

LAST WORD : RACE-BLIND COLLEGE ADMISSIONS – BACK TO THE DRAWING BOARD

by ADRIEL A. HILTON & TED N. INGRAM

If higher education is to successfully promote diversity enrollment, it will take a combination of targeted programs.

Supreme Court Justice Sonia Sotomayor has called herself “the perfect affirmative action baby.” She says she would not have been admitted to either Princeton or Yale if not for affirmative action. “My test scores were not comparable to that of my colleagues at Princeton or Yale,” she has said.

Sotomayor’s views on affirmative action stand in stark contrast to those of Justice Clarence Thomas. In his 2007 autobiography, *My Grandfather’s Son*, Thomas says affirmative action did more to hinder rather than help his career. Referring to his Yale law degree as almost worthless, Thomas says his admission to Yale under affirmative action watered down his degree’s value. But as more states, Nebraska being the latest, begin navigating the anti-affirmative action waters charted by California’s Proposition 209, questions linger about what such a world would be like.

Most higher education institutions are aware of U.S. Census Bureau data predicting massive increases in the nation’s minority population, especially in California, Texas, Michigan and Florida. A growing number of them are prevented by ballot initiatives (e.g., California’s Proposition 209 and Michigan’s Proposal 2) from using race-based policies to grow their minority enrollment. The educational outlook for the considerable minority population is troubling, particularly for those seeking graduate level programs.

Law schools have been among the most difficult to diversify. The American Bar Association (ABA) has acknowledged that the percentage of minorities enrolled in law schools dropped by about 20 percent in the middle of this decade. The “Miles to Go” study, conducted by the ABA’s Commission on Racial and Ethnic Diversity, found that African-Americans are proportionately less represented in the legal profession than in any other leading occupation. Blacks make up 3.9 percent while Latinos make up just 3.3 percent. And it appears the profession is not able to turn to the traditional source of law schools to rectify the problem.

Thomas may have preferred to have attended Yale Law School without the benefit of affirmative action but it is not clear that he would have been admitted in the absence of such a policy. There are conflicting studies suggesting what might happen if colleges and universities abandoned

affirmative action; some predict minority enrollment will drop, while others anticipate enrollment increases of more and better qualified minorities. We recently completed a study that examined the aftermath of changing college and university admissions in one state to shed light on the impact of using race-neutral criteria.

In 1999, Florida Gov. Jeb Bush implemented the One Florida Initiative (OFI), outlawing the use of race-based admission policies in all public universities.

Almost simultaneously, the Florida Legislature voted to open two minority-serving schools of law at Florida International University (FIU) and Florida A&M University (FAMU), which had closed in 1968 but reopened in 2002. The study sought to determine whether these two events impacted racial diversity in Florida's public law schools and legal profession. Did it work?

The measured response to the question is, well, yes, in a manner of speaking.

We looked at several aspects of Florida's public law schools, before and after implementation of the OFI and the openings of the two minority-serving schools of law, including the impact on mission statements, recruitment, admissions, enrollment, Law School Admissions Test (LSAT) scores and graduation rates. We found little to no impact on the schools' mission statements or recruitment efforts, given the fact that the OFI allows race-conscious recruiting. With the exception of the law schools at FIU and FAMU, both of which opened after the OFI was instituted, Florida law schools were forced to change admissions practices in order to remove race as a factor in their decisions.

The study noted an increase in minorities applying, being admitted and enrolling (up to 10.5 percent in some cases) compared with the years before 2000, when the OFI was fully implemented. What is troubling about the numbers, however, is much of the increase in minority enrollment occurred at the two minority-serving law schools. Without the FIU and FAMU schools of law, the systemwide rise in overall minority enrollment numbers would have been much smaller. Finally, we found no significant change in either LSAT scores or graduation rates among Florida's public law schools since the OFI or the opening of the two schools at FIU and FAMU, despite the fact that racial preference played no role in decisions about which applicants to admit, putting to rest assertions that unqualified applicants were being enrolled under affirmative action.

The findings suggest the state could not have significantly improved diversity, using a race-neutral policy, without also opening two minority-serving law schools. If higher education is to successfully promote diverse enrollment, it will take a combination of targeted programs. The quest for diversity in true race-blind fashion in America's colleges and universities remains a dream deferred. At least in Florida, it is back to the drawing board.

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