

More than Just the Numbers: *Fisher v. Texas* and the Practical Impact of Texas’s Top Ten Percent Law

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Data—actual facts—demonstrate that Texas’s Top Ten Percent Law (“TTPL”) is insufficient to achieve diversity in the state’s universities and colleges.¹ A significant amount of TTPL students graduated from hyper-segregated schools where African-American and Latino/a students, combined, comprised 80% or more of the total school population. Also, a substantial amount of these hyper-segregated schools had an economically disadvantaged student population exceeding the state average of 60.2%. Even with these numbers, however, Caucasian students were the majority racial group admitted to the University of Texas at Austin (“UT”) via TTPL in 2012, 2013, and 2014. Thus, this essay concludes, as did the brief, that “racial isolation in schools is a perverse and insufficient means to attain diversity in higher education.”²

Part one gives background about the TTPL—the underlying law at issue in *Fisher v. Texas*.³ Part two contrasts statewide enrollment data and TTPL admissions data. Part three focuses on regional TTPL data, specifically Region 4 (Houston), which produces the highest rate of students that are automatically admitted to UT. The final part analyzes the data and TTPL’s impact on UT’s holistic admissions process—the underlying issue in *Fisher v. Texas*. From this analysis, part four demonstrates that UT needs TTPL and its holistic process to combat racial and socio-economic isolation which precludes diversity within racial groups.⁴

¹ Brief of Legal Scholars Defending Diversity in Higher Education as Amici Curiae Supporting Respondents, *Fisher v. University of Texas at Austin*, 570 US _ (2013) (No. 14.981), 2015 WL 6754983 at 8. [hereinafter Pleasant and Harpalani] (“Data from the Texas Education Agency (“TEA”) and University of Texas at Austin (“UT”) revealed that the TTPL does yield some numerical racial diversity at UT, but the yield is contingent on de facto racial segregation in Texas public schools.”).

² Pleasant and Harpalani, *supra* note 1, at 14 (“UT or any other university [should not have] to depend on racial isolation and segregation to achieve numerical diversity”); *see also* Parents Involved in Comm. Schools v. Seattle School Dist. No. 1, 555 U.S. 701, 797 (2007) (Kennedy, J. concurring in the judgment in part and concurring in judgment) (“A compelling interest exists in avoiding racial isolation . . .”).

³ *See Fisher v. Univ. of Texas at Austin, et al*, 135 S. Ct. 2888 (2015), cert. granted; *see also Fisher v. Univ. of Texas at Austin et al*, 133 S. Ct. 2411 (2013).

⁴ Vinay Harpalani, *Diversity within Racial Groups and the Constitutionality of Race-Conscious Admissions*, 15 U. PA. J. CONST. L. 463 (2012) [hereinafter Harpalani, *Diversity*] (stating diversity within racial groups breaks down racial stereotypes, reduces the stigmatic harm of race-conscious measures, and facilitates meaningful representation among racial minorities with different backgrounds and experiences).

I. BACKGROUND ON THE TOP TEN PERCENT LAW

In 1997, the Texas legislature codified the TTPL to counteract the United States Court of Appeals for the Fifth Circuit decision in *Hopwood v. Texas*.⁵ The parties' central claim in *Hopwood*—a 1996 case—was that they were subjected to unconstitutional racial discrimination when UT's School of Law denied their admissions applications.⁶ The *Hopwood* decision ended affirmative action in Texas, thus precluding higher educational institutions, such as UT, from continuing to use race to remedy long standing discrimination in the states' educational system.⁷

The purpose of the TTPL was to achieve a diverse student body in a racially-neutral and accountable manner.⁸ Under the law, 'a student who graduates with a grade point average in the top ten percent of the student's high school graduating shall be automatically admitted' to UT's undergraduate institution.⁹ The TTPL has been amended since its

⁵ Tex. Educ. Code § 51.803(a); *see generally* *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), cert. denied 533 U.S. 929 (2001), *abrogated by* *Grutter v. Bollinger*, 539 U.S. 306 (2003); *see also* Steven Thomas Poston II, *The Texas Top Ten Percent Plan: The Problem it Causes for the University of Texas and a Potential Solution*, 50 S. TEX. L. REV. 257, 265 (2008) [hereinafter Poston, *Top Ten Percent Plan*] (Following *Hopwood*, the fall 1997 entering class at UT dropped by 4.3% for Latino/a students and by 33.8% for African-American students.).

⁶ *Hopwood*, 78 F.3d at 938. (finding when four Caucasian students applied to UT in 1992, the law school used a race-conscious admissions policy to increase traditionally under-represented minority students); *see also* Harpalani Diversity, *supra* note 4 at 498 (pre-*Hopwood*, UT's "incoming freshman class was 4.5% African-American and 15.6% Latino/a").

⁷ *Hopwood*, 78 F.3d at 944 (holding that any consideration of race or ethnicity for the purpose of achieving a diverse student body was not a compelling interest under the 14th Amendment); *see also* *Hopwood v. Texas*, 861 F. Supp. 551, 554-55 (W.D. Tex. 1994) After *Brown v. Board of Education*, the State of Texas resisted integration of its public schools and higher education system. Its state constitution sanctioned segregated schools until 1969.

⁸ Bill Analysis of H.B. 588 (Tex. 1997), at 4 <http://www.hro.house.state.tx.us/pdf/ba75r/hb0588.pdf> (TTPL was envisioned as a fair, race-neutral admissions process that allowed students to continue their education at UT irrespective of their backgrounds (i.e., race/ethnic and socio-economic status) and geographic locations within the state); *see also* Tex. Educ. Code §§ 7.002, 8.001, and 8.002 (creation of the Texas Education Agency ("TEA") and regional education service centers ("ESC") provide accountability to the state legislature as to the impact of the law).

⁹ The *Fisher* litigation resulted from UT's response to the *Grutter v. Bollinger* decision. *Fisher*, 133 S. Ct. at 2416 (2013) (UT's holistic admissions process post-*Grutter* explicitly considered race); *see also* *Grutter*, 539 U.S. at 325, 334-35 (2003) (The Court reasoned that the University of Michigan Law School's use of race as a plus factor in its admissions process was constitutionally permissible.); *see generally* Tex. Educ. Code § 51.803(a).

enactment, and as of 2014, only students that graduate in the top 7% are automatically admitted.¹⁰

Statistically, students who receive automatic admission to UT attend high school in one of the 20 regional educational service centers (“ESC”) within the state.¹¹ Between 2012 and 2014, five of the 20 ESCs—Houston, Richardson, Austin, Fort Worth, and San Antonio—produced over 70% of all students who were automatically admitted to UT under the law.¹² Region 4 (Houston) (“Region 4”) yields the most students admitted annually under the TTPL, thus its data serves as a good evaluative model for *Fisher v. Texas*.¹³

