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Policy Brief

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Does Affirmative Action *Really* Hurt Blacks and Latinos In U.S. Law Schools?

The Reality Is Many African Americans and Latinos Would Be Left Behind If Affirmative Action Ended

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Executive Summary

Today there are roughly 80,000 Latino and African American attorneys and judges in the United States, compared to about 6,200 in 1970.¹ Much of this remarkable thirteen-fold increase is due to the presence of affirmative action policies at law schools.

The opportunity to enroll in a highly selective graduate or professional school is often viewed as a gateway to economic well-being in American society. Yet, in a highly publicized *Stanford Law Review* article, Richard Sander recently attempted to turn this conventional wisdom on its head. Sander claimed to statistically prove that affirmative action at American law schools actually depressed the number of African Americans who become lawyers by “mismatching” them at schools where they were in over their heads academically. While Sander’s article expressly limits its focus to African Americans, a forthcoming book by Sander will analyze Latinos’ entry into the legal profession. Since articles and books with arguments such as these often have a way of influencing public policy, TRPI commissioned this analysis to evaluate the validity of these claims.

This policy brief demonstrates that Sander’s prediction of a 7.9% net increase in black lawyers if affirmative action ended today is so unlikely that it is essentially impossible. In fact, based on 2004 admissions data, an annual decline in African American attorneys of 30% to 40% is more likely if affirmative action were ended.²

This policy brief also reviews the key methodological flaws in Sander’s study of African Americans in legal education, and also situates Latinos in this analysis. At the end of the day, the benefits Sander projects would result from ending affirmative action and shunting underrepresented students to lower-ranked schools are quite speculative.

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Background on the Controversy

In a recent study, University of California, Los Angeles (UCLA) law professor Richard Sander claimed that affirmative action programs decrease the number of African Americans who become attorneys by greatly undermining graduation and bar passage rates. He further argues that affirmative action does more harm than good in the legal job market as well.³

Even before its publication in the *Stanford Law Review* in January 2005, Sander's article generated widespread attention, including speaking invitations ranging from National Public Radio (NPR) to the University of California Board of Regents, to Fox News' *Hannity & Colmes*. The headline in the *New York Times* asked, "For Blacks in Law School, Can Less Be More?"⁴ The press found it irresistibly newsworthy when a self-described liberal came out with a 115-page econometric analysis predicting that if affirmative action ended today, the result would be a 7.9% annual *increase* in the number of African American attorneys.

Unfortunately, most of the news coverage mistakenly suggested that Sander's study stood on a solid empirical foundation. Sander cultivated this impression, claiming on NPR's *Morning Edition* that "half a dozen social scientists that I know of have been working on replicating my analyses for the past three months, and so far, I haven't found anyone who has found a single mistake in the study."⁵

What was not acknowledged in the press is the strong and growing consensus that the social science in Sander's article in the student-edited *Stanford Law Review* is not well supported empirically.⁶

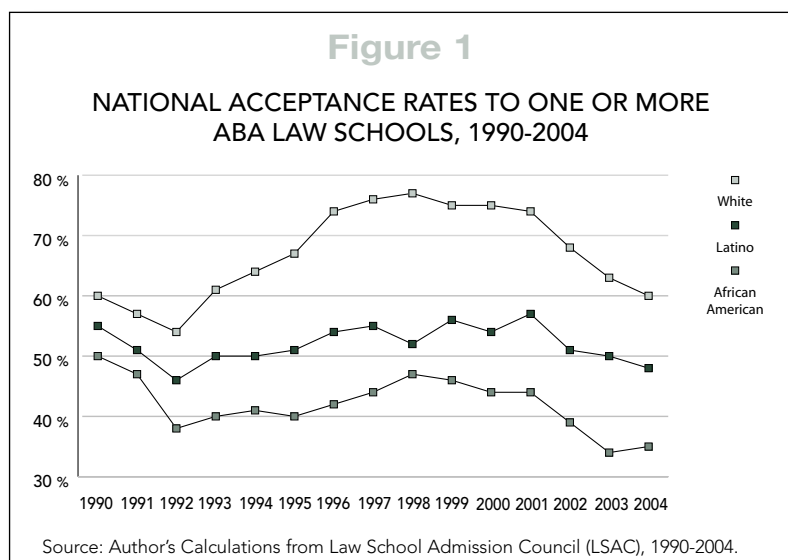
The mismatch theory has been around since the early 1970s. Its proponents at the undergraduate level include prominent affirmative action critics Stephan Thernstrom and Ward Connerly.⁷ Linda Chavez of the Center for Equal Opportunity goes so far as to claim that academic mismatch due to affirmative action is the "biggest problem" confronting Latinos in higher education today.⁸ In light

