

Diversity and Racial Preferences: Implications of the Michigan Case for the UNC System

By Jon Sanders

Summary: Race preferential admissions tend to depress the grade, the graduation rates, and advancement to graduate school for those favored in the admissions process. The Supreme Court will soon rule on the legality of such preferences in university admissions. What might this ruling mean for North Carolina?

In California, Texas, and Florida, where racial preferences have been eliminated, there was an initial drop-off in minority enrollment in the most academically challenging institutions. But those were offset by increased minority enrollment in the state's other colleges. A 1998 study conducted by the Center for Equal Opportunity suggests that similar results could be expected in North Carolina. The CEO found that ending racial preferences in the UNC system would result in the flagship institutions, such as UNC-Chapel Hill and NC State, experiencing an initial drop-off in minority admissions, but minority admissions in the other UNC schools would increase. The CEO study also suggested that, without racial preferences, overall graduation rates for minorities would improve.

The Supreme Court is poised to issue a verdict on the legality of racial preferences in higher education admissions. The forthcoming decision will have ramifications for colleges across the land, private as well as public. This paper analyzes what it will mean to North Carolina higher education if the Supreme Court rules against racial preferences. It examines that question from a legal standpoint and also considers practical and moral questions. It also looks at states where racial preferences have already been ended to see what to expect if the Supreme Court ends them for the rest of the country.

I. The University of Michigan Case: A Review

In 1998 the Center for Equal Opportunity (CEO) released a study, "Racial Preferences in Higher Education," that examined admissions at the University of Michigan. The CEO report found that at U of M, "the average

white admittee scored 230 points higher on the combined SAT (out of a possible 1600), 6 points higher on the ACT (out of a possible 36), and nearly half a point higher on grades (on a 4-point scale) than the average black admittee.” The CEO also found that Michigan “refused admission in 1995 to hundreds of white and Asian students who had both higher test scores and GPAs than the black admittee median.” Furthermore, “The University of Michigan at Ann Arbor is by far the greatest offender among the state’s public colleges and universities when it comes to using racial preferences.”¹

The CEO also found that whites and Asians graduated at a rate 20 percentage points higher than blacks and 10 points higher than Hispanics at University of Michigan. Using logistic regression, the CEO calculated “[t]he odds of a black applicant with the same qualifications as a white applicant being offered admission to the University of Michigan at Ann Arbor is 173.7 to 1. In other words, if two students with equal test scores and grades apply to UM, and UM has only one spot to offer them, it is almost 174 times more likely to choose a black applicant instead of a white one.”²

The Supreme Court Case³

All eyes are on Michigan now, thanks to *Grutter v. Bollinger*, a case before the Supreme Court involving Michigan Law School’s use of racial preferences. According to court documents, in 1992 Michigan adopted a policy to “admit a group of students who individually and collectively are among the most capable students applying to American law schools in a given year” and to “seek a mix of students with varying backgrounds and experiences.” To achieve this goal, Michigan devised an index plotted on a grid of standardized test scores and grade-point averages. The highest scores were concentrated in the upper-right-hand corner, and an applicant’s chances of admission were higher, the closer the applicant’s combination of standardized test scores and GPA got to that corner. Also, Michigan used so-called soft variables, such as “the enthusiasm of the recommenders, the quality of the undergraduate institution, the quality of the applicant’s essay, residency, leadership and work experience,

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unique talents or interests, and the areas and difficulty of undergraduate course selection.” These variables allowed University of Michigan to select an applicant with lower index scores if there were “good reason to be skeptical of an index score-based prediction” or if the applicant “may help achieve... diversity.” The latter is crucial because of Michigan’s “commitment to racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against.” These include, “African-Americans, Hispanics, and Native Americans, who without this commitment might not be represented in our student body in meaningful numbers [and who] are particularly likely to have experiences and perspectives of special importance to our mission.”

In practice, Michigan officials relied on a tacit, though unspecified, notion of admitting a “critical mass” of “under-represented minority students.” The grids of successful vs. unsuccessful applicants showed that Native Americans, African-Americans, Mexican-Americans, and Puerto Rican applicants had odds of admissions many times greater than did Caucasian applicants. Furthermore, the university explained that “eliminating race as a factor in the admissions process would dramatically lower minority admissions.”