II. STATEWIDE ENROLLMENT DATA FOR AFRICAN-AMERICAN, LATINO/A, AND CAUCASIAN STUDENTS DOES NOT CORRELATE TO TTPL ADMISSIONS STATISTICS

Texas statewide enrollment statistics show that African-American (12.7%), Latino/a (51.8%) and Caucasian (29.4%) students comprise 93.9% of the school-aged population matriculating through the 12th

¹⁰ See Mark C. Long, Victor Saenz, and Marta Tienda, *Policy Transparency and College Enrollment: Did the Texas Top Ten Percent Law Broaden Access to the Public Flagships?*, 627 ANNALS AM. ACAD. POL. & SOC. SCI. 82, 91 (2010) (Automatically admitted UT students ranged from 41% to 54% between 1998 and 2002, surged to 70% in 2003, and reached 81% in 2008.); see also Tex. Educ. Code § 51.803(a-1), Acts 2009, 81st Leg., ch. 1342, § 1, *eff.* June 19, 2009 (As of 2011-2012, UT was not required to exceed 75% of its enrollment capacity with automatically admitted students); THE UNIV. OF TEXAS, REPORT TO THE GOVERNOR, THE LIEUTENANT GOVERNOR, AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES ON THE IMPLEMENTATION OF SB 175, at 30, Table 4.1 (Dec. 31, 2014) [hereinafter UT Report] (As of 2012, the percentage was 9%. Each year thereafter the percentage of automatic admits was reduced by 1% annually, so as of 2014, the percentage was 7%) (on file with Legislative Reference Library of Texas).

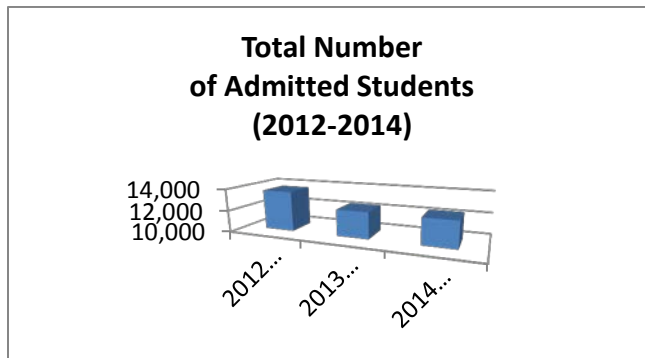
¹¹ Tex. Educ. Code § 8.002 (ESCs assist school district in improving student performance, enable school districts to operate efficiently and effectively, and implement initiatives assigned by the legislature or commissioner.); see also *About the Texas Education Agency*, TEXAS EDUCATION AGENCY (Mar. 24, 2016, 3:05 PM), http://tea.texas.gov/About_TEA/Other_Services/Education_Service_Centers/Education_Service_Center_s/ (listing the 20 ESCs. The ESCs are Region 1 (Edinburgh), Region 2 (Corpus Christi); Region 3 (Victoria), Region 4 (Houston), Region 5 (Beaumont), Region 6 (Huntsville), Region 7 (Kilgore), Region 8 (Mt. Pleasant), Region 9 (Wichita Falls), Region 10 (Richardson), Region 11 (Fort Worth), Region 12 (Waco), Region 13 (Austin), Region 14 (Abilene), Region 15 (San Angelo), Region 16 (Amarillo), Region 17 (Lubbock), Region 18 (Midland), Region 19 (El Paso), and Region 20 (San Antonio)).

¹² See UT Report, *supra* note 10, at 15-16, Table 1.5; see also *Education Service Centers Map*, TEXAS EDUCATION AGENCY (Mar. 24, 2016, 3:05 PM), http://tea.texas.gov/regional_services/esc/.

¹³ Region 4 includes 7 counties and 50 individual school districts. See *supra* note 12, at *Education Service Centers Map*.

grade.¹⁴ Also, 60.2% of school-aged students in the state are considered “economically disadvantaged.”¹⁵

Between 2012 and 2014, UT admitted a total of 38,464 students through a combination of the TTPL and its holistic process.¹⁶ In 2012, a total of 13,672 students were admitted with 10,625 of those students receiving automatic admissions.¹⁷ In 2013, a total of 12,419 students were admitted with 9,963 of those students receiving automatic admissions.¹⁸ Finally, in 2014, a total 12,379 students were admitted with 8,979 of those students receiving automatic admissions.¹⁹



During this time, UT admitted 8,903 students or 23% of its incoming classes via its holistic process.²⁰ Conversely, 29,567 students or 76.8% of UT’s incoming classes received automatic admissions under TTPL.

¹⁴ This essay focuses on African-American, Latino/a, and Caucasian students since they are at issue in *Fisher v. Texas*. See UT Report, *supra* note 10, at 30, Table 4.1. Statistics are from ISD reports from Region 4. See *Enrollment Trends*, TEXAS EDUCATION AGENCY (Mar. 24, 2016, 3:05 PM), http://tea.texas.gov/acctres/enroll_index.html.

¹⁵ See *2014–15 School Report Card (SRC) Definitions*, TEXAS EDUCATION AGENCY (Mar. 24, 2016, 3:05 PM), <http://tea.texas.gov/perfreport/src/index.html> (“The percentage of economically disadvantaged students is the count of students that are eligible for free or reduced-price lunch or other public assistance divided by the total number of students.”).

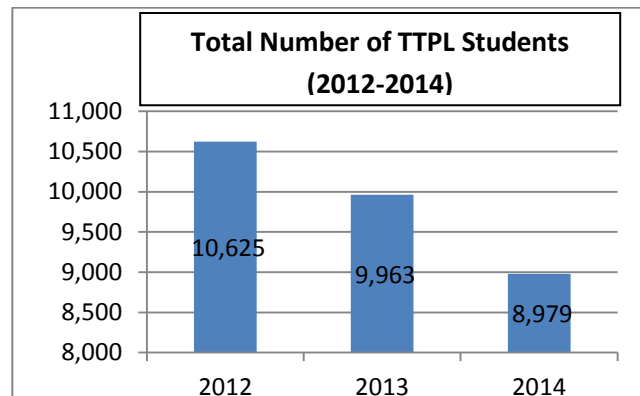
¹⁶ UT Report, *supra* note 10, Table 1.2 at 9-12.

¹⁷ UT Report, *supra* note 10, Table 1.2 at 9-12, and Table 1.5 at 15-16. The 10,625 figure represents students who graduated in the top 9% of their high school class.

¹⁸ UT Report, *supra* note 10, Table 1.5 at 15-16. The figure of 9,963 represents students who graduated in the top 8% of their high school classes.

¹⁹ See *id.* The figure 8,979 represents students who graduated in the top 7% of their high school classes.

