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## The Texas Top Ten Percent Rule: Bad Policy, Good Politics

By Beth Henary Watson & Marc Levin

The top ten percent rule is a textbook example of a bad policy that is nevertheless politically appealing. As a result, it will be challenge to garner the votes in the Texas Legislature needed to either repeal it, or more likely, reform it in the next session. The leading reform on the table, and one supported by UT and A&M, is to cap the percentage of the incoming class that is admitted under the ten percent rule at 50 or 60 percent. This would seemingly require reducing the automatic admits to 8 or 9 percent of each high school class, or perhaps more likely requiring students to take certain high school courses to be eligible.

At the [June 24 hearing before the Texas Senate Higher Education Subcommittee](#), leaders from liberal groups such as the Mexican-American Legal Defense Fund (MALDEF) and the N.A.A.C.P. joined with none other than conservative UT Law Professor Lino Graglia in singing the praises of the policy. There is no mystery as to why the policy was passed after the Hopwood decision that outlawed racial preferences at Texas universities. By admitting students with low standardized test scores from less competitive inner city schools, the ten percent plan brings more blacks and Hispanics to UT and A&M than would otherwise be there under an admissions policy that considers factors besides class rank.

Though the U.S. Supreme Court's decisions in the University of Michigan affirmative action cases allow colleges to use race qualitatively in admissions to achieve a "critical mass" of racial diversity, liberals still advocate the ten percent rule as a supplement to racial preferences for several reasons. First, since the Court held that extra points cannot be awarded for race and that each file must be individually considered, preferences are difficult to put into practice at schools

like A&M and UT which receive approximately 20,000 applications per year. Second, nothing requires universities to utilize racial preferences, and A&M President Robert Gates has declined to do so. Finally, Justice Sandra Day O'Connor's majority opinion suggests the court's decision to permit limited racial preferences to achieve diversity will expire in 25 years.

Conversely, Conservatives like Graglia and Curt Levey of the Center for Individual Rights (the public interest group that litigated the *Hopwood* case and the Michigan cases), who also testified in favor of the ten percent rule, are more inclined to support the ten percent rule after the Michigan decisions in the hopes that universities will be satisfied enough with the diversity produced by the rule and voluntarily decide to avoid the legal thicket of racial preferences altogether.

The ten percent plan also scores political points in rural areas because a disproportionate number of students in the top ten percent of their classes at rural high schools have low standardized test scores. This means repealing or curtailing the ten percent rule may be a tough political sell to legislators from rural areas, even those who are Republicans.

Yet for all of its political benefits, the ten percent rule is virtually indefensible from an educational policy perspective. Among its drawbacks are:

***It deprives universities of flexibility in admissions.***

While states like Florida and California guarantee certain percentages of their top students admission to a state university, Texas guarantees the top 10 percent of students from every Texas high school admission to the state college of their choice. Other states were mindful of differences in high school quality in making their plans and therefore did not deprive their universities – namely the flagships – of the power to exercise control over their admissions.

No doubt, Texas wants a flagship to compete with those of California in particular, but for the fall 2003 semester, automatic admits accounted for 69 percent of those admitted to UT, and were 75 percent of Texas admits. The

University of Texas at Austin and Texas A&M University should not be left with so little choice in crafting their student bodies.

***It lowers objective standards.***

Ten Percent Plan proponents can say that those admitted under this single-criterion policy earn better GPAs than those not admitted under the plan. However, this is misleading. The point of comparison should be between those students in the top ten percent, a minority to be sure, who would not have been admitted were test scores and other variables, such as essays, considered and the students who would have been admitted in their place. The latter group would include students from some of the state's most competitive high schools like Bellaire and Westlake who scored as high as 1400 on their SAT, but just missed the top ten percent. Meanwhile, students from some inner city and rural high schools are admitted under the rule with SAT scores as low as 800, a score which suggests they will have considerable difficulty doing the work at UT or A&M.

