

**IS AFFIRMATIVE ACTION IN UNIVERSITY  
ADMISSIONS LEGAL, EFFECTIVE, AND JUST?**

**by**

**Albert J. Simone, President  
Rochester Institute of Technology**

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## INTRODUCTION

Since 1978, the “Law of the land” has been the decision handed down by Justice Lewis F. Powell, Jr., in *Regents of the University of California vs. Bakke*. In a 5 to 4 vote, Justice Powell ruled that while quotas are illegal, *some consideration* could be given to a university applicant’s race in order to promote educational diversity, which is viewed as a *compelling government interest*. Race, then, can be considered as a “plus” factor out of a number of admissions-relevant factors that are being considered.

Many colleges and universities since 1978 have used this decision, in part, to construct their admissions decisions each year. This approach is now being formally challenged.

Specifically, a Caucasian woman applicant to the University of Michigan Law School and two Caucasian applicants, one female and one male, to the University of Michigan’s largest undergraduate college (the College of Literature, Science, and the Arts) were denied admission and, as a consequence, filed law suits against Michigan in the fall of 1997. The applicants alleged that their denial was the result of the policy of affirmative action, which allowed the admission of African American and Hispanic American students of lesser qualifications than they possessed. They claim that this policy, and the intended outcome, is illegal. They specifically cite the admissions policy in place from 1995 to 1998, and the policy that replaced it in 1998. The applicants claim that the first policy utilized a racial *quota* (which is illegal) because it set aside a certain number of seats each year for minorities. They claim the second (and current) policy is illegal because it employs a “disguised racial quota” which is implemented through a “point system” (which we will discuss later).

Both cases have been heard in the lower courts. In the case of the University of Michigan Law School, the trial court found the University of Michigan policy unlawful, but an appeal court reversed the judgment. In the undergraduate college case, the trial court found the 1995-8 policy unlawful but the current policy lawful; both sides appealed. While this case was pending, the law school case was accepted by the Supreme Court, and it was then decided to hear both cases simultaneously at the Supreme Court. The U.S. Supreme Court began hearing testimony on April 1, 2003. It is expected to render its decision in July 2003.

In the following section, I shall present some context for this decision. In subsequent sections, I shall provide some arguments against affirmative action and the University of Michigan’s specific policy, arguments supporting affirmative action and my personal position on this issue, what I think the Supreme Court will do, and the implications of whatever the Court decides for current RIT policy.

## **CONTEXT**

### **U.S. Supreme Court Composition**

The U.S. Supreme Court is evenly split on ideological grounds. Four members tend to be conservative in their thinking and actions, and four liberal. Justice Sandra Day O'Connor appears to be somewhere between the two groups, although some say she also is off to the side on some issues. The early thinking is that this may be one of those times in which she is off to the side, so that we could have a stalemate, in which the conservative and liberal members of the Court offset each other and Justice O'Connor is off on a third tangent. This stalemate scenario is unlikely, I believe, although a split vote of the Court is likely.

### **Community Interest**

In no other Supreme Court case in recent years has there been so much and so agitated a community interest. For example, more than 60 briefs in support of the University of Michigan have been filed, representing more than 300 signatories. These signatories include more than 110 members of the U.S. Congress, 70 Fortune 500 Companies, 29 top-ranking officers and civilian leaders of the military, 22 state attorney generals, scores of colleges and universities, labor unions, and professional organizations. One brief has signatures of more than 14,000 law students.

On the other side of the issue, 20 briefs have been submitted against the University of Michigan in support of the plaintiffs. President Bush is one of those people submitting a brief supporting the plaintiffs. President Bush's initial statements on the issues were quite firm and strong in his opposition to what the University of Michigan is doing. Subsequent to his initial statements, he seems to have softened his position. In particular, he indicated that he supports the principle of affirmative action but is very much against the University of Michigan point system used in making admissions decisions. He views the point system as a back-door way of imposing a quota system. At the moment, President Bush appears to be promoting race-neutral ways of achieving diversity, such as the rank-in-class system currently used at the University of Texas, University of Florida, and the University of California.

