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Racial Preferences Under Siege

They are vulnerable politically and bankrupt intellectually.

By John Fund
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Two recent events, one on the West Coast and one on the East Coast, demonstrate that after half a century, support for racial preferences in college admissions is getting more and more unsustainable — both politically and intellectually.

In California, liberals have long deplored the 1996 passage of Proposition 209, which banned racial preferences at state universities. Its backers pointed out that the 1964 Civil Rights Act, which is often cited as the authority for mandating preferential treatment for racial minorities, actually forbids all racial discrimination. "It is a sordid business, this divvying us up by race," Supreme Court chief justice John Roberts has concluded. Polls show that most Americans agree, and even after an intense negative campaign, Prop 209 was backed by 55 percent of Californians, including three-quarters of whites, four out of ten Asians, and a quarter of blacks and Latinos. In general, Prop 209 has worked well by forcing better legitimate outreach efforts by universities. The percentage of blacks and Latinos in the overall University of California system has actually increased from what it was in 1996 (while declining at the most elite UC campuses).

Nonetheless, many California liberals are determined to return to something akin to quotas. Democratic state senator Ed Hernandez used his party's two-thirds control of the senate to push through a ballot measure that this fall would have asked voters whether to end the ban on racial preferences. The measure appeared set to fly through the assembly, which also has a two-thirds Democratic majority.

But then the public became energized. Asian Americans began agitating, as thousands of them flooded legislative offices with petitions arguing that a repeal would hurt their children's prospects for getting into the most competitive public campuses. S. B. Woo, a former Democratic lieutenant governor of Delaware who is president of the Asian 80-20 PAC, led the effort, saying, "Asian Americans have always been picked out to be stepped on in race-conscious college admissions."

The pressure led three Asian Democrats who had voted for the bill in the senate to withdraw their support and urge assembly speaker John Perez to postpone a vote. "We have heard from thousands of people throughout California voicing their concerns about the potential impacts," they wrote Perez. "Many in the [Asian/Pacific Islander] and other communities throughout the

state feel that this legislation would prevent their children from attending the college of their choice."

Finding that few of the eight Asian Democrats in the assembly now favored going forward on the bill, Perez had no choice but to yank it off the calendar for this year. Opponents of racial preferences say efforts to make college more attainable for minority students are better directed at improving their local K–12 schools so they will be better prepared. They hope the Hernandez bill isn't resurrected.

It may not be. The intellectual case for preferences is looking increasingly shaky. Last month, a packed auditorium at Harvard Law School featured an Intelligence Squared U.S. debate on whether "affirmative action does more harm than good." Harvard professor Randall Kennedy, the author of the book *For Discrimination*, and Columbia professor Ted Shaw, the former head of the NAACP Legal Defense Fund, argued that diversity is an important and noble goal that universities must pursue. UCLA professor Richard Sander, author of the book *Mismatch*, and University of San Diego professor Gail Heriot, a commissioner on the U.S. Civil Rights Commission, presented statistics from over 20 peer-reviewed studies that showed how the good intentions of affirmative-action supporters have had disastrous results.

The research cited by Sander and Heriot shows that universities routinely put a race-conscious fist on the admissions scale, rather than a thumb. These heavy preferences mean that the median African-American student at law school has credentials lower than those of 99 percent of the Asian and white students — and underrepresented minorities admitted to law school based on a heavy preference are two to three times more likely to fail the bar exam.

Going to any school to which a student is admitted because of race, rather than to a school better matched to the student's aptitude, isn't helpful. For example, affirmative-action students are 50 to 75 percent more likely to drop out of a science program than are regular admits. But students who attend a school where their entering credentials are similar to those of their fellow students are more likely to follow through with an ambition to major in science or engineering, more likely to decide to become a college professor, and more likely to finish law school and pass the bar. We almost certainly now have fewer minority doctors, lawyers, and business chiefs than we would have had under race-neutral admissions policies.

Professors Kennedy and Shaw didn't challenge the empirical studies on mismatch, and Kennedy even stipulated that they were true. But he said the quest for diversity is important enough to justify affirmative action: "Why would we not allow people the opportunity to advance themselves if they so desire, and if these institutions believe that it is in their interest — their institutional interest — to invite these students to come?"

But Sander and Heriot pointed out that universities go to great lengths not to give students an informed choice, actively concealing the failure rate of students who enter with lower grades and test scores. Both said they would embrace a compromise to avoid the trench warfare of political

battle over the issue and would drop all objections to affirmative action if universities gave every student the career-goal success rate of prior students with their credentials at that school. Sander said the pretense universities perpetuate, that everyone they admit has the same chance of success, is "manifestly untrue." Heriot noted that after the U.S. Commission on Civil Rights issued a report highlighting the "mismatch" problem, "there was a sad silence from the schools, no transparency, and no task forces examining the damage to minorities."

Professor Kennedy didn't argue with his opponents on their compromise: "I think that the point about disclosure is a fine point." But he continued to defend racial preferences when an Asian-American student in the audience asked about the harm they inflict on Asian Americans, even though they too have battled racism. Kennedy didn't deny that Asians are harmed by racial preferences; he simply said the benefits of diversity are worth some individual sacrifice: "We have all sorts of programs that disadvantage people." Sander replied that the "large racial penalty for Asian Americans" is "really repugnant" — Asian Americans are being "treated the way we used to treat Jewish Americans" when there was a cap on their presence at elite schools.

Given the overwhelming liberal ethos of Harvard's campus, the impact of the debate on the audience was surprising. Audience members voted by keypad before and after the debate. Among those expressing a position, opposition to affirmative action rose by nearly a third — from 31 percent before the debate to 40 percent afterward. Support dropped from 69 percent before the debate to 60 percent afterward.

Shortly before passage of the Civil Rights Act of 1964, Urban League executive director Whitney Young called for "a decade of discrimination in favor of Negro youth." Congress unequivocally rejected that advice, opting instead for a complete ban on racial discrimination in employment and at universities that accept federal funds. Nevertheless, Young got his way — and way more. Within just a few years, universities were violating the prohibition on race discrimination by substantially lowering their academic standards for minorities. Young's "decade of discrimination" has now stretched into its sixth decade. White guilt is a terrible thing to overcome, even when there are hidden non-white victims of that guilt.

When Justice Sandra Day O'Connor provided the critical vote upholding the constitutionality of the University of Michigan's racial preferences in 2003, she wrote that the Court expected that affirmative action would need to continue for only another quarter-century. Here's hoping the events in California and at Harvard provide the impetus for a more honest public debate that could draw the curtain on racial preferences before that deadline is reached in 2028. Too many students will see their career goals shortchanged if reform doesn't come more quickly.

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