

The Promise and Peril of the Texas Uniform Admission Law

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During the late 1990s, as the debate over affirmative action escalated, Texas moved into the national limelight. After the U.S. Court of Appeals for the Fifth Circuit found the use of race or ethnicity in college admissions unconstitutional in *Hopwood v. Texas*, the state embarked on a bold experiment.¹ In 1997, the Texas legislature passed H.B. 588, commonly termed the Top Ten Percent Law, which guaranteed automatic admission to *any* public university for applicants who graduated in the top 10 percent of their high school senior class. Legislators cited both general principles of equal access, and empirical evidence that high school grades are strong predictors of college success, and hoped that the new approach would increase, or at least maintain, ethno-racial diversity at the state's selective public institutions.

The law, which went into effect in 1998, is deceptively simple. Seniors from every high school—large or small, public or private—are evaluated using a uniform measure of “merit.” Heralded as a race-neutral alternative to affirmative action, the law complied with the judicial ban imposed by *Hopwood* because it did not propose the consideration of ascriptive attributes in admission decisions. Students must formally apply for admission and submit test scores from college-entrance exams, but their scores do not affect admission decisions, as long as the applicants qualify for the ten-percent guarantee. The opportunity remains open for two years after high school graduation, as long as the graduate does not enroll in any other post-secondary educational institution in the interim.

Although the Supreme Court's 2003 *Grutter* decision reaffirmed that a narrowly tailored consideration of race was permissible to achieve the educational benefits that are a consequence of a diverse student body, the Texas uniform admission law remains in force unless it is repealed by the Texas legislature.² (Actually, it will remain in force for a full year following its repeal, to allow schools and students to plan for a revised admission regime.) Initially endorsed by affirmative action opponents and supporters alike, the Texas Top Ten Percent Law has become as controversial as the use of race preferences itself. This is in part because the law merely

shifted the terms of the debate from individuals to schools as the basis for exclusion. Such a shift is problematic in a state where social class drives competition for slots at the most selective post-secondary institutions, and where the number of such slots is sharply limited because of historical underinvestment in higher education, relative to the size of the college-eligible population.

Affirmative Action and Uniform Admissions

Since the middle of the twentieth century, the policy debate about access and equity in higher education has shifted from an emphasis on the desired ends, to a discussion of means that are acceptable to achieve those ends. Just fifty years ago, the debate revolved around *whether* integration was necessary for opportunity to be equal. The *Brown* decision settled that question legally, if not entirely practically. In a series of subsequent decisions, the Court reiterated and clarified its message that separate is inherently unequal, and that integration is a necessary, albeit insufficient condition for the leveling of the educational playing field.

In higher education, affirmative action addresses a need to broaden access to selective institutions by forging a compromise between the principles of democratic inclusion and the requirements of a merit-based system of rewards. Although seldom defined in prescriptive terms, affirmative action policies attempted to go beyond the simple prohibition against discrimination, by using race or ethnicity as one of many factors considered in college admissions. Not surprisingly, civil rights groups embraced affirmative action as a strategy for equalizing access to selective postsecondary educational institutions. Although affirmative action was ended by judicial action in Texas and by popular vote in California, the results were the same in both states: a precipitous drop in the number of minority applicants and admits.³

That race-sensitive admissions policies have been challenged at the polls and in the courts attests to the lack of consensus about which strategies are acceptable for equalizing educational opportunity. The controversy is not likely to subside soon, for at least three reasons: first, the demand for slots at selective institutions is rising; second, well-funded opposition groups have organized to orchestrate strategic attacks; and third, the college-age and national population are

becoming more diverse because of immigration from new source countries and because of differential fertility.

Opponents of affirmative action have proposed three alternatives to using race and ethnicity in college admissions—“pure” academic achievement, social class, and percent plans—each with different implications for increasing campus diversity. At one extreme, proponents of narrowly-defined measures of academic achievement favor the consideration of standardized test scores, high school grades and completion of advanced-placement courses as allowable criteria to identify meritorious students. The naïve presumption is that ignoring race and ethnicity in favor of an exclusive focus on measured academic achievement results in color-blind admissions.

Although high school grades are strong predictors of college success, pervasive grade inflation, exemplified in the prevalence of grade-point averages over 5 on a 4-point scale, weakens the attractiveness of this indicator unless it is standardized across high schools, as class ranking distributions do. Class ranking serves as a forcing function to identify the highest achievers, even in a Lake Wobegone-type school whose children are all above average. Standardized test scores are also sometimes touted as a way to compare students from many different high schools. When used as the primary measure of academic merit, however, these scores are problematic for a number of reasons. First, although often misinterpreted as measures of intrinsic ability, in fact test scores largely measure developed ability. Second, as studies have shown, compared with grades, standardized test scores are far less reliable predictors of college success.⁴ Third, in part because of the ability and propensity of middle- and high-income white students to pay for costly test-taking programs and individual coaching, social class has become an important correlate of high test scores.⁵ Consequently, this public screening tool has been subverted to a private good by virtue of ability to pay. Fourth, whether by design or default, over time admissions committees have placed greater weight on standardized scores, thereby increasing the apparent “bonus” associated with minority group status. As a result, black and Hispanic students’ lower average scores on standardized tests, compared with white students, provide the main rationale for opposing affirmative action; yet this result is partly predetermined by the changing weights these two achievement indicators are given in admissions decisions.⁶

