

Race-Based Affirmative Action Admissions Policies: Why University of Michigan Supporters Were Wrong

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I. INTRODUCTION

In defending its admissions policies, the University of Michigan chose to completely ignore the historic rationale for affirmative action policies: compensation for past forms of discrimination faced by underrepresented groups. The university also failed to comment on the potential problems faced when students with weaker skills are admitted. This is particularly important since evidence has shown that black and Hispanic students perform quite poorly in the most competitive schools. The racial performance gap at these schools “reinforce[s] perceptions of black inferiority and the racial stigma that [are] so damaging to even high-achieving black students.”¹

Instead, University of Michigan supporters chose to defend their policies solely based on the value to society as a whole of having a diverse student population.² In June 2003, the United States Supreme Court ruled that the University of Michigan’s undergraduate affirmative action admissions policies were unconstitutional.³ More importantly, in agreement with Justice Powell’s 1978 opinion,⁴ the Court indicated that race can be one factor in selecting college admits as long as the preference is made on an individualized basis. As a result, the University of Michigan began revamping its procedures with the expectation that its new individualized procedure would admit black⁵ and Hispanic students in essentially the same proportion as it had under the old set of policies.

This paper does not judge the diversity argument presented by the University of Michigan supporters or the criticisms presented by its detractors. Instead it will focus on three issues: (1) to what extent is the pursuit of diversity inconsistent with the compensation argument; (2) do affirmative action candi-

* Koppelman Professor of Economics at Brooklyn College. © 2006 Robert Cherry.

1. ROBERT CHERRY, *WHO GETS THE GOOD JOBS?* 221 (2001). This problem may be particular to the University of Michigan where a large bonus for minority status substantially distorted the equity of the admission process by admitting a large share of affirmative action candidates with very low SAT scores.

2. See Patricia Gurin et al., *Diversity and Higher Education: Theory and Impact on Educational Outcomes*, 72 HARV. ED. REV. 330 (2002); see also Brief for National Association of Scholars as Amici Curiae, *Gratz v. Bollinger*, 539 U.S. 244 (2003) (No. 97-75231); see generally *The Compelling Need for Diversity in Higher Education*, <http://www.umich.edu/~urel/admissions/research/>.

3. *Gratz v. Bollinger*, 539 U.S. 244 (2003).

4. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

5. In this paper, I will use the term “black” rather than “African-American,” because the latter term is increasingly found problematic given the growing diversity of blacks in the United States. See Rachel Swarns, *African-American Becomes a Term for Debate*, N.Y. TIMES, Aug. 29, 2004, at A1.

dates benefit from going to the most selective colleges regardless of their qualifications; and (3) did the ending of raced-based affirmative action result in a permanent reduction of black and Hispanic students at California universities.⁶ Ultimately, I propose that class-based affirmative action and pre-college educational enhancement programs provide a viable alternative to race-based affirmative action programs, especially for those who support affirmative action policies primarily as compensation for past forms of discrimination.

II. AFFIRMATIVE ACTION ADMISSIONS PROGRAMS DO NOT COMPENSATE FOR A DEFICIENT PRIMARY EDUCATION

Even with affirmative action admissions policies, black and Hispanic students are substantially underrepresented in the most selective colleges. Anthony Carnevale and Stephen Rose estimated that blacks and Hispanics account for 15% and 13%, respectively, of 18-year-olds, but they comprise only 6% each of students in the 146 most selective colleges.⁷ Through the 1980s, the dominant explanation for this under-representation had been the injustices resulting from the inferior schools that most black and Hispanic students attended, suggesting that affirmative action should primarily aid lower income families who send their children to deficient schools. Instead, data consistently demonstrates that black and Hispanic students who attend selective schools are overwhelmingly from middle and upper-middle class households (Table 1).⁸ Carnevale and Rose found that only 27% of black and Hispanic students in those 146 most selective schools come from below average socioeconomic status (SES) families, and fully 60% of black students and 58% of Hispanic students are in the top SES quartile (Table 1).⁹ Even Derek Bok and William Bowen's alternative SES measure found that only 14% of black students come from the lowest SES category in their study.¹⁰

Of interest, the share of black students from the lowest SES quartile remains low even for the next most selective schools (Tier-II) (Table 2). By contrast, 25% of

6. For another critique that touches on some of these points, see Russell Nieli, *The Changing Shape of the River: Affirmative Action and Recent Social Science Research* (Oct. 4, 2004), http://www.nas.org/reports/river_change/affirm-act_soc-sci.pdf (critiquing the viewpoint that even under-qualified blacks and Hispanics who gain access to the most selective universities benefit).

7. ANTHONY P. CARNEVALE & STEPHEN J. ROSE, *THE CENTURY FOUNDATION, SOCIOECONOMIC STATUS, RACE/ETHNICITY, AND SELECTIVE COLLEGE ADMISSION* 10 (2003), http://www.tcf.org/Publications/Education/carnevale_rose.pdf.

8. *Id.* at 11.

9. *See id.* (author's calculations from data provided by Stephen J. Rose (on file with author)).

10. WILLIAM G. BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* 57 (1998). To be in the highest SES grouping in 1989, Bowen and Bok assume that students must have had at least one parent with a college degree and come from a family with annual income of at least \$70,000. *Id.* Those in the lowest SES had both parents lacking a college degree and family annual income of \$22,000 or lower. *Id.* According to their criteria, in the 1989 matriculating class, 15% of black and 44% of white students were in the top SES group, while 14% and 2% of black and white students, respectively, were in the lowest SES group. *Id.*

Table 1. Socioeconomic Status (SES) of Students in the Most Selective Schools (Tier I)

	SES Quartiles			
	First	Second	Third	Fourth
All ¹¹	3	6	17	74
Black ¹²	4	23	13	60
Hispanic ¹³	17	15	10	58
White ¹⁴	2	4	18	76

Table 2. Socioeconomic Status (SES) of Black Students by College Selectivity¹⁶

School Tier	SES Quartile			
	First	Second	Third	Fourth
I. Most Selective	4	23	13	60
II. Selective	7	41	22	29
III. Less Selective	17	23	34	26
IV. Least Selective	36	19	27	18

Hispanic students in the Tier-II schools come from the lowest SES quartile.¹⁵

Moreover, if the focus was really on benefiting lower SES black and Hispanic students, there would have been much more sympathy for the plan implemented in Texas (the Texas Plan)¹⁷ because it gives priority to students from the kinds of segregated schools that reflected the historic justification for affirmative action admissions programs: compensation for inferior schools caused by past discrimination. Instead, there was strong criticism of these programs by race-based affirmative action admissions supporters.¹⁸

Since current affirmative action programs overwhelmingly benefit black and Hispanic students from wealthier families, the justification for these programs has increasingly been the promotion of diversity. This shift away from using past or continued primary educational inequalities as the basis for affirmative

11. CARNEVALE & ROSE, *supra* note 7, at 69.

12. Author's calculations from data provided by Stephen J. Rose (on file with author).

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. The Texas Plan requires the University of Texas at Austin and Texas A&M to accept every Texas resident who ranked in the top 10% of his or her high school graduating class.

