

**BANS ON AFFIRMATIVE ACTION IN STATES WITH A HISTORY OF
STATE-SPONSORED DISCRIMINATION**

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Abstract: Due to the ubiquitous nature of state-sponsored segregation in the United States against black people in higher education until the early 1970s, many institutions in the southern United States were required to take affirmative action to improve black-undergraduate representation. Political resistance to these practices led to bans in Florida and Georgia colleges in 2000. Using a difference-in-differences strategy, I show how black-undergraduate representation in those colleges declined relative to other southern colleges where affirmative action was still allowed. My findings have implications for how colleges should proceed with race-sensitive diversity initiatives in a hostile political climate.

Keywords: College affirmative-action, African-American.

Black students are half as likely as white students to earn a bachelor's degree (Deming & Dynarski, 2009) and five times less likely to attend an elite, selective college or university (Reardon, Baker, & Klasik, 2012). Given the increasing importance of a college education for job and wage security (Deming & Dynarski, 2009; Long, 2013), reducing these college opportunity gaps has long been a national policy concern (e.g., Grutter v. Bollinger, 2003; Sweatt v. Painter, 1950). These concerns are amplified in states with a history of de jure (or state-sponsored) segregated systems of higher education. Following *Lucy v. Adams* (1955), which applied *Brown v. Board of Education* (1954) to desegregate colleges and universities, many segregationist states admitted only token numbers of black students. Others continued to refuse black students (e.g., *Meredith v. Fair*, 1962).

This paper focuses on 18 of 19 states that have a history of state-sponsored segregation and examines if affirmative-action bans caused a decline in black student enrollment in institutions of higher education within those states. Based on a difference-in-differences quantitative analysis strategy that takes advantage of variation among these states, I argue that bans on affirmative action in Florida and Georgia have led to an otherwise unexpected decrease in black-student enrollment colleges and universities. Though, as a quasi-experimental strategy, it is impossible to completely rule out alternate explanations, these results suggest in states with histories of higher-education discrimination, institutional affirmative action should remain on the table as a viable policy and practice option toward addressing the ongoing effect of past discrimination on present-day black undergraduate enrollment patterns.

The Development of Affirmative Action as a Remedy for the South

The failure of court orders to accomplish higher-education desegregation, as well as desegregation in other educational and public arenas (e.g., Meredith, 1962), encouraged Congress to pass the Civil Rights Act of 1964, which in Title VI prohibits racial discrimination by entities receiving federal funding. Importantly, the Department of Health, Education, and Welfare (HEW) under the Johnson Administration did not find that the end of funding stream was a sufficient stand-alone remedy. Its Title VI regulations unequivocally stated:

In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination. (34 C.F.R. 100.3(6)(i) (1964)).

By requiring affirmative action by institutions and states receiving federal education funding, the Johnson Administration sought to induce what the courts could not by legal proscription (Brown, 2001). While some states and institutions responded to these directives by voluntarily creating minority-specific admissions quotas and recruitment programs, others responded by creating holistic admissions that did not explicitly consider race, but allowed it as a consideration factor.

Most institutions for which the mandate actually applied tended toward a different response pattern. In the absence of internal pressure to desegregate, and in the face of continuing external resentment and opposition, these institutions did little more than remove

explicit administrative barriers to the enrollment of students of color. As a result, these colleges remained functionally segregated years after Title VI required meaningful desegregation. In 1969-1970, HEW ordered the university systems of 19 states to submit affirmative-action plans (Palmer, 2010)¹. The current debate on affirmative action in pursuit of diversity, however, ignores this intentionally remedial origin of the policy². At the same time that litigation challenging the voluntary use of affirmative action was developing (Regents of the University of California v. Bakke, 1978), affirmative action was mandatory and remedial in these 19 states.

Still, none of these 19 states had provided HEW with a sufficient affirmative-action plan, thus the National Association for the Advancement of Colored People sued to force Title VI compliance (Adams v. Richardson, 1973). As a result of Adams, the U.S. Department of Education Office of Civil Rights (OCR), aided by the district court, imposed and actively supervised the affirmative-action plans of seven states until 1989³, five others until 1992⁴, and four well until the mid-2000s⁵ (Roebuck & Mutry, 1993). The result was decades of intense supervision of affirmative-action initiatives in these states while colleges in the rest of the country were free to pursue affirmative action—or not—somewhat voluntarily (Litolff, 2007; Roebuck & Mutry, 1993).