Because minority students are more likely to hail from the lower rungs of the socioeconomic scale, the use of class preferences has been proposed as an alternative to race-sensitive policies, in the effort to diversify campuses.⁷ In practice, however, although such an approach may diversify a campus's class profile, it is unlikely to significantly alter its racial or ethnic diversity. Instead, such programs may privilege high-achieving students from low-income white families. In Texas, low-income blacks and Hispanics are poorer, on average, than low-income whites and are more likely to attend under-performing schools than equally-situated white students.⁸ Researcher William Bowen and his associates claim that minority enrollments at 19 selective colleges would drop by half if class preferences replaced race preferences.⁹

The third alternative—guaranteeing admission to any high school student who graduates at or above a predetermined threshold in the class rank distribution—is a relatively recent development. Percent plans are a variant of the academic merit criteria, except that they standardize diverse grading policies and grade inflation. They have so far not been subject to the same scrutiny, in part because of their recency relative to race- and class-sensitive programs.

Percent Plans and College Admissions: Solution or Problem?

In research project dating back to 1999, we have sought to evaluate the consequences of the Texas law, the most controversial of the percent plans.¹⁰ Ultimately, the controversy hinges on assumptions about high schools. Supporters of affirmative action found the plan controversial because, they claimed, the plan relied on the continued segregation of Texas high schools to achieve college diversity. Those who opposed affirmative action on the grounds of “merit” also opposed equating achievement in low-quality high schools with achievement in the most elite preparatory academies. The Texas Top Ten Percent Law also disregards altogether test scores for rank-eligible applicants, challenging their value as indicators of college success.

The Texas program is particularly important because the state has witnessed unprecedented demographic diversification in recent years; because its college-eligible population is projected to grow well into the future, even after that of other states slows; because the state fares poorly on various educational indicators, compared with other states of comparable wealth; and because the state has historically underinvested in its public post-secondary educational system.¹¹

California and Florida, the other two states that implemented percent plans in the late 1990s, have also experienced rapid growth and diversification of their college-eligible populations; consequently, it is possible to appraise the relative costs and benefits of the plans in these three states. A brief overview of higher education demographics helps illustrate our claim that the “college squeeze” is partly responsible for growing angst about race-sensitive admissions in higher education.

Demography of Higher Education

That both Texas and California have been declared “majority minority” states by the U.S. Census Bureau implies an ample supply of minority students to diversify college campuses. Owing to their younger age structure, the result of immigration and higher fertility rates, black and Hispanic minorities comprise a higher share of the school-age population than they do of the population age 25 and over. The consequences of racial and ethnic differences in fertility are evident in the changing composition of high school graduates.

Table 1 about here

Notwithstanding that Texas has one of the lowest high school graduation rates in the nation, the state’s rapid demographic growth, combined with appreciable diversification, has increased the share of graduates from minority groups.¹² Between 1994 and 2004, the number of high school graduates increased 50 percent. Despite a low overall rate of high school completion, Hispanic high school graduates nonetheless increased numerically by 78 percent during this period, raising their share of the total annual graduate pool from 29 percent in 1994 to 35 percent by 2004. Because the number of white graduates rose only 29 percent during this same period, their share of diploma recipients fell from 56 percent to less than half. Meanwhile, the shares of black and Asian graduates inched up by a percentage point each, implying growth at a rate well above the statewide average.

Figure 1 About Here

Figure 1 shows projected and actual percentage changes in the numbers of high school graduates for the country as a whole and for four populous, high-immigration states. New York

was projected to experience a decline but actually experienced a small percentage increase. California and Florida also experienced a bulge in their number of high school graduates during the 1990s, although a less dramatic one than Texas. According to the Western Interstate Commission for Higher Education (WICHE), the number of public high school graduates grew only 19 percent nationally between 1994 and 2004, compared with 30 percent in California and 25 percent in Florida.¹³ These estimates are conservative because the numbers for 2003 and 2004 were projected from 2002 data. In Texas, for example, actual increases exceeded projections by 3 and 5 percent, respectively.

The numbers of students graduating from Texas and Florida public high schools are projected to grow well in excess of the national average during the next decade, even as other states witness modest growth or declines in their college-eligible cohorts (national growth is estimated at a meager 2 percent over the same period). WICHE projections indicate that California's high school graduates will grow a modest two percent between 2005 and 2015.

These changes bear directly on future college enrollment trends. Figure 2 shows that college enrollment in Texas rose faster than the national average between 1994 and 2004—the period bracketing implementation of the percent plan. The expansion of post-secondary opportunities, particularly at 4-year institutions, did not keep pace with demographic trends, however: enrollment in the state's post-secondary institutions rose 27 percent, including both 2- and 4-year institutions—a rate well below the 50 percent increase in the number of high school graduates during that period.¹⁴ Of course, not all high school graduates pursue post-secondary education, but the number seeking to do so has increased as the labor market premiums for higher education continued to rise.

Figure 2 About Here

Texas differs from many other states and the nation as a whole in another important respect—namely, the changing composition of its post-secondary education system. At the national level, the growth in enrollment at both two- and four-year institutions grew by 19-20 percent, but

Figure 2 shows this was not the case in Texas. Instead, two-year institutions recorded a 37% increase in enrollment, and the total enrollment at two-year institutions surpassed that of four-year public institutions in 1995, a few months before the *Hopwood* decision.¹⁵ Enrollment at Texas private colleges and universities has risen very slowly, and while these institutions were bound by the Hopwood decision until its repeal by *Grutter*, they were never bound by the provisions of the Top Ten Percent law, which only applied to public institutions.