²⁰ The holistic process will be fully discussed in part four of this essay. For this section, holistic admissions applicants were subtracted from the total number of admitted students minus TTPL students. There were 3,047 in 2012; 2,456 in 2013, and 3,400 in 2014. See UT Report, *supra* note 10 and accompanying text.



Despite statewide enrollment statistics, African-American and Latino/a students admitted to UT were significantly less than the state averages.²¹ In 2012, for example, only 614 African-American (i.e. 5%) and 3,337 Latino/a (i.e., 31%) students were admitted to UT under TTPL.²² In 2013, the numbers of African-American and Latino/a students decreased (i.e., 520 and 3,103, respectively), but the percentages remained the same from the previous year.²³ In 2014, the number of African-American students (i.e., 492) decreased again, but the percentage (5%) did not. The same year, there was a decline in Latino/a students, both in number and percentage (i.e., 2,722 or 30%).²⁴

Conversely, the number of Caucasian students that were admitted to UT exceeded statewide enrollment statistics for three consecutive years.²⁵ In 2012, 4,117 or 39% of Caucasian students were automatically admitted. In 2013 and 2014, the numbers and percentages declined (i.e., 3,747 or 38% and 3,193 or 36%, respectively), yet they did not fall below 29.4%; the state average for this racial group.

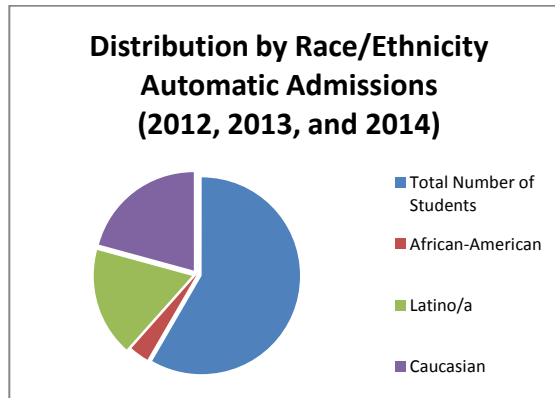
²¹ The state average for African-American students is 12.7% and 51.8% for Latino/a students. See UT Report, *supra* note 10, Table 4.1 at 30.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* The state average for Caucasian students is 29.4%.



As a result of the incongruity between statewide enrollment statistics and TTPL data, this essay now looks to regional statistics to further evaluate TTPL admissions impact on African-American, Latino/a, and Caucasian students.

III. REGION 4'S RACIALLY ISOLATED SCHOOL DISTRICTS AND CAMPUSES DIMINISH THE DIVERSITY OF STUDENTS ADMITTED UNDER THE TOP TEN PERCENT LAW

From 2012 to 2014, Region 4 produced almost one-third of all of the students that were automatically admitted to UT.²⁶ Region 4 covers 50 individual school districts (“ISD”) and seven counties.²⁷ And according to recent data, there are 222,860 or 19% African-American; 586,798 or 49.9% Latino/a; and 262,134 or 22.3% Caucasian students enrolled in the region.²⁸ Despite these regional statistics, students admitted under TTPL are not representative of the racial composition of Region 4.

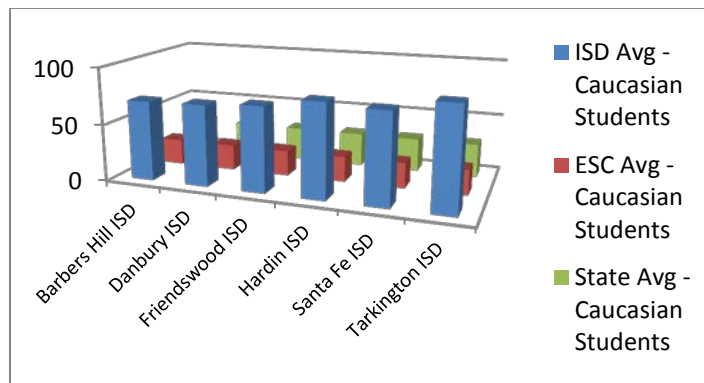
²⁶ In 2012, 2,989 out of the 10,625 TTPL students graduated from a Region 4 school in the top 9% of their class. In 2013, the figure was 2,777 out of 9,963 (8% of the graduating class). And in 2014, it was 2,565 out of 8,979 (7% of the graduating class). See UT Report, *supra* note 10, Table 1.5 at 16-17.

²⁷ See *50 School Districts Covering 7 Counties*, Region 4 Education Service Center, <http://www.esc4.net/users/Documents/School%20Districts%202014-15.pdf> (last visited March 28, 2016) (describing detailed breakdowns of the ISD districts and countries within Region 4).

²⁸ See *Profile of Region 4 Districts and Charters*, REGION 4 EDUCATION SERVICE CENTER, http://www.esc4.net/users/Documents/Region4_Demographics_2015.pdf (last visited March 28, 2016).

A. Region 4 district-wide data

Data from the 2013-2014 school year shows hyper-segregated schools with predominately Caucasian or African-American and Latino/a students. Hardin and Tarkington ISDs were hyper-segregated at rates three times higher than the state and Region 4 ESC population percentages. Similarly in Barbers Hill ISD, Danbury ISD, Friendswood ISD, and Santa Fe ISD, the schools hyper-segregation was two times higher than the state and Region 4 ESC population percentages.



In Hardin ISD, Caucasian students were 82.1% of the district population.²⁹ Likewise, in Tarkington, they were 89.1% of the district population.³⁰ In Barbers Hill ISD, the rate was 73%.³¹ In Danbury ISD, Caucasian students were 75.2% of the district population.³² In

²⁹ See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, HARDIN ISD available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/campus.srch.html> (search “1” by “Campus District Name (full or partial) and then search “Hardin” for “appropriate name or number”; then select “HARDIN ISD in LIBERTY County” and follow “View Report” hyperlink) [hereinafter Hardin Report Card].

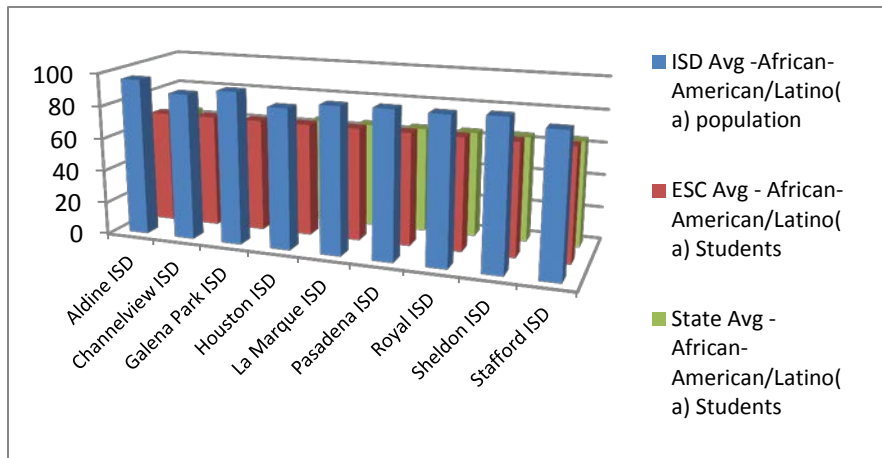
³⁰ See Texas Education Agency 2013-14 School Report Card Tarkington, TEXAS EDUCATION AGENCY, <https://rptsvr1.tea.texas.gov/perfreport/src/2014/campus.srch.html> (search “1” by “Campus District Name (full or partial) and then search “Tarkington” for “appropriate name or number”; then select “Tarkington” and follow “View Report” hyperlink) [hereinafter Tarkington Report Card].