As a condition for removing administrative oversight, most of these states entered into consent decrees, which required maintenance of the OCR-approved affirmative-action plans. But, in 1992, after only three years, HEW lifted oversight from Texas, when Cheryl Hopwood sued the University of Texas at Austin Law School for maintaining a race-conscious affirmative-action plan. In 1996, the Fifth Circuit Court of Appeals banned Texas's OCR-approved affirmative-action plan (Hopwood). In 1999, Florida, where a consent decree had been entered into in 1992, then-Governor Jeb Bush signed an executive order which banned

¹ Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and West Virginia

² In a separate paper, I argue that this debate developed out of a misreading of Justice Powell's controlling concurrence in *Regents of the University of California v. Bakke* (1978) (Shaw, forthcoming). Justice Powell did not, as is commonly understood, hold that affirmative action cannot be justified as a remedy for past discrimination. Rather, he identified that "there has been no [factual] determination...that the University [of California, Davis] engaged in discriminatory practice requiring remedial effort," and denied the University's attempt to justify its affirmative action program on that factual—and not legal—basis (p. 305). This misreading has gone unchallenged by landmark U.S. Supreme Court cases on the topic primarily because until *Fisher* (2013) none involved a state or institution that had ever engaged in the types of race discrimination affirmative action was introduced to remedy (see *Bakke*, 1978 (California); *DeFunis v. Odegaard*, 1974 (Washington); *Grutter* (Michigan)).

³ Arkansas, Georgia, Missouri, North Carolina, Oklahoma, South Carolina, and West Virginia. OCR also supervised Texas's desegregation plan during this time period, though not aided by the District Court.

⁴ Florida, Kentucky, Maryland, Ohio, and Pennsylvania.

⁵ Alabama, Louisiana, Mississippi, and Tennessee.

affirmative action in that state beginning in 2000 (*One Florida*, 1999). Around the same time, a federal district court in Georgia, which had entered into a consent decree in 1989, banned affirmative action at the University of Georgia. The University System of Georgia responded by discontinuing affirmative action in all of its institutions pending appeal to the Eleventh Circuit of Appeals, which eventually upheld the ban (*Johnson v. University of Georgia*, 2001). As a case from the Fifth Circuit, *Hopwood* (1996) would have banned affirmative action in Louisiana and Mississippi as well if these states had not still been under OCR supervision (Fordice, 1992; *U.S. v. Louisiana*, 1993). Like Louisiana and Mississippi, Alabama was under OCR supervision at the time *Johnson* (2000) was decided, and thus that case's affirmative-action ban did not apply to Alabama institutions (see *Knight v. Alabama*, 1995).

Research Design

Given the history of a remedial need and the Title VI policy intent alongside the fact that the aforementioned states have, on average, larger black college-aged populations than other states and a history of court-supervised affirmative-action implementation, a separate region-specific study on affirmative action within this remedial context is warranted. In a critical first step toward incorporating the intended remedial policy context in an evaluation of affirmative action's present-day effects on black-student enrollment, I address the following research question: What is the impact of affirmative-action bans on black-student enrollment in institutions located in states with a history of state-sponsored segregation?

I employ a difference-in-differences strategy that takes advantage of variation among states in when court supervision ended in modeling affirmative-action-ban effects on black undergraduate enrollment (Murnane & Willett, 2010). The end of court supervision made individual states' decisions to continue using affirmative action vulnerable to popular attack through lawsuits, referenda, and political initiatives (Litolff, 2007). In three states, Texas, Florida, and Georgia, the end of court oversight led to successful affirmative-action bans in 1996 for Texas (*Hopwood v. Texas*) and in 2000 for Florida (*One Florida*, 1999) and Georgia (*Johnson v. University of Georgia*, 2000; 2001). By the time the Florida and Georgia bans were enacted only four states remained under court supervision: Alabama, Louisiana, Mississippi, and Tennessee. I compare black undergraduate enrollment in (1) Florida and Georgia before and after the 2000 ban effective date to (2) enrollments in remaining 16 Adams states (excluding Texas). I separately compare Florida and Georgia enrollments before and after the ban to (3) enrollments in the three of the four continuing mandate states as a

