significant. It ameliorates the problem but does not answer it. As the population of the state increases—as it is predicted to—the likely need to revisit this legislation will reoccur as has been evidenced with the percentage plans in California (Horn & Flores, 2003). Lastly, a larger percentage of minority students, specifically African Americans, tend to rank in the lower half rather than the top half of the top 10% graduates of high school. This would result in fewer African American students gaining admission through this policy. The economic feasibility of this proposal is non-existent given that it does not add, eliminate, or change the financial structures in the state. The political feasibility of this policy proposal is moderate given that it sounds appealing; yet, most legislators, institutional leaders, and policy actors want more than a mere percentile change.

Policy Recommendations

A number of policy recommendations enacted and implemented in conjunction could strengthen H.B. 588 and allow for its continued success. The Texas Legislature should consider alternative policy instruments such as incentives to promote the achievement of the state's goals in higher education. The policy adaptations I recommend comprise of maintaining the admissions program while changing the language that guarantees admission to *any* public institution of higher education of the *student's choice* and providing incentives to colleges that enroll more underrepresented students (at their campuses) who graduate in the top 10%. Other recommendations consists of creating incentives for K-12 schools which have low student higher education participation rates and providing incentives for underrepresented students to participate in public four-year institutions.

Maintain the Program but Change the Language

Much has been written about the apparent benefits associated with H.B. 588 and much has been learned about the policy's effects on student applications, admissions, and enrollments. Although it has been minimally effective at increasing racial diversity, it appears to have had some unintended positive consequences especially as it relates to Texas' *Closing the Gaps* Master Plan goals. The policy's positive effects derived from implementation coupled with the potential negative effects associated with the elimination of the policy act as reasons for the continued implementation of the legislation. The question is what form should the legislation take given some of these reasonable criticisms?

The Texas Legislature should consider revising the language that guarantees any top 10% high school graduate admission to *any public institution of student's choice*. This would potentially give The University of Texas at Austin and Texas A&M University more institutional autonomy in the college admissions decision process. This balance could be achieved by having half of the students admitted to any institution under the top 10% and the other half could be admitted through a different admissions policy (Wolfson, 2004). This could be achieved through a number of methods. One method could be to run the program on a first-come, first serve basis.

That is, institutions can admit students who apply to the university first. Another method is to have a sport's draft-like scenario where public institutions of higher education compete for students to attend their institutions. Yet, another method could be to have a lottery system decide what student will receive admission to which public institution of higher education.

A method that would make more sense involves the use of graduation ranking more systematically. That is, the higher the student's graduation ranking may be, the higher the chances the student will be admitted to his or her first institutional choice; however, the student would not automatically be removed from the system for being ranked below a certain percentage. There would be some degree of flexibility attached to this process. The feasibility of this recommendation is high because of the support expressed by most institutions of higher education including non-flagship institutions that would benefit from increased top 10% enrollments. The political feasibility of maintaining the Top 10% law is moderate-to-high given that most higher education leaders continue to support the program; however, adaptations and additions are necessary given what has been learned. The political feasibility of initiating the language changes is significantly high given the high degree of agreement amongst higher education institution leaders and policymakers. The financial feasibility of these policy suggestions appear to be non-existent given that the recommendations do not add, eliminate, or change the financial structures.

Provide Incentives to Higher Education

Another proposal the state should consider involves providing financial incentives to colleges and universities that increase the number of students admitted to their institutions who are top 10% graduates and from underrepresented minority groups. This could be accomplished by providing matching funds to public institutions of higher education that provide institutional scholarship programs similar to the Longhorn Scholars Program or Century Scholars Program respectively of The University of Texas at Austin and Texas A&M University. Another way this could be accomplished is to provide a financial incentives (different from the one that would go to students) to institutions that increase the number or percentage of students who enroll at their

institution who are both top 10% and from underrepresented populations. The definition of the term “underrepresented” either could include all minority students or could be limited to students who are underrepresented at the particular institution, thereby individualizing the institution’s goals. The political feasibility of this proposal is moderate given that its effect could be felt across the state instead of merely the two public flagships. The economic feasibility of this proposal is moderate-to-low because of the fiscal constraints of the state.

Provide Incentives to School Districts

Another proposal for the improvement of H.B. 588 would be to create incentives for school districts with weak college traditions to improve their student college-going rates (Tienda, Cortes, & Niu, 2003). This proposal would offer school districts that increase the percentage of students who participate in four-year public institutions of higher education incentive funds. This proposal could be implemented by offering school districts that send less than 5% of their high school graduates to higher education incentives to increase their student enrollments in four-year colleges. This would focus efforts at a select few public high schools and student populations, although, the student population does not need to be particularized to underrepresented minority students. This policy suggestion can be considered somewhat controversial given its focus on public K-12 instead of higher education. Further, controversial public finance policies may not be effective within the context of Texas.

For example, Texas experimented with a K-12 finance policy designed to provide equity in the Texas public education system by taking away revenue over a specified amount from rich-resource school districts and redistributing it to low-resource school districts (Huntsberger, 2005). Hence, the name given it was the “Robin Hood K-12 Education Finance Plan.” This policy has been challenged in state courts after significant public outcry by certain segments of parents and school district leaders. The historical significance of this incident coupled with the financial constraints of the state’s budget suggests that the political and financial feasibility of passing this somewhat controversial K-12 education proposal is low.