³¹ See Texas Education Agency 2013-14 School Report Card Barbers Hill ISD, TEXAS EDUCATION AGENCY, <https://rptsvr1.tea.texas.gov/perfreport/src/2014/campus.srch.html> (search “1” by “Campus District Name (full or partial) and then search “Barbers Hill ISD” for “appropriate name or number”; then select “Barbers Hill ISD” and follow “View Report” hyperlink).

³² See Texas Education Agency 2013-14 School Report Card Danbury ISD, TEXAS EDUCATION AGENCY, <https://rptsvr1.tea.texas.gov/perfreport/src/2014/campus.srch.html> (search “1” by “Campus District Name (full or partial) and then search “Danbury ISD”

Friendswood ISD, they accounted for 74.2% of the district population.³³ Lastly, in Santa Fe ISD, Caucasian students were 79.3% of the district population.³⁴

As previously noted, hyper-segregated schools in Region 4 are not limited to Caucasian students. In at least nine ISD's, African-American and Latino/a students, combined, comprise more than 80% of the district-wide population.³⁵ On average, these figures are 20% greater than state and ESC average population percentages for these students.



In the Aldine ISD, African-American and Latino/a students' comprise 95.9% of the district population.³⁶ In the Galena Park ISD,

for "appropriate name or number"; then select "Danbury ISD" and follow "View Report" hyperlink).

³³ See Texas Education Agency 2013-14 School Report Card Friendswood ISD, TEXAS EDUCATION AGENCY, <https://rptsvr1.tea.texas.gov/perfreport/src/2014/campus.srch.html> (search "1" by "Campus District Name (full or partial) and then search "Friendswood ISD" for "appropriate name or number"; then select "Friendswood ISD" and follow "View Report" hyperlink) [hereinafter Friendswood Report Card].

³⁴ See Texas Education Agency 2013-14 School Report Card Santa Fe, TEXAS EDUCATION AGENCY, <https://rptsvr1.tea.texas.gov/perfreport/src/2014/campus.srch.html> (search "1" by "Campus District Name (full or partial) and then search "Santa Fe" for "appropriate name or number"; then select "Santa Fe" and follow "View Report" hyperlink).

³⁵ The nine ISDs are Aldine ISD, Galena Park ISD, Houston ISD, La Marque ISD, Pasadena ISD, Royal ISD, Sheldon ISD, and Stafford ISD. See *50 School Districts Covering 7 Counties supra* note 27 and accompanying text.

³⁶ See Texas Education Agency 2013-14 School Report Card Aldine ISD, TEXAS EDUCATION AGENCY, <https://rptsvr1.tea.texas.gov/perfreport/src/2014/campus.srch.html> (search "1" by "Campus District Name (full or partial) and then search "Aldine ISD" for

these students comprise 92.7% of the district population.³⁷ In the Houston ISD, they are 87.2% of the district population.³⁸ In the Channelview ISD, the rate is 89%.³⁹ In the Pasadena ISD, African-American and Latino/a students comprise 89.2% of the district population.⁴⁰ And in Sheldon ISD, these students' comprise 89.6% of the district population.⁴¹ Interestingly, these six ISDs are located in the same county, Harris County, and in the same city, Houston.

In other Region 4 ISDs the figures are remarkably similar. In the La Marque ISD, African-American and Latino/a students comprise 88.7% of the district population.⁴² In the Royal ISD, they represent 88.5%.⁴³ And

“appropriate name or number”; then select “Aldine ISD” and follow “View Report” hyperlink) [hereinafter Aldine Report Card].

³⁷ See Texas Education Agency 2013-14 School Report Card Galena Park ISD, TEXAS EDUCATION AGENCY, <https://rptsvr1.tea.texas.gov/perfreport/src/2014/campus.srch.html> (search “1” by “Campus District Name (full or partial) and then search “Galena Park ISD” for “appropriate name or number”; then select “Galena Park ISD” and follow “View Report” hyperlink).

³⁸ See Texas Education Agency 2013-14 School Report Card Houston ISD, TEXAS EDUCATION AGENCY, <https://rptsvr1.tea.texas.gov/perfreport/src/2014/campus.srch.html> (search “1” by “Campus District Name (full or partial) and then search “Houston ISD” for “appropriate name or number”; then select “Houston ISD” and follow “View Report” hyperlink).

³⁹ See Texas Education Agency 2013-14 School Report Card Channelview ISD, TEXAS EDUCATION AGENCY, <https://rptsvr1.tea.texas.gov/perfreport/src/2014/campus.srch.html> (search “1” by “Campus District Name (full or partial) and then search “Channelview ISD” for “appropriate name or number”; then select “Channelview ISD” and follow “View Report” hyperlink).

⁴⁰ See Texas Education Agency 2013-14 School Report Card Pasadena ISD, TEXAS EDUCATION AGENCY, <https://rptsvr1.tea.texas.gov/perfreport/src/2014/campus.srch.html> (search “1” by “Campus District Name (full or partial) and then search “Pasadena ISD” for “appropriate name or number”; then select “Pasadena ISD” and follow “View Report” hyperlink).

⁴¹ See Texas Education Agency 2013-14 School Report Card Sheldon ISD, TEXAS EDUCATION AGENCY, <https://rptsvr1.tea.texas.gov/perfreport/src/2014/campus.srch.html> (search “1” by “Campus District Name (full or partial) and then search “Sheldon ISD” for “appropriate name or number”; then select “Sheldon ISD” and follow “View Report” hyperlink).

⁴² See Texas Education Agency 2013-14 School Report Card La Marque ISD, TEXAS EDUCATION AGENCY, <https://rptsvr1.tea.texas.gov/perfreport/src/2014/campus.srch.html> (search “1” by “Campus District Name (full or partial) and then search “La Marque ISD” for “appropriate name or number”; then select “La Marque ISD” and follow “View Report” hyperlink).