sensitivity check⁶⁷. Following Hinrichs (2012), I use IPEDS, an institutional-level enrollment dataset assembled in part by the Delta Cost Project⁸. I merged these data with institutional selectivity data from Barron's Profiles of American Colleges, 24th Edition (2000). The sample includes 149 U.S. public, non-historically black colleges and universities (non-HBCU), four-year colleges and universities in the 18 states who reported IPEDS data for the years 1997-2002.

Table 1 - Selected summary characteristics of the public, non-HBCU institutions in the sample, for the years 1997-2002 (n=149); and selected state characteristics, for the year 2000, by affirmative-action-ban status⁹

	Florida and Georgia (n=17n = 17)		Comparison Group ¹⁰ (n=132n = 132)		Old Fifth Circuit Alternate Comparison Group (n=27n = 27) ¹¹	
	Before Ban 1997-1999	After Ban 2000-2002	Before Ban 1997-1999	After Ban 2000-2002	Before Ban 1997-1999	After Ban 2000-2002
Outcome^(a)						
Percentage Black-undergraduate Enrollment ^{PCTBLK}	14.79 (8.62)	14.03 (8.12)	12.12 (8.85)	14.44 (9.48)	20.92 (8.63)	21.66 (9.61)
Institutional Characteristics						
<u>Institutional Selectivity^(b)</u>						
Selective	14 (82.35%)		89 (67.42%)		13 (48.15%)	
Non-Selective	3 (17.65%)		43 (32.58%)		14 (51.85%)	
In-State Tuition and Fees per \$1,000 ^(a)	2.12 (0.36)	2.54 (0.57)	3.08 (1.13)	3.57 (1.39)	2.46 (0.36)	2.88 (0.43)
State Characteristics						
Black Population (%) ^(c)	21.74 (7.21)		18.22 (9.08)		30.32 (4.08)	

⁶ Separate analyses confirm that, excluding Texas which had already experienced an affirmative-action ban, the black undergraduate enrollment trends for (1) Florida and Georgia were the parallel to those for (2) the remaining 16 states and (3) three of the four continuing mandate states in 2000.

⁷ These three states—Alabama, Louisiana, and Mississippi—have nearly identical legal histories to Florida, Georgia, and Texas by virtue of their federal courts having been subject to the same U.S. Court of Appeals for the Fifth Circuit until 1981 (*Bonner v. City of Prichard*, 1981). Federal cases from Tennessee, the fourth state, are appealed to the Sixth Circuit.

⁸ The Delta Cost Project is a longitudinal database maintained by the National Center for Education Statistics that includes IPEDS data on enrollment, finance, and student aid for the years 1987-2010 (Delta Cost Project, 2012).

⁹ Enrollment and population data are percentage measures. In-state tuition and fees are measured in unadjusted non-constant dollars. Standard deviations are in parentheses. For institutional selectivity, relative frequency displayed as percentages are in parentheses

¹⁰ Alabama, Arkansas, Delaware, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia

¹¹ Alabama, Louisiana, and Mississippi

18-24 Population with Bachelor's Degree (%) ^(c)	34.31 (0.90)		35.70 (1.28)		36.42 (0.75)	
Average Annual Income per \$1,000 ^(d)	35.25 (2.35)		35.37 (5.10)		31.95 (2.18)	
Unemployed Residents (%) ^(d)	4.26 (0.33)	4.40 (0.74)	4.44 (0.87)	4.67 (0.97)	5.08 (0.66)	5.24 (0.68)

Sources: (a) Southern Regional Education Bd., Tuition and Required Fees, by College (2000a, 2000b, 2001, 2005); U.S. Department of Education, National Center for Education Statistics, IPEDS Analytics: Delta Cost Project Database (2012); (b) *Barron's Profiles of American Colleges, 24th Edition* (2000); (c) U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau (2002); (d) U.S. Department of Labor, Bureau of Labor Statistics (1998-2003).