Taken together, the rapid growth of the college-age population, coupled with the comparatively slow expansion of four-year institutions, created a college squeeze that manifested itself in intensified competition for access to the most selective 4-year public institutions. It is not entirely surprising that support for affirmative action would wane as a result of this squeeze, because many students who are denied admission to their preferred institution presume that race preferences are responsible for the admission crunch. Because of the increased competition, many white applicants would inevitably be denied admission to their preferred institution, and affirmative action provided a face-saving excuse for their rejection. Affirmative action was widely discussed and controversial, while the demographic pressures were more subtle and rarely noticed. The impact of the Texas college squeeze was intensified by the state's rapid demographic diversification and the growth in contenders for slots at the selective institutions.

Percent Plans: One Size Does Not Fit All

The percent plans currently used in Texas, California and Florida share one basic feature: namely, they guarantee admission to students who graduate above a specified ranking threshold for their senior class. The thresholds used vary widely, from a very generous 20 percent in Florida to only 4 percent in California. The plans also differ in several other highly consequential respects: specifically, in students' ability to choose a campus, the students' obligation to complete a specified curriculum and the methods for calculating class rank.

The California percent plan is more complex than that of either Texas or Florida. To ration access to the highly competitive University of California system, which includes the prestigious Berkeley and UCLA flagship campuses, California crafted a two-tier system that includes both a statewide rank and a local high school rank. All seniors are rated using a multi-criterion index

based on various indicators of academic achievement, including standardized test scores, grades and class rank. (Since 2004 many highly qualified applicants based on the multi-criterion index have been denied admission to the UC system campuses because there were insufficient slots to accommodate them.) Significantly, California's automatic admission guarantee kicks in only if the top 4 percent of students from a particular high school were not ranked highly enough on the statewide index to guarantee admission to the UC system. Not only is this a very stringent threshold, but as a strategy to boost campus diversity the California four-percent plan mainly involves students from low-performing schools with large minority populations. Another important distinction is that the admission criteria were devised and implemented by the UC system, not mandated by statute.

The Texas plan differs from both Florida and California in how campus assignments are made. Texas, unlike Florida and California, allows rank-eligible students to select any public campus in the state, including the flagship campuses at the University of Texas–Austin and Texas A&M University in College Station. This means that Texas, unlike Florida and California, lacks an efficient mechanism for regulating the allocation of students among its various campuses to maintain system-wide balance in cohort size and composition.

Second, unlike California, which requires a specified high school curriculum for eligibility to the UC system, the Texas plan initially did not require students to complete a recommended college preparatory curriculum. This fueled criticisms that the law enabled students to game the system by avoiding rigorous courses to boost their grade point averages and, thus, class rank. Worse, critics alleged, the absence of a recommended curriculum allowed many students who were ill-prepared for college work to qualify for the admission guarantee. To strengthen accountability, in 2001 the Texas legislature passed a law requiring that all high school graduates complete the recommended or advanced curriculum. This new requirement was not imposed on the state's ninth-graders beginning until 2004-05, and so its effect will not be evident until they begin to apply for college in 2008.

The lack of a uniform curriculum is related to a third difference among the percent plans: namely, whether individual high schools, secondary school districts or a centralized university

system office should calculate the high school class rank distributions. This is important because many schools do not offer honors or advanced courses; because high schools that do offer such courses weigh them differently when calculating grade point average; and because the lack of uniform weighting and ranking criteria opens myriad opportunities for both students and administrators to manipulate the system. For example, in a high school located outside of Austin, administrators were concerned about students' growing tendency to avoid taking math courses during their senior year to protect their class ranking. In an effort to encourage seniors to complete their fourth year of math, school officials promised that senior-year math grades would not be used in computing class rank.¹⁶

California has the most rigorous procedure among the three states for computing class rank. Participating schools must submit students' transcripts, from which UC administrators determine the top 4 percent of the pool, based on students' grade point averages for UC-approved coursework that they completed in the tenth and eleventh grades. This system provides consistency across secondary-school campuses, while also adhering to the curriculum requirements, but it led to complaints of unfair treatment of public schools in low-income areas where advanced or honors courses were unavailable.

Not only does the Texas plan provide the greatest flexibility of the three in the calculation of class rank, but the period during which rank can be established is broader: either at the end of 11th grade, the middle of 12th grade, or at graduation, whichever is most recent to the submission of the student's application. Moreover, the Texas admission guarantee remains in effect for up to two years after high school graduation or until rank-eligible students enroll in a post-secondary institution, whichever comes first. This means that top 10% graduates who elected to defer enrollment to a public 4-year campus would relinquish their automatic admission if, for example, they enrolled in a community college for a refresher course.

Uniform Admissions in Texas and Beyond: Promise and Peril

If the uniform admission plan is appealing as a meritocratic entitlement, it nevertheless imposes considerable opportunity costs. Well before the *Grutter* and *Gratz* decisions, the Texas uniform admission law was being heralded as a successful race-neutral alternative to affirmative action.

Among its benefits, supporters emphasized that the law increased geographic diversity by qualifying students from high schools that seldom sent students to the flagship campuses, and that it helped restore ethno-racial diversity after the judicial ban on the use of race preferences.