The law school’s use of preferences had been narrowly upheld, 5-4, in a rare *en banc* hearing by the U.S. Court of Appeals for the Sixth Circuit. Controversy arose, however, over some features of that ruling. First, all five judges ruling in favor of racial preferences were Democrat appointees. All three Republican appointees dissented, joined by one Clinton appointee. Second, the Sixth Circuit was only half its normal size, with President Bush’s seven nominees being refused confirmation by the Democrat-controlled U.S. Senate. There were eight vacancies on the court (one of the judges ruling in the Michigan case having taken “senior status” last December).⁴ Furthermore, the request for *en banc* hearing was made in May 2001, as dissenting Judge Danny J. Boggs noted in the also-unique “Procedural Appendix” filed “to record as an explanation of the manner in which this

case came before the particular decision-making body that now decided it.” There were 11 active judges in the circuit then, and a conservative majority. The request failed, for some reason, to be circulated to every judge. In fact, the request was not revealed or granted until two conservative judges had retired, giving the circuit a liberal majority.⁵

Regardless of the outcome, many observers expected the Supreme Court to consider the Michigan case because of the large division in the federal courts of appeals on the issue. The Sixth Circuit and the Ninth Circuit (concerning racial preferences at the University of Washington Law School) have both ruled in favor of the “diversity” rationale for using racial considerations in admissions decisions. However, the Fifth Circuit, in *Hopwood v. Texas*, rejected that rationale. Furthermore, the Eleventh Circuit was unique in its ruling against the University of Georgia’s racial points system of admissions. That Court ruled that the use of racial considerations in admissions decisions must be “narrowly tailored” to the diversity rationale used in the 1978 Supreme Court decision, *Regents of the University of California v. Bakke*.⁶

II. Legal Implications for the Nation and North Carolina

Equal Protection Under the Law

The Fourteenth Amendment guarantees equal protection under the law to any citizen of the United States. That law includes Title VI of the Civil Rights Act of 1964, which states: “No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Thus, equal protection is extended to U.S. citizens wishing to participate in, or benefit from, any program or activity receiving federal aid which includes every program at every college (public or private) in which at least one program receives federal aid. As made clear by the Civil Rights Restoration Act of 1987, “the term ‘program or activity’ mean[s] all the operations of... a college, university, or other postsecondary institution, or public system of higher education... any part of which is extended Federal financial assistance.” Therefore, the Supreme Court’s decision in *Grutter v. Bollinger* will be applicable to nearly every college or university in the land.

The Powell Opinion

At present, the governing decision is *Bakke*, which is the only time the court ever ruled on racial preferences in admissions to institutions of higher education.

Concerning *Bakke*’s applicability to *Grutter*, lawyers for the University of Michigan present arguments based on Justice Lewis F. Powell Jr.’s opinion in favor of limited use of race-based admissions to ensure a racially diverse campus. Lawyers for the plaintiffs argue that none of the other justices subscribed to Powell’s diversity justification and, instead, viewed race-preferential admissions as appropriate only to address racial discrimination by the university itself or society at large. (Subsequent rulings by the court now apply the highest standard of scrutiny to racial preferences used to remedy societal discrimination.)

Powell’s opinion was more nuanced than is popularly held, and is certainly more nuanced than most academic justifications for racial preferences. He held that race or ethnicity was only one element of diversity. As he wrote, “The diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.” Importantly, he noted that a “special admissions program, focused solely on ethnic diversity, would hinder rather than further attainment of genuine diversity.”⁷

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Powell held that taking an individual applicant's race in perspective to achieve diversity in this broader sense is a sufficiently compelling state interest.⁸ He cited the example of Harvard College, where the Committee on Admissions avoided adopting "the single criterion of scholarly excellence" because of their belief that doing so would cause Harvard to lose its vitality, intellectual excellence and even educational quality.⁹

At first this diversity encompassed such things as geography and student interests, Powell wrote, but later Harvard added race to the mix:

"The belief that diversity adds an essential ingredient to the educational process has long been a tenet of Harvard College admissions. Fifteen or twenty years ago, however, diversity meant students from California, New York, and Massachusetts; city dwellers and farm boys; violinists, painters and football players; biologists, historians and classicists; potential stockbrokers, academics and politicians. The result was that very few ethnic or racial minorities attended Harvard College. In recent years Harvard College has expanded the concept of diversity to include students from disadvantaged economic, racial and ethnic groups. Harvard College now recruits not only Californians or Louisianans but also blacks and Chicanos and other minority students... In practice, this new definition of diversity has meant that race has been a factor in some admission decisions."¹⁰

