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# “Freedom Is Not Enough...”<sup>1</sup>: Affirmative Action and J.D. Completion Among Underrepresented People of Color

Jason M. Scott, Paige Wilson, and Andrea Pals<sup>2</sup>

WORKING PAPER  
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## ABSTRACT

*In Fall 2022, the Supreme Court heard arguments regarding the future of affirmative action in higher education. Initially, affirmative action policies were adopted to give equal opportunity to communities who have been and continue to be harmed by discriminatory systems and practices. As we wait for the Court’s decision, it is crucial to understand how existent affirmative action bans impact underrepresented people of color’s (uPOC) graduate/professional degree attainment. Data from the Integrated Postsecondary Education Data System, the U.S. Census Bureau, and the Center for Reproductive Rights is analyzed to determine whether affirmative action bans decrease the proportion of uPOC completing their law degrees (or enrolling in graduate programs). We utilize a differences-in-differences (DiD) estimation method, which compares pre- and post-ban rates of degree completion (and graduate school enrollment, where applicable) in states that implemented an affirmative action ban to those states without one. Using this technique, we find that the implementation of a ban decreases the proportion of uPOC completing their law degrees and enrolling in graduate programs. These effects are both practically and statistically significant. Despite the partisan controversy surrounding race-conscious admissions, our findings add to empirical research demonstrating the detrimental impact of eliminating affirmative action in college and university admissions.*

## INTRODUCTION

Although greater educational attainment is considered a way out of poverty and a gateway toward a more equitable society, people of color—specifically those identifying as Black, Hispanic, Native American (American Indian or Alaska Native), and Native Hawaiian or Pacific Islander (hereafter referred to as “underrepresented people of color,” or “uPOC”)—remain underrepresented in legal education and graduate education more broadly (Long & Bateman,

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<sup>1</sup> In reference to the commencement address given by President Lyndon B. Johnson at Howard University (June 4, 1965): “[F]reedom is not enough...You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, ‘you are free to compete with all the others,’ and still justly believe that you have been completely fair. Thus, it is not enough just to open the gates of opportunity” (Johnson, 1966, p. 636).

<sup>2</sup> AccessLex Institute

2020; *Regents of the University of California v. Bakke*, 1978).<sup>3</sup> uPOC face many hurdles to college and graduate school admission, disproportionately limiting their enrollment in higher education (e.g., Carter & Welner, 2013; Chetty & Hendren, 2018; Gaertner & Hart, 2013, 2015; Parrish & Hikido, 1998; Reardon & Owens, 2014; Quillian, 2017). This lack of representation on campuses can lead admitted uPOC to experience tokenism or stereotype threat that may damage their sense of belonging (Atkins, 2020; Lancaster et al., 2019; Law School Survey of Student Engagement [LSSSE], 2020; Robbins, 2020; Rocconi et al., 2019). They may also suffer from impostor syndrome, in which individuals feel out of place and doubt their capabilities (Atkins, 2020; Bravata et al., 2020). Collectively, these “othering” experiences can lead uPOC to attrite at higher rates than students from other racial and ethnic backgrounds (e.g., Jones & Watson, 1990; Scott et al., 2023).

The systemic marginalization of uPOC in higher education is not only unjust; it is costly. Carnevale et al. (2013) find that professional degree holders have nearly triple the average lifetime earnings of high school graduates (\$3.6 million versus \$1.3 million) and one-and-a-half times that of bachelor’s graduates (\$3.6 million versus \$2.3 million). Moreover, graduate education is a path toward greater political voice and power. Hersh (2021) reports that the majority of our nation’s leaders hold graduate degrees, meaning that graduate education is a gateway into powerful positions where uPOC could enact policy changes.

The exclusion of uPOC from graduate education brings us to the present study. In *Grutter v. Bollinger* (2003), the Supreme Court affirmed the use of race for admissions in limited scope (i.e., affirmative action), famously and optimistically opining that “25 years from now, the use of racial preferences will no longer be necessary...” (p. 343). Ultimately, we hope to shed some light on whether affirmative action policies remain necessary 20 years into the projected 25-year timeline and, if so, what the reversal of *Grutter* might mean for many uPOC who will apply to or enroll in a law or other graduate degree program.