By guaranteeing admission to a fixed percent of top-ranked graduates at all high schools, the number of high school campuses represented in both the flagships' admission cohorts and their freshman classes rose steadily. According to the UT Admissions Office, for example, 795 different Texas high schools were represented in the 1996 admission cohort, compared with 943 high schools in 2004—an increase of nearly 19 percent.¹⁷ Although the number of schools represented among enrolled students was lower—616 in 1996, versus 815 in 2004—because not all admitted students enroll, both trends indicate that the law equalized access to the public flagships. This is a highly appropriate result for a publicly-funded state institution. Nonetheless, students who attended high schools with established traditions of sending large numbers to the public flagships retained an enrollment advantage because, conditional on admission as either top 10% graduates or general admits, they were more likely to enroll.¹⁸ Economics is a major explanation for this outcome, and has important implications for further expansion of college access in Texas.

The Top Ten Percent law has also been credited with restoring ethno-racial diversity at these same flagship campuses. Again taking the UT-Austin campus as an example, we find clear evidence of campus diversification in the applicant pool; the admit pool; and the freshmen enrollment cohort. In 1996, 63 percent of all first-time freshmen admits were white; but by 2005 this share had plummeted to 55 percent.¹⁹ International students account for another 2 to 3 percent of admitted applicants, and blacks, Hispanics, Native Americans and Asians constitute the remainder.

Of special interest are the admission trends among black and Hispanic students. Under affirmative action, blacks comprised 4 percent of the admission pool, but this share dropped to 3 percent in the immediate aftermath of the *Hopwood* decision. They now make up 5 percent of first-time freshmen admits. Likewise, Hispanic students sustained a modest drop in representation in 1997 and 1998; however, they now represent 18 percent of admitted students, a

full 3 percentage points above the 1996 average. Still, this gain is less than the growth in their share of high school graduates overall, as seen in Table 1. Meanwhile, Asian Americans turn out to be by far the biggest beneficiaries of the Top Ten Percent law, making up 17 percent of all admitted freshmen in 2005, up from 14 percent in 1996, and this even though their overall share of high school graduates is a meager 4 percent.

Whether these admission and enrollment trends are due to the uniform admission law or to statewide demographic diversification is unclear, but there is indisputable evidence that diversity of the flagship campuses has rebounded. (Because of its location outside a metropolitan area, Texas A&M has had a more difficult time restoring campus diversity, even with the admission guarantee. However, an aggressive outreach campaign has begun to yield increases in the numbers of Hispanic and black freshmen.) This rebound is driven by changes in the applicant pool. Although black and Hispanic students remain under-represented and Asian students over-represented relative to their respective shares of high school graduates, the trends indicate that these gaps are closing. Between 1996 and 2004, the total number of applications to the University of Texas at Austin rose 38 percent, from over 17,000 to nearly 24,000 applicants. Consequently, the admission rate plummeted from 66 to 51 percent. Thus, even though the number of white applicants rose 18 percent between 1996 and 2005, their admission probability fell from 61 to 52 percent. Applications from underrepresented minority students, particularly Hispanics, increased even more with the Hispanic share of the applicant pool rising from 14 percent in 1996 to 19 percent by 2005.

Demography was not the only driver of campus diversification, however. The Top Ten Percent law's contribution to campus diversification can be seen by comparing the representation of minorities among rank-qualified enrollees. In 2005, for example, blacks comprised 6 percent of all first-time freshmen from Texas high schools who qualified for the automatic admission guarantee, but made up only 4 percent of their race counterparts who did not graduate in the top decile of their class. Similarly, 22% of the top ten percent enrollees were Hispanic in 2005, but among enrollees who did not qualify for the automatic admission guarantee, only 13 percent were Hispanic.²⁰

Finally, the Texas admissions experiment has shown that emphasizing class rank in the definition of academic merit while ignoring test scores for the highest-achieving students actually does qualify a broader cross-section of students for college admission. Even more importantly, the uniform admission law has demonstrated that standardized test scores, which are the primary criterion used by opponents of affirmative action to justify exclusion of blacks and Hispanics, are not indispensable metrics for establishing academic merit and measuring a student's potential for postsecondary study. Consistent with a large body of research showing that grades are better predictors of college success than standardized test scores, UT freshmen admitted under the Top Ten Percent provision achieve higher grades during their freshmen year and have higher persistence rates than their lower-ranked counterparts who scored 200–300 points higher on the SAT.²¹ This finding is worthy of note by the post-secondary institutions that have been placing greater weight on test scores as an indicator of academic merit.²²

Admission officers have wisely understood that a guarantee of admission does not automatically lead to enrollment. As we have said before, economics are also a powerful factor in enrollment decisions. Motivated by this realization, both of Texas's public flagships developed tuition scholarship programs which they targeted to rank-eligible graduates of resource-poor high schools with weak traditions of college attendance. Minority scholarships had also been outlawed by *Hopwood*, but geographically-based alternatives such as high schools were specifically permitted. The fact that the eligible high schools tend to have large minority student bodies has helped the uniform admission law diversify the flagship campuses, while strengthening institutional ties between the universities and selected resource-poor secondary schools.²³ Although the numbers of scholarship recipients from any given high school are not large, over time the state's Longhorn and Century Scholarship programs have improved these schools' college orientation, while also increasing the number of students from these high schools who actually enroll at the flagships.²⁴

Figure 3 depicts the college destinations of Texas high school seniors from the Class of 2002 who enrolled in college the year after graduation. The graduates are categorized by type of high school and type of post-secondary institution. Using data published by the Texas Education

Agency, we developed a typology of Texas high schools based on income level of the student population and the relative strength of a school's college-going traditions.²⁵

The five strata include:

1. feeder high schools, the 28 high schools that in 2000 supplied between one-fifth and one-quarter of the freshmen at the two public flagships;
2. affluent high schools, with average college enrollment rates;
3. typical high schools, which are not either resource-poor or affluent;
4. resource-poor schools with average college-going traditions; and
5. Longhorn/Century schools, which are low-income schools (70 in the Longhorn program and 58 in the Century) with low college-going traditions, but whose top-ranked students are eligible for fellowships to UT–Austin or Texas A&M.