### **Rank-in-Class System**

Because of referenda, legislation, or court decisions, Texas, Florida, and California have eliminated affirmative action in public university admissions decisions and introduced a rank-in-class system. For example, at the University of Texas, the top 10% of the students graduating from each high school throughout the state are automatically admitted to the University of Texas. In the University of California system it is 4%, and in the University of Florida system it is 20%. Given the very unequal distribution of minority and majority students in these high schools, where some high schools are predominately composed of students of color and other high schools are predominately composed of white students, the expectation is that diverse student bodies will emerge without any explicit decisions being made based on race.

This approach is strongly criticized on at least three grounds. The first has to do with the quality of the entering freshman class each year. For example, if one high school is far superior to another in terms of the caliber of curriculum, faculty, facilities, and student body, and if the graduating classes of both high schools are the same, then each high school will have the same number of students admitted. However, at the University of Texas, for example, the students in the top 10% of the weaker high school may not be as well qualified as the students in the top 20% or 30% of the second high school, yet they will be admitted to the University of Texas, and the better qualified students from the top 20% or 30% of the stronger high school will be denied admission.

The second reason offered by some people has to do with student performance and success. In the above example, if the students from both high schools are in the same college classes, the students from the stronger high school will be much better prepared for college work. Therefore, they will earn A's and B's, on average, while the students from the weaker high school will earn D's and F's. Moreover, the students from the stronger school will graduate at a higher rate. In an attempt to balance the two groups, the level at which the courses are taught may be lowered. In addition, students from the weaker high school may lose self-confidence and self-esteem, and to the extent that they are minority students, may even feel that they are being discriminated against. Students from the stronger high school could come away with feelings of disrespect for students from the weaker high schools. All of these outcomes work against the quality of education for all of the students from both high schools.

The third reason has to do with applying this model across all the states. If the attempt is to achieve more diversity in the public university system, this can work in states in which the high schools tend to be strongly racially unbalanced (i.e., "segregated"). However, there are states in which high schools are more integrated with a more representative balance of all races. In this instance, it is not clear that this approach would enhance diversity.

Texas A&M University took the class-rank approach one step further. It selected 250 high schools and offered admission to the top 20% of graduates from these schools. These schools typically are low performing schools which send few students to Texas A&M. The schools were selected without taking race explicitly into account. Factors that place schools on the list include high dropout rate, limited English proficiency, and low passage rate on a statewide achievement test. In contrast to the University of Texas, in which all students in the top 10% are automatically admitted, students in the top 20% from the 250 selected schools must also meet the same standards (high school courses and test scores) as other applicants in order to be admitted.

### **University of Michigan Point System and "Critical Mass" Approach**

The University of Michigan each year has approximately 19,000 undergraduate applicants, from which it admits approximately 5,000 students. To assist it in making these very difficult decisions, it established a point system in 1998, to be described below.

The maximum number of points possible is 150. Students who receive 100 or more points are automatically admitted, students who receive 90 and 99 are placed on the waiting list, and students who receive less than 90 are automatically rejected.

Points are accumulated under two categories, the first of which is called “Academic factors” and the second of which is called “Other factors”. Under Academic factors, a total of 110 points can be earned. Under Other factors, a total of 45 points can be earned.

The Academic factors include grade point average, which can yield a maximum of 80 points; SAT scores, which can yield a maximum of 12 points; the quality of the school from which the student comes, which can yield up to 10 points; and the difficulty of the school curriculum, which can yield up to 8 points.

It is interesting to note that the grade point average is weighted 80 points while the SAT score is weighted 12 points. This weighting supports those arguments that say SAT scores should not be weighted heavily because they are “culturally biased” and do not measure “motivation” or “ability to overcome adverse economic and social circumstances”. In this case, the GPA is weighted almost seven times as much as the SAT score. Others, of course, argue that the SAT score should be weighted heavily because it better measures the ability of a person to have the intellectual talent necessary to succeed in college. Research shows that SAT scores are most heavily correlated with first-year success and not with graduation rates. This debate, of course, has gone on and on year after year. Be that as it may, this is not the bone of contention in the current controversy. Rather, the issue lies in the “Other factors” category.