of the fact that Ms. Chavez and others claim that the mismatch theory has broad implications across higher education, this policy brief will discuss some key studies of undergraduates as well.

Admission to U.S. Law Schools

Before addressing Sander's analysis, it is first helpful to place law school admissions in context. In 2004, over 100,000 applicants applied to 186 American Bar Association (ABA)-accredited law schools. The average applicant applied to 5.5 schools, and 56% were offered admission at one or more law schools. Law schools tend to rely more heavily on standardized test scores and college grades than some other graduate and professional schools.

Contrary to what some might expect, Figure 1 indicates that even with affirmative action, Latinos and African Americans had significantly lower admission rates to ABA law schools than whites in each of the past fifteen admission cycles. The mid-to-late 1990s marked a widening of the opportunity gap between whites and underrepresented minorities, in part due to a perfect storm of ballot initiatives, resolutions, and legal challenges to affirmative action. This included the *Hopwood v. Texas* ruling which banned affirmative action at public and private institutions in Texas, and Proposition 209 and a regent resolution which ended affirmative action in the University of California system. Note that California and Texas have the



largest Latino populations in the U.S., so *Hopwood* and Proposition 209 had a significant effect on the Latino pipeline nationally. Other anti-affirmative action developments in the late-1990s included a Florida gubernatorial order, a ballot initiative in Washington, and the filing of federal lawsuits against the University of Michigan, University of Washington, and University of Georgia.⁹

Unrealistic and Contradictory Enrollment Estimates

Sander's article starts with the claim that ending affirmative action would redirect African Americans (and by implication Latinos) to lower-ranked schools, but it would only decrease total black enrollments at ABA law schools by 14.1%. Sander's claim originates from a study of the 2001 admissions cycle by Linda Wightman.¹⁰ The "grid model," which applies whites' admission rates to Latinos and African Americans with equivalent test scores and grades, endorsed by Sander and one of two models in Wightman's article, projected Latino acceptance rates would only decline 6.6% in 2001 without affirmative action.

Sander's post-affirmative action enrollment estimates are simply too optimistic. First, 2001 is no longer representative of the current admissions climate, as Figure 1 indicates. Acceptance rates have declined significantly since the 2001 admissions cycle because a softer job market for recent college graduates increased applications to ABA law schools from 77,000 in 2001 to 100,000 in 2004.

Consequently, in 2004, the same grid model Sander used in his analysis actually forecasts a 32.5% decline in admission offers to African Americans and a 22.6% decline for Latinos (including an alarming 55.7% decline for Puerto Ricans).

Second, Sander ignores Wightman's warning that the grid model is "less realistic in its assumptions" because it ignores the schools to which minority students actually applied.¹¹ Wightman's other model, which is anchored to the schools to which applicants did apply, projected a 37.9% decline in the number of African Americans accepted at ABA law schools,

and a 21.6% decline for Latinos.¹² And results for this second model would be even worse today because competition is more severe due to the influx of tens of thousands of additional applicants since 2001.

Third, it turns out that Sander did not really apply 2001 data after all, much less the latest available data. What he did do was apply his flawed interpretation of Wightman's 2001 figures to the Law School Admission Council's Bar Passage Study, which tracked the 1991 entering class of law students. The Bar Passage Study database has been analyzed by several scholars in addition to Sander, and is the most comprehensive data available.