The number of students from any particular high school who qualify for the admission guarantee depends on size, of course, but so too does the likelihood that qualified students eventually enrolled in college. Many high school graduates—even those who excel academically—do not go to college.

Overall, the numbers are promising: more than 90 percent of all Texas seniors who graduated in the top 10 percent of their high school classes in 2002 were enrolled in college the following fall. But this share varied from 97 percent of the top-tenth graduates of affluent schools, to 80 percent of those from Longhorn/Century schools. Even among those who do enroll, there are large differences in college choice. As Figure 3 shows, only 35 percent of top decile graduates from typical Texas high schools enrolled at UT–Austin or Texas A&M, compared with almost half of the graduates from resource affluent schools, and nearly two-thirds of those from the 28 feeder schools (the percentages do not add up to 100 because enrollment at private schools or public schools outside Texas is not shown). Seen from another angle, nearly one-quarter of top-tenth graduates from the Longhorn/Century schools enroll in community colleges, compared with only 4 percent of comparably-ranked students from the major feeder high schools. Thus, despite complaints that the Top Ten Percent law privileges students from underperforming schools,

graduates from the major feeder schools, and, to a lesser extent, from resource-affluent schools, were significantly more likely to enroll at one of the public flagships than graduates from the typical Texas high school.²⁶

The success of the school-targeted scholarship programs for top-tenth graduates is evident in the higher enrollment of graduates from the Longhorn/Century high schools, compared with typical resource-poor high schools: 22 percent to 17 percent. The numbers involved are not large, but sufficient to improve the likelihood of enrollment among top-performing students. Sociologist Thurston Domina reports that each scholarship program averages 225–250 scholarships per year, which should render their impacts relatively similar.²⁷ Overall, these results suggest that by itself, the Top Ten Percent law may be a necessary condition for broadening college access, but that it is insufficient to do so without financial aid to qualifying students.

Although it has been successful in broadening access to competitive four-year public institutions, the Texas law also has numerous drawbacks. Some derive from the law's considerable flexibility, while others are a by-product of the intensifying "college squeeze." Some critics complain that high-performing students from low-performing schools are being privileged over lower-ranked students from more competitive schools in their access to the flagships. Others allege that the law fostered a brain drain to neighboring states, by crowding out talented students who rank in the second decile of their class at the most competitive high schools,.

Both allegations are empirically unsubstantiated, but they reflect growing frustration among parents and students from affluent school districts who are denied admission to their preferred four-year institution.²⁸ The math is rather straightforward, in that the slow expansion of the four-year post-secondary system relative to the growth of applicants implies that more students will be denied admission to their top choice institution (in fact, the state's private institutions have also have experienced significant growth in their applicant pool, attesting to the increasing demographic squeeze in college admissions).

The major pitfalls of the Texas law have to do with carrying capacity, a tendency to build on (rather than undo) the legacy of segregation, and the reliance on a single criterion to establish

merit. We are not able, in the space allotted, to discuss other pitfalls of lesser consequence, including incentives to game the system by choosing an easier course of study; manipulating weights in the calculation of class rank; and transferring from a more-competitive to less-competitive school in order to increase the likelihood of qualifying for the admission guarantee.

Physical infrastructure—in particular, classroom and lab space—and faculty resources constrain the size of any school’s student body. The most popular short-term response to this constraint is to adjust enrollment targets by tightening or loosening admissions policies, but campus expansion is a viable medium-term solution. The two flagship campuses have employed both strategies. With the share of top-tenth applicants to UT–Austin rising significantly, in 2000 UT President Larry Faulkner temporarily increased the size of the undergraduate class. This enabled the school to continue meeting other aspects of its institutional mission through selective admissions. The increase eventually proved untenable: institutional carrying capacity was exceeded, and the number of applicants admitted was subsequently reduced. All of the reduction, of course, was borne by applicants who were not in the top ten percent, irrespective of their academic qualifications, which only fueled criticism of the law. In contrast, Texas A&M University has been expanding both the size of its undergraduate body (by 500 students per year between 2002 and 2007) and its faculty, which was increased by a bold 447 new hires.²⁹ Coupled with a vigorous outreach initiative, A&M has been successfully restoring campus diversity along many dimensions.

While the distribution of its denied applications shifted to include growing numbers of students from competitive high schools, the University of Texas campus has become saturated with automatically admitted students, crippling the institution’s ability to shape its freshman class. In 1996, 42% of first-time freshman admits ranked in the top decile of their high school class. A temporary increase in the size of the freshman class in 2000 and 2001 kept the share of automatic admits at 47 and 51 percent, respectively. But by 2005 nearly three in four admitted students had qualified for admissions under the Top Ten Percent provision, reflecting (as seen in Figure 4) an average annual growth in top-tenth applicants of about 9 percent. Although Texas A&M has also witnessed an increase in the share of applicants who qualify under the guarantee, only about half

of those students are automatically admitted, leaving admission officers some latitude to shape the freshman class.