⁴³ See Texas Education Agency 2013-14 School Report Card Royal ISD, TEXAS EDUCATION AGENCY, <https://rptsvr1.tea.texas.gov/perfreport/src/2014/campus.srch.html> (search “1” by “Campus District Name (full or partial) and then search “Royal ISD” for “appropriate name or number”; then select “Royal ISD” and follow “View Report” hyperlink).

in Stafford, African-American and Latino/a students comprise 84.8% of the district population.⁴⁴

B. Region 4 school-specific data

Similar to the ISD's, individual school campuses reflect hyper-segregated student populations. In its annual reports to the Governor, Lieutenant Governor, and Legislature, UT publishes the feeder schools whose graduates are admitted under the TTPL.⁴⁵ The data below represents those individual feeder schools from the above-mentioned ISDs.

1. Hyper-segregated, predominately Caucasian schools

Between 2012 and 2014, about 121 students were automatically admitted to UT from a school in Hardin ISD, Friendswood ISD, and Tarkington ISD.⁴⁶ On average, these schools in Hardin ISD⁴⁷, Friendswood ISD⁴⁸, and Tarkington ISD⁴⁹, were hyper-segregated with Caucasian students comprising 82.2% of the student population. None of the schools, however, exceeded the state average for economically disadvantaged students (i.e., 60.2%).

2. Hyper-segregated, predominately African-American and Latino/a schools

Between 2012 and 2014, about 1,244 students were automatically admitted to UT from 27 schools in Aldine ISD, Galena Park ISD,

⁴⁴ See Texas Education Agency 2013-14 School Report Card Stafford, TEXAS EDUCATION AGENCY, <https://rptsrv1.tea.texas.gov/perfreport/src/2014/campus.srch.html> (search "1" by "Campus District Name (full or partial) and then search "Stafford" for "appropriate name or number"; then select "Stafford" and follow "View Report" hyperlink).

⁴⁵ See UT Report, *supra* note 10.

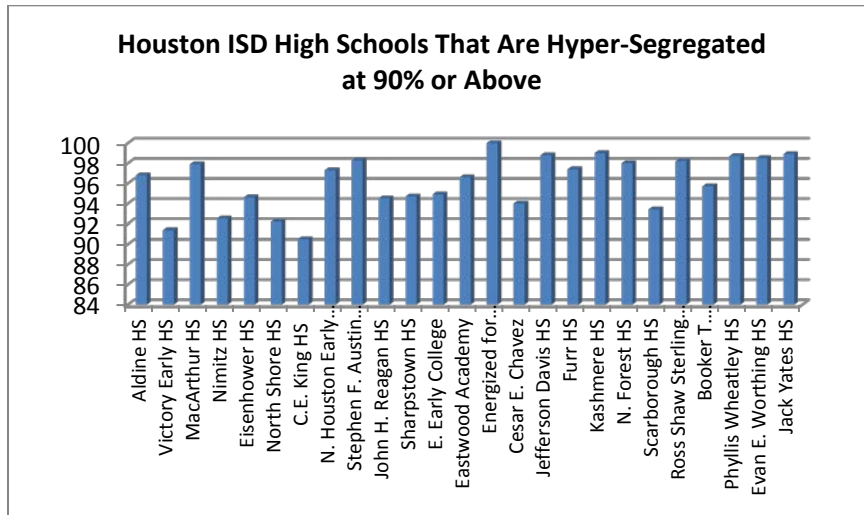
⁴⁶ See THE UNIV. OF TEX. AT AUSTIN, TEXAS FEEDER SCHOOLS SUPPLEMENT TO SB175 REPORT FOR 2015, at 7, 14, 16 available at <http://www.utexas.edu/student/admissions/research/SB175-AdmEnr-TXschools-2012-14.pdf> [hereinafter TEXAS FEEDER SCHOOLS].

⁴⁷ There was an 80.8% Caucasian student body at Hardin High School. See Hardin Report Card, *supra* note 29. See TEXAS FEEDER SCHOOLS, *supra* note 46 at 16 (Only one student was admitted in 2012, none in 2013 or 2014).

⁴⁸ See Friendswood Report Card, *supra* note 33 (reporting 75.8% Caucasian student body at Friendswood High School); see also TEXAS FEEDER SCHOOLS, *supra* note 46 at 16 (Only one student was admitted in 2012, none in 2013 or 2014).

⁴⁹ See Tarkington Report Card, *supra* note 30 (reporting 90.7% Caucasian student body at Tarkington High School); see also TEXAS FEEDER SCHOOLS, *supra* note 46 at 7 (In 2012 two students were admitted; in 2013 seven students were admitted; and in 2014 two students were admitted.).

Houston, ISD, Pasadena ISD, and Sheldon ISD.⁵⁰ Ironically, all of the above-named ISDs are located in the city of Houston within Harris County, and most of them exceed the state average of economically disadvantaged students (i.e., 60.2%).



a) Aldine ISD: In five high schools from this ISD—Aldine High School⁵¹, Victory Early College High School⁵², MacArthur High School⁵³, Nimitz High School⁵⁴, and Eisenhower High School⁵⁵—the

⁵⁰ TEXAS FEEDER SCHOOLS, *supra* note 46 at 17-19.

⁵¹ See Aldine Report Card, *supra* note 36 (reporting Aldine had a 96.8% combined African-American and Latino/a combined student body and 71.8% economically disadvantaged.); see also TEXAS FEEDER SCHOOLS, *supra* note 46 at 7 (In 2012 twenty-four students were admitted; in 2013 fourteen students were admitted; and in 2014 seventeen students were admitted.).

⁵² See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, VICTORY EARLY COLLEGE H S, ALDINE INDEPENDENT SCHOOL DISTRICT available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101902008.pdf> (reporting Victory Early College had a 91.4% combined African-American and Latino/a combined student body an 72.8% economically disadvantaged); see also TEXAS FEEDER SCHOOLS, *supra* note 46 at 17 (In 2012 two students were admitted; in 2013 four students were admitted; and in 2014 four students were admitted.).

⁵³ See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, MACARTHUR H S, ALDINE INDEPENDENT SCHOOL DISTRICT available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101902003.pdf> (reporting MacArthur High School had a 97.9% combined African-American and Latino/a combined student body an 90.2% economically disadvantaged); see also TEXAS FEEDER SCHOOLS, *supra* note 46 at 18 (In 2012 thirty-eight students were admitted; in 2013 thirty-one students were admitted; and in 2014 nineteen students were admitted.).

average African-American and Latino/a combined student population was 94.6%, and 75.6% were economically disadvantaged.

b) Galena Park ISD: African-American and Latino/a students, combined, at North Shore Senior High School comprised 92.2% of its student body, and 70.8% were economically disadvantaged.⁵⁶

c) Pasadena ISD: In two high schools from this ISD—Dobie High School⁵⁷ and Pasadena Memorial High School⁵⁸—the average African-American and Latino/a combined student population was 81.4%; only one of the two schools was economically disadvantaged above 60.2%.

d) Sheldon ISD: African-American and Latino/a students, combined, at C.E. King High School comprised 90.5% of the student body, and 73.2% were economically disadvantaged.⁵⁹

⁵⁴ See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, NIMITZ H S, ALDINE INDEPENDENT SCHOOL DISTRICT *available at* <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101902005.pdf> (reporting Nimitz High School had a 92.5% combined African-American and Latino/a combined student body an 68.6% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 18 (In 2012 seventeen students were admitted; in 2013 twelve students were admitted; and in 2014 twenty students were admitted.).