18. See generally Brief for Social Scientists Glenn C. Loury et al. as Amici Curiae Supporting Respondents, *Gratz v. Bollinger*, 539 U.S. 244 (2003) (Nos. 02-241 and 02-516).

action admissions policies has led some supporters to reject fairness arguments altogether. As Richard Kahlenberg states:

Bok argues that a wealthy minority student is not admitted to Harvard as a matter of fairness or reparations but because she adds to the student body. The whole concept of “deserving” or “earning” a spot is considered naïve by many members of the academy. Students are admitted because they fit the needs of the university and the society at a particular point in time not because there is anything intrinsically worthy about them.¹⁹

III. UNINTENDED IMPACTS OF RACE-BASED AFFIRMATIVE ACTION ADMISSIONS PROGRAMS

Racial preference is often seen as complementing class preference schemes. This would suggest that if all racial preferences were eliminated, not only would there be a substantial reduction in black and Hispanic students but also of students from lower SES backgrounds. Carnevale and Rose found that using only traditional performance measures, the black and Hispanic share of students in their list of 146 selective colleges would decline from 12% to 4%.²⁰ Somewhat surprisingly, however, they estimated that the share of students from lower SES backgrounds would increase from 10% to 12%.²¹ Thus, race-based affirmative action admissions policies may result in the displacement of white students from lower SES backgrounds.

Catherine Hoxby also found that non-European immigrant students had a displacement effect on the share of economically-disadvantaged native-born students: the share of native-born students from low-income families or parents with limited educational attainment was adversely affected in the middle range of colleges—those whose student body had an average combined SAT score of between 900 and 1100—as the number of non-European immigrant students increased.²² Hoxby posited a number of mechanisms by which immigrants crowd out native-born: (1) displacement and reshaping of educational opportunity programs (EOPs) that offer academic and financial support to “educationally and economically disadvantaged” populations; (2) displacement in selective schools of natives by black and Hispanic students from elite Caribbean and Latin American families; and (3) monopolizing and reshaping academic and financial counseling services. Studies seem to find that, in general, immigration

19. RICHARD KAHLENBERG, THE CENTURY FOUNDATION, ECONOMIC AFFIRMATIVE ACTION IN COLLEGE ADMISSIONS 3 (2003), available at <http://www.tcf.org/Publication/Education/kahlenberg-affaction.pdf>.

20. CARNEVALE & ROSE, *supra* note 7, at 37.

21. *Id.* at 47.

22. Caroline M. Hoxby, *Do Immigrants Crowd Disadvantaged American Natives Out of Higher Education?*, in HELP OR HINDERANCE? THE ECONOMIC IMPLICATIONS OF IMMIGRATION FOR AFRICAN AMERICANS 282, 282 (Daniel S. Hamermesh & Frank D. Bean eds., 1998).

has modestly lowered the educational attainment of native-born students.²³

Most relevant here, Hoxby found that at the most selective colleges, approximately thirty-seven native-born black students are displaced for every hundred foreign-born black students admitted and approximately thirty-nine native-born Hispanic for every hundred Hispanic foreign-born admitted. Indeed, there was a one-for-one displacement if the foreign-born students are nonresident aliens. Reflecting the situation at Harvard, Sara Rimer and Karen Arenson reported:

While about 8%, or about 530, of Harvard's undergraduates were black, Lani Guinier, a Harvard law professor, and Henry Louis Gates Jr., the chairman of Harvard's African and African-American studies department, pointed out that the majority of them—perhaps as many as two-third—were West Indian and African immigrants or their children, or to a lesser extent, children of biracial couples.

They said that only about a third of the students were from families in which all four grandparents were born in this country, descendants of slaves.²⁴

Thus, current race-based affirmative action programs are not well targeted since they allow foreign-born and wealthy native-born applicants to qualify. Indeed, it appears that affirmative action policies displace not only white students from lower SES backgrounds, but native-born black and Hispanic students as well.

IV. BLACK AND HISPANIC STUDENTS DO NOT BENEFIT FROM AFFIRMATIVE ACTION ADMISSIONS POLICIES

Even if race-based affirmative action admissions policies primarily serve blacks and Hispanics of higher SES backgrounds and have undesirable displacement effects, they might still be defensible if they better the careers of their beneficiaries. For many advocates, evidence that these admissions policies dramatically increase black and Hispanic enrollment at the most selective colleges is sufficient for them to claim that the status quo must be maintained.

The problem with this approach is that maintaining the status quo precludes fine-tuning affirmative action admissions policies. In particular, it is important to assess whether or not there are certain subpopulations of black and Hispanic students who are harmed by the status quo of affirmative action policies. The

23. See Julian R. Betts, *Educational Crowding Out: Do Immigrants Affect the Educational Attainment of American Minorities?*, in *HELP OR HINDRANCE? THE ECONOMIC IMPLICATIONS OF IMMIGRATION FOR AFRICAN AMERICANS* 253, 267 (Daniel S. Hamermesh & Frank D. Bean eds., 1998) (estimating that immigration in the 1980s lowered the high school graduation rate of blacks and native-born Hispanics by one and three percentage-points, respectively); see also Mark H. Lopez, *Do Immigrants Affect the Educational Attainment of U.S. Born Students? Evidence from NELS:88* (Dec. 1999), available at <http://pweb.jps.net/~lsbonnin/mark/docs/imdec99.pdf> (finding that in schools with a significant number of limited English-proficient students, there was a negative relationship between the share of such students with the educational attainment of non-Hispanic native-born students).

24. Sara Rimer & Karen W. Arenson, *Top Colleges Take More Blacks, but Which Ones?*, *N.Y. TIMES*, Jun. 24, 2004, at A24.

measures used to make this assessment include post-graduation earnings data, graduation rates, and college performance.