Therefore, Powell reasoned, "race or ethnic background may be deemed a 'plus' in a particular applicant's file." The catch is that it must "not insulate the individual from comparison with all other candidates for the available seats." What does that mean? "The file of a particular black applicant may be examined for his potential contribution to diversity without the factor of race being decisive when compared, for example, with that of an applicant identified as an Italian-American if the latter is thought to exhibit qualities more likely to promote beneficial educational pluralism."¹¹ This nuanced approach means that, as the Center for Individual Rights and the Pope Center have expressed, "Most colleges and universities have a difficult time complying with Powell's opinion in *Bakke*."¹²

"Diversity" in the UNC System

Based in no small part on the reasoning behind Powell's opinion, "diversity" has become the watchword at public colleges in North Carolina and across the country. One can easily find institutional pronouncements on the educational importance of diversity throughout the materials and web sites of UNC schools. Whole divisions and committees are tasked with ensuring, monitoring, and assessing diversity on campus. N.C. State, for instance, pursued an ambitious "Diversity Initiative" for several years during the 1990s before scrapping it. Now N.C. State has begun a new "comprehensive, ongoing assessment of the climate for diversity."¹³ UNC-Wilmington,

meanwhile, recently published a report on "The Status of Ethnic Diversity." The report called for, among other things, sensitivity training for faculty, a new associate provost for diversity, a commission of diversity to develop a "Five-Year Diversity Plan," and for making "[a]ll public presentations such as the UNC-Wilmington website and publications present a diversity message."¹⁴

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Universities have made no secret of the fact that the diversity they seek is something quantifiable on the surface; that is, it's driven by skin color and gender. Consequently, ensuring diversity on campus is part of the admissions process and is controlled by the admissions office.

Not surprisingly, there has been a student backlash against this narrow form of diversity, with students testing the merits of their university's idea of diversity and finding it lacking. Many students, like Justice Powell, understand that in the real world, diversity encompasses more than race, ethnicity and gender. Yet they are encouraged at every campus to "Celebrate Diversity!" when the diversity to be celebrated is the most narrow definition, i.e. skin color and gender.

In just the last year, for example, conservative student publications at UNC-Chapel Hill and Duke University

both published front-cover challenges to this idea. The March 2002 cover of UNC-CH's *Carolina Review*, talked about "Trampling UNC's Intellectual Diversity."¹⁵ A few months later, the October 2002 cover of *New Sense* magazine at Duke University, published by the Duke Conservative Union, proclaimed "Down with 'Diversity.'"¹⁶

Those same concerns fueled suspicions by students who consider themselves qualified for admission but were rejected, that they were victimized by the obvious racial focus of the university's diversity agenda. While most students who harbor such suspicions do nothing about them, there are also those who are willing to sue the school for violating their rights. Universities, therefore, must be confident that their admissions processes are legal, or better put, defensible in court.

Out of those concerns, UNC President Molly Broad in 1997 ordered a UNC-wide review of the system's existing racial preferences. The UNC review was charged with seeking out and abolishing strictly race-based admissions policies and scholarships.¹⁷ Noting the "constantly evolving" legal landscape on the issue of racial preferences, Broad wrote in a letter to UNC chancellors and trustees dated Nov. 26, 1997 that UNC will change "any of our practices [that] are legally inappropriate" to keep "the University from being drawn into unnecessary and inappropriate controversy." Broad also noted that although some legal requirements are clear, "other important questions await definitive resolution by the court."¹⁸

Recently, UNC-CH Director of Admissions Jerry Lucido discussed the school's "race-conscious" admissions policy before the Board of Trustees. Lucido hewed to the Powell line, saying UNC-CH considers race only as one of many factors in reviewing applications and that the university has "anything but a race-based policy." UNC-CH does not rely on quotas, Lucido said, so "Race may play a role for a student, or it may not."¹⁹

There have been attempts outside UNC to bring more clarity to those important questions, pending resolution in the court. In 1998 the Center for Individual Rights (CIR), together with the Pope Center for Higher Education Policy, published "Racial Preferences in Higher Education: A Handbook for College and University Trustees".²⁰ Among the handbook's features was a worksheet that outlines questions that will determine whether an institution illegally uses racial preferences in admissions:

Passing the Legal Test: Worksheet on Admissions Procedures

- Does the school try to admit a certain percentage of minority students or admit minority students in proportion to their representation in the population as a whole?
- Does the school add points to applicants' GPA or test scores based on race?
- Does the school extend application deadlines based on race?
- Does the school offer preferences or restrict access to scholarships on the basis of race?
- Does the school automatically admit or deny individuals based on test scores, and if so, does it appear that the university utilizes lower cut-off scores for applicants of certain racial groups?
- Does the school automatically review more thoroughly applicants of certain racial groups?
- Is there a separate review process or separate review committee for applicants of certain racial groups?
- Does the school automatically classify applicants of certain racial groups as disadvantaged?
- Does the school admit students through "conditional admit" or other special programs reserved for students of certain racial groups?

From *Racial Preferences in Higher Education: A Handbook for College and University Trustees*, p. 24.

The same organization that studied the effect of racial preferences in Michigan higher education, the CEO, also studied the effect of racial preferences in North Carolina.²¹ The report, “Preferences in North Carolina Higher Education,” looked at six UNC schools — N.C. State, UNC-Asheville, UNC-CH, UNC-Charlotte, UNC-Greensboro, and UNC-Wilmington. It found “a substantial qualifications gap between black and white applicants who have been accepted for future enrollment,” and “no school at which the black median SAT scores or GPA was equal to or higher than the white median for students admitted in 1995” (the year of the survey).²² At only one school, UNC-G, did the CEO find no indication of racial preferences having been used. At the others, however, the CEO found “a strong degree of preferences in admissions given to blacks over whites,” demonstrated by the odds ratios of admission (the odds of a black applicant with the same qualifications as a white applicant being offered admission). Ratios were: at UNC-CH, 3.4 to 1; at UNC-C, 8.37 to 1; at UNC-A, 10 to 1; at UNC-W, 57.2 to 1; and at N.C. State, 177.1 to 1. N.C. State’s odds ratio was even more extreme than the University of Michigan’s, which was 173.7 to 1.

III . The Harmful Effects of Race-Based Admissions Policies

Graduation Rates

The CEO warned of the effects of such admissions policies on graduation rates. “If students gain admission to colleges and universities for reasons other than their academic preparation, it is likely that they will face greater burdens in school than will their peers who have met a higher academic standard of admission,” the report states. “They may in fact not earn their degrees. It follows, therefore, that racial and ethnic preferences will have a negative effect on the graduation rates of students who supposedly benefit from them.”²³ To that end, the CEO examined six-year graduation rates at those North Carolina schools noted above and found gaps in the graduation rates of blacks and whites that “roughly parallel[] the size of the admissions odds ratios.”²⁴

Since it examined students admitted in 1995, the CEO study did not measure how UNC admissions changed following President Broad’s 1997 order to review the preferences that were in place. Nevertheless, the effect of those preferences on graduation rates — and the effect of those graduation rates on the students — was recently illustrated at N.C. State. A collection of black student interest groups issued “N.C. State University’s African American Student Issues: Spring 2002 University Report,” which, among other things, gave the university a D

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grade in the graduation rate of black students. Between 1994 and 1999 the graduation rate for black students was only 47 percent.²⁵ Those students, however, were admitted under the same process that the CEO examined. The black students’ report, in other words, appears to validate the CEO’s concerns about race-preferential admissions negatively affecting graduation rates of the students who ‘benefited’ from them.

Unexpected support for this critique of racial preferences has come in a new book, *Increasing Faculty Diversity: The Occupational Choices of High-Achieving Minority Students*,²⁶ by Stephen Cole and Elinor Barber. The authors’ research was sponsored by two strong supporters of racial preferences, the Council of Ivy Group Presidents and the Andrew W. Mellon Foundation. The findings of the study detailed in the book, which were based on a five-year period, directly contradict those of a widely heralded 1998 book, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions*.²⁷

This book was written by Derek Bok, a former Harvard president, and William G. Bown, president of the Mellon Foundation. Not surprisingly, the Mellon Foundation is distancing itself from the new book by Cole and Barber.²⁸