This puzzling methodology produces an internally inconsistent comparison; Sander overestimates the benefits of ending affirmative action while at the same time, he underestimates the performance of students admitted under affirmative action. For the reasons explained below, this amounts to having it both ways.

For example, the 1991 entering class cohort is the basis for Sander's post-affirmative action estimates of grades, graduation, and bar rates. Yet, he ignores the fact that Wightman's grid model projected a substantial 52.5% decline in black enrollments (and a 29% decline in Latino enrollments) in the absence of affirmative action in 1991.¹³

On the other hand, if Sander wants the focus to be on recent admission patterns because the disparate impact of ending affirmative action today is not as troubling as it was in 1991, then his graduation and bar performance estimates should reflect the qualifications of today's students, not those from 1991. (But Sander's estimates for what happens under affirmative action are anchored to the 1991 cohort, when 41.4% of African Americans had LSAT/GPA index scores of 600 on Sander's scale. By 2004, 62.4% of black law students had index scores over 600, and 85.2% of Mexican American law students had index scores over 600.)

If all of this seems a bit confusing, that is because it's a confused methodology, and it gets worse

because Sander's calculations are at odds with the grid model that he endorses. Sander assumed that the black students who would be eliminated under the grid model without affirmative action in 2001 are the students with the very lowest LSAT/GPA index scores.

However, this assumption is invalid. Over two-thirds of the black law students who would be excluded under the 2001 grid model actually had index scores above Sander's cutoff. Thus, his post-affirmative action bar estimates are inflated because he improperly eliminated hundreds of black students with the lowest index scores and improperly kept all those with higher index scores.

Finally, Sander assumes that African Americans (and Latinos) would be just as interested in attending lower-ranked law schools without affirmative action. Yet, when affirmative action was banned at public law schools in California, Texas, and Washington, black applications dropped significantly. His model is also based on white admission rates, but African Americans and some Latinos (particularly Puerto Ricans) apply to fewer law schools and apply later in the cycle than whites, which depresses admission rates because fewer slots remain later in the cycle.

In addition, Sander's claims are unrealistic because dozens and dozens of the law schools where black and Latino law students would presumably attend under his model are in regions with very small African American/Latino populations, including the Great Plains, Pacific Northwest, and rural New England. For similar geographic reasons, the adverse impact of ending affirmative action at certain schools with high Latino enrollments would not necessarily be offset by "cascading" many of these students to other schools. For example, at the University of New Mexico Law School, the only law school in that state, Latinos have been about 28% of the class over the last decade, with nearly all benefiting from a policy favoring in-state residents (and many benefiting from affirmative action).¹⁴ Latino students who would be excluded at New Mexico if affirmative action ended would not smoothly cascade to neighboring law schools (Arizona State, University of Colorado, Texas Tech), in part

because state residency preferences would now work to their disadvantage.

Reversing Diversity at Elite Law Schools

In addition to the overall impact on ABA law school admissions, another important consideration in the affirmative action debate is the impact at the most selective law schools. This issue warrants attention because, as will be shown later in this policy brief,

An Affirmative Action Profile:

One Latina's Experience at Harvard Law

Margaret E. Montoya was the first Latina admitted to Harvard Law School, graduating in 1978. She grew up in Las Vegas, New Mexico, and like a fair number of Latino students she attended several colleges, before receiving her undergraduate degree from San Diego State.