A. *Future Earnings*

Bowen and Bok claimed that black students with equal SAT scores had higher earnings if they attended the most selective schools, Tier-I, rather than the next most selective schools, Tier-II.²⁵ They concluded:

Black students admitted to the most selective [schools] did not pay a penalty in life after college for having attended such competitive institutions. On the contrary, the black matriculants with academic credentials that were modest by the standards of these schools appear to have been well advised to go to the most selective schools to which they were admitted.²⁶

At closer inspection, however, the data used by Bowen and Bok does not completely support their claims for those who matriculated in 1976. Among black male and black female students with combined SAT scores below 1000, those who had attended Tier-I colleges had higher 1995 incomes than those who had attended Tier-II colleges. Looking at the record of black students with combined SAT scores between 1000 and 1199, however, the evidence is less compelling. For black men with combined SAT scores between 1100 and 1199, and black women with combined SAT scores between 1000 and 1099, it was beneficial to attend a Tier-I rather than a Tier-II school. However, among black men with combined SAT scores between 1000 and 1099, 1995 earnings were \$83,600 and \$91,800²⁷ if they had attended a Tier-I and Tier-II school, respectively.²⁸ Similarly, black women with combined SAT scores between 1100 and 1199 had lower earnings if they attended a Tier-I, rather than a Tier-II, school—\$73,500 versus \$83,600.²⁹ Thus, Bowen and Bok's data on future earnings suggest that black students with *competent* skills³⁰ do not consistently benefit when admissions policies enable them to attend the most selective schools.

One problem with these comparisons is that the students in the Tier-I schools may not be completely comparable with students in the Tier-II schools who have the same SAT scores. To overcome this selectivity problem, Stacy Berg Dale and Allan Krueger used a fixed effects model. They found that students who attended more selective colleges do not earn more than other students who were accepted by comparable schools but chose to attend less selective col-

25. BOWEN & BOK, *supra* note 10, at 144.

26. *Id.*

27. These earnings figures represent all graduates over a twenty-year period and not first-year salaries.

28. BOWEN & BOK, *supra* note 10, at 143.

29. *Id.*

30. As measured by SAT scores of 1000 and greater.

Table 3. Graduation Rates at Tier-I Schools by SAT Score

Group	Combined SAT-Equivalent Scores		
	Less Than 1000	1000 to 1200	1200 or Above
All ³⁵	52	85	96
White ³⁶	56	87	96
Black ³⁷	23	63	100
Hispanic ³⁸	24	99	85

leges.³¹ In particular, Dale and Krueger stated, “[T]he effect on earnings of the average SAT score of the school the student attended is indistinguishable from zero These results raise doubt about a casual interpretation of the effect of attending a school with a higher average SAT score in regressions that do not control for selection.”³²

B. Graduation Rates

Data consistently demonstrate that the greater the selectivity of the school, the higher the graduation rate, even after controlling for SAT scores. For example, Carnevale and Rose found that for students with SAT-equivalent scores between 1000 and 1100, graduation rates were 80% in the top-tier colleges, 71% in Tier-II colleges, 59% in Tier-III colleges, and only 55% in Tier-IV colleges.³³

There is one important caveat that must be explored: the graduation rates of students with particularly low SAT-equivalent scores in the most selective colleges. Carnevale and Rose believe that an SAT-equivalent score of 1000 reflects a “threshold of readiness.”³⁴ That is, they found (Table 3) that graduation rates decline appreciably, especially for black and Hispanic students who have SAT-equivalent scores of less than this threshold.

To a large extent, the most selective colleges are aware of this problem, so

31. See Stacey B. Dale & Alan B. Krueger, *Estimating the Payoff to Attending a More Selective College: An Application of Selection on Observable and Unobservables*, 20-22 (Nat’l Bureau of Econ. Research, Working Paper No. 7322, 1999).

32. *Id.*

33. CARNEVALE & ROSE, *supra* note 7, at 70 (finding that those in the lowest SES have a 55% graduation rate but those in the highest SES have 73% graduation rate). They estimated, however, that “[v]irtually all of this 18 percentage point difference is determined by factors prior to enrolling in college—i.e. SAT scores, high school grades, rigor of high school courses taken, etc.” *Id.* at 13-14.

34. *Id.* at 40-43.

35. *Id.*

36. Author’s calculations based on data provided by Stephen Rose which have been rounded up to the nearest whole percentage point (on file with author).

37. *Id.*

38. *Id.* (The anomalously high graduation rate for Hispanics with SAT-equivalent Scores between 1000 and 1200 of 99% is as reflected in the data provided by Stephen Rose).

Table 4. Distribution of SAT Scores in the Most Selective Colleges⁴¹

	SES-Equivalent Quartile			
	First	Second	Third	Fourth
All	3	2	12	83
Black	9	6	28	55
Hispanic	–	4	11	82
White	3	1	9	81

they admit relatively few students with low SAT-equivalent scores (Table 4). In particular, only 15% of black students had SAT-equivalent scores of less than 1050, which would place them in the bottom half of the SAT-equivalent distribution.³⁹ By contrast, only 4% of Hispanic students admitted had such low SAT scores.⁴⁰

These findings are consistent with results from law school affirmative action admissions policies. More than 20% of black students admitted to law school as a result of affirmative action admissions policies failed to graduate; and of those who graduated, 27% were unable to pass a bar exam within three years.⁴² Abigail and Stephan Thernstrom noted, “[This was] a failure rate nearly triple that of blacks who were admitted under regular standards, and almost seven times the white failure rate.”⁴³

Although using a SAT-equivalent score of 1000 to exclude students would have very modest consequences on many of the most selective schools, it can have a substantial impact on some individual schools. In the mid-1990s, the University of Michigan had been admitting a high proportion of black and Hispanic students with very low SAT scores. This outcome occurred because of the very limited value placed on these scores in Michigan’s admissions process. In particular, a student with a combined SAT score between 900 and 1010 received six of the possible twelve points. For black and Hispanic students, this shortfall was more than compensated for by the twenty point bonus they

39. *Id.*

40. *Id.*

41. *Id.*; see also CARNEVALE & ROSE, *supra* note 7, at 78.

42. Carnevale and Rose also found that low SAT scores limited the likelihood of post-graduate education:

While relatively few who had SAT-equivalent scores below 1000 pursued graduate education, fully 38% of those who scored above 1200 attended graduate school [I]n top tier colleges, nearly half went on to graduate school if their SAT-equivalent scores were above 1200, while only one-quarter went on if their scores were between 1000 and 1200. The few students with scores below 1000 at these institutions had an even lower percent of graduate school participation.

CARNEVALE & ROSE, *supra* note 7, at 14-15.

43. Stephan Thernstrom & Abigail Thernstrom, *Racial Preference: What We Know Now*, 107 COMMENT. 44, 48 (1999).

received for having underrepresented minority status (UMS).