While prior research has examined the impact of affirmative action bans on graduate school admission of students of color across various disciplines, to our knowledge none of these studies investigate these effects within legal education, or on law degree completion in the past 15 years. This paper aims to demonstrate the effect of affirmative action bans on uPOC law school completion (and, for those states that implemented bans before 2000, enrollment of uPOC in broader graduate school programs). We do so by utilizing a differences-in-differences (DiD) estimation method, which compares pre- and post-ban rates of degree completion (and graduate school enrollment, where applicable) in states that implemented an affirmative action ban to those states without one.

## BACKGROUND

Disparities between the demography of the United States and professional degree holders (e.g., those with a J.D. or M.D.) are perceptible. The 2020 United States Census found that 13.6

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<sup>3</sup> As an institution supporting law schools and law students (both current and prospective), AccessLex Institute is committed to understanding barriers to law school for uPOC and improving access to legal education for all. We therefore are specifically interested in disparities in law schools for uPOC in terms of admissions and attrition rates, in addition to our interest in broader graduate school admissions.

percent of the population identified as Black, 18.6 percent Hispanic, and 1.3 percent Native American (U.S. Census Bureau, 2021). In contrast, data from 2016 show that 6.5 percent of professional degree recipients were Black, 6.9 percent were Hispanic, and 0.7 percent were Native American, Alaskan, Hawaiian, or Pacific Islander (Espinosa et al., 2019; National Center for Education Statistics [NCES], 2020). It is possible that these disparate numbers are due in part to lower admission and enrollment rates for uPOC and higher non-transfer attrition rates of uPOC.

The issue of disparities between uPOC and White students is exacerbated in law schools, as legal education is arduous and has high attrition rates (Bowman et al., 2022; Feingold & Souza, 2013; Robbins, 2020). Extant literature has identified racial inequities in law school applications, borrowing, and enrollment, bar passage rates, and representation within the legal profession overall (American Bar Association [ABA], 2020a; National Association for Law Placement [NALP], 2023; Quintanilla et al., 2020; Taylor, 2018, 2019; Wightman, 1998; Williams, 2021). These disparities extend to retention as well—uPOC represent approximately 30 percent of first-year law school enrollment but 44 percent of those who drop out (ABA, 2022a; Thomas & Cochran, 2018). By comparison, White students comprise approximately 62 percent of first-year law students but only 49 percent of dropouts. Of all uPOC students who received a graduate degree in 2016, the smallest proportions were awarded degrees in law, social/behavioral sciences, and the humanities (Espinosa et al., 2019). Due to the severity of racial and ethnic underrepresentation at the graduate level, and in law schools specifically, we examine the extent to which state-level affirmative action bans affect uPOC J.D. attainment and enrollment in graduate degree programs.

### **Affirmative Action**

By executive order, Presidents John F. Kennedy and Lyndon B. Johnson implemented affirmative action policies to combat racial discrimination in hiring practices. Selective colleges and universities later followed suit, adopting race-conscious admission practices to promote greater access to and opportunity in higher education for uPOC which would, by extension, lead to higher rates of college and graduate degree completion and ultimately greater lifetime earning potential among uPOC (Bonadies Torres, 2020; *Grutter v. Bollinger*, 2003). Research has also found that greater levels of educational attainment are associated with greater health and mental well-being outcomes (e.g., Raghupathi & Raghupathi, 2020; Zajacova & Lawrence, 2018).

Initially, several institutions utilized a quota or percentage plan, where a set number of seats or percentage of an incoming class was reserved for uPOC (*Regents of the University of California v. Bakke*, 1978). Others, notably the University of Michigan's undergraduate campus, awarded decisively large bonus points to minority applicants in admissions. These considerations of race in admissions decisions, however, were ruled a violation of the Equal Protection Clause of the Fourteenth Amendment because these policies were insufficiently “narrowly tailored” (*Gratz v. Bollinger*, 2003).<sup>4</sup>

On the other hand, in a concurrent judgement, *Grutter v. Bollinger* (2003), the Court upheld the University of Michigan Law School's “narrowly tailored use of race in admissions decisions to

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<sup>4</sup> “Narrowly tailored” is a legal principle that laws or policies be written precisely and using the least restrictive means to achieve their ends.

further a compelling interest in obtaining the educational benefits that flow from a diverse student body” (p. 343). The Court based its *Grutter* decision, in part, on education research submitted in support of the University of Michigan.