⁵⁵ See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, EISENHOWER H S, ALDINE INDEPENDENT SCHOOL DISTRICT *available at* <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101902004.pdf> (reporting Eisenhower High School had a 94.6% combined African-American and Latino/a combined student body an 74.6% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 17 (In 2012 twenty-eight students were admitted; in 2013 fifteen students were admitted; and in 2014 twenty-one students were admitted.).

⁵⁶ See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, NORTH SHORE SENIOR HIGH, GALENA PARK INDEPENDENT SCHOOL DISTRICT *available at* <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101910003.pdf>; *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 18 (In 2012 twenty-four students were admitted; in 2013 twenty-five students were admitted; and in 2014 fourteen students were admitted.).

⁵⁷ See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, DOBIE H S, PASADENA INDEPENDENT SCHOOL DISTRICT *available at* <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101917004.pdf> (reporting Dobie High School had a 81.7% combined African-American and Latino/a combined student body an 60.2% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 17 (In 2012 twenty-six students were admitted; in 2013 nineteen students were admitted; and in 2014 twenty-seven students were admitted.).

⁵⁸ See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, PASADENA MEMORIAL HIGH SCHOOL, PASADENA INDEPENDENT SCHOOL DISTRICT *available at* <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101917013.pdf> (reporting Pasadena Memorial High School had a 81.1% combined African-American and Latino/a combined student body an 62.2% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 18 (In 2012 one-hundred-and-twenty-three (“123”) students were admitted; in 2013 one-hundred-and-thirteen (“113”) students were admitted; and in 2014 one-hundred-and-seventeen (“117”) students were admitted.).

⁵⁹ See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, C E KING H S, SHELDON INDEPENDENT SCHOOL DISTRICT *available at* <https://rptsvr1.tea.texas.gov/perfreport/src/20>

c) Houston ISD: In 22 high schools from this ISD—North Houston Early College High School⁶⁰, Stephen F. Austin High School⁶¹, John H. Reagan Senior High School⁶², S.P. Waltrip High School⁶³, Sharpstown High School⁶⁴, Challenge Early College High School⁶⁵, East Early College High School⁶⁶, Eastwood Academy⁶⁷, Energized for STEM

14/static/campus/c101924001.pdf (reporting C E King High School had a 90.5% combined African-American and Latino/a combined student body an 73.3% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 17 (In 2012 seven students were admitted; in 2013 seven students were admitted; and in 2014 eleven students were admitted.).

⁶⁰ *See* TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, NORTH HOUSTON EARLY COLLEGE HIGH SCHOOL *available at* <https://rptsrv1.tea.texas.gov/perfreport/src/2014/static/campus/c101912308.pdf> (reporting North Houston High School had a 93.3% combined African-American and Latino/a combined student body an 89.3% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 19 (In 2012 four students were admitted; in 2013 five students were admitted; and in 2014 three students were admitted.).

⁶¹ Three Stephen F. Austin High Schools exist in Texas. Two are in Region 4 in Houston ISD, and Fort Bend ISD. *See* TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, AUSTIN HIGH SCHOOL *available at* <https://rptsrv1.tea.texas.gov/perfreport/src/2014/static/campus/c101912308.pdf> (reporting 98.3% combined African-American and Latino/a combined student body an 88.8% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 18 (In 2012 thirteen students were admitted; in 2013 eight students were admitted; and in 2014 fourteen students were admitted.).

⁶² *See* TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, JOHN H. REAGAN SENIOR HIGH SCHOOL *available at* <https://rptsrv1.tea.texas.gov/perfreport/src/2014/static/campus/c101912012.pdf> (reporting 94.5% combined African-American and Latino/a combined student body an 76.3% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 18 (In 2012 seventeen students were admitted; in 2013 nineteen students were admitted; and in 2014 seventeen students were admitted.).

⁶³ *See* TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, S.P. WALTRIP HIGH SCHOOL *available at* <https://rptsrv1.tea.texas.gov/perfreport/src/2014/static/campus/c101912015.pdf> (reporting 89.1% combined African-American and Latino/a combined student body an 73% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 18 (In 2012 eight students were admitted; in 2013 seven students were admitted; and in 2014 eight students were admitted.).

⁶⁴ *See* TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, SHARPSTOWN HIGH SCHOOL *available at* <https://rptsrv1.tea.texas.gov/perfreport/src/2014/static/campus/c101912023.pdf> (reporting 94.7% combined African-American and Latino/a combined student body an 89.6% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 18 (In 2012 nineteen students were admitted; in 2013 ten students were admitted; and in 2014 three students were admitted.).

⁶⁵ *See* TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, CHALLENGE EARLY COLLEGE HIGH SCHOOL *available at* <https://rptsrv1.tea.texas.gov/perfreport/src/2014/static/campus/c101912323.pdf> (reporting 93.2% combined African-American and Latino/a combined student body an 69.4% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 18 (In 2012 five students were admitted; in 2013 seven students were admitted; and in 2014 six students were admitted.).

⁶⁶ *See* TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, EAST EARLY COLLEGE HIGH SCHOOL *available at* <https://rptsrv1.tea.texas.gov/perfreport/src/2014/static/campus/>

Academy Central⁶⁸, Cesar E. Chavez High School⁶⁹, Jefferson Davis Senior High School⁷⁰, Furr High School⁷¹, Kashmere Senior High School⁷², Robert E. Lee High School⁷³, North Forest High School⁷⁴,

c101912345.pdf (reporting 94.9% combined African-American and Latino/a combined student body an 84% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 18 (In 2012 six students were admitted; in 2013 three students were admitted; and in 2014 five students were admitted.).

⁶⁷ *See* TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, EASTWOOD ACADEMY available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101912301.pdf> (reporting 96.6% combined African-American and Latino/a combined student body an 84.8% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 18 (In 2012 seven students were admitted; in 2013 two students were admitted; and in 2014 eight students were admitted.).

⁶⁸ *See* TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, STEM ACADEMY CENTRAL available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101912321.pdf> (reporting 100% combined African-American and Latino/a combined student body an 75% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 18 (In 2012 one students were admitted; in 2013 one students were admitted; and in 2014 no students were admitted.).

⁶⁹ *See* TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, CESAR E. CHAVEZ HIGH SCHOOL available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101912027.pdf> (reporting 94% combined African-American and Latino/a combined student body an 84.5% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 18 (In 2012 twenty-eight students were admitted; in 2013 thirteen students were admitted; and in 2014 thirteen students were admitted.).