As a result, UMS students attending the University of Michigan had much lower traditional qualifications than non-UMS students. Whereas 98% of non-UMS freshmen in 1995—the class that was the basis of the Supreme Court case—had at least a 3.2 high school cumulative grade point average (GPA) and a combined SAT score of at least 1000, only 44% of UMS students met this criterion.⁴⁴ If a minimum combined SAT score of 1000 was required, UMS students would have declined from 14.01% to 7.21% of the 1995 freshman class.⁴⁵ This evidence suggests that a significant proportion of black and Hispanic students admitted under previous admissions policies would have had difficulty graduating. Unfortunately, the University of Michigan has been unwilling to release graduation data.

C. School Performance

Not all graduates from the same school gain the same in terms of income and careers. For example, Bowen and Bok found that moving from being ranked in the lowest third of their class to being ranked in the top third increased the 1995 annual earnings of black male and black female graduates who matriculated in 1976 from \$68,500 to \$115,800 and \$56,600 to \$72,800, respectively.⁴⁶ If attending a more selective school is likely to lower class rank, these admissions policies have a problematic impact on earnings. Indeed, Dale and Krueger estimated that shifting up in selectivity lowered class rank by about seven percentile-points, lowering earnings by about 3.2 % which “may largely offset any advantage of attending a more elite school on earnings.”⁴⁷

This is of particular importance since it is well documented that, on average, black students at the most selective colleges have much lower grades than do white students. For example, Bowen and Bok found that black 1989 matriculants at their sample of very selective schools had a GPA of 2.61, whereas their white classmates had a 3.15 GPA.⁴⁸ As a result, Bowen and Bok found that “the average rank of black matriculants was at the 23rd percentile of the class, the average Hispanic student ranked in the 36th percentile, and the average white student ranked in the 53rd percentile.”⁴⁹

44. CHERRY, *supra* note 1, at 214.

45. *Id.* at 214-16. If the university only required a minimum 3.2 GPA, but no SAT minimum, UMS students would comprise 12.29% of freshmen; and if the university required both minimum 3.2 GPA and minimum combined 1000 SAT, UMS students would comprise 6.91% of freshmen.

46. BOWEN & BOK, *supra* note 10, at 141.

47. Dale & Krueger, *supra* note 31, at 29.

48. BOWEN & BOK, *supra* note 10, at 7.

49. *Id.* Law school data show even greater discrepancies. Ian Ayres and Richard Brooks find that excluding the law schools at historically black colleges, “only 6.7% of whites have lower grades than 50% of blacks . . . only 7.5% of blacks have grades that are higher than the white median.” Ian Ayres & Richard Brooks, Does Affirmative Action Reduce the Number of Black Lawyers? 2 (Jan. 2005) (unpublished manuscript, on file with author). As a result, they estimate that “[i]n the LSAC data, 42.6% of blacks entering law school had less than a 50% chance of becoming lawyers within 5 years of

Table 5. Percentage of Students with at Least an A- GPA, by SAT Scores and College⁵⁴

Schools	SAT Scores		
	Less than 1200	1200 to 1299	At Least 1300
Ivy League	14	22	51
Liberal Arts	10	25	44
State Universities	28	35	52

Stephen Cole and Elinor Barber's data on grades and SAT scores of a sample of students from some of the most selective schools underscores these racial differences.⁵⁰ Their study included liberal arts majors from all eight Ivy League colleges and thirteen very selective private liberal arts colleges.⁵¹ Among these schools, few students had a GPA of less than a B-. There was, however, a substantial racial difference in grade distribution.⁵² Whereas 44% and 34% of liberal arts majors in the Ivy League and liberal arts schools surveyed, respectively, had a GPA of at least an A-, only 20% and 7% of black liberal arts majors, respectively, did so.⁵³

Cole and Barber found that once the quality of the school was held constant, SAT scores had a powerful predictive power (Table 5). For example, in the Ivy League and very selective liberal arts colleges in their sample, almost one-half of those liberal arts majors with an SAT score of at least 1300 had a GPA of at least an A-, while less than 15% of those with less than a 1200 SAT score did.

Cole and Barber also sought high-achieving black liberal arts majors—those with at least a 2.8 GPA at the end of their junior year—at nine large state universities that were among Carnevale and Rose's Tier-II grouping.⁵⁵ Given their overall size and the fact that a number of these universities were selected because they had a numerically large African-American representation, they initially hoped to find a large number of students for their study. Once they checked SAT scores of black students, however, Cole and Barber concluded that:

starting law school (Virtually no entering white students—0.2%— are in this high risk category).” *Id.* at 3; see also Richard Sander, *A Systematic Analysis of Affirmative Action in American Law Schools*, 57 STAN. L. REV. 367 (2004).

50. STEPHEN COLE & ELINOR BARBER, INCREASING FACULTY DIVERSITY 194, 297 (2003).

51. *Id.* at 297.

52. *Id.*

53. *Id.* at 194, 297.

54. *Id.* at 297.

55. Ohio State University, Rutgers University, SUNY at Stony Brook, UCLA, University of North Carolina at Chapel Hill, the University of Texas at Austin, the University of Virginia, the University of Washington, Seattle, and the University of Wisconsin at Madison.

Table 6. Percentage of Black Students with a GPA of at Least A- by SAT Scores and College Among Students with a GPA of at Least 2.8⁵⁹

Schools	SAT Scores		
	Less than 1200	1200 to 1299	At Least 1300
Elite	6	14	24
State	16	23	43
Historically Black	26	38	55

[T]he 100 elite schools in the country are admitting virtually all of the academically best-prepared students. This means that in the overwhelming majority of schools in the country, including the state universities . . . in our sample, there were very few minority students who met our criteria of being an arts and science major and having a GPA of 2.8 or above.⁵⁶

In particular, at these state universities, they estimated that only 28% of black liberal arts majors also had at least a 2.8 GPA, whereas 41% of Hispanic and 65% of white liberal arts majors did.⁵⁷

V. UNDERACHIEVEMENT OF BLACK STUDENTS AT VERY SELECTIVE COLLEGES

There has been substantial criticism of using SAT scores for admissions purposes. Indeed, as Cherry pointed out in *Who Gets the Good Jobs?*, prior to Proposition 209, the University of California at Berkeley had an admissions formula that placed too much weight on these scores.⁵⁸ In addition, there is some evidence that, although SAT scores may be an important predictor of academic success for white students, it is a much poorer predictor for black students. Cole and Barber found, however, that its predictive power held for black liberal arts majors once the selectivity of the colleges attended was taken into account.

Within school groupings, Table 6 indicates that the share of well-performing students attaining a GPA of at least A- is directly related to their SAT scores. Not surprisingly, this relationship is strongest in the most selective schools. Whereas black students with high SAT scores were four times (24/6) as likely to have a GPA of at least A- as black students with low SAT scores at the most selective schools, they were only about thrice as likely (43/16) to do so at the state universities, and only about twice as likely (55/26) at the historically black colleges in Cole's survey.⁶⁰

56. COLE & BARBER, *supra* note 50, at 48.

57. *Id.* at 221.