Under Other factors, geography can count a maximum of 10 points (for example, if you are a Michigan State resident); alumni can count up to 4 points; a good essay can count 1 point; personal achievements can count up to 5 points; and leadership and service can count up to 5 points. Again, there is not a lot of controversy in this aspect of the system.

Rather, the controversy is based on the Miscellaneous subcategory that appears in the category of Other factors. In this category, a student can earn 20 points if he or she possesses any *one* of the following attributes (students cannot score points for more than one attribute): the student is judged to have a social-economic disadvantage, he or she is a scholarship athlete, he or she receives discretionary support from the Provost, or the student is an *underrepresented minority*. If none of the above apply, a student could receive 5 points for being a “male in a nursing program”.

Two examples highlight the issue.

In the first example, assume we have a Caucasian or Asian student and an underrepresented minority student who attend the same high school, study the same curriculum, and achieve identical scores in every “Academic” and “Other” category. Let us assume that the Caucasian (or Asian) student’s point total is 81. He or she will be automatically rejected. The African American, Hispanic American, or Native American student will be automatically accepted because, in addition to the 81 points scored in the Academic and Other categories, that student also has a 20 point assignment because he or she is an underrepresented minority, thereby giving him or her 101 points.

The second example is exactly the same as the above except the two students have different scores. For example, we have a Caucasian or Asian student and an underrepresented minority student attending the same high school. The Caucasian or Asian student scores better on the essay, curriculum, SAT, and grade point average. Adding up all his or her points yields 91, thereby qualifying this student for the Wait List. The underrepresented minority student, who scored less in every category except the school attended, has a point total of 81 which, when the 20 points are added for being an underrepresented minority, brings him or her to 101 points and, therefore, automatic admission.

The argument being brought by the plaintiffs in the two University of Michigan undergraduate examples is that in the first case, two students are identical in every respect except race, but because of race, the one student is admitted and the other is not. In the second example, the two students are identical in one category (high school attended), but one student is better in every other category except race. The first student in the second example (the one with the higher scores) is put on the wait list and the underrepresented minority student is automatically admitted.

It is argued that the above examples represent racial discrimination and are, therefore, illegal.

In the University of Michigan Law School case, the judge said that the Law School had an unwritten policy to enroll a “critical mass” of underrepresented minority students. For example, in 1995, all of the black students with minimum LSAT scores of 159 and GPA’s of 3.0 were admitted, while only one of 54 Asian applicants and 4 of 190 white applicants with the same qualifications were admitted. In addition, nine of the 12 black applicants with LSAT scores of 148 - 155 and GPA’s of 3.25 - 3.49 were admitted, while only one of 91 white applicants with the same qualifications was admitted.

The federal trial court judge ruled that this approach considered race in such a way as to constitute an illegal quota system (as noted above, the appeal court reversed this decision).

Similar data is found in a comprehensive study, *The Shape of the River*, authored by the former presidents of Harvard University and Princeton University. This major text is a strong and persuasive statement in support of affirmative action. Yet it shows that in five of the select universities studied, 19% of whites and 60% of blacks were admitted with SAT scores of 1,200 – 1,249, 24% of whites and 75% of blacks were admitted with SAT scores of 1,250 – 1,299, and 67% of whites and 100% of blacks were admitted with SAT scores of 1,500 or more. Thus, the probability of being admitted is significantly higher for a black applicant over a white applicant with the same SAT score.

Proponents of affirmative action question the validity of the SAT score as a predictor of college success and some raise questions of cultural bias in the test. Opponents of affirmative action use the example just given to challenge the legality and fairness of admission decisions and the quality of the resulting student body.