Dr. James Vick acknowledged during the first academic year after the top ten percent rule was passed that UT implemented remedial courses for some top ten percent admits. Would it not be more efficient for that student to take such courses at a community college and then transfer to UT while a fully prepared student is using that precious place at UT to take full advantage of the offerings at a flagship research university?

Indeed, there is an increasingly pronounced trend of Top Ten Percenters having an average SAT lower than that of their non-Ten Percent counterparts. For the enrolled freshman class of 2003, Top 10 Percent enrollees had a mean SAT of 1223, down 30 points from the year 1996, when Hopwood was decided. Non 10 percent enrolled freshmen had an average SAT of 1257, up from 1197 in the year 1996.

While no one advocates using standardized test scores as the sole factor in admissions decisions, their value as a uniform measuring stick across vastly different high schools and curricula has been empirically demonstrated. The

Legal Times recently reported, "Data collected by the College Board and others have consistently found that SAT scores work well as a predictor of college grades, . . . including both early and later college performance, as well as of retention and graduation."

However, with the top ten percent plan, there is a two-tiered system in which students from across the state fight it out in a very competitive environment for a minority of seats at UT on one level, then another level on which someone who finishes at the top of a prestigious high school is classified as equal to an individual from a school that may be on a TEA watchlist for low standards. A sad footnote to this is that the mean SAT for black freshmen enrolled at UT fell has fallen across all categories

In an alarming trend, the number of enrolled Top 10 Percent freshmen scoring very low on the SAT or ACT (<900 or <18, respectively) has gone up significantly. For 1996 freshmen, 15 students – 1 percent – earned such a score. For 2003, 128 freshmen – 3 percent – did.

The simple fact is that all high schools are not created equal. It is much more difficult to be in the top ten percent of some high schools than it is others, due largely to the makeup of the student body. Class rank, it must be remembered, is a relative criterion and therefore the composition of the group to which a student is being compared has as much influence on his rank as his own absolute performance.

In addition to glossing over the differences between the competitiveness of different high schools, the Ten Percent Rule also ignores differences in the difficulty of curricula. While the Texas House passed a bill in the 2003 session sponsored by the Senator Jeff Wentworth (R-San Antonio) requiring students to take the advanced state curriculum to be eligible for the top ten percent rule, Senator Royce West successfully filibustered the legislation in the Senate.

***It is rife with perverse incentives.***



Anecdotal evidence of perverse incentives created by the Top Percent Plan has been mentioned in the media. Namely, this includes:

- 1) Students and parents have no reason to attend rigorous high schools if they aspire to a state university in Texas.
- 2) Schools have no reason to nurture their top students to get into state universities.

- 3) There is no reason other than personal ambition to take a rigorous high school curriculum or try to do well on standardized tests if one is in his Top 10 Percent and aspires to a state university.

***It reduces diversity.***

In an April 9 report in *The Daily Texan*, UT Student Government President Brent Chaney expressed concern that, by filling up 70 percent or more of each incoming class, the top ten percent rule crowds out international students, who arguably add the most unique perspective to college classrooms. Closer to home, the rule means that there are fewer spots in each incoming class that home-schooled students may compete for.

Furthermore, shouldn't there be space for students with remarkable accomplishments, such as winning the state science fair or national spelling bee, even if they don't happen to be in the top ten percent of their high school class? One shortcoming of using class rank as the only criterion is that it favors the student who is above average in every subject over the student who is average in many subjects but close to being a genius in one subject. Why should Texas lose the next Mozart to Harvard because he or she got a B in high school English or physical education?

It is ironic that liberals have traditionally championed, with considerable justification, the use of holistic admissions policies that looked not simply at class rank, grades, and standardized test scores, but also an applicant's writing

samples, extracurricular activities, leadership ability, and the obstacles the student has overcome, such as holding a part-time job during high school and growing up in a low-income family in which the parents did not attend college.

Ultimately, the top ten percent rule is indefensible as an education policy, but it may be invincible as a political ploy.

Beth Henary, a freelance writer, political consultant, and former Editor of *The Austin Review*, testified as an expert witness at the June 24 hearing on the top ten percent rule. Marc Levin is an attorney and Associate Editor of *The Austin Review*.