⁷⁰ *See* TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, JEFFERSON DAVIS SENIOR HIGH SCHOOL available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101912003.pdf> (reporting 98.8% combined African-American and Latino/a combined student body an 96% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 17 (In 2012 twelve students were admitted; in 2013 eleven students were admitted; and in 2014 ten students were admitted.).

⁷¹ *See* TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, FURR HIGH SCHOOL available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101912004.pdf> (reporting 97.4% combined African-American and Latino/a combined student body an 94.9% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 17 (In 2012 eleven students were admitted; in 2013 six students were admitted; and in 2014 four students were admitted.).

⁷² *See* TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, KASHMERE SENIOR HIGH SCHOOL available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101912007.pdf> (reporting 99% combined African-American and Latino/a combined student body an 85.4% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 17 (In 2012 two students were admitted; in 2013 two students were admitted; and in 2014 no students were admitted.).

⁷³ *See* TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, ROBERT E. LEE HIGH SCHOOL available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101912009.pdf> (reporting 87.3% combined African-American and Latino/a combined student body an 96% economically disadvantaged); *see also* TEXAS FEEDER SCHOOLS, *supra* note 46 at 17 (In 2012 eighteen students were admitted; in 2013 six students were admitted; and in 2014 seven students were admitted.).

Scarborough Senior High School⁷⁵, Ross Shaw Sterling High School⁷⁶, Booker T. Washington Senior High School⁷⁷, Westbury Senior High School⁷⁸, Phyllis Wheatley Senior High School⁷⁹, Evan E. Worthing Senior High School⁸⁰, and Jack Yates High School⁸¹—the average

⁷⁴ See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, NORTH FOREST HIGH SCHOOL available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101912477.pdf> (reporting 98% combined African-American and Latino/a combined student body an 88.3% economically disadvantaged); see also TEXAS FEEDER SCHOOLS, *supra* note 46 at 17 (In 2012 nine students were admitted; in 2013 no students were admitted; and in 2014 no students were admitted.).

⁷⁵ See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, SCARBOROUGH SENIOR HIGH SCHOOL available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101912024.pdf> (reporting 93.4% combined African-American and Latino/a combined student body an 91.2% economically disadvantaged); see also TEXAS FEEDER SCHOOLS, *supra* note 46 at 17 (In 2012 one students were admitted; in 2013 three students were admitted; and in 2014 three students were admitted.).

⁷⁶ See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, ROSS SHAW STERLING HIGH SCHOOL available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101912014.pdf> (reporting 98.2% combined African-American and Latino/a combined student body an 77% economically disadvantaged); see also TEXAS FEEDER SCHOOLS, *supra* note 46 at 17 (In 2012 ten students were admitted; in 2013 one students were admitted; and in 2014 no students were admitted.).

⁷⁷ See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, BOOKER T. WASHINGTON SENIOR HIGH SCHOOL available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101912016.pdf> (reporting 95.7% combined African-American and Latino/a combined student body an 93.7% economically disadvantaged); see also TEXAS FEEDER SCHOOLS, *supra* note 46 at 17 (In 2012 five students were admitted; in 2013 no students were admitted; and in 2014 three students were admitted.).

⁷⁸ See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, WESTBURY SENIOR HIGH SCHOOL available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101912017.pdf> (reporting 91% combined African-American and Latino/a combined student body an 78.9% economically disadvantaged); see also TEXAS FEEDER SCHOOLS, *supra* note 46 at 18 (In 2012 ten students were admitted; in 2013 twenty-one students were admitted; and in 2014 nine students were admitted.).

⁷⁹ See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, PHYLLIS SENIOR HIGH SCHOOL available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101912018.pdf> (reporting 98.7% combined African-American and Latino/a combined student body an 82.1% economically disadvantaged); see also TEXAS FEEDER SCHOOLS, *supra* note 46 at 18 (In 2012 eight students were admitted; in 2013 five students were admitted; and in 2014 four students were admitted.).

⁸⁰ See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, EVAN E. WORTHING SENIOR HIGH SCHOOL available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101912019.pdf> (reporting 98.5% combined African-American and Latino/a combined student body an 79.2% economically disadvantaged); see also TEXAS FEEDER SCHOOLS, *supra* note 46 at 17 (In 2012 five students were admitted; in 2013 four students were admitted; and in 2014 three students were admitted.).

⁸¹ See TEX. EDUC. AGENCY, 2013-2014 SCHOOL REPORT CARD, JACK YATES HIGH SCHOOL available at <https://rptsvr1.tea.texas.gov/perfreport/src/2014/static/campus/c101912020.pdf> (reporting 98.9% combined African-American and Latino/a combined student body an 69.8% economically disadvantaged); see also TEXAS FEEDER SCHOOLS, *supra*

African-American and Latino/a combined student population was 90.8%, and 84% were economically disadvantaged.

Because of this hyper-segregation in Region 4, one would assume that the dominating racial groups opportunity for automatic admission to UT greatly increase. However, the data tells another story.

IV. THE DATA SHOWS UT NEEDS BOTH TTPL AND ITS HOLISTIC PROCESS TO ACHIEVE DIVERSITY

Abigail Fisher's plight against UT began in 2008 after she graduated from Stephen F. Austin High School in the Fort Bend ISD in Sugar Land, Texas.⁸² Because she did not graduate in the top ten percent of her class, her application was assessed under UT's holistic admissions policy.⁸³ Ultimately, UT denied her application.⁸⁴ And despite Fisher's singular characterization of her harm and UT's role in creating that harm, the impact of the Supreme Court's decision will reach far beyond Texas and her individual circumstances.

A chief argument in *Fisher v. Texas* is that the TTPL yields a sufficiently diverse student body so UT should not also consider race via its holistic process.⁸⁵ Stated differently, the question is whether UT or any higher education institution can still consider race in its admissions process, when the institution also employs a race-neutral policy.

A. “Student body diversity is a compelling interest that can justify the use of race in university admissions.”⁸⁶

At UT, students who were not automatically admitted get evaluated under a two-step admissions process.⁸⁷ This process first includes an

note 46 at 17 (In 2012 six students were admitted; in 2013 two students were admitted; and in 2014 four students were admitted.).

⁸² *Fisher v. Univ. of Texas at Austin, et al.*, 133 S. Ct. 2411 (2013) (“Fisher I”), and *Fisher v. Univ. of Texas at Austin, et al.*, 135 S. Ct. 2888 (2015) (“Fisher II”); see also Valerie Strauss, *Who is Abigail Noel Fisher?* THE WASHINGTON POST (Oct. 12, 2012) <https://www.washingtonpost.com/blogs/answer-sheet/wp/2012/10/10/who-is-abigail-noel-fisher/>.