Montoya recently served as an expert in *Grutter v. Bollinger*, the University of Michigan Law School affirmative action case, where she stated in her deposition that affirmative action was critical for students like her, and for Latinos generally, to gain access to positions of leadership in American society.¹⁵ Looking back, Montoya recalls that it was hardly an easy environment for her at Harvard Law in the 1970s (when there were no tenured Latinos on the faculty), and she notes, "I can tell you that I never imagined myself in front of a Torts class as a faculty member."¹⁶

Montoya became a member of the bar in three states, and worked in corporate law, legal services, and academic administration in Mexico, Boston, and New York state before returning to New Mexico. She has been a tenured professor at the University of New Mexico School of Law for the last decade, and recently served as the President of the Society of American Law Teachers.

access to selective law schools is a key pathway to leadership positions in the legal profession. Currently, African Americans are 7.6% of the student body at the top twenty U.S. law schools.¹⁷ Latinos are 6.5% of the student body at the top twenty law schools (compared to 5.4% at all ABA schools), including 14% at Stanford and 11% at the University of Southern California (USC).¹⁸

Sander concedes that ending affirmative action nationwide would sharply curtail the number of African Americans at elite law schools, to about 1-2% of the class.¹⁹ In fact, Sander’s model projects that there would be zero African Americans at Harvard and Yale under race-blind admissions.²⁰ Wightman also found that if admission to the top tier of law schools in 2001 was based entirely upon LSAT scores and undergraduate GPAs, African Americans would be less than 2% of the class.²¹ Under Wightman’s same model, admission offers to Latinos at top tier schools would decline by nearly three-fifths,²² and the effect would be even worse today due to stiffer competition.

While Sander acknowledges that student diversity would dramatically decline at top tier schools in the absence of affirmative action, he hypothesizes that there are offsetting educational and career benefits if many students of color “cascade” to lower-ranked law schools. This policy brief will show that the benefits Sander envisions are largely illusory.

The “Mismatch” Theory and Latinos

As Sander explains, the essence of the mismatch hypothesis is that a student admitted with affirmative action to a highly-ranked law school such as USC or Vanderbilt (typically ranked in the top 15 or so) typically has a significantly lower chance of passing the bar than if that student had attended a lower-ranked school (e.g. schools ranked in the 40 to 60 range) that admitted him/her on the basis of academic credentials alone.²³ In short, Sander believes that more modest ambitions can be a key to learning (and earning) more.

How does this mismatch hypothesis hold up with respect to Latinos? One technique for evaluation of its impact is to study graduation and bar passage rates for minority students who, based solely on test scores and grades, would have been admitted at the law school they attended. Such students are, by Sander’s definition of academic credentials, not mismatched. This is exactly what Wightman did in cross-referencing the Bar Passage Study with school-specific admission data. Such data are preferable to the data Sander used, but in fairness to him, it is not publicly available (Wightman was a vice president at the Law School Admission Council at the time of her study).

Wightman found that LSAT scores and college grades “are not significant predictors of graduation from law

Table 1

LATINO GRADUATION AND BAR RATES — STUDENTS WHO WOULD (LEFT SIDE) AND WOULD NOT (RIGHT SIDE) HAVE BEEN ADMITTED AT THE LAW SCHOOL THEY ATTENDED BASED ON LSAT/UGPA

	Graduation Rates		Bar Rates	
	WOULD	WOULD NOT	WOULD	WOULD NOT
Mexican American	79.1%	81.5%	92.0%	87.0%
Puerto Rican	92.0%	82.1%	95.5%	72.5%
Other Latino	88.8%	88.1%	93.1%	82.8%
Latino Totals	87.0%	84.2%	93.0%	83.4%
	(n=315)	(n=972)	(n=259)	(n=740)

Source: Wightman 1997, pp. 35-38

school.”²⁴ Table 1 displays graduation rates and bar rates for Mexican Americans, Puerto Ricans, and other Latinos. The percentages on the left side are for those students who would have been admitted at their law school based solely on LSAT scores and college GPA; the percentages on the right are for other students who likely benefited from affirmative action or consideration of some other factor in the admissions process (i.e., they enrolled in law school but did not have test scores and grades high enough to get into the school they attended). The graduation rates of Latinos are close to being the same (87.0% versus 84.2%) when comparing students who are not “mismatched” to those who are, according to Sander’s definition.