Figure 4 About Here

Using the 9 percent growth rate to project the composition of future admission cohorts, Figure 4 reveals that within three years—that is, by 2009—the UT–Austin campus will have exceeded its carrying capacity. Moreover, its ability to shape its freshman class will be virtually nonexistent within a year. One solution would be to index the admission threshold to the carrying capacity of the state’s higher education system and the changing demand for college based on the population of high school graduates. Surprisingly, the architects of the law did not do so. Nor did they think to cap the number of applicants automatically admitted, in order to avoid saturating campuses with students admitted solely on the basis of class rank. For example, lowering the class rank threshold for the admission guarantee from 10 percent to 7 percent would reduce the share of automatic admits from 95 to 70 percent in 2008, and from 103 to 76 percent in 2009.

Unfortunately, the law as written has greatly diminished public universities’ discretion to consider the many elements of their mission. The 2007 session of the Texas legislature considered and rejected a proposed campus cap on the fraction of the freshman class admitted through the Top Ten Percent law.

Furthermore, and despite claims that the law is race-neutral, the success of any percent plan designed to restore diversity to selective institutions is heavily dependent on segregation. Minority students primarily benefit from the top-tenth rule if they attend a segregated school. Minority students who attend integrated schools experience a significantly lower chance than their white classmates of graduating in the top decile of their class. Moreover, white students who attend “majority minority” high schools (e.g., 60–80 percent nonwhite) are more likely to qualify for the admission guarantee than their counterparts.³⁰ In large measure, this reflects social class differences that are also related to college-going behavior, which the law does not address. Not surprisingly, rank-eligible black and Hispanic students are less likely than similarly-qualified white and Asian students to enroll in college.³¹ In the short run, then, the law works only in a relatively segregated system; but in the long run, of course, that segregation serves neither the

interests of high school students nor the public institutions that recruit them under the uniform admission law.

Finally, by relying exclusively on a single criterion to adjudicate college applications, the uniform admission law blunts the broad-ranging diversity that can only be achieved by thorough review of a student's full dossier. To be sure, the large freshman cohorts at the Texas public flagships provide some guarantee of diversity even on a simple statistical level. But the law has not only proven to be a less efficient tool than affirmative action to increase campus diversity, it has also reified class boundaries because large numbers of admitted students do not enroll for economic reasons. In his last State of the University address, for example, former Texas A&M President (now U.S. Secretary of Defense) Robert Gates admitted that "Texas A&M remains a 'middle class university' with about 40 percent of incoming freshmen having incomes of \$80,000 or less".³²

Uncertain Future

Texas legislators have made several attempts to amend the uniform admissions law, but their efforts—ranging from strengthening the curriculum eligibility requirements to imposing uniform criteria for calculating class rank to outright repeal—have failed to win majority support. Notably, the Top Ten Percent law is backed by Democrats from minority districts and Republicans representing rural white districts, who argue that the law gives students from their areas access to the public flagships that they would not otherwise enjoy. Unless the law is modified or repealed, however, the growing saturation of the UT–Austin campus with automatically-admitted students will eliminate the last modicum of its ability to fulfill its institutional mandates. This threat appears to be less imminent for Texas A&M, whose capital fundraising campaign has enabled it to expand both the size of its undergraduate class and the faculty. Given the likelihood of continued increases in the size of future high school graduation cohorts, this situation may change at other campuses as well, as it has already been doing at the state's selective private institutions.

Because Texas responded to the judicial repeal in *Hopwood* with legislative action, any attempt to redress the law's unintended consequences will require yet another legislative solution. In the

long run, efforts to bring Texas's other public institutions up to the same academic level as the two flagships would expand the carrying capacity of the state's post-secondary system as a whole. In the short run, the admission guarantee could be modified by adopting the provisions of the California or Florida approaches, including those that preclude students from selecting a campus at will or that use system-wide criteria to establish admission eligibility. Alternatively, the law could cap the number of students that can be automatically admitted in a given year (e.g., to 50 percent). The allotted slots could then be used to promote the positive features of the law: namely, by ensuring that the number of feeder schools continues to expand. At a minimum, though, the percent plan must somehow be more directly linked to the system's carrying capacity.

The Top Ten Percent law might or might not be successful in diversifying the college freshman class at public universities in other states. As the Texas case shows, diversification is most likely to result when there is an expanding base of high school graduates, especially minority graduates; when there are many highly segregated high schools; when the set of selective public institutions is relatively small; and when financial aid is used to reinforce the opportunity for admission. Whether the law should be viewed as a success depends partly upon whether one views the glass as half-full or half-empty. There are, however, several lessons that could be put into use in nearly every state.

First, expanding the number of high schools represented in the student body does represent a type of diversity, but one that could be achieved with geographic set-asides instead of a percent plan. In places with both residential segregation and geographic attendance zones, such set-asides could result in greater minority representation.

Second, less affluent students will continue to need financial aid, and minority students are disproportionately included in this number. But the majority of the needy will be the majority of the population – usually white students. Geographic targeting can increase the probability that minority applicants will receive the aid, compared with relying solely upon the determination of individual need.

Third, where a state has only one recognized flagship school – or in the case of a large state, only a couple of flagships – provisions that allow students to select their institution will result in saturation of the most highly ranked institution. The impact on other 4-year public universities may well be negligible, unless the demand for college outstrips the supply of slots. Percent plans may accelerate the out-migration of young high school graduates from some parts of the state, or they may even work to the disadvantage of smaller institutions. Legislators concerned about regional institutions, or simply about increasing access for the most talented students, may want to ponder the effects of percent plans on local communities.

