Title: “Changes in Levels of Affirmative Action in College Admission in Response to Statewide Bans and Judicial Rulings”

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Abstract Body

Background / Context:

Affirmative action in college admissions has been under continuous challenge for 40 years (Holzer & Neumark, 2006). The constitutionality of affirmative action was precariously settled by Justice Powell’s deciding opinion in the 1978 Regents of the University of California v. Bakke case. The Powell decision allowed for affirmative action to be used only to promote diversity (unless the college had a specific history of racial discrimination that was remedied by affirmative action) and only if race was one factor considered among many others (i.e., quotas could not be used). However, the 1996 Hopwood v. Texas ruling by the Fifth Circuit Court of Appeals did not consider the Powell decision in Bakke to be binding and found that diversity did not serve a compelling government interest as necessary to meet the constitutional requirements established by other Supreme Court decisions. The Hopwood decision was interpreted by Texas Attorney General Morales to ban affirmative action in public colleges and private colleges (that accept federal funding) in Texas. In 2003, the Supreme Court’s decisions in the Grutter and Gratz cases clarified the legality of the use of affirmative action in admissions, but also limited the mechanisms by which colleges could advantage minority applicants in admissions decisions. After the Grutter ruling, UT-Austin announced that they restarted using affirmative action in 2005 (Faulkner, 2005), while Texas A&M opted not to do so (Winter, 2004). UT-Austin’s decision has prompted a court challenge, Fisher v. the University of Texas at Austin, which will be decided by the U.S. Supreme Court this year.

The California electorate ended affirmative action at public institutions with the passage of Proposition 209 in 1996. In 1998 Washington State voters followed suit by passing Initiative 200 which banned affirmative action at public colleges and universities. In November, 1999, Florida governor Jeb Bush signed Executive Order 99-281 to eliminate affirmative action in government employment, state contracting, and higher education admissions (Bush, 1999). Known as the “One Florida” initiative, this executive order directed the state’s higher education Board of Regents to “implement a policy prohibiting the use of racial or gender set-asides, preferences or quotas in admission to all Florida institutions of Higher Education, effectively immediately” (Bush, 1999, 2).

In 2001, the University of Georgia discontinued the use race as an admissions factor after the Eleventh Circuit Court of Appeals ruled against the use of affirmative action in Johnson v. Board of Regents of the University of Georgia. It is unclear the extent to which universities in the Eleventh Circuit’s jurisdiction, which includes Alabama, Florida, and Georgia, felt bound by the Johnson ruling, although it is reasonable to believe that they may have concluded that affirmative action practices were on shaky constitutional grounds and may have perceived the Johnson ruling as reflecting declining political and social support for affirmative action practices. Although the 2003 Grutter ruling superseded the Johnson ruling and would have allowed a return to race-based affirmative action, the University of Georgia continued to not use race as a factor in admissions decisions post-Grutter (Lyn, 2008).

Louisiana and Mississippi are located in the 5th Circuit Court of Appeals jurisdiction, and thus were subject to the Hopwood ruling during the years 1997-2003. However, some ambiguity exists as federal consent decrees required colleges in these states to address racial segregation (Grodsky & Kalogrides, 2008, 29). Again, colleges in these states may have nonetheless perceived the Hopwood ruling to suggest declining political and judicial interest in minority representation.
Voter referenda in Michigan (2006), Nebraska (2008), and Arizona (2010) produced statewide bans in affirmative action, while a similar referendum failed in Colorado in 2008. Finally, the state legislature in New Hampshire banned affirmative action for public colleges in the state in 2011.

In the Grutter ruling, the Supreme Court held that for the use of an applicant’s race to be permissible, the college would need to exhaust other non-race-based methods to increase diversity (which is at the heart of the current Fisher v. Texas case). These rulings, particularly the need for holistic review, have made it more costly for universities to practice affirmative action. Further, these rulings apply to both private and public colleges. In this context, we might expect to see declines in the aggregate magnitude of affirmative action being practiced by colleges. Our expectation is then to see declines nationwide in the period we study (1992 to 2004), but particular declines in states that are bound by voter referenda in 2004 (CA and WA) or administrative decision (FL), and states affected by the Hopwood and Johnson rulings (TX, AL, GA, LA, and MS), as their universities had not had sufficient time to adjust to the Grutter ruling.