## **Most Impact is on Select Colleges and Universities**

It can be argued that whichever way the Supreme Court goes, there will be little impact on the vast majority of the approximately 3,700 colleges and universities in the United States. Rather, the impact will be on those universities that are very selective in their admissions. This conclusion follows because most of the approximately 3,700 universities across the United States are not very selective.

For example, many universities have open admissions, which means that 100% of the people who apply are admitted. In these cases, every student who applies is guaranteed admission.

Other colleges are not open admission, but they have very high admission rates. For example, if a college has an 80% admission rate, this means that four out of every five students who apply are admitted. A very select school, on the other hand, might have a 10% or 20% admission rate. A 20% admission rate means that only one out of five students who apply will be admitted.

Therefore, in select schools, the odds are highly against any student, on average, being admitted to begin with. It is in these cases in which affirmative action is most significant, both for minority and majority students. If you are a minority student, affirmative action can give you the edge that you need to beat the odds. If you are a majority student, affirmative action can be the factor that keeps you out when otherwise you might have been admitted.

## **Race-exclusive Programs**

Courts are now ruling on the legality of programs which are open only to students of a particular race. Examples include summer programs or summer institutes that are open to, for instance, African American students only. Questions also are being raised about scholarships designated for students from one race only.

In response to questions raised by the Department of Education, the Massachusetts Institute of Technology and Princeton University, for example, have abandoned summer institutes which were designated for students of color only.

## **Polls**

Numerous polls have been taken. I will cite the results of a few that have been taken recently.

*The Los Angeles Times* took a poll of 1,400 people. 55% approved President Bush's position on affirmative action, 27% disapproved. Within the approval group, 59% were Caucasian and

46% were minority. It is interesting to note that 46% of the minority people polled agreed with President Bush's position on affirmative action. Within the disapproval group, 21% were Caucasians and 41% minority. It is interesting to note that 21% of the Caucasians polled disagreed with President Bush's position.

At a student referendum at the University of Michigan, of the 6,300 students responding, 41% were in favor of the University of Michigan's affirmative action policy and 41% were against it. Interestingly, on the campus which is the genesis of this major Supreme Court decision, the students appear to be evenly split.

In a poll of 1,000 people conducted by ICR/Communications Research of Media, three questions were asked. In response to "Do you think affirmative action is needed?", 51% said "yes" and 43% said "no". In response to "Which is a bigger problem, African American and Hispanic American students hurt by racism or White students hurt by affirmative action?", 44% of the people polled said that the greater problem was that African American and Hispanic American students were hurt by racism, while 30% of the people who responded felt that the greater problem was Caucasians being hurt by affirmative action. In response to the question, "How close are we to eliminating discrimination?", 15% of the people polled replied that we are not close, and 38% of the people replied that we are close. It is interesting that in the first question, more people felt that affirmative action is needed than don't, and in the second question, more people feel that students of color are hurt by racism more than white students are hurt by affirmative action. Yet, in the third question, more people feel that we are close to eliminating discrimination than feel we are not close. The three questions do not yield mutually consistent answers.

### **Low Income Families**

A recent study reports that at the 146 most select universities, 3% of the freshman class came from the lower 25% of family incomes and 10% from the lowest 50%. 6% of the freshmen came from African American families and 6% came from Hispanic American families, so that 12% came from African American and Hispanic American, taken as a group.

Thus, African American and Hispanic American students taken as a group are four times as likely (12% vs. 3%) to be admitted to a select university as are poor students (defined as being in the bottom 25%).

As a consequence of these data, some people argue that diversity should be more broadly defined to include "economic" diversity as well as "racial" diversity. One proposed solution is to establish a pool to be considered for admission at select universities composed of (1) all students with SAT scores greater than or equal to 1300 *and* (2) all students from the bottom 50% of family incomes who have SAT scores of 1000 or more plus a grade point average of 3.0 or more plus either strong recommendations from a teacher or an outstanding record of extracurricular activities and leadership.