To be sure, there are some disparities in bar passage in Table 1 (93.0% versus 83.4%). However, the point of Sander’s article was to assess the relative costs and benefits of affirmative action. Note then, that for the Latinos represented in Table 1, ending affirmative action under mismatch rationale results in a poor tradeoff: the gap in bar passage is less than 10 points (5 points for Mexican Americans), yet Latinos who would be pushed to lower-ranked schools or excluded altogether outnumber by a 3-1 margin those who would have been admitted by test scores and grades at the law school where they enrolled.

In fact, this test of the mismatch hypothesis in Table 1 is too generous in Sander’s favor, since it doesn’t establish that students who enrolled at a law school with below average LSAT scores and college grades *would have* graduated and passed the bar at higher rates had they attended a less prestigious law school (the opposite could be true, as is explained in the next section).

Insight into the utility of the mismatch hypothesis is available from studies of undergraduate performance. A leading study by Sigal Alon and Marta Tienda, consisted of analyses of three large databases using several statistical models.²⁵ Controlling for students’ initial differences, researchers found that attending selective or highly selective colleges and universities increases the likelihood of timely graduation. Using the same dataset employed by Bowen and Bok in *The*

Shape of the River, Alon and Tienda found that the graduation benefits of attending an elite school were larger for Latinos and African Americans than whites and Asian Americans.²⁶

Mismatched Evidence on African Americans

Consistent with the above evidence on Latinos, Sander’s mismatch theory is not supported by his own bar exam and graduation data on African Americans from the Bar Passage Study, as the article in the *Stanford Law Review* (by this author and Professors David Chambers, Tim Clydesdale and Richard Lempert) indicates.²⁷ Within the Bar Passage Study (Sander’s core data), among black students with equivalent LSATs and UGPAs, those at the elite schools do the best on the bar exam and those at middle-tier law schools do better than those at third-tier law schools. Yet, these students at higher-ranked schools are relatively more “mismatched,” and should therefore do worse, not better, under Sander’s theory.

Other scholars who have analyzed the same Bar Passage Study data employed by Sander also reject the mismatch hypothesis. This was the finding of another *Stanford Law Review* essay by Professors Ian Ayres and Richard Brooks of Yale Law School,²⁸ though just a few months ago Sander represented that Ayres and Brooks were among the social scientists who had replicated his analysis without finding any mistakes.²⁹ Ayres and Brooks show that increasing affirmative action, not eliminating or reducing it, would increase the number of black lawyers. Moreover, Daniel Ho’s piece in the *Yale Law Journal* also confirms that Sander’s mismatch evidence does not add up.³⁰

Sander’s mismatch theory purports to measure the benefits of moving black students at elite schools down a tier or two, and so on down the chain. But in 2001-2003, the top 26 law schools graduated about 1600 African Americans, with an impressive graduation rate above 96%, including 100% at Columbia, Georgetown, and Michigan.³¹ Thus, it is hard to imagine any sizeable graduation payoff to forcing most of these black students to lower-ranked schools, though Sander acknowledges that without

affirmative action, African Americans would only be 1-2% of the students at elite law schools, down from over 7% today.

Sander claims that affirmative action has “large and devastating effects on blacks’ chances of passing the bar.” Yet, the Law School Admission Council’s research on the Bar Passage Study shows that entering LSATs and college grades only explain about 10% of variation in whether graduates pass a bar exam. Sander’s model is good at predicting students who pass, for the simple reason that most students pass a bar exam. However, even including the more robust predictor of law school grades, Sander’s model only correctly identifies as non-passers 129 of 1,074 (12%) of those who did not pass a bar exam.

Sander’s estimates also belie reality by assuming that without affirmative action there would be zero black-white (or Latino-white) differences in LSATs and GPAs within the law schools students attend. He recently “moderated” his claim, arguing that the credential gap “is about 30 times larger than it would be in a race-blind regime.” But a mountain of higher education data demonstrates that substantial test score disparities are inevitable under virtually any race-blind admissions system. As William Bowen and Derek Bok observe in *The Shape of the River*, the only way to equalize test scores “would be to discriminate against black candidates.”³²

What’s the Bottom Line?