Our paper contributes three new perspectives to the existing body of research on the post-affirmative action policy environment. First, while studies have examined the enrollment of underrepresented minorities in post-affirmative action state using institution-level IPEDS data (e.g. Hinrichs, 2010; Moses & Yun, 2009) or IEPDS data combined with survey data (Grodsky & Kalogrides, 2008), no analysis to our knowledge has examined the applicant-level effects of affirmative action bans in the way that we do. Second, as Long (2010) notes, “there is little historical evidence” that allows researchers to examine how affirmative action policy has varied across institutions, regions, and time (p. 1). We address this gap in the literature by contributing research that compares the post-affirmative action policy environment of 1992 to 2004. The third contribution we make relates to considering a set of U.S. colleges and universities with a broad range of selectivity as measured by students’ median SAT scores. While a robust body of literature has examined the effects of eliminating affirmative action at flagship universities and elite institutions (e.g. Bowen & Bok, 1998; Espenshade, Chung, and Walling, 2005; Espenshade & Chung, 2005; Espenshade, Hale, and Chung, 2005, Grodsky & Kurlaender, 2006) our analysis of institutions which are at least moderately selective accounts for a much broader range of institution types. Our analysis is thus closer in spirit to Kane (1998), Light and Strayer (2002), Long (2004), Arcidiacono (2005), and Howell (2010), which each use data on a nationally representative sample of youth.

Setting:

Nationally representative student data containing information on the admissions decisions of applicants to 4-year colleges in the continental U.S. in 1992 and 2004.

Population / Participants / Subjects:

Our data on college applicants comes from the National Education Longitudinal Study of 1988 (NELS) and the Education Longitudinal Survey of 2002 (ELS). NELS followed 8th graders from 1988 until 2000 while ELS has followed 10th graders from 2002 to the present. We use data through the fourth follow-up of NELS (2000) and the second follow-up of ELS (2006). When the NELS and ELS students were seniors, they were asked are asked to list two colleges
that they would prefer to attend and whether they had been accepted by that college. Since many students did not know the status of the admissions decision at the time of the senior survey, they were re-asked in the follow-up interview two years later.

We include the following variables as predictors of whether the student is admitted (vector $X$ in Equation 1 below): high school grade point average; average of student’s SAT and ACT score (in SAT equivalent points); class rank percentile; indicators for whether the student participated in athletics and student government and whether the student was female; parent’s socio-economic percentile; high school quality index; indicator for private high school; indicator for living in a Metropolitan Statistical Area; MSATACT of the college; indicators for a private college and the student living in the same state as the college; and the enrollment of the college.

The dataset of 4-year colleges is taken from the 1992 and 2005 editions of Barron’s Profile of American Colleges, and restricted to those in the continental U.S. Using these data, we compute for each institution the average of its freshmen’s median SAT test score (on reading and math) and ACT test scores (converted into SAT-equivalent points) to produce our constructed variable MSATACT.

Our data consist of 8,010 (10,470) applications made by NELS (ELS) students, and these applications went to 1,277 (1,419) four–year colleges included in the Barron’s guide.

**Research Design and Method of Analysis:**

Our main goal is to identify whether affirmative action changed between 1992 and 2004 and whether the change was greater in the “post-affirmative action” states. This analysis produces a difference-in-difference estimate.

Our goal is to identify the effect race had on applicant $i$’s admissions decision from college $j$ (by region and cohort), and we wish to estimate the magnitude of affirmative action in a flexible manner so as to allow it to move smoothly across the selectivity distribution. To accomplish this task, we estimate the following equation using applications to colleges within narrow selectivity bands (i.e., within +/- 50 points in MSATACT):

$$\text{Prob}(\text{Admit}_{ij}=1) = \Lambda(\alpha + \beta M_i + \gamma X_{ij} + \epsilon_{ij}).$$

From this equation, we estimate the mean marginal effect of being an underrepresented minority ($M$) on the likelihood of being admitted. We construct an estimate for affirmative action at each 4-year college based on the level of affirmative action estimated for applicants to colleges of similar selectivity (and within the same region) to college $j$.

To produce standard errors on the mean levels of affirmative action at the college level, we produce estimates of affirmative action at the individual level for 250 bootstrapped samples of student applications, compute $AA_j$ for each institution, compute the mean of $AA_j$ for relevant groups of institutions, and take the standard error of the resulting 250 estimates. For standard errors of the change in mean levels of affirmative action between 1992 and 2004, regional differences in 1992 and 2004, and the regional differences in the change in mean levels of affirmative action between 1992 and 2004 (i.e., the difference-in-difference estimate), we compute the changes / regional differences / difference-in-differences based on the results from each of our 250 bootstrapped samples, and take the standard errors of these changes / regional differences / difference-in-differences across the 250 samples.