If such a hypothetical model were introduced, we would now find that the students from the bottom 50% of family incomes would represent 38% of the pool of students eligible for admission, instead of the 10% that are now currently admitted. This would seem to be a strong move in the right direction. However, not necessarily so. If we carry this model out, it turns out that the African American students in the admissible group now fall from 6% to 4%, while the Hispanic American students stay the same at 6%.

Even if we were to propose such a model, its political viability is not clear, for the same reasons we have the two cases before the Supreme Court at this time. Specifically, given that the number of openings is fixed, favoring economically disadvantaged and minority students in the model just described would mean that there would be less spaces available for middle class white Americans. Some of those not admitted could make the argument that they are better qualified academically and that race and, now, economic circumstances, should not cause them to be discriminated against.

### **Legal Ambiguity**

The 14<sup>th</sup> Constitutional Amendment contains an equal protection clause. This guarantees civil rights for African Americans. One could argue, therefore, that the 14<sup>th</sup> amendment favors the actions undertaken by the University of Michigan. Of course, one could make the reverse argument still based on the 14<sup>th</sup> amendment. In addition, Title VI of the Civil Rights Act of 1964 prohibits racial discrimination by any institution receiving federal funds. In this case, it could be argued that the University of Michigan's policy does not pass muster. But then we have the Bakke decision of 1978.

The above examples represent just a little bit of the fodder that can be used to stimulate legal debates on both sides of the question.

### **U.S. Presidents and Affirmative Action**

Many people are quick to associate affirmative action with democratic presidents. Such people would be both right and wrong. For example, in 1941, President Franklin Delano Roosevelt, under law #8802, signed an Executive Order providing for no racial discrimination in hiring by those companies who received federal funds. This law was aimed at national defense plants, which were not hiring African Americans. Organized labor threatened a national strike unless this practice was ended. Under the threat of such a strike, President Roosevelt conceded to the union pressure.

President Kennedy, in 1961, for the first time used the term affirmative action in an executive order.

It can be argued that Richard Nixon was the chief architect of affirmative action. In 1969, he established the Philadelphia Plan. At that time, unions were keeping African Americans out of apprenticeship programs. President Nixon ordered that, first, 10% of jobs in apprenticeship

programs had to go to African Americans; second, the Federal Reserve Banks had to put money into Black banks; and third, he provided for set-asides for African Americans.

President George Bush, Sr., backed up all of the policies described above.

## **ARGUMENTS AGAINST AFFIRMATIVE ACTION AND THE UNIVERSITY OF MICHIGAN POLICY**

One argument is that affirmative action is unconstitutional.

Another argument is that affirmative action is morally wrong. For example, it is not just and fair to reject a “poor white student” in order to admit a “middle class or rich minority student”.

The National Association of Scholars, made up of 4,500 faculty members across the country, argues that affirmative action erodes academic quality and fosters a campus climate that is racially polarized. One of their arguments is that affirmative action recruits and attracts minority students to elite institutions where they are not as qualified academically as majority students on average. Therefore, they earn lower grades, which restricts their access to graduate school and jobs, hurts their self-esteem, leads them to feel that they are being discriminated against, and leads majority students to consider them inferior.

A recent book has been used to support the last point. The book, funded by the Mellon Foundation and the Council of Ivy Group Presidents, studied 7,612 undergraduate students from 34 very select (in terms of percentage of applicants admitted) universities. The study looked at all African American students who had SAT scores equal to or greater than 1,300. At the select liberal arts colleges, 12% of the African American students earned grade point averages of A- or better at the time of their graduation from college, and at the Ivy League schools, 28% had grade point averages of A- or better. At State Universities, 44% of African American students with SAT scores of 1,300 or better received an A- at the time of their graduation from college, and at historically Black institutions, 55% of such students received an A- or better.