My outcome of interest is a continuous variable measuring the percentage of first-time, full-time black undergraduates enrolled at a given institution located in a given state in a given year. The primary predictor variable of interest is an interaction between two categorical binary variables: (1) whether affirmative action was ever banned in an institution located in a given Adams state, thus having a value of one for Florida and Georgia institutions, and zero for all others, and (2) whether the enrollment period for a given institution was in a year after the affirmative action ban was in effect, thus receiving a value of one if enrollment is after 2000, when those two bans went into effect, and zero if before. I included six other predictor variables in the analysis: average institutional selectivity, average institutional in-state tuition and fees measured annually in unadjusted nominal thousands of dollars to estimate how any affirmative-action ban effects might covary across the ban with cost of attendance, and the percentages of black people, unemployed persons, as well as persons between the ages of 18-24 who have bachelor's degrees, and average income in a state's population at the 2000 census to estimate how these state-level demographic characteristics might adjust ban effects.

I calculated as a "first difference," the difference between mean enrollments before (1997-1999) and after (2000-2002) the effective dates of the One Florida initiative and Johnson (2000) for Florida and Georgia institutions. This difference estimates the population impact on black-student enrollment as well as any non-ban-related effects on enrollment across these events. To account for non-ban-related effects, I calculated as a "second difference," the same mean difference for institutions in the remaining Adams-state institutions, which, as stated earlier, are similar to Florida and Georgia in having histories of institutional discrimination and active judicial and administrative oversight of their

desegregation practices. All models account for the clustering of observations within institutions over time and within states, with year random effects to account for the nesting of institution-level observations within time¹². None of these models include year fixed effects to avoid collinearity. To account for the non-linear relationships between enrollment and both income and tuition, I used a logarithmic transformation for these variables in all models.

Findings

Based on the observed enrollment rates, before the 2000 bans, black-student enrollment in Florida and Georgia institutions was, on average, approximately 2.5 percentage points higher than in Adams states without affirmative-action bans (14.79 vs. 12.12%; see Table 1), but was approximately six percentage points lower than in the subset of three states still under court-mandated affirmative action in 2000 (14.79 vs. 20.92%). After the bans, while enrollment in the three mandate states increased by one and one-half percentage points (from 20.92 to 21.66%), and non-ban state black-student enrollment increased by more than two percentage points (from 12.12 to 14.44%), ban-state enrollment decreased by three quarters a percentage point (from 14.79 to 14.03%). Though the population percentage of residents ages 18-24, trends in average in-state tuition price and unemployment-rate trends are similar for the three groups, institutional selectivity differs considerably across ban, non-ban, and Old Fifth Circuit non-ban states. 82% of the sampled institutions in Florida and Georgia are selective, while only 67% of institutions in the non-ban-state comparison group are, and only 48.15% of the Old Fifth Circuit institutions. Across the ban, average in-state tuition list prices in ban states and affirmative-action-mandated states increased by about \$420. Tuition in non-ban states increased by an average of \$70 more, suggesting that these observations might not be the effect of tuition price. Moreover, the average income, unemployment rates (and trends), population percentage of residents aged 18-24 is about the same across all three state groups.

¹² This approach is equivalent to fitting the following model:

(1) $PCTBLK_{isy} = \beta_0 + \beta_1(BAN \times POST_{isy}) + \beta_2(BAN_{is}) + \beta_3(POST_y) + \beta_4 year + \delta_s + (u_{iy} + \varepsilon_i)$
 β_1 provides the difference-in-differences, and is the coefficient of interest that captures the impact of affirmative-action bans on black-student enrollment δ_s represents separate dummy variables for each state and $year$ represents year of enrollment. ε and u represent level-1 and level-2 residuals, respectively.