Provide Incentives to Underrepresented Students

A last proposal that warrants attention here would be the creation of incentives that attract underrepresented students to public, four-year institutions. This would promote diversity of students across the state's public institutions of higher education. This particular policy recommendation does have its critics, especially legal experts who have interpreted the recent University of Michigan cases as pertaining to the funding of higher education as well. That is, the law would not allow the use of financial aid to go to specific underrepresented racial or ethnic groups unless a state compelling interest existed. Even if the state were to find a state compelling interest, the state would need to ensure that singling out particular racial or ethnic groups from participation in the financial aid program does not occur. I disagree with this interpretation based on three arguments.

First, the *Gratz v. Bollinger* and *Grutter v. Bollinger* cases specifically dealt with higher education admissions and not higher education financial aid. What may legally hold in one context may not in another. Second, the state is under court order to desegregate the state's system of higher education; therefore, the use of this mechanism to achieve desegregation would probably be within the limits of these legal decisions. Finally, the use of race-based financial aid was found to be legal by one of the federal circuit courts in *Podberesky v. Kirwan*, 38 F.3d 147 (4th Cir., 1994). This case, however, remains somewhat suspect given the particulars. Nonetheless, the political feasibility of passing this policy adaptation or instrument is low-to-moderate given the many questions surrounding it. Further, the financial constraints of the state make the feasibility of enacting and implementing this policy instrument low.

Discussion of Policy Change Paragons

In the preceding sections, I provided an analysis of the policy proposals presented by legislators, researchers, and other people for the improvement or elimination of H.B. 588. The policy suggestions offered either are too drastic (elimination of the policy) or not sufficient (lack incentives) to be effective. As McLaughlin (1987) suggested, the effectiveness of policies increases if you have policy incentives attached to policy mandates. Therefore, I provide a set of

recommendations for the improvement of the legislation that included such incentives. In some cases, my proposals asked for changes to the language in the current policy such as assuring that the student does not receive automatic admission to the institution of the student's choosing. In other cases, my policy recommendations asked for additional economic incentive policies such as those incentives geared for higher education institutions, K-12 schools and districts, and underrepresented students. If the state offers incentives at all levels of education responsible for the promotion of access to higher education, the success of the state's goals are more likely to be evidenced.

A set of policymaking paragon can be deduced from the literature. Paragons are a set of model practices or a model of excellence that can be replicated or considered in a process. Policy paragons, thus, represent a set of model policy practices of excellence policymakers may consider when deciding whether to maintain or repeal policy. The first thing to consider is whether action or inaction causes potential harm. In the case scenario above, to be inactive would create a situation where institutions would potentially suffer consequences. Inaction may be detrimental not to the students but to institutional autonomy. Another recommendation is to consider repealing the legislation. This is opposite to inaction, yet, requires similar scrutiny and evaluation. If the elimination of the law poses a significant threat, it should be reconsidered. In this scenario, if the Texas Legislature eliminates the law, specific minority populations may react to the policy changes negatively. As such, the policy removal may cause more harm than maintaining the policy.

Another policy paragon is to seek balance in the process. If removal of Texas H.B. 588 and leaving the legislation as written both represent problematic solutions, what can be done? Another consideration is to work on compromising legislation that achieves the end of harming neither the institutions nor minority student enrollments. This end could be accomplished by amending policy to limit the discretion students have in choosing the institution they gain automatic admissions while encouraging minority students to seek admission to these same public, four-year institutions.

Another policy paragon is to attach monetary incentives to any mandate to ensure that the policy is afforded the best opportunity for success. Thus, the policy mandate could be assisted with policy incentives such as financial aid programs for minority students who graduate in the top 10% of their class. Texas also could match institutional funds used for similar incentive financial aid programs at their campuses. Finally, the state could provide incentive funds for K-12 schools and districts that increase the percentage or number of minority students who participate in higher education.

Conclusion

As the evaluation and analysis provided above indicates, the criticisms offered were either not founded on research or were philosophical in nature; therefore, outside the realm of empirical analysis. These philosophical questions, though, remain important questions to consider. Most of the benefits, intended and unintended, associated with H.B. 588 indicate positive, progressive steps at answering some of the educational systemic problems plaguing both systems of education, K-12 and higher education. Even as the research offered the many benefits of the legislation, there appear to be areas of concern that need revisions. The problems and concerns related to the appropriate degree of institutional autonomy and state oversight need revision. The concern related to the percentage of students who could potentially ask for admission to the flagship institutions needs to be addressed. The problem associated with the type of programs that need to be established or expanded in order to provide the benefits associated with percentage plans (e.g., financial aid assistance, orientation, and recruitment programs) should be revisited.

The research results suggested that H.B. 588 has had limited success at diversifying the Texas state system of higher education from an ethnic or racial perspective; however, it appears to have had an effect in diversifying higher education from an economic status and class perspective. However limited the success of H.B. 588 in desegregating higher education by race or ethnicity, the effects nonetheless have been positive. If Texas colleges and universities implement admissions programs that adhere to the recent Supreme Court decisions in *Gratz* and

Grutter coupled with the continuation of H.B. 588 along with these additional suggestions for adaptations, Texas could bring social change unheard of and unparalleled. It would prove prudent for the Texas Legislature to continue supporting this extraordinary experiment in the great State of Texas.

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