A new study, utilizing 1999 data, surveyed 1,643 students and 2,440 faculty and administrators at 140 select colleges. The study undertook a very comprehensive statistical analysis. The authors, who claimed they were very surprised by the data, concluded that as the number of African American students in an institution increased, students’ (majority and minority) satisfaction with their educational experience dropped, as did their impression of the quality of education and the work ethic of peers.

Some people looking at these results raise the question as to whether affirmative action really yields educational benefits. In fact, they argue that affirmative action yields negative results for both minority and majority students. Needless to say, there are arguments questioning the statistical analysis and, especially, the conclusions reached.

From the perspective of public policy, some scholars argue that affirmative action “suggests that we hold equal treatment and merit as secondary, dispensable ideals, that the preferred groups

cannot succeed without special public favors, and that society thinks we can assuage old injustices by creating new ones”.

The opposition to affirmative action has been spearheaded by three major organizations. These are the American Civil Rights Institute, the Center for Equal Opportunity, and the Center for Individual Rights. These organizations together have been responsible for bringing cases to state and federal courts since 1992, particularly in the states of California, Florida, Massachusetts, Michigan, Texas, Virginia and Washington. Appendix A summarizes some of these actions.

## **ARGUMENTS IN FAVOR OF AFFIRMATIVE ACTION AND THE UNIVERSITY OF MICHIGAN POLICY**

As the RIT campus knows well, I have been a strong advocate, by word and deed, of affirmative action in the recruitment and retention of underrepresented students, faculty, and staff. My own arguments in support of affirmative action for our students at RIT, which has been endorsed fully by the RIT Commission for Promoting Pluralism and the RIT North Star Center and permeated across the campus, is presented in Appendix B.

Briefly, I argue in Appendix B that affirmative action supports student success, student employability, the overall campus environment for students, and, in the long term, a better society and community for us all. Affirmative action provides a richer and more complete education for all of our students.

The Commission of Independent Colleges and Universities (cIcu), an organization of the 108 independent universities in the State of New York, has filed an amicus brief. This brief is presented in Appendix C.

I am the immediate past Chair of cIcu and had the opportunity to influence that statement in three major ways. First, I argued that we should wholeheartedly support the University of Michigan’s purpose in establishing a policy in support of affirmative action. Second, I indicated that we should not in any way support their methodology. I argue this not only because I would not choose that method, but also because I believe it to be unconstitutional.

Third, I wanted to make sure that we made an argument for institutional autonomy. By that I mean the following. American higher education is composed of 3,700 universities, which are diverse in many ways. Some universities are large and some are small; some are religiously affiliated and some are secular; some are liberal arts and some are technological; some are primarily teaching institutions and some are research institutions; some are located in urban centers and some in the midst of sparse rural communities; some are public and some are private; and the comparisons can go on and on. It stands to reason, therefore, that the admissions policies of these different universities will differ in significant ways in order to reflect their diverse missions.

For example, the university which has primarily engineering and technical curricula will have a different pool of students to select from than a university which is primarily humanities and social sciences oriented. A university located in the middle of a major city will have a very large pool of minority students from which to draw and may not have the same challenges to diversify its campus as one which is a primarily local university in a rural area in a state which does not have a large minority population.

As a consequence, I believe a university should be free to establish its own policy on diversity of the student body, consistent with its mission, special attributes, and unique circumstances. The Supreme Court should be cautioned that one rule, one methodology, or one system will not accommodate every university for the reasons given. Assuming that the Court supports affirmative action, which I hope it will, at the same time it must provide flexibility for individual universities to exercise their institutional autonomy.

## **WHAT WILL THE SUPREME COURT DO?**

I believe the Supreme Court will reaffirm the importance, desirability, and acceptability of affirmative action. I believe a compelling argument can be made that it is in the State's interest to support affirmative action.

At the same time, I believe that the particular methodology employed by the University of Michigan will be struck down as unconstitutional. It is a failed attempt at a quota. It discriminates against Caucasian and Asian students inappropriately and unnecessarily.