Table 2 - Taxonomy of models for affirmative-action ban effects on institutional percentage of black-student enrollment, 1997-2002 (n=149)

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7
Enrollment after 2000*	-1.086*	-1.134*	-1.114*	-1.133*	-2.628***	-1.125*	-7.318***
Affirmative-Action ban	(0.445)	(0.445)	(0.451)	(0.450)	(1.007)	(0.450)	(2.664)
Affirmative-Action Ban	2.673	3.914	1.285	2.035	2.018	2.154	2.129
	(2.308)	(2.261)	(2.046)	(2.038)	(2.043)	(2.058)	(2.060)
Enrollment after 2000	0.322*	0.126	0.185	0.128	0.125	0.232	0.228
	(0.150)	(0.191)	(0.259)	(0.259)	(0.259)	(0.261)	(0.260)
Institutional Selectivity		-5.441***		-3.823***	-3.898***	-5.683*	-5.950*
		(1.540)		(1.336)	(1.341)	(2.527)	(2.525)
Selectivity * Ban					1.814		7.690*
					(1.094)		(3.261)
State Black Population (%)			0.553***	0.516***	0.516***	0.557***	0.559***
			(0.071)	(0.071)	(0.071)	(0.070)	(0.070)
State 18-24 Population Bachelor's Degree (%)			0.396	0.172	0.159	0.403	0.390
			(0.518)	(0.515)	(0.517)	(0.512)	(0.512)
State Average Annual Income			1.158	0.224	0.295	0.503	0.702
			(1.913)	(2.123)	(2.123)	(2.138)	(2.133)
State Unemployed Population (%)			0.061	0.007	0.004	-0.009	-0.006
			(0.114)	(0.120)	(0.120)	(0.121)	(0.121)
In-State Tuition and Fees		1.324		1.138	1.115	0.534	0.428
		(0.792)		(0.889)	(0.888)	(0.913)	(0.912)
constant	12.121***	5.239	-24.510	-12.282	-12.338	-18.075	-18.737
	(0.780)	(6.374)	(27.545)	(27.553)	(27.574)	(27.516)	(27.493)

Robust standard errors are in parentheses: * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

Note: These models estimate the effect of affirmative-action bans on black-student enrollment in Florida and Georgia colleges and universities by comparing average institutional enrollment before (1997-1999) and after (2000-2002) the bans' 2000 effective date. Alabama, Arkansas, Delaware, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia colleges and universities, collectively "16 states," are the comparison group. Model 1 presents the naïve affirmative-action ban effect. Model 2 includes measures for institutional selectivity and the log-in-state tuition and fees per \$1,000 as institution-level covariates. Model 3 includes measures for the state population percentages of black residents and residents aged 18-24 who have bachelor's degrees in 2000; and the log income per \$1,000 and average state population percentages of unemployed residents for a given year. Model 4 includes all covariates. Model 5 includes an interaction to estimate the extent to which ban effects vary by institutional selectivity. Model 6 uses institutional research expenditures and tuition reliance as instrumental variables to estimate exogenous components of institutional selectivity, and includes all covariates in Model 4. Model 7 includes an interaction between the exogenous estimate of institutional selectivity and affirmative-

action bans. None of these models include year fixed effects to avoid collinearity. All models account for the clustering of observations within institutions over time and within states with year random effects. $n = 60$

Results from the statistical analysis show that affirmative-action bans caused a 1.09 percentage-point (or 7.36%) decline in black-student enrollment in Florida and Georgia colleges and universities when compared to the larger 16-state non-ban group, and explains less than 1% of the variation in institutional black student enrollment (see Table 2). Limiting the comparison group to the three affirmative-action-mandated states shows a greater ban effect. The -1.50 percentage-point (or -10.14%) difference is 20% larger than the -1.09 percentage-point effect for the Adams-state group, and explains 13% of the variation in black-student enrollment.

Results from the first model are very stable; the observed associations remain even after controlling for other variables in the remaining models (i.e., Models 2-4) that may explain the observed decline in black-student enrollment. Results from the fourth model show that the ban effect is constant even though the state black population and institutional selectivity have a positive 0.51 percentage-point (or 3.45%) and a negative 6.48 percentage-point (or -43.81%) independent effects on institutional black-student enrollments. In sum, irrespective of institutional selectivity, affirmative-action bans in these states appear to have both arrested and reversed trends toward more population-representative on-campus enrollments.