Fourth, the percent plans function, in effect, as the opposite of the idealized admission process set out in *Grutter*. Rather than considering many factors, such as leadership, different talents, and so on, the admissions office is constrained to consider only one criterion: rank in class. In the long run, this selection regime may undermine other aspects of campus diversity. Talented musicians and dancers, students who are extremely gifted in one subject (such as mathematics), and students with demonstrated but unmeasured accomplishments may eventually be squeezed out from flagship campuses.

Fifth, a percent plan creates a new entitlement. This entitlement may be hard to rescind, even when a state experiences financial constraints. Especially in a state with a growing population, percent plans imply additional costs to colleges.

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Table 1. Composition of Public High School Graduates: Texas, 1994-2004 (%)

	1994	2004	% Δ
Hispanic	29	35	78
White	56	48	29
African-American	12	13	65
Asian and Other	3	4	81
Total Graduates (*000)	163	244	50%

Source: Texas Education Agency, Texas Public School Statistics, Pocket Edition, 1994-1995 & 2004-2006

Figure 1. Actual and Projected Change in Public High School Graduates, 1994-2015: US and Selected States

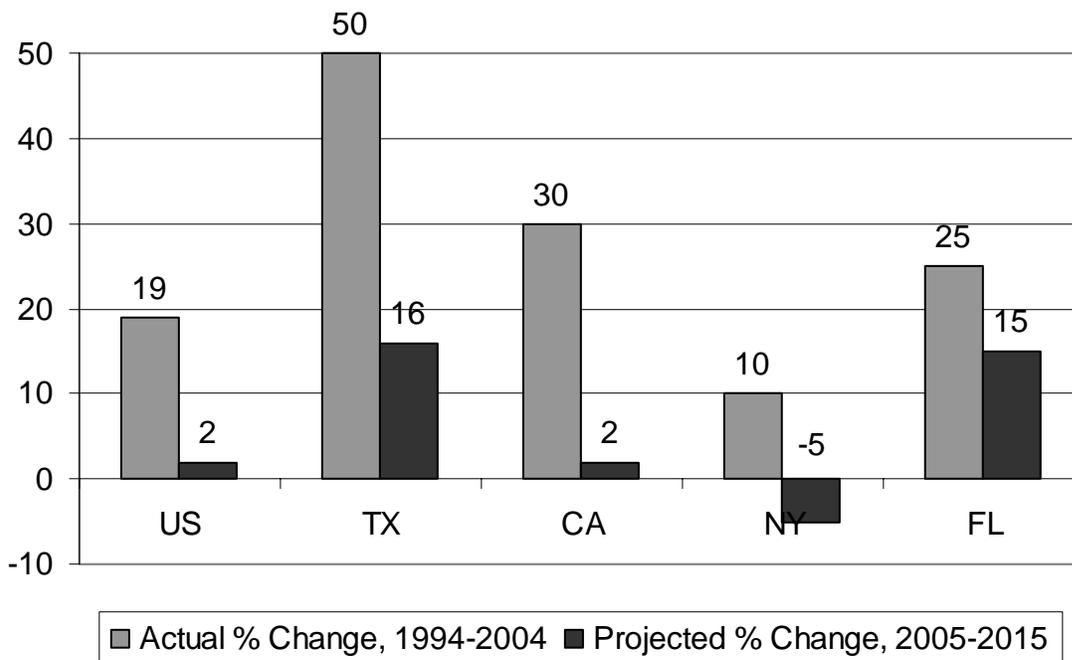
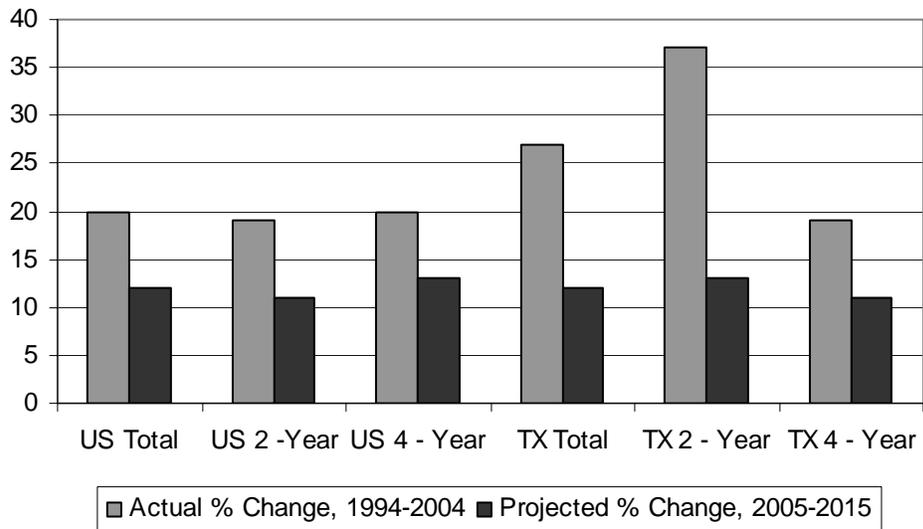
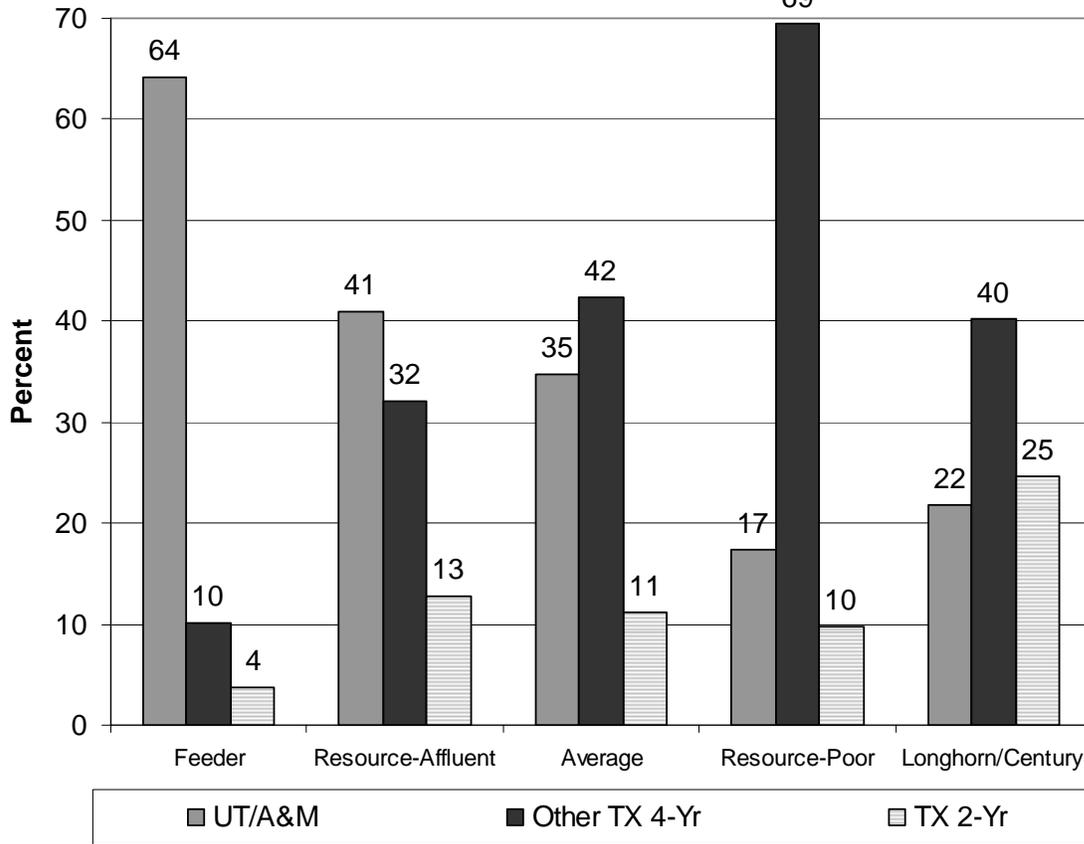