According to *The Chronicle of Higher Education*, which wrote about the book, “Many universities are trying hard to recruit black, Hispanic, and American Indian professors, says the [Cole] book. But they end up fighting over the same insufficient pool of minority Ph.D.’s. That group is small primarily because most minority under-

graduates don't earn grades good enough to get into graduate school, or even to convince themselves that they are academically suited for careers in the professoriate. The crux of the problem, according to the book: Affirmative action has steered many minority undergraduates to selective colleges where they do poorly."²⁹

Increasing Faculty Diversity found that only 19 percent of black undergraduates (as opposed to 43 percent of white, 40 percent of Asian, and 27 percent of Hispanic undergraduates) had GPAs of A or A-. As the *Chronicle* reported, the book shows that "affirmative action directs minority students to elite institutions where they are underqualified and likely to earn lower grades than white students." It quotes from the book: "Because of affirmative action, these African-Americans... are admitted to schools where, on average, white students [SAT] scores are substantially higher. Not surprisingly, in this kind of competitive situation, African-Americans get relatively low grades." The book recommends that "high-school guidance counselors should encourage minority students to attend not 'the most prestigious school they can get into,' but 'a school where he or she is likely to do well academically.'"³⁰

The Chronicle article also discusses a black academic, Carol M. Swain, a professor of law and political science at Vanderbilt University, who received a doctorate from UNC-CH. According to *The Chronicle*, Professor Swain "believes that affirmative action can hurt not just young minority students but also minority professors." As an undergraduate, Ms. Swain started out at a community college, then earned her bachelor's degree from Roanoke College before moving to the University of North Carolina at Chapel Hill for her doctorate. "I believe the success I enjoyed that built my confidence as a student wouldn't have been there had I been misplaced early on," Swain told *The Chronicle*.³¹

Stigma, Paternalism and Separatism

A recent report released by the New York Civil Rights Coalition (another surprising source of recent criticism of racial preferences) discussed another troubling aspect of race-based admissions justified on the grounds of diversity. In *The Stigma of Inclusion: Racial Paternalism/Separatism in Higher Education*, Ramin Afshar-Mohajer and Evelyn Sung discuss how colleges' race-preferential focus in admissions spills over into other campus activities and produces undesirable effects. They argue that "colleges and universities... permit or encourage, and, oftentimes, fund a balkanized campus environment... the officials of many colleges reward the self-segregation of minority students on their campuses as supportive of many efforts to foster the comfort of a culturally, economically, geographically, and racially diverse group of students." And they conclude that these "policies... actually support a new form of ethnic and racial segregation in higher education."³²

Afshar-Mohajer and Sung explain how those schools using race in admissions allow race to be used in roommate selection, campus housing preferences, scholarships, and even remediation and counseling of "at risk" students. By allowing race and ethnicity considerations to permeate almost every facet of campus life, the authors contend that colleges foster a kind of racial and ethnic separatism through "the deification of race as a factor for treating students differently" and also "by placating or empowering students who advocate and practice separatism."³³

Afshar-Mohajer and Sung argue that by allowing such separatism to creep back into institutions under the guise of diversity, colleges and universities have abdicated their responsibility to educate and challenge their students. Claiming to have minorities' best interests at heart, the colleges excuse segregated housing, courses, and programs by saying it makes campus life more comfortable for the minority students. "Their alibi for not fostering racial integration, for reversing themselves, midstream, about the value of interaction and social discourse is premised on the rigorous pursuit of knowledge and truth," Afshar-Mohajer and Sung write.³⁴

The authors conclude that "[t]he purpose of higher education is to remove narrow constrictions of the mind, to

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extirpate prejudice, to remove barriers to the open pursuit of knowledge...Separatism in all of its forms, but especially when it is aided and abetted by college and university officials and resources, is a betrayal of that mission. Shame on the colleges and universities that do this to successive generations of their students!"³⁵

IV. The Effects of Ending Preferences

Three Path-breaking States: California, Texas and Florida

The best "test state" for the effects of eliminating racial preferences in college admissions is California. In 1996 California voters approved Proposition 209, titled the "California Civil Rights Initiative." This initiative explicitly ended racial preferences in California's public higher education system. The CCRI states that "The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."³⁶ Preceding voter approval, however, the University of California Board of Regents, under the leadership of regent Ward Connerly, had approved guidelines eliminating the use of racial, ethnic, and gender preferences in the system's admissions in July 1995.³⁷ (The UC Regents repealed those guidelines in 2001 as part of a symbolic protest against Prop. 209.³⁸)