What the Court does next is open to question. Prior to April 1 (i.e., the beginning of the Supreme Court hearings), I believed that the Court would come out with a rather vague, wishy-washy mixed message, which would provide lots of discretion to universities to find "race-neutral" methods to implement affirmative action, consistent with their university missions. In effect, it would reaffirm the 1978 Bakke decision in a more definitive fashion, but still leave a lot of leeway. While this is a workable result, it is still problematic because the vagueness of the prescribed methods for increasing diversity could lead to further law suits down the road or, at the minimum, continuing acrimony in the community at large.

I thought that this might be the way the Court would go because of the ideological split on the Court and the complexity of the matter being reviewed.

However, more recent pronouncements by the individual Justices as they ask questions and make comments indicate that, perhaps, they will bite the bullet and give relatively firm guidelines on a methodology that can be employed. I am not sure what those guidelines will be, but some firmness, with appropriate flexibility, would definitely be an improvement over the current situation.

Of course, if I am right and affirmative action is reaffirmed in one form or another, this definitely does not put an end to the matter. The courts merely interpret the Constitution and the law. The law can be changed. If the Court does support affirmative action as a compelling state

interest, the battle will be ongoing. I expect that there will be attempts at State legislation and State referenda as well as legislation brought before the U.S. Congress to explicitly deny affirmative action. I expect that the controversy will continue.

The only way that this debate finally will be put to rest is when we have no underrepresented minorities at our universities and, therefore, the need for affirmative action will no longer be valid. When this happy state of affairs occurs – and I believe it will someday – affirmative action will have done its job.

Obviously, my immediate remarks reflect my own personal view, with which many people may well disagree.

## **EFFECT ON RIT**

Whichever way the Supreme Court decides, the effect on RIT will be negligible. The rationale to support this statement follows.

RIT works very hard to widen the pool from which it draws minority students. For example, some of the programs we utilize include the Project Excellence Program started by Carl Rowan in which a select number of universities are invited to interview a select, high-performing group of African American students from the Washington, D.C. area. We have been one of several universities in the Vanguard Program of the National Action Council for Minorities in Engineering (NACME) program. We are a full partner in the Rochester City School/Hillside/Wegmans Work Study Scholarship program. We have identified select high schools around the country which graduate outstanding minority students, and we engage in special recruitment efforts in those schools.

Most importantly, when we consider the pool of all students who apply – and there were over 14,000 applications for admission last year - we are *need-blind* and *race-blind* in selecting from that pool those students who are admissible. Approximately 65% of the undergraduate application pool are judged to be admissible. Whatever AALANA students (that is, African American, Latino American, and Native American) are in that pool are the students we work with. The judgment of the Admissions Office, typically in consultation with the faculty in various programs, is that every student admitted to RIT is able to do well at RIT, and is expected to graduate.

Having said that, the financial aid offer from RIT to an admitted AALANA student requesting financial aid is larger, on average, than a financial aid offer made to other admitted students. That is to say, if an AALANA and a majority student are exactly equal in every respect, the grant portion of the financial aid award to the AALANA student will be greater.

There are two reasons for this. First, on average, the financial need is greater for AALANA students. Second, we are responding to the law of supply and demand.

For example, many universities want these highly qualified AALANA students and offer more financial aid to them than they do to students with equivalent academic credentials. The financial aid increment that we offer AALANA students is calculated, as best we can, in order to equalize the probability of enrollment between a majority student (with lower financial aid) and the minority student. We believe this is justifiable because it reflects the law of supply and demand. For example, the starting salary that we offer an engineering, computer, or business professor is significantly higher than the starting salary that we offer humanities and social science professors. As I discussed elsewhere, this does not reflect value or contribution to RIT; it reflects what we have to do to compete in a market that is governed by the law of supply and demand in a free market system.