Figure 2. Growth of Overall College Enrollment, 1994-2004 and Projected 2005-2015, US vs. TX



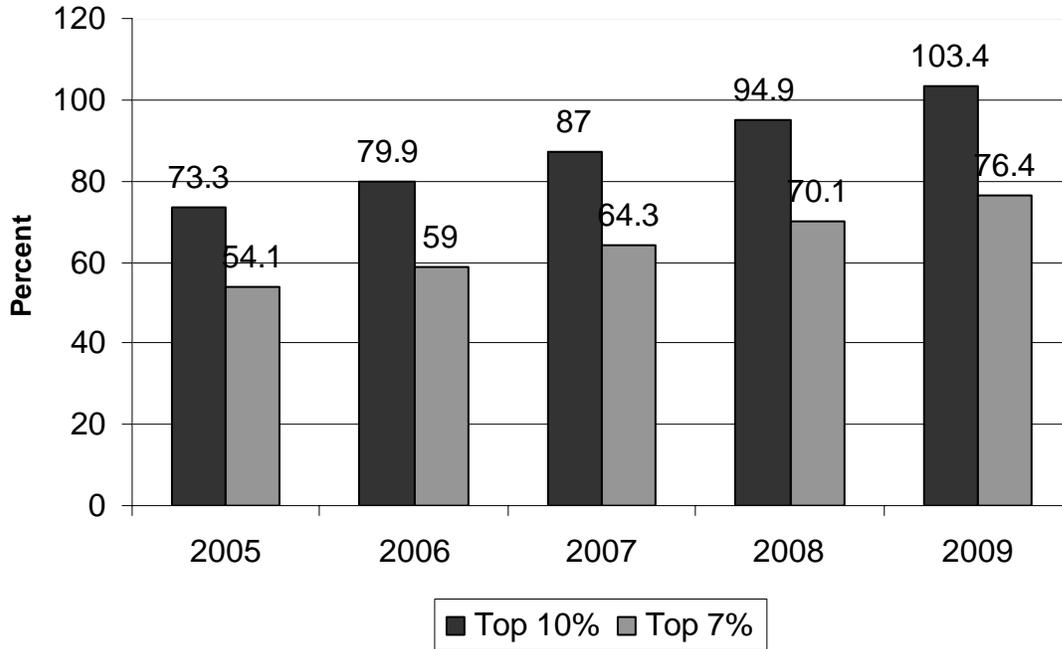
Source: Texas Higher Education Coordinating Board

**Figure 3. College Destinations of Top 10% Graduates by Type of High School Attended
(as percent of enrolled)**



Source : THEOP, Senior Wave 1 & 2 Data

Figure 4. Actual and Projected Top 10% and Top 7% Admits: UT-Austin, 2005-2009



Source: Projections for UT-Austin Based on Ethnic Distribution of 2005 HB588 Admits as of March 28, 2006.

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