As a quasi-experimental strategy, the difference-in-differences estimation approach is limited in its ability to support causal claims (Shadish, Cook, & Campbell, 2002). As such, alternate explanations for these results must be analyzed and discussed. A hypothesis often put forth by affirmative-action opponents is that affirmative action depresses institutional selectivity in favor of black applicants. The data make such a claim provocative: 35% of ban-state institutions are rated in the top Barron's (2000) categories, while only 18% of the remaining 16-state institutions are, and only 1 of 43—2%—of institutions in affirmative-action-mandated states are.

As shown in the fourth model, I cannot isolate any potentially causal effects of institutional selectivity on enrollment away from ban effects. Unobserved inputs like student SAT scores and institutional reputation might yield a false relationship between selectivity and enrollment, given the ban. I test this in the fifth model by incorporating as a predictor an interaction between institutional selectivity and the ban. Results from this model suggest that the selectivity does not change the ban effect on black-student enrollment. Further, the

sensitivity analyses shows that institutional selectivity is a substantial predictor of black-student enrollment even after accounting for exogenous variation in the variable, which does not diminish ban effects on enrollment (see Model 6 in Table 2). In other words, banning institutions from using these practices appears to lead to declines in black-student on-campus representation independently of institutional selectivity. Among institutions with segregation history, the affirmative-action effect is not limited to elite colleges, as Hinrichs (2012) found, but is rather ubiquitous.

Though robust, these findings are not without their limitations. Given the time scope of this paper's inquiry, it is likely that Hopwood (1996) led to a general environment shock in the Deep South that this study, by isolating its inquiry at the 2000 affirmative-action bans has accounted for, but has not measured. The scope of this paper is constrained by certain aspects of these data sources, which present different limitations. First, IPEDS data detail enrollment by race, and not admissions (Garces, 2012; Hinrichs, 2012). This study cannot fully capture any confounding effect that student-level decision-making might have on any single institution's yield of admitted black students or its consequential effect on the percentage of enrolled black students. Second, IPEDS did not begin to measure out-of-state enrollments until 1998. Data for this year, which are collected biennially, are missing for many institutions in the sample. Evaluation of ban-effects on out-of-state enrollments would be helpful in fully exploring black-student institutional migration hypotheses.

Conclusion and implications for policy and research

By framing this study in terms of remedy, region, and institution, as Title VI affirmative action originally contemplated, this study takes an important first step in bringing an empirical basis to evaluating the necessity and appropriateness of race-sensitive policies in many states and institutions currently grappling with the legal and political implications of doing so. Findings indicate that affirmative-action bans have led to otherwise unexpected declines in black-student enrollment in states with a history of state-sponsored higher education segregation. One implication of these findings might be that in public colleges and universities with a history of state-sponsored higher-education segregation, affirmative action is needed to help remedy black-student undergraduate underrepresentation. Race-conscious recruitment, admissions, and enrollment strategies might still be needed to remediate black-student underrepresentation in southern public colleges, particularly elite ones. In light of Fisher (2013), these findings and this framework might provide a rudimentary blueprint for colleges to begin to explore their need for affirmative action under what appears to be a

heightened evidentiary standard. Given Adams (1973) and Fordice (1992), the findings might revitalize an entirely different justification for engaging in affirmative action practices: remediation. Another implication might be that affirmative action needs to remain available as a policy mechanism for all institutions with this history seeking to improve their black-student enrollment. In a policy environment increasingly discouraged of such policies, the findings in this study underscore a need to craft efficient, context-specific alternatives to affirmative action to mitigate the predictive influence of race on enrollment outcomes.

Such a justification is grounded in the remedial nature of Title VI affirmative action. A resurgence in the law for remedial justifications together with empirical proofs that existing black-student enrollment conditions in these institutions have an unbroken causal link to segregation-era institutional practices, consent orders and decrees notwithstanding, would be necessary to advance an intervention structure along the lines that Title VI originally intended. These would not foreclose diversity as a compelling state interest, but rather supplement the ongoing need for vigilantly attending to institutional contributions to black-student college underrepresentation. Toward accomplishing this goal, we will need to work with individual colleges and universities to open the black box of admissions so that we may qualitatively and quantitatively evaluate how each engages in practices that, independent of student capability to succeed, undermine black-student representation.

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