In the situation in which we have a majority student and an AALANA student vying for the last open spot in a particular program, we consider race as one factor, but not the dominating factor. For example, assume the two students being considered are equal in every respect. If the program already has a large number of AALANA students but is weak, let us say, in the computer or mathematics background of already admitted students, or has a very small number of students outside of the State of New York, or has very few women students, and if we have a Caucasian student who possesses one or more of these attributes, then we would select the Caucasian student over the AALANA student. If, on the other hand, the program has a relatively small number of AALANA students in it, and none of the other program attributes are an issue, then we would admit the AALANA student. In the case in which the program is balanced in all of the student attributes (including race) just identified, we might take the Caucasian student or the AALANA student, depending on our sense of what the university as a whole might require in order to achieve a diverse student population.

As it turns out at RIT, the number of AALANA applicants admitted as a percentage of the total number of AALANA students applying is less than the percentage of Caucasian and Asian students admitted as a percentage of those who apply. Importantly, the average grades and test scores for RIT's enrolled AALANA freshmen far exceed the national average for AALANA students.

Interestingly, for this past year, the number of AALANA freshmen who continued into their sophomore year exceeded the rate of Caucasian and Asian freshmen who continued into their sophomore year.

## **A COMPELLING NATIONAL INTEREST**

According to the latest demographic data, in the year 2016, the Caucasian population in the United States will reach its peak and will decline thereafter. In the year 2050, the majority of the U.S. population will be made up of people of color.

At that time, 60% of the active work force (people between 21 and 45 years of age) will be people of color. Interestingly, at that time, the vast majority of retirees will be Caucasian; in effect, the "minority" population in the United States will be the major contributors to the Social Security system, which primarily will support white retirees.

At that time, our skilled and professional labor force will be crippled if people of color are not ready in the appropriate numbers to take the places of Caucasians who have vacated those positions because of retirement.

Without a fully qualified labor force, the United States will not be able to survive in economic competition with the rest of the world. As a consequence, the quality of life and standard of living of all Americans will fall.

Therefore, it can be argued that it is in everyone's long term self-interest to support affirmative action today so that more AALANA Americans will have the opportunity to graduate from colleges and universities and be professionally skilled and educated in order to replenish the American labor force of tomorrow. We have to act now to protect for our grandchildren the way of life we have enjoyed.

Beyond that, I would argue that affirmative action is necessary to protect the democracy we, as Americans, have fought and died for since 1776. Disturbingly, the gap between the very rich and the very poor – those in the upper quartile and those in the bottom quartile of family income – is widening. If, in the years ahead, the distribution of income among Americans remains very unequal – and in fact increases – and if this disparity of income distribution occurs along racial lines so that the percentage of AALANA Americans are increasingly “poor” and the percentage of Caucasian and Asian Americans are increasingly “rich”, the American system as we know it could implode.

This dire observation increases in significance every day as the balance of population shifts toward AALANA Americans. That is to say, if there is a continuing increase in AALANA Americans as a proportion of the total population until AALANA Americans become a majority of the population, and if AALANA Americans continue to be predominately drawn from the bottom two quartiles of family income, our system of government could change. This change could occur peacefully within the democratic process, yielding a non-democratic society. More likely, since the current majority of Americans with a lot to lose would resist strongly, we could have revolt, rebellion, and riots. This may not happen in our lifetime, but as the demographic and economic trends now prevalent become more and more manifest, it could happen for our grandchildren.

It is in everyone's self-interest to do what we can now to avoid this state of affairs for future generations of Americans.

## CONCLUSION

I would argue that this country should maintain affirmative action in university admissions, utilizing methods that reflect a university's institutional autonomy in fulfilling its mission and which do not *unjustly* and *inappropriately* favor any one race over the other. As I have illustrated in the RIT example, our universities are capable of accomplishing this.

Affirmative action, implemented as described above, enriches the college experience and increases the quality and relevance of education.

Affirmative action, as I described it above, is the right thing to do. It gives life and meaning to the American values of opportunity and access for everyone who wants to work hard and has talent. There should be no inhibitions to any American because of race or ethnicity.

Affirmative action, as described above, is in every American's long term economic self-interest.

Affirmative action, as described above, is necessary for the long-term preservation of our democratic system of government.

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