We construct a measure of affirmative action at “nearby” colleges for student living at the centroid of a county. We produce a weighted average of each college’s level of affirmative
action, with more weight given to colleges that are closer to the student and in the same state as the student, and to colleges with greater enrollment.

**Findings / Results:**

In the table below, we show our results for colleges whose MSATACT was above 1,100. Across public and private colleges, the advantage received by minority applicants over observably similar non-minority applicant fell insignificantly from 11.5% in 1992 to 7.8% in 2004. For public colleges, the decline in affirmative action was larger, falling from 14.8% to 5.1%, and this decline was weekly significant.

Looking at columns 2 and 3 of this table, we show that all of this decline can be attributed to colleges in AL-CA-FL-GA-LA-MS-TX-WA, where the declines were large and significant for public colleges. In other states in the Continental U.S., there was no significant or substantial change in levels of affirmative action. Thus, there is no evidence that the Grutter ruling requiring holistic review adversely affected levels of affirmative action practiced in the year after the ruling. Column 4 of this table shows that the difference in cross-regional differences was large and significant for public colleges.

**Conclusions:**

We find that affirmative action declined significantly and substantially between 1992 and 2004 in states where affirmative action was prohibited during this period by referenda, judicial rulings, or administrative decisions (i.e., Alabama, California, Florida, Georgia, Louisiana, Mississippi, Texas, and Washington). In contrast, levels of affirmative action were unchanged throughout the rest of the Continental U.S., suggesting that the requirements imposed by the 2003 Grutter ruling had little immediate effect on universities’ abilities to continue to provide preferential admission to minority applicants. In Figure 3 below, we illustrate that these declines in affirmative action had effects on the availability of affirmative action in states that are nearby but that lack highly selective colleges, notably Arizona, Idaho, and Nevada.
Appendices

Appendix A. References


Johnson v. Board of Regents of the University of Georgia, 263 F.3d 1234 (11th Cir. 2001)


Smith v. University of Washington Law School, CV-97-00335-TSZ (9th Cir. 2004).


Appendix B. Tables and Figures

Estimated Levels of Affirmative Action, Cross-Regional Differences, and Temporal Changes for Colleges With Median Freshman SAT at 1,100 and above

<table>
<thead>
<tr>
<th></th>
<th>Continental U.S.</th>
<th>AL-CA-FL-GA-MS-TX-WA</th>
<th>Other States in Continental U.S.</th>
<th>Cross-Regional Difference</th>
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<td>(1)</td>
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<td>(4) = (2) - (3)</td>
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<tr>
<td>1992</td>
<td>11.5% *** (2.2%)</td>
<td>8.4% (7.5%)</td>
<td>12% *** (2.4%)</td>
<td>-3.6% (7.8%)</td>
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<td>2004</td>
<td>7.8% *** (2.7%)</td>
<td>-1.3% (6.8%)</td>
<td>14.1% *** (2.6%)</td>
<td>-15.4% ** (7.3%)</td>
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<td>1994 to 2004 Change</td>
<td>-3.6% (3.5%)</td>
<td>-9.7% (10.2%)</td>
<td>2.1% (3.5%)</td>
<td>-11.8% (13.5%)</td>
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Private and Public Colleges

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<tr>
<td>1992</td>
<td>14.8% *** 3.0%</td>
<td>9% * (5.0%)</td>
<td>18.6% *** (3.2%)</td>
<td>-9.6% * (6.0%)</td>
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<td>2004</td>
<td>5.1% (4.5%)</td>
<td>-14.3% (11.5%)</td>
<td>17.9% *** (3.2%)</td>
<td>-32.1% ** (12.0%)</td>
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<td>1994 to 2004 Change</td>
<td>-9.7% ** (5.7%)</td>
<td>-23.3% ** (12.9%)</td>
<td>-0.7% (4.3%)</td>
<td>-22.6% ** (13.5%)</td>
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Public Colleges

Note: ***, **, and * indicate significance at the 1%, 5%, and 10% level, respectively. For the level of affirmative action (or, conversely, discrimination), significance is tested using a two-tailed test. For regional differences, cross-cohort changes in levels of affirmative action, and the difference-in-differences estimates (where we hypothesize a decline in levels of affirmative action and cross-regional differences in 2004), significance is tested using a one-tailed test (and no test is conducted if the cross-cohort change is positive).
Figure 3: Changes in Levels of Affirmative Action at Nearby Colleges with Median Freshman SAT at or Above 1,100