Simply combining two of the points above – using the latest available data from 2004, and properly representing which black students would be admitted or rejected under the grid model – yields a 21% decline in black attorneys without affirmative action. And that is holding constant all the other questionable calculations and assumptions in Sander’s analysis.

Evidence indicates that African American application and yield rates to law school would also likely decline in the absence of affirmative action. In addition, it is questionable for Sander to base African Americans’ post-affirmative action estimates on white bar passage rates, particularly since he had never properly

established that black-white performance disparities are due to academic mismatch. All in all, the number of black lawyers resulting from the 2004 admissions cycle would likely decline by 30%-40% if affirmative action were not practiced.³³

The Labor Market and Leadership Opportunities

The “After the JD” dataset, which Sander used for his claims about job prospects for black lawyers in the absence of affirmative action, is not yet publicly available.

Tellingly, however, while Sander claims that affirmative action “disadvantages most blacks in the job market,” none of the other scholars on the After the JD steering committee stand behind Sander’s claim that affirmative action is a poor tradeoff in the labor market. Several committee members are working on a refutation of Sander’s claim. David Wilkins of Harvard Law School, a collaborator in After the JD, observes in another recently published critique of Sander in the *Stanford Law Review* that a law degree from a high-prestige school is a more powerful long-range determinant of success in the legal profession than law school grades.³⁴

The U.S. Supreme Court, in *Grutter v. Bollinger*, wisely declared, “In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity.” Currently, 60% of the 600 African American law professors in the U.S. graduated from the top twenty law schools. Today there are about 250 Latino law professors, compared to approximately five in the early 1970s.³⁵ The pattern is similar for Latinos, with schools like Harvard, Berkeley, and Yale producing the highest number of Latino law professors.³⁶

The impact of substantially eroding student diversity at elite law schools would also likely have far-reaching negative effects on other leadership positions in the legal profession, including federal judges and law firm partners. For example, almost half of the Latinos appointed to the federal bench are graduates of the

top-twenty law schools.³⁷ In 1965, shortly before the adoption of affirmative action, there was only one Latino federal judge in the entire U.S.³⁸ Over three-quarters of the African American partners in major corporate law firms graduated from elite law schools.³⁹

In summary, Sander's study has quite a lot of anti-affirmative action rhetoric and little in the way of sound empirical analysis. Perhaps Stanford professor Michele Landis Dauber best captures this in her essay for the *Stanford Law Review*.⁴⁰ Dauber analogizes all of the media hype over Sander's article, in the absence of verifiable results, to the controversy fifteen years ago when a couple obscure chemists claimed they discovered cold fusion, only to have their claims later systematically repudiated, with less media fanfare, by the rest of the scientific community.