In response to these rulings, the common methods for affirmative action today involve the targeted recruitment of uPOC, a holistic review process that includes considerations of race, or a combination of the two (Jones & Nichols, 2020; Kent & McCarthy, 2016; Michel et al., 2019). Yet, despite being upheld by the Supreme Court in 2003, narrowly tailored affirmative action policies in postsecondary education have been repeatedly legally and legislatively challenged. In response to public criticisms of affirmative action, 12 states currently ban or previously banned race-conscious admission practices. Chronologically, they are: California (banned in 1996); Louisiana, Mississippi, and Texas (1996–2003); Washington (1998); Florida (1999); Michigan (2006); Nebraska (2008); Arizona (2010), New Hampshire and Oklahoma (2012), and Idaho (2020).<sup>5</sup>

Having been successfully challenged by several state legislatures, race-conscious admissions now face renewed scrutiny in the Supreme Court. In Fall 2022, the U.S. Supreme Court heard challenges to the affirmative action policies at Harvard University and the University of North Carolina. At stake is whether the Court will overturn its decision in *Grutter v. Bollinger*, thereby prohibiting these narrowly tailored affirmative action policies.

## LITERATURE REVIEW

### The Effects of Affirmative Action

Supporters of affirmative action and race-conscious admissions policies argue that, thus far, these policies have increased access to higher education for uPOC (Civil Rights Act, 1964; Hoover, 2022; Johnson, 1966). Data supports these arguments. For example, in 1976–77, 89 percent of master’s degrees and 92 percent of doctoral/professional degrees were awarded to White graduates of non-Hispanic origin, but more recently, only 64 and 66 percent of master’s and doctoral/professional degrees were awarded to White graduates (NCES, 2020). However, this increased diversity could be due, in part, to the changing demography of the country (Vespa et al., 2018).<sup>6</sup> And despite the seeming progress toward diversifying advanced degree attainment,

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<sup>5</sup> Affirmative action in Texas was initially challenged in federal court in 1994, but the University of Texas School of Law’s application of race-based affirmative action was upheld by the U.S. District Court for the Western District of Texas. That decision was appealed and in the Fifth Circuit Court’s decision in *Hopwood v. Texas* (1996), the previous court’s ruling was overturned, and it was ruled that public universities in Texas could not use race as a factor in admissions (this was later expanded to include decisions related to financial aid, scholarships, fellowships, and recruitment and retention). Since this decision was rendered by the Fifth Circuit Court, it also affected public institutions in Louisiana and Mississippi, as the Fifth Circuit has jurisdiction over these states in addition to Texas. This decision was abrogated by the Supreme Court ruling in *Grutter v. Bollinger* (2003). (Affirmative action was again challenged in *Fisher v. University of Texas at Austin* (2013, 2016), but this case did not ultimately overrule affirmative action.) Thus, even though affirmative action was at one time banned in Louisiana, Mississippi, and Texas, it currently is not. However, no more than a handful of schools in Louisiana and Mississippi actually consider race in admissions decisions.

<sup>6</sup> While non-Hispanic White individuals are still the majority group in the United States of America, the fastest growing racial/ethnic group is “two or more races.” Proportions of all “minority” races have been increasing and are expected to continue this trend, with non-Hispanic White individuals incrementally decreasing in proportion in response. Thus, there are an increasing number of non-White individuals, which may contribute in some measure to the changing proportions of those receiving graduate degrees, to a small degree (Vespa et al., 2018).

some proponents of affirmative action believe it has not done enough or has not finished its work to correct historical bias against uPOC in higher education (Mottley, 2015), arguing that efforts to ban it would be pulling the plug prematurely (Hersh, 2021; Jones & Nichols, 2020; Zhang, 2022).

Research on affirmative action often supports the supposition that it has helped uPOC (Jones & Nichols, 2020; Kidder, 2003). Fischer and Massey (2007), for example, provided an analysis of data from the National Longitudinal Survey of Freshmen to understand how affirmative action affected grades, college satisfaction, and persistence for Black and Hispanic students at selective institutions. After controlling for a host of covariates, Fischer and Massey (2007) found that the more a student purportedly benefitted from affirmative action policies, the more their average GPA increased and the more their likelihood of dropping out decreased.<sup>7</sup> On the other hand, there are many critiques and opponents of affirmative action policies.