The UC Regents' ban on race-preferential admissions took effect in 1998. By 2002, the UC system was admitting proportionately more minority students than it did before 1998. In 1997, the last year the UC system used race-preferential, "affirmative action" admissions policies, Latino, African-American, and Native American students comprised 18.8 percent of students admitted. For 2002, without using race-preferential admissions policies, Latino, African-American, and Native American students comprised 19.1 percent. Only at the most competitive UC campuses — Berkeley, Los Angeles, and Irvine — were minority admissions rates below 1997 levels. And the drop-offs there have been compensated by increases at the other UC schools.³⁹

"I don't mean to gloat, but I told you so," Connerly told the Associated Press about the news. "We've been saying for a long time that these kids don't need any special treatment to get into the UC system. They just need to work hard, get fair treatment, and have confidence in themselves. The rest will take care of itself," he said.⁴⁰

In 2001 California state officials implemented the "Four-Percent Plan." This guarantees that the top 4 percent of every high-school graduating class in the state is admitted to the UC system. The result was increased "geographic diversity" leading to the admission of more students from rural high schools than in previous years.⁴¹ UC also stepped up its outreach efforts to minority students.⁴²

In Texas, race-preferential admissions were ended as a result of the Hopwood ruling. Hopwood first affected admissions in 1997, and minority admissions to the University of Texas system fell sharply. By 1999, however, more black and Hispanic students gained admission to the UT system than in 1996 (pre-Hopwood), and the proportion of minorities among all admittees had returned to pre-Hopwood levels.⁴³ As in California, these gains for minorities in the system as a whole have not been reflected in the flagship campuses (UT-Austin and Texas A&M), where minority admissions are still lower than the pre-Hopwood levels.⁴⁴

In 1997 Texas lawmakers passed the "top 10 percent law." It guaranteed, starting in 1998, that Texas students graduating in the top 10 percent of their high-school class will be admitted to any public college or university in Texas. UT also recruits students at "freshman admissions centers" located in urban areas and through special scholarship programs. These scholarships target schools with large minority populations, relatively low family incomes, and standardized-test scores below the state average. The state also makes use of privately sponsored scholarships that specifically target minority students.⁴⁵

In Florida, a 1999 executive decision by Gov. Jeb Bush and a subsequent vote by the Board of Regents, ended race-preferential admissions at Florida's 11 public institutions. Bush's decision was part of his "One Florida"

plan. It included a “Talented Twenty” section guaranteeing admission to one of Florida’s public universities for every high school student in the top 20 percent of his graduating class who also completed 19 college-preparatory classes. Bush’s policy was criticized by the U.S. Commission on Civil Rights as a “stealth agreement” for “segregation” and called “dead wrong” by Vice President Al Gore. But Bush said it would actually increase enrollment for minorities and improve diversity in higher education because the plan also included increased outreach efforts for minorities.

Florida’s results have been similar to those experienced in California and Texas. Minority enrollment has increased slightly at Florida’s public universities, moving from 35 percent in 2001 to 36 percent in 2002. While minority enrollment did decline at some of the Florida public institutions, this was offset by the increases at the others, including the University of Florida, considered the flagship of the system.⁴⁶

V. Conclusions: The Potential for North Carolina

In its 1998 report, the CEO examined the possibility of eliminating race-based admission policies in the UNC system. If the median Verbal SAT scores, Math SAT scores, and GPAs of black admittees at a school surpassed the 25th percentile scores of white admittees at the same school, the report assumed that those students could gain admission to that school without considering race. Consequently, the report found that “North Carolina schools would not become resegregated in the absence of preferences. There would be no universities without black admittees. Only Chapel Hill, Asheville, and N.C. State might lose a significant proportion of those who would currently be admitted. They would immediately be admitted to the other public universities in the state.”⁴⁷

Indeed, that is the pattern that has emerged in states where racial preferences have come to an end. Only at the most rigorous universities does minority enrollment fall, and the other public institutions readily admit those minority students who were turned away. Overall, minority enrollment is not greatly affected. What appears to be happening when racial preferences end, is that students prepare themselves according to the new admissions expectations. As has occurred in Florida, universities and state governments typically find ways to admit minorities under Justice Powell’s reasoning in favor of diversity, but *without the explicit racial component*.

Clearly, the evidence suggests that the end of racial preferences in higher education admissions is not harmful to minority students. In fact it appears that the contrary is true. Minority students are more likely to attend colleges that are more consistent with their abilities, increasing their chances of success both in college and in life. If North Carolina’s minority students are not well prepared for the state’s top academic institutions and minority enrollments drop at these schools in the absence of racial preferences, then the blame should go to the state’s primary and secondary education system. Racial preferences can be of no help to a minority student who has been shortchanged by the North Carolina public school system.

NOTES

¹ Lerner, Robert, and Althea K. Nagai, "Racial Preferences in Michigan Higher Education: Racial Preferences in Undergraduate Admissions at the Public Colleges and Universities of Michigan," Center for Equal Opportunity, Jan. 26, 1998.

² Ibid.

³ Unless otherwise stated all quotes in this section are from *Grutter v. Bollinger*, 2002 FED App. 0170P (6th Cir.).

⁴ Sanders, Jon, "Supreme Court Considered Likely to Review Michigan's Lawsuit on Racial Preferences," *Carolina Journal*, July 2002, p. 11.

⁵ Ibid.

⁶ Ibid.

⁷ *University of California Regents v. Bakke*, 438 U.S. 265 (1978).

⁸ "Racial Preferences in Higher Education: A Handbook for College and University Trustees," the Center for Individual Rights, 1998, p. 6

⁹ Op. cit. at note 7.

¹⁰ Ibid.

¹¹ Ibid.

¹² *Racial Preferences in Higher Education: A Handbook for College and University Trustees*, (Washington, D.C.: The Center for Individual Rights and the Pope Institute for the Future of Higher Education) 1998, p. 6.

¹³ Anderson, James, "Student participation a necessity for racial climate survey: The following is a letter submitted by Vice Provost for Undergraduate Affairs James Anderson," *Technician*, Nov. 1, 2002.

¹⁴ Hackley, Lloyd V., Edward B. Fort, E.K. Fretwell, Joseph B. Oxendine, "The Status of Ethnic Diversity at The University of North Carolina at Wilmington: Preliminary Report," Oct. 28, 2002.

¹⁵ *Carolina Review*, Vol. IX, Issue 5, March 2002.

¹⁶ *New Sense*, Vol. 3, No. 1, October 2002.

¹⁷ Batten, Taylor, "UNC: Race will be less of a factor," *The Charlotte Observer*, Nov. 25, 1997.

¹⁸ Broad, Molly C., letter to the chancellors of the University of North Carolina, Nov. 26, 1997.

¹⁹ Thigpen, Daniel, "Lucido: UNC Race-Conscious, Not Race-Based," *The Daily Tar Heel*, Jan. 24, 2003.

²⁰ Op. cit. at note 12.

²¹ Lerner, Robert, and Althea K. Nagai, "Preferences in North Carolina Higher Education: Racial and Ethnic Preferences in Undergraduate Admissions at Six North Carolina Public Universities," Center for Equal Opportunity, June 29, 1998.

²² Ibid. p. 2.

²³ Ibid.

²⁴ Ibid.

²⁵ Windham, Carie, "NCSU gets bad marks from AASAC: An AASAC report card pins two F's, a D and a B on the university in African-American issues," *Technician*, Feb. 1, 2002.

²⁶ Stephan Cole and Elinor Barber, *Increasing Faculty Diversity: The Occupational Choices of High-Achieving Minority Students*, (Cambridge, Mass: Harvard University Press) 2003.

²⁷ Derek Bok and William Bown, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* (Princeton, NJ: Princeton University Press) 2000.

²⁸ Wilson, Robin, "The Unintended Consequences of Affirmative Action: A controversial study from unlikely sources asks why college faculties lack diversity," *The Chronicle of Higher Education*, Jan. 31, 2003, p. A10.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Afshar-Mohajer, Ramin, and Evelyn Sung, "The Stigma of Inclusion: Racial Paternalism/Separatism in Higher Education," New York Civil Rights Coalition, Sept. 9, 2002, p. iii.

³³ Ibid. p. iii.

³⁴ Ibid. p. 25.

³⁵ Ibid., p. 25.

³⁶ *California Civil Rights Initiatives* (Proposition 209), Section (a), 1996.

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