58. CHERRY, *supra* note 1, at 222.

59. COLE & BARBER, *supra* note 50, at 126.

60. Cole and Barber indicate one interesting ramification of black students at selective schools having low SAT scores. Their study was attempting to understand why there were so few black faculty

Some critics also claim that the SAT is biased against black test takers. Research has consistently rejected any direct racial bias in the SAT; however, there have been some recent criticisms of the selection and importance given to various SAT exam questions.⁶¹ Jeffrey Young reported that based on their overall predictive reliability, the SAT developers reject sample questions at which black test takers perform relatively better and keep sample questions at which white test takers perform relatively better.⁶² Freedle and Kostin found that black test takers perform relatively better with more difficult SAT questions and white test takers perform relatively better with easier questions.⁶³ Thus, these critics contend that if the SAT gave more weight to difficult questions and changed their selection from sample questions, black SAT scores would rise relative to white SAT scores.

There is a fundamental problem, however, with this implicit claim that the current SAT understates the basic skills of black test takers. If this were true, then black students should *outperform* white students with the same SAT scores in college. But the evidence indicates that black students actually *underperform* relative to white students with the same SAT scores.⁶⁴ We can observe this underperformance if we compare Tables 5 and 6. Whereas at the most selective schools, approximately 50% of all students with an SAT score of at least 1300 had a GPA of at least an A-, only 24% of black students with comparable SAT scores have as high a GPA.⁶⁵ Whereas about 25% of all students attending the most selective colleges who had SAT scores between 1200 and 1300 had a GPA of at least an A-, only 14% of black students with comparable SAT scores had as high a GPA.⁶⁶ More generally, Cole and Barber estimated that at the most selective schools, the GPA of black students was approximately 0.20 percentage

members. When entering college, high-achieving black students were just as likely as their white counterparts to consider college teaching as a vocation. Cole and Barber noted, however, one important difference. While high-achieving black liberal arts majors were just as likely to consider “teaching only,” they were much less likely to indicate an interest in “teaching and research” or “research only” than high-achieving white liberal arts majors.

One plausible explanation is that incoming black students were much less likely to have been exposed to research than incoming white students and, therefore, were less likely to know what it is. Cole and Barber favored another explanation: incoming students realize that research requires the use of quantitative methods and since black students have lower math SAT scores, they are more likely to believe that they would not be able to succeed at research. Cole found that when SAT scores were taken into account, there were no statistically significant differences in freshman interest in research between black and white students. See COLE & BARBER, *supra* note 50.

61. Christopher Jencks, *Racial Bias in Testing*, in THE BLACK-WHITE TEST SCORE GAP 55-85 (Christopher Jencks & Meredith Phillips eds., 1998).

62. Jeffrey R. Young, *Researchers Charge Racial Bias on SAT*, CHRON. OF HIGHER EDUC., Oct. 10, 2003, at A34.

63. Roy O. Freedle, *Correcting the SAT's Ethnic and Social-Class Bias: A Method for Reestimating SAT Scores*, 73 HARV. ED. REV. 1, 3 (2003).

64. See Ayres and Brooks, *supra* note 49, at 29 (finding a similar pattern in law schools where “black law students are 20 percentage points less likely to become lawyers than white law students with the same entering credentials attending the same tier schools”).

65. COLE & BARBER, *supra* note 50, at 126, 297.

66. *Id.*

points below that of white students with the same SAT score.⁶⁷

Cole and Barber believe that the reason for this underperformance is primarily due to the theory proposed by Claude Steele.⁶⁸ Steele writes that in the United States, a negative stereotype exists that portrays blacks as being less intelligent than whites. This stereotype affects black students adversely because they tend to have much less confidence in their academic abilities and fear that their performance will confirm this negative stereotype. Steele found that these attitudes were most strongly held among high-achieving black students. Steele demonstrated that this attitude leads black students to “give up” more easily than white students when confronted with a particularly challenging exam once they are told that results show black students do not perform as well on that exam as white students.⁶⁹

Steele and other supporters of race-based affirmative action admissions primarily used these findings to explain the low performance of black students on the SAT. Interestingly, this was not particularly pertinent to the University of Michigan case since the school’s admissions process so devalues the SAT. Instead, Steele’s findings can go a long way to explain the underperformance of black students at selective schools. For many black students, basic coursework and classroom tests are quite stressful. Rather than fully competing for the best possible grades, Steele’s thesis suggests that many black students fear failing so much that they “give up,” just as they did in the challenging test he administered. Because these stresses are not as significant at the state universities he sampled, the underperformance is much less at these schools than at the most selective schools surveyed.

Indeed, in a comprehensive survey of college freshmen, Massey et al. found that at the very selective schools in the Bowen and Bok sample, black and Latino freshmen were much more likely to drop a course and attained significantly lower grades on the courses they completed than either white or Asian freshmen.⁷⁰ While skill preparation was a factor, they “found clear and consistent statistical evidence that stereotype vulnerability worked to undermine the academic performance of black and Latino students above and beyond whatever deficits they experienced with respect to academic, financial, social, or psychological preparation for college.”⁷¹

Cole and Barber also briefly explored an alternative explanation for black underperformance: studying hard and competing academically violate black

67. *Id.* at 293.

68. Claude M. Steele, *A Threat is in the Air: How Stereotypes Shape Intellectual Identity and Performance*, 52 *AM. PSYCHOLOGIST* 613 (1997); see also Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Test Performance of Academically Successful African-Americans*, in *THE BLACK-WHITE TEST SCORE GAP 401* (Christopher Jencks & Meredith Philips eds., 1998).

69. Steele, *supra* note 68, at 618-22.

70. DOUGLAS S. MASSEY ET AL., *THE SOURCE OF THE RIVER: THE SOCIAL ORIGINS OF FRESHMEN AT AMERICA’S SELECTIVE COLLEGES AND UNIVERSITIES* 195 (2003).