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Endnotes

- ¹ This estimate for 2005 is based on a conservative extrapolation from 2000 Census data. See ABA Commission on Racial & Ethnic Diversity in the Profession, Statistics about Minorities in the Profession from the Census, available at <http://www.abanet.org/minorities/links/2000census.html>, University of California, Final Report of the Task Force on Graduate and Professional Admissions tbl. E-2 (Sept. 1977) (1970 Census figures).
- ² The author of this policy brief coauthored the following article, which analyzes the issues raised by Professor Sander's study in greater detail. David L. Chambers et al., The Real Impact of Eliminating Affirmative Action in American Law Schools: An Empirical Critique of Richard Sander's Study, 57 *Stanford Law Review* 1855 (2005), available at <http://law.bepress.com/cgi/viewcontent.cgi?article=1050&context=umichlwps>.
- ³ Richard H. Sander, A Systemic Analysis of Affirmative Action in American Law Schools, 57 *Stanford Law Review* 367 (2004).
- ⁴ Adam Liptak, "For Blacks in Law School, Can Less Be More?," *New York Times*, Feb. 13, 2005, at WK 3.
- ⁵ Richard Sander Interview with Tony Cox on National Public Radio, Jan. 4, 2005, available at <http://www.npr.org/templates/story/story.php?storyId=4257997>.
- ⁶ See the articles by Chambers et al., Ayres and Brooks, Wilkins, Dauber, and Ho, which are discussed in this policy brief.
- ⁷ Stephan Thernstrom, The Black-White Student Mismatch Problem in University Admissions, 6 *Journal of Blacks in Higher Education* 62 (1994-95); Ward Connerly, Creating Equal: My fight Against Race Preferences 235 (2000).
- ⁸ Educating the Largest Minority Group, *Chronicle of Higher Education*, Nov. 28, 2003, at B6 (interview with Ms. Chavez, who argued: "The biggest problem confronting Hispanic students in higher education today is that many of them have been admitted through the double standard of affirmative action. That virtually guarantees that they will have more difficulty than their peers succeeding at the institutions in which they are enrolled. Once in college, many of the students enroll in less academically rigorous courses than students who meet the regular requirements for admission, and are significantly more likely to drop out of college. The entire process badly serves the very students it was meant to help.").
- ⁹ *Hopwood v. Texas*, 78 F.3d 932, 944 (5th Cir. 1996), overruled in part by *Grutter*, 123 S. Ct. 2325 (2003); Cal. Const. Art I, § 31 (Proposition 209, passed in 1996); Wash. Rev. Code § 49.60.400(1) (Initiative 200, passed in 1998); *Smith v. University of Wash. Law School*, 233 F.3d 1188, 1201 (9th Cir. 2000) (filed in 1997); *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003) (filed in 1997); *Gratz v. Bollinger*, 123 S. Ct. 2411 (2003) (filed in 1997); Florida Executive Order 99-281 (1999); *Johnson v. Board of Regents of the Univ. System of Georgia*, 263 F.3d 1234 (11th Cir. 2001) (there were several individuals who sued Georgia in the late 1990s).
- ¹⁰ Linda F. Wightman, The Consequences of Race-Blindness: Revisiting Prediction Models with Current Law School Data, 53 *Journal of Legal Education* 229, 243 tbl.7 (2003).
- ¹¹ Linda F. Wightman, The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions, 72 *N.Y.U. Law Review* 1, 18, 22-29 (1997).
- ¹² Wightman, Consequences of Race-Blindness, *supra* note 9, at 243 tbl.7.
- ¹³ Wightman, Threat to Diversity, *supra* note 10, at 22 tbl.5. Wightman describes the grid model as conservative because its unrealistic assumptions err on the side of underestimating the effect of ending affirmative action. *Id.* at 18.
- ¹⁴ Southwest Hispanic Research Institute et al., *The Educational Pipeline: Expanding Opportunities For Under-represented Groups in New Mexico Higher Education & Opening Paths to Leadership* (forthcoming 2005).
- ¹⁵ Deposition of Margaret E. Montoya in *Grutter v. Bollinger*, Case No. 97-75928, E.D. Mich. (Dec. 12, 2000).
- ¹⁶ Luz Herrera, Challenging a Tradition of Exclusion: The History of an Unheard Story at Harvard Law School, 5 *Harvard Latino L. Rev.* 51, 58 n.38 (2002) (interviewing Margaret E. Montoya).

- ¹⁷ AM. Bar Association & Law School Admission Council, *Official Guide to ABA-Approved Law Schools 2005 Edition* 25-34 (2004).
- ¹⁸ *Id.* at 25-34.
- ¹⁹ Sander, *supra* note 3, at 483.
- ²⁰ Richard Sander, Measuring the “Distribution Gap” (June 2005), available at <http://www1.law.ucla.edu/~sander/Systemic/supp/DGap.pdf>.
- ²¹ Wightman, Consequences of Race-Blindness, *supra* note 9, at 246-247 (tier one includes 18 schools).
- ²² *Id.* at 247 tbl.9.
- ²³ Sander, Systemic Analysis, *supra* note 3, at 448-49.
- ²⁴ Wightman, Threat to Diversity, *supra* note 10, at 35.
- ²⁵ Sigal Alon & Marta Tienda, Assessing the “Mismatch” Hypothesis: Differentials in College Graduation Rates by Institutional Selectivity, 78 *Sociology of Education* __ (forthcoming 2005), draft version available at http://www.rand.org/labor/adp_pdfs/2004tienda.pdf. Alon and Tienda analyzed the High School & Beyond, National Educational Longitudinal Survey (NELS), and College & Beyond databases.
- ²⁶ *Id.* at 24.
- ²⁷ Chambers et al., *supra* note 2.
- ²⁸ Ian Ayres & Richard Brooks, Does Affirmative Action Reduce the Numbers of Black Lawyers?, 57 *Stanford Law Review* 1807 (2005), draft available at <http://islandia.law.yale.edu/ayers/AyresBrooksResponse.pdf>.
- ²⁹ See National Public Radio, *supra* note 5. Sander made similar claims before a room of 200 law professors at the Association of American Law Schools (AALS) annual meeting in January, 2005.
- ³⁰ Daniel E. Ho, Why Affirmative Action Does Not Cause Black Students to Fail the Bar, 114 *Yale L.J.* 1997 (2005), available at <http://people.iq.harvard.edu/~dho/research/ho-ylj.pdf>; Daniel E. Ho, Affirmative Action’s Affirmative Actions, 114 *Yale L.J.* 2011 (2005), available at <http://people.iq.harvard.edu/~dho/research/srep.pdf>.
- ³¹ UCLA Law Professor Proposes to Bump Black Law Students Down Into Less Selective Law Schools, 45 *J. Blacks in Higher Educ.* Autumn 2004, at 26, 28.
- ³² William G. Bowen & Derek Bok, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* 16 (1998).
- ³³ Chambers et al., *supra* note 2.
- ³⁴ David B. Wilkins, A Systemic Response to Systemic Disadvantage, 57 *Stanford Law Review* 1915 (2005).
- ³⁵ Miguel A. Méndez & Leo P. Martínez, Toward a Statistical Profile of Latina/os in the Legal Profession 13 *Berkeley La Raza Law Journal* 59, 75 (2002).
- ³⁶ Michael A. Olivas, The Education of Latino Lawyers: An Essay on Crop Cultivation, 14 *Chicano-Latino Law Review* 117, 130 (1994).
- ³⁷ Directory of Latino/a Federal Judges, 13 *Berkeley La Raza Law Journal* 95-99 (2002) (49% excluding U.S. District Court of Puerto Rico, 46% if Puerto Rico is included). The top-20 list comes from the 2004 *U.S. News & World Report* law school rankings.
- ³⁸ Honorable Sonia Sotomayor, A Latina Judge’s Voice, 13 *Berkeley La Raza Law Journal* 87, 89 (2002).

³⁹ David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms?*, 84 *California Law Review* 493, 563-64 (1996).

⁴⁰ Michele Landis Dauber, *The Big Muddy*, 57 *Stanford Law Review* 1899 (2005).

⁴¹ I thank Harry Pachon, Professor of Public Policy at the University of Southern California and President of TRPI, and Kevin Johnson, Associate Dean at the UC Davis School of Law, for their thoughtful comments on drafts of this policy brief.

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TRPI Mission Statement

Founded in 1985, The Tomás Rivera Policy Institute advances critical, insightful thinking on key issues affecting Latino communities through objective, policy-relevant research, and its implications, for the betterment of the nation.

CLEE Mission Statement

The Center for Latino Educational Excellence (CLEE) was established as a major initiative of the Tomás Rivera Policy Institute (TRPI) in the spring of 2002. The long-term mission of CLEE is to improve educational attainment and achievement in Latino communities across the United States through the development of policy research that can provide guidance for Latino leadership across public, non-profit, and private sectors on how to improve the current systems of education that are, on many levels, failing Latino youth and adults.

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