### **Opposition to Affirmative Action**

Proponents of race-neutral admissions argue that students should be evaluated on merit alone, or partially on other demographic factors such as socioeconomic status (SES; Museus et al., 2019; Pruitt, 2015; Sander, 2004; Schmidt, 2008). The desire to implement race-neutral admissions policies often centers on criticisms that affirmative action denies opportunities to non-uPOC candidates (particularly those from families of limited means) or that it actually harms enrolled uPOC students and the institutions that admit them (Nadel, 2006).

Criticism of affirmative action is largely framed as a merit issue. One component of this argument is that opponents to affirmative action believe it constitutes “reverse discrimination” against White and Asian/Asian American students by valuing certain racial identities over others (Museus et al., 2019; Schmidt, 2008). Supporters of race-neutral admissions tend to believe that it is unfair that otherwise qualified White or Asian applicants “lose” their seats to ostensibly less qualified uPOC applicants. Another component is the supposition that admitted uPOC students are harmed by a mismatch between their abilities and the rigor of the admitting institution (*How bans on affirmative action impact black student college graduation rates*, 2012; Sander, 2004). From the institutional perspective, opponents argue that admitting underqualified applicants damages the overall educational quality of an institution (Chan & Eyster, 2003).

Several studies have attempted to refute these concerns about affirmative action. Regarding reverse discrimination, researchers contend that this argument fails to acknowledge that Asian American students do, in fact, benefit from affirmative action policies (Museus et al., 2019; Schmidt, 2008), though the extent to which affirmative action constitutes reverse discrimination is difficult to support or refute since it is largely based on political disagreement. Contrary to the mismatch hypothesis, Fischer and Massey (2007; as discussed earlier) found that students who benefitted more from affirmative action had improved outcomes compared to those who did not ostensibly benefit from affirmative action. Tienda and Zhao (2017) similarly determined that graduate students across different programs who benefitted from affirmative action had a high

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<sup>7</sup> This variable was calculated by finding the difference between Hispanic and Black freshmen’s SAT score and the institutional average SAT score. Students who scored above the institutional average had a score of 0 indicating that they did not ostensibly benefit from affirmative action.

likelihood of success in attaining their degrees. Regarding the lowering of institutional quality, some have argued that banning race-conscious admissions itself results in lower quality. If an institution has diversity goals and is barred from considering race, it must turn to other metrics to ensure a suitably diverse class (Antonovics & Backes, 2014; Chan & Eyster, 2003). Rather than considering traditional metrics in conjunction with applicant race, admissions officers must focus on less objective and more subjective metrics which, in the case of undergraduate admissions, results in lower average SAT math and verbal scores among admitted students (Antonovics & Backes, 2014).

As an alternative to affirmative action policies, some have proposed race-neutral admissions that use alternative diversity metrics to equitably admit students. Opponents to affirmative action argue that focusing solely on race is detrimental to and ignores disadvantages that stem from low socioeconomic status (Onwuachi-Willig et al., 2009; Pruitt, 2015; Reardon et al., 2017). It is unclear whether SES has been successfully implemented as a substitute for race in admissions, but several scholars have projected that SES on its own is a poor substitute for race. Reardon et al. (2017), for example, used simulations that predicted decreased diversity under SES-based policies compared to race-based policies. These findings support Wightman's (1997) earlier projections that no alternative admissions factors (including SES) would result in the same level of diversity as race-conscious policies. Xiang and Rubin's (2015) simulation study similarly predicts that SES would be a poor substitute for race. In general, the lesson from these studies is that although there is *some* correlation between race and SES, the two are distinct concepts that yield admission outcomes that are quite different for uPOC applicants.

Notably, Pruitt (2015) calls for consideration of race *with* SES as a way to save affirmative action from a bipartisan standpoint, which could be a future route for policy changes. Other attempts to implement admissions plans that satisfy opponents and proponents of affirmative action have been made as well.