71. *Id.*

cultural norms. This explanation reflects the perception that academic success is frowned on among black youth who disparagingly label it as “acting white.”⁷² There is substantial anecdotal literature that supports this explanation.⁷³ Despite its weak scientific basis, many believe that it is one explanation for black underperformance.⁷⁴

Cole and Barber do estimate a slight negative correlation between the academic performance of black students and their association with black organizations, black cultural awareness, or black campus protests. Interestingly, Patricia Gurin also found that weakly performing black students were much more likely to take ethnic studies courses than strongly performing black students.⁷⁵ My own interpretation of black underperformance does not reflect an anti-academic cultural norm, but rather the adverse effect of victimization ideology. That is, I believe that black studies courses and black protest organizations are dominated by victimization rhetoric—the system is stacked against black people so that failure is unavoidable. While this victimization thesis may somewhat combat feelings of academic inferiority, it weakens the academic efforts of black students. This is the view echoed by UC-Berkeley linguistics professor, John McWhorter:

Most blacks don't live in poverty or face overwhelming odds, he argues. But . . . blacks who are part of a growing middle class tend to exaggerate their oppression. This 'victimology' mind-set coupled with repudiation of 'white' mainstream culture is what keeps them from being the best they can be in school and beyond.⁷⁶

Data presented by Cole and Barber are consistent with this victimization thesis. They report that a significant number of black students claimed that they had experienced discrimination at school.⁷⁷ In particular, at the predominantly white schools surveyed, 23% of black students indicated that “some faculty members at the college they attended had made their undergraduate experience

72. See Bob Herbert, *Breaking Away*, N.Y. TIMES, Jul. 10, 2003, at A23.

73. See, e.g., JOHN H. MCWHORTER, *LOSING THE RACE: SELF-SABOTAGE IN BLACK AMERICA* (2000).

74. For the controversy stirred when Bill Cosby supported this cultural thesis, see Deepti Hajela, *Cosby Remarks on Blacks Draw Fire, Support*, ASSOCIATED PRESS WIRE SERVICE, May 30, 2004, available at <http://www.msnbc.msn.com/id/511320>; Cynthia Tucker, *Bill Cosby's Plain-Spokenness Comes Not a Moment Too Soon*, Sept. 25, 2004, available at <http://www.keepmedia.com/pubs/uExpress/2004/09/25/587543?extID=10032&oliID=213>. For a critique of this cultural explanation for black under-performance, see Philip J. Cook & Jens Ludwig, *The Burden of "Acting White": Do Black Adolescents Disparage Academic Achievement?*, in *THE BLACK-WHITE TEST SCORE GAP 375* (Christopher Jencks & Meredith Phillips, eds., 1998).

75. Expert Report of Patricia Gurin, *Gratz v. Bollinger*, 135 F. Supp. 2d 790 (E.D. Mich. 2001) (No. 97-75321), available at <http://www.umich.edu/~urel/admissions/legal/expert/summ.html>.

76. McWHORTER, *supra* note 73, construed in Rona Marech, *Why Do Black Students Lag Behind?*, THE SAN FRANCISCO CHRON., Feb. 2, 2001, at 1.

77. COLE & BARBER, *supra* note 50, at 197.

Table 7. Percentage of Students Very Satisfied with Undergraduate Education, by School Type, Race, and GPA⁸⁰

School	All Students		(White-Black) Difference	
	White	Black	All Students	A-Students
Ivy League	43	29	14	6
Liberal Arts	50	26	24	23
State Universities	32*	28*	4*	-3

*Only those students with a GPA of 2.8 or higher.

more difficult because of their ‘racial/ethnic background.’”⁷⁸ By contrast, only 10% of Hispanic students answered affirmatively.⁷⁹ Cole and Barber discounted the claim that discrimination affected their grades because entering complaints into the regression analysis did not have a statistically significant effect on predicted GPA.

Cole and Barber also report that grades had a substantial impact on the degree to which black students were “very satisfied” with their undergraduate education (Table 7). At Ivy League schools, there was a fourteen percentage-point gap between the share of white and black students who were very satisfied with their undergraduate education. When the comparison was restricted to only those students who had a GPA of at least an A-, this gap was reduced to six percentage points. Indeed, at state universities, when the comparison was restricted to only those with a GPA of at least an A-, black students had a three percentage-point higher share than white students of those who were “very satisfied.” Only at the very selective liberal arts colleges surveyed was the gap substantial even when the comparison was restricted to students with a GPA of at least an A-.

In sum, raced-based affirmative action policies might not benefit black and Hispanic students and may actually harm some students who have gained admission to the most selective colleges because of these policies.

VI. IMPACT OF THE ELIMINATION OF RACE-BASED AFFIRMATIVE ACTION ADMISSIONS POLICIES

After Proposition 209 ended the race-based affirmative action admissions policies in California, the number of black and Chicano freshmen at UC-Berkeley each declined by about 44% and 23%, respectively.⁸¹ Cecilia Conrad

78. *Id.*

79. *Id.*

80. *Id.*

81. University of California, Office of the President, Application, Admissions and Enrollment of California Resident Freshmen from Fall 1995 through 2003, Application Flow Reports for New

and Rhonda Sharpe documented how these effects duplicated changes that had already occurred in acceptance rates at state medical schools.⁸² In 1995, California medical schools began eliminating underrepresented minority status as an admissions factor and began substituting socio-economic status. Just as with the undergraduate enrollment, this shift to a class-based preference system adversely affected both black and Chicano applicants.

The collapse of black freshmen enrollment at UC-Berkeley caused many previous critics of race-based affirmative action admissions policies to reevaluate their position. In particular, a former critic, Glenn Loury, spearheaded an amicus curiae brief to the Supreme Court that argued against class-based affirmative action admissions policies providing an acceptable alternative to race-based affirmative action admissions policies.⁸³ In a separate essay, Loury suggested that the stability of democracy rested on its ability to have a racially integrated elite and that this was only possible if the most selective colleges were racially integrated.⁸⁴ Indeed, maintaining racial diversity became the major justification given for race-based affirmative action admissions policies by numerous *New York Times* editorials: Without race-based affirmative action admissions policies, there would be virtually no black students enrolled in the most selective colleges.⁸⁵

Nonetheless, with the termination of racial preferences, California moved toward a class-based affirmative action admissions process and dramatically expanded its developmental programs in economically-disadvantaged high schools, especially those with a large proportion of Hispanic and black enrollment. As a result, there was a substantial rebound in black and Chicano freshman enrollments in the UC system.⁸⁶ Chicano system-wide freshmen enrollment was higher in 2003 than 1997, the last year before Proposition 209, and the Chicano *share* of total UC enrollment is substantially higher. Even black system-wide freshmen enrollment was up numerically, and only modestly lower as a share of total freshmen enrollment. Overall black, Chicano, and Latino freshman enrollment as a share of total freshmen enrollment increased

Students (2003), available at <http://www.ucop.edu/news/factsheets/flowfrc9503.pdf>. UC data often combines Chicanos and Latinos to form the underrepresented Hispanic grouping. Since Chicanos are much less likely to be foreign and from a high SES family than Latinos, I decided to only use Chicanos. The results are essentially the same for the broader classification.