⁸³ Supplemental Brief for Appellant at 16, *Fisher v. Univ. of Texas at Austin*, 758 F.3d 633 (5th Cir. 2014) (describing Fisher graduated in the top 12% of her class).

⁸⁴ *Fisher*, 133 S. Ct. at 2415 (2013).

⁸⁵ Pleasant and Harpalani, *supra* note 1 at 25 (“Petitioner incorrectly asserts that race can be too small of an admissions factor to be constitutional.”).

⁸⁶ *Grutter v. Bollinger*, 539 U.S. 306, 325 (2003).

⁸⁷ See generally THE OFFICE OF ADMISSIONS, THE UNIV. OF TEXAS, IMPLEMENTATION AND RESULTS OF THE TEXAS AUTOMATIC ADMISSIONS LAW (HB 588) (Dec. 23, 2010) (on file with Office of Admissions at Univ. of Texas), explaining that although the cited

academic review (i.e., class rank, completion of UT required high school curriculum, and ACT/SAT score). Second, personal achievements are evaluated (i.e., two admissions essay scores, leadership, extracurricular activities, awards/honors, and work experience), as well as special circumstances.⁸⁸

As Justice O'Connor stated "[r]ace 'is only one element in a range of factors a university properly may consider in attaining the goal of a heterogeneous student body.'"⁸⁹ UT's holistic process complies with this requirement. Moreover, UT only has discretion to holistically evaluate about one-quarter of its incoming classes because the remainder is admitted via TTPL.⁹⁰

When state and Region 4 data are compared to the racial composition of African-American, Latino/a, and Caucasian students who are automatically admitted to UT, there is a visible discrepancy.⁹¹ The proportion of African-American and Latino/a students admitted to UT under the TTPL are still less than statewide and regional percentages. Further, there is no question that a good number of ISDs in Region 4 boast hyper-segregated African-American and Latino/a students and that region supplies the most TTPL graduates to UT. The data shows that African-American students are automatically admitted to UT at a rate that is about half of their statewide population (i.e., 5 to 6% versus 12.7%).⁹² Likewise Latino/a students are automatically admitted to UT at about half the rate (i.e., 30 to 31% versus 51.8%) of their statewide population. At least 494 or 16.5% of the students automatically admitted to UT in 2012 graduated from schools that were hyper-segregated with African-American and Latino/a students. These numbers lessened to about 13.5% and 14.6%, respectively, in 2013 and 2014.⁹³

statistics were not applicable in 2008 when Abigail Fisher applied to UT, she and other non-TTPL applicants were evaluated using the same process.

⁸⁸ See generally source cited *supra* note 87 (Familial socio-economic status, household status (i.e., single-parent), language (i.e., bilingual), family responsibilities, socio-economic status of the school(s) attended, average ACT/SAT of the school attended in relation to the student's ACT/SAT, and race are all considered).

⁸⁹ *Grutter*, 539 U.S. at 324 (2003).

⁹⁰ TTPL admits comprised 76.8% of UT's incoming class over a three-year period, leaving UT with a mere 23% of applicants to selectively evaluate under its non-TTPL process.

⁹¹ See *supra* Parts II and III.

⁹² *Id.*

⁹³ In 2013, TTPL statistics tracked those of the total admissions class at UT, with the exception of Latino/a and Caucasian students. Latino/a and Caucasian students were 31% and 38% of the class. In 2014, TTPL statistics tracked those of the total admissions class at UT, with the exception of Latino/a and Caucasian students. Latino/a and Caucasian students were 30% and 36% of the class. See UT Report, *supra* note 10, Table 4.1 at 33.

Although Caucasian students are similarly hyper-segregated in Region 4, it occurs in a limited number of ISDs.⁹⁴ At least 51 or 1% of the students automatically admitted to UT in 2012 graduated from hyper-segregated, predominately Caucasian schools.⁹⁵ This 1% statistic remained constant in subsequent years, 2013 and 2014. Overall, Caucasian students are automatically admitted to UT (i.e., 37.5% average) at a rate that exceeds their statewide (29.4%) and regional (i.e., 22.3%) population.

B. Diversity within Racial Groups Counteracts the Racial Isolation of Groups from Similar Backgrounds or Experiences

“Qualitative diversity (i.e., diversity within racial groups) inherently promotes the educational benefits articulated by [the Supreme Court], as it serves to break down racial stereotypes, reduce racial isolation, and facilitate cross racial understanding.”⁹⁶ In the city of Houston alone, at least 22 schools with African-American and Latino/a students, combined, comprised on average 90.8% of the total school population.⁹⁷ This figure also takes into account that these same students, from Region 4, hail from economically disadvantaged schools where the average campus rate is 84%, far exceeding the statewide rate (60.2%). With these figures, African-American and Latino/a students admitted under TTPL do not sufficiently contribute to socioeconomic or geographic diversity at UT.⁹⁸

V. CONCLUSION

Absent the multi-layered process currently in use (i.e., TTPL plus the holistic process), UT will be resigned to utilize TTPL as its only means to achieve diversity. Thus, a singular option is insufficient to admit a diverse student body, especially when Region 4 schools feed 25% of TTPL graduates to UT, and those graduates attended high schools that

⁹⁴ See *supra* Part III.

⁹⁵ UT Report, *supra* note 10, Table 4.1 at 33. In 2012, TTPL statistics tracked those of the total admissions class at UT, with the exception of Latino/a and Caucasian students. Latino/a and Caucasian students were 31% and 39% of the class.

⁹⁶ Harpalani, *supra* note 4 (Diversity within racial groups should contribute to socioeconomic, cultural, or geographic diversity).

⁹⁷ See *supra* Part III.

⁹⁸ See *Parents Involved in Comm. Schools v. Seattle School Dist. No. 1*, 555 U.S. 701, 797 (2007) (Kennedy, J. concurring in part and concurring in judgment) (“[T]his Nation has a moral and ethical obligation to fulfill its historic commitment to creating an integrated society that ensures equal opportunity for all of its children.”).

were largely racially isolated and segregated by socio-economics⁹⁹. Such reliance on TTPL, alone, would be a perverse and insufficient means to attain diversity at UT or other colleges and universities in Texas.¹⁰⁰

⁹⁹ See MARTA TIENDA AND TERESA A. SULLIVAN, *THE PROMISE AND PERIL OF THE TEXAS UNIFORM ADMISSION LAW*, available at http://www.texastop10.princeton.edu/reports/forthcoming/PromiseandPeril_TiendaSullivan.pdf (“Because minority students are more likely to hail from the lower rungs of the socioeconomic scale, the use of class preferences has been proposed as an alternative to race-sensitive policies, in the effort to diversify campuses. In practice, however, although such an approach may diversify a campus’s class profile, it is unlikely to significantly alter its racial or ethnic diversity.”).

¹⁰⁰ See *supra* note 1.