An example of a race-neutral, but purportedly equitable merit-based admissions policy is the Texas Top Ten Percent (TTTP) Plan. Under the plan, any student in the top 10 percent of their high school class who applied to a selective public higher education institution in Texas would be guaranteed admission (Cortes, 2010; James-Gallaway & James-Gallaway, 2022). In theory, this would address the above merit-based criticisms by admitting the most meritorious candidates from all high schools, irrespective of the characteristics of the high school or the applicant. A similar plan was implemented for University of California institutions (Antonovics & Backes, 2014; Garces, 2012a). These policies, however, would have no effect on applicants to law school or to graduate education more broadly.

Notwithstanding, empirical findings demonstrate a critical problem with these plans: they do not account for bias within high school performance metrics and thus fail to consider cumulative disadvantages of uPOC. Those in the top of their classes are more likely to be the most socioeconomically advantaged students at that school (Chetty & Hendren, 2018; Museus et al., 2019). Due to racial segregation in neighborhoods, which results in better opportunities, the most advantaged students in impoverished districts are more likely to be White (Carter & Welner, 2013; Parrish & Hikido, 1998; Reardon & Owens, 2014; Quillian, 2017). Thus, even in these school districts, the TTTP plan may exclude uPOC students who would likely succeed if given

equal opportunity and resources (Gaertner & Hart, 2013, 2015; Tienda & Zhao, 2017; Wightman, 1997).

### **Effects of Affirmative Action Bans**

Previous research on the effects of affirmative action bans in undergraduate and graduate admissions largely finds that in both contexts, the enrollment of uPOC is adversely impacted. At the undergraduate level, multiple studies have found associations between affirmative action bans and lower enrollment and admission of uPOC across different institutions (Antonovics & Backes, 2014; Backes, 2012; Elias & Perez, 2022; Long & Bateman, 2020; Wightman, 1997). Others have found that even where enrollment rates for uPOC increased post-ban, the increases are not proportional with population changes (Elias & Perez, 2022), meaning that race-neutral admission practices are not likely to maintain or improve student diversity in states where race-conscious admissions are not permitted.

Similar results have been found within graduate education. Notably, scholars Garces and Mickey-Pabello have conducted multiple studies using an approach similar to our own. Across their studies, Garces and Mickey-Pabello used a differences-in-differences technique to measure pre- and post-affirmative action ban enrollment of uPOC in graduate programs and medical schools, specifically (Garces, 2012a, 2012b, 2013; Garces & Mickey-Pabello, 2015; Mickey-Pabello & Garces, 2018). They include sensitivity analyses and a host of control variables where possible, increasing the strength of their findings. The cumulative results indicate that uPOC enrollment in graduate school declined between 12 and 26 percent (depending on the field of study) after race-conscious admission practices were disallowed. The effects were largest in STEM fields (Garces, 2012a, 2013) and selective public institutions (Backes, 2012; Garces, 2013; Mickey-Pabello & Garces, 2018).

Although law schools were central to two Supreme Court cases on affirmative action in admissions, including the landmark *Grutter v. Bollinger* case, empirical research on the impact of affirmative action bans on law school admissions is limited. To the best of our knowledge, only one study has considered the impact of affirmative action on uPOC law school enrollment. Rothstein and Yoon (2008) used Law School Admissions Council and Bar Passage Study data to compare Black and White law student enrollment using grid data analysis. They find that without affirmative action, we could *conservatively* expect an average 60 percent reduction in the number of Black first-year students. This disparity sharply increases with institutional selectivity, with Rothstein and Yoon estimating a 90 percent enrollment reduction at the most selective institutions. Notably, the authors project "...that affirmative action is responsible for nearly all of the diversity currently seen in the law student population generally and at every law school of even moderate selectivity," (p. 52). However, this study does not control for several outside variables, such as proportion of uPOC in the same state as a school and may therefore under- or over-estimate decreases in enrolled students. Moreover, the study does not take into account the six states that implemented affirmative action bans after it was completed.

Scott, Wilson, Cochran and Pals (2023) link campus racial diversity to positive student outcomes (attrition, law school GPA, and bar passage) among uPOC at selective law schools. Given these findings, it seems reasonable to assume that if the Supreme Court strikes down narrowly tailored race-conscious admission practices, leading to lower representation of uPOC in law and other



graduate programs, uPOC enrolled in such programs may face additional struggles in their studies.

As noted earlier, uPOC comprise approximately 30 percent of first-year law students, but 44 percent of those who drop out of law school (ABA, 2022a; Thomas & Cochran, 2018). It is unclear how