82. Cecilia A. Conrad & Rhonda V. Sharpe, *The Impact of the California Civil Rights Initiative (CCRI) on University and Professional School Admissions and the Implications for the California Economy*, 25 REV. BLACK POL. ECON. 13 (1996).

83. See Brief for Social Scientists Glenn C. Loury et al. as Amici Curiae Supporting Respondent, *supra* note 18.

84. Glenn C. Loury, *Affirmative Action and Reaction; Admissions (and Denials) of Responsibility*, N.Y. TIMES, Mar. 29, 2003, at A11.

85. See, e.g., Editorial, *Upholding Affirmative Action*, N.Y. TIMES, Dec. 3, 2002, at A30; Editorial, *Fighting Resegregation*, N.Y. TIMES, Jan. 27, 2003, at A24; Editorial, *Friends of Affirmative Action*, N.Y. TIMES, Apr. 1, 2003, at A18.

86. University of California, Office of the President, *supra* note 81.

Table 8. Black and Chicano Freshmen in University of California, 1997 and 2003.⁸⁸

	Freshmen - '97	% Share - '97	Freshmen - '03	% Share - '03
System-Wide				
Black	917	3.87	983	3.23
Chicano	2325	9.82	3420	11.27
UC-Berkeley				
Black	252	7.84	141	4.25
Chicano	385	11.98	293	8.83
UCLA				
Black	201	6.28	124	3.11
Chicano	425	11.90	494	12.38

from 17.1% in 1997 to 17.9% in 2003.⁸⁷

If we look at the two flagship colleges, UC-Berkeley and UCLA, black and Chicano freshmen enrollments have not completely rebounded. At UC-Berkeley in 2002, black freshmen enrollment as a share of total UC-Berkeley freshmen enrollment was only 4.25%, whereas it was 7.84% in 1997.⁸⁹ For Chicanos, their share fell more modestly from 11.98% to 8.83%.⁹⁰ At UCLA, the picture was much better for Chicanos, as their share rose from 11.90% to 12.38%.⁹¹

The focus on the black freshmen enrollment decline at UC-Berkeley was misplaced. During the mid-1990s, the number of black freshmen enrolled through the regular admissions process stagnated at UC-Berkeley. To compensate, in 1996 and 1997, UC-Berkeley substantially increased the number of blacks entering through executive exceptions. As a result, in 1997, 27.48% of all black freshmen enrolled system-wide were at UC-Berkeley, while only 16.72%, 15.17%, and 9.62% of Asian, Chicano, and white system-wide freshmen, respectively, were enrolled there. A black linguistics professor at UC-Berkeley, John McWhorter, lamented that during the early 1990s, "black undergraduates at UC-Berkeley tended to be among the worst students on campus, by any estimation."⁹² These distinctive efforts at UC-Berkeley explain why its black freshman enrollment declined disproportionately once racial preferences were purged from both the regular admissions and executive excep-

87. *Id.* This is the measure of under-represented minorities used by the University of California.

88. University of California, Office of the President, *supra* note 81.

89. *Id.*

90. *Id.*

91. UCLA began reducing black and Chicano enrollment prior to Proposition 209. In 1996, blacks and Chicanos comprised 6.25% and 14.55%, respectively, of total freshmen enrollment. In addition, the 2003 figure is a record low and substantially below the previous year (3.11% versus 4.05%). *Id.*

92. JOHN H. McWHORTER, *LOSING THE RACE: SELF-SABOTAGE IN BLACK AMERICA* 89 (2000).

tions procedures.⁹³ In 2003, black freshmen at UC-Berkeley comprised 14.34% of all black freshmen system-wide, still a larger concentration than any of the other groups.⁹⁴

VII. CLASS-BASED AFFIRMATIVE ACTION POLICIES AS AN ALTERNATIVE TO RACE-BASED AFFIRMATIVE ACTION ADMISSIONS POLICIES

While Loury believes that a test of democracy is whether or not its elite are racially integrated,⁹⁵ most ordinary people place much more value on class mobility. A society is deemed fair if working-class youth have a chance to become a member of the elite. Carnevale and Rose document polls that consistently find widespread support for class-based affirmative action admissions even among those who rejected race-based affirmative action admissions policies.⁹⁶ In their survey, “two-thirds of respondents said qualified low-income students should, at least in some cases, have an advantage in college admissions over equally qualified students from non-poor families.”⁹⁷

Unfortunately, Bowen and Bok aggressively reject class-based affirmative action admissions policies. They claim, “[t]he problem is not that poor but qualified candidates go undiscovered, but that there are simply too few of these candidates in the first place.”⁹⁸ Richard Kahlenberg suggests, “[i]n Bowen and Bok’s pessimistic view of how well poor and working-class students can perform, one may detect shadows of Harvard president James Bryant Conant’s opposition to the GI Bill, which he incorrectly thought would overpopulate higher education with underqualified students.”⁹⁹

Carnevale and Rose note the large untapped supply of qualified students from low SES families: only 44% went directly to four-year colleges, while 31% of economically-disadvantaged students who score in the top quartile on the NELS tests are not enrolled in post-secondary schools.¹⁰⁰ They estimate that if class-based affirmative action replaced race-based affirmative action admissions policies, economically disadvantaged students would rise from 10% to 38% of

93. Of note, the yield rate—the percentage of those admitted who signed a letter of intent—for blacks dropped from 62.8% to 48.6% between 1997 and 2003. Virtually all of this decline can be explained by the reduction in the numbers admitted to UC-Berkeley and UCLA, where the yield rates were unchanged. The reduction in system-wide yield rates, but not at individual campuses, strongly suggests that those black applicants who were not accepted at the two flagship universities (but at other UC campuses) chose to go elsewhere. See University of California Office of the President, *supra* note 81.

94. In 2003, 13.43%, 8.57%, and 8.99% of Asian, Chicano, and white freshmen system-wide, respectively, were enrolled at UC-Berkeley. See University of California, Office of the President, *supra* note 81.

95. See Brief for Social Scientists Glenn C. Loury et al. as Amici Curiae Supporting Respondent, *supra* note 18.

96. CARNEVALE & ROSE, *supra* note 7, at 29.

97. *Id.*

98. BOWEN & BOK, *supra* note 10, at 44.

99. KAHLBERG, *supra* note 19, at 6.

100. CARNEVALE AND ROSE, *supra* note 7, at 39.

students in the 146 most selective colleges, and graduation rates would rise as well.¹⁰¹

Unfortunately, as long as race-based affirmative action policies reign, schools seem unwilling to take economic diversity seriously. Noting that the percentage of student Pell Grant recipients is a reasonable proxy for economic disadvantage, Kahlenberg states:

It is probably no accident that among Donald Heller's list of colleges ranked by percentage of Pell recipients, leaders included institutions in states where the use of race is banned—U.C. Berkeley (32.4 percent) and UCLA (35.1 percent)—while at the other extreme are public universities such as the University of Virginia (8.6 percent) and William and Mary (8.0 percent) where the use of race continues.¹⁰²

He also is not surprised that the share is only 7% at Bowen's Princeton and Bok's Harvard.

Michigan supporters also attacked class-based affirmative action admissions policies.¹⁰³ They criticized the Texas Plan because it relies on segregated schools to sustain black and Hispanic enrollment at flagship colleges. If, however, affirmative action admissions policies are meant to be compensatory, the Texas Plan is more effective than race-based affirmative action admissions policies because the black and Hispanic students benefiting will be coming in much larger proportions from academically inferior segregated schools. Moreover, if segregated schooling declines, there should be a decline in the need for affirmative action admissions policies.

A more modest criticism of the Texas Plan is that it is not applicable to Michigan because Hispanic students are not as residentially segregated as they are in Texas. If this is correct, a modified version of the Texas Plan would still be quite effective. By accepting the top 10%, Michigan would still recruit many black students from segregated high schools. In addition, Michigan could adopt an individualized class-based plan; California has shown that these policies have been quite effective in maintaining Hispanic enrollment.

The next line of criticism comes very close to the Bowen and Bok argument. The amici curiae contended that the black and Hispanic students accepted under the Texas Plan displaced black and Hispanic students who had higher SAT

101. *Id.* at 55.

102. KAHLENBERG, *supra* note 19, at 8. This high level of economically disadvantaged students at UC-Berkeley and UCLA is at odds with continued criticism that the individualized system enacted is just a disguised method of perpetuating race-based affirmative action admissions. For an example of this conservative criticism, see Harold Johnson, *Have UC Regents Found a Sneaky Way Around Law that Forbids Any Race Preference?*, PAC. LEGAL FOUN., Aug. 6, 2004, http://www.pacificlegal.org/list_Commentaries.asp?curpage=8 (follow "Have UC Regents Found a Sneaky Way Around Law that Forbids Any Race Preference?" hyperlink).

103. Benjamin Forest, *Affirmative Action—And Reaction: A Policy That Depends on Segregation*, N.Y. TIMES, Mar. 29, 2003, at A11.

scores and were from better schools than the economically disadvantaged students accepted under the Texas plan.¹⁰⁴

I am not overly sympathetic to this argument. Critics focus on the reduced SAT test scores and educational skills of black and Hispanic students accepted under the Texas Plan.¹⁰⁵ However, students who rank in the top 10% of their high school class are “strivers,” possessing potentials that have been untapped whereas the “stronger” black and Hispanic middle-class students who attended academically superior schools have already demonstrated that they are likely to be outperformed at a very high level. After studying college performance, Brian Bucks concluded, “[c]ontrary to critics’ concerns, . . . [compared to performance under pre-Hopwood affirmative action policies,] . . . minorities’ relative academic achievement has improved with the adoption of race-neutral policies in Texas.”¹⁰⁶ Specifically, he found that GPAs and retention rates improved substantially. For example, freshman year GPAs at the University of Texas at Austin for black and Hispanic students increased by 0.35 and 0.25 points, respectively, from their pre-Hopwood levels.¹⁰⁷ And black and Hispanic retention rates after five semesters increased by 12.1 and 12.3 percentage points, respectively.¹⁰⁸ Not surprisingly, the amicus curiae brief considered the skill-enhancing programs instituted at the University of Texas at Austin as evidence of the inferiority of the Texas Plan.¹⁰⁹

VIII. SUMMARY REMARKS

The more recent evidence presented here strengthens the position that it is harmful to enroll inadequately prepared black and Hispanic students in the most selective colleges and that a focus on class-based affirmative action admissions programs is a more equitable and effective method of creating constructive diversity at these colleges. Race-based affirmative action admissions policies cannot be justified because they offset economic disadvantage, because they provide academic and/or financial benefits to black and Hispanic students, or because there is no better way to diversify selective colleges. In particular, a large proportion of black students performs poorly and becomes disenchanted with their college experience. The perception of academic inferiority of black students grows among their fellow white and Asian students and is internalized. Alternatively, as Kahlenberg suggests, class-based affirmative action admissions

104. See Brief for Social Scientists Glenn C. Loury et al. as Amici Curiae Supporting Respondents, *supra* note 18.

105. *Id.*

106. Brian Bucks, *Affirmative Access Versus Affirmative Action: How Have Texas’ Race-Blind Policies Affected College Outcomes?* 3 (Nov. 1, 2004), <http://www.utdallas.edu/research/tsp/pdfpapers/paper33.pdf>.

107. *Id.* at 25.

108. *Id.* at 26.

109. See Brief for Social Scientists Glenn C. Loury et al. as Amici Curiae Supporting Respondents, *Gratz supra* note 18.

policies can sustain comparable rates of black and Hispanic enrollment while increasing dramatically the number of economically disadvantaged students at the most selective colleges.¹¹⁰

I believe, however, that the most important means to correct the underrepresentation of blacks and Hispanics at the most selective colleges is to address pre-college education enhancement affirmative action policies. These policies have been effective in increasing the number of black and Hispanic students who qualify for the UC system and those who graduate the military academies and officer training programs.¹¹¹ It was interesting that the success of the military policies has been used by supporters of the University of Michigan's case.¹¹² Rather than lowering standards, Charles Moskos and John Butler demonstrate how the military was successful because it practiced developmental affirmative action so that blacks and Hispanics met the same formal standards for performance on standardized exams as all others.¹¹³

The harmful effects of race-based affirmative action admissions policies seem so transparent that one hopes that the University of Michigan, in reformulating its admissions policies, follows the California example, and genuinely pursues more of a class-based approach. They must not allow faculty and administrative interests in having a racially-diverse student body to override concerns for the best interests of applicants. While the class-based approach may create a shortfall of black and Hispanic students in the short run, it will gain substantial economic diversity and the students enrolled will have an improved academic performance compared to those in the present situation.

110. KAHLBERG, *supra* note 19, at 6.

111. CHERRY, *supra* note 1, at 226-28.

112. Brent Staples, *What the U.S. Army Teaches Us About Affirmative Action*, N.Y. TIMES, Jan. 6, 2003, at A20; Adam Clymer, *Service Academies Defend Use of Race in Their Admissions Policies*, N.Y. TIMES, Jan 28, 2003, at A17.

113. *See generally* CHARLES MOSKOS & JOHN BUTLER, *ALL THAT WE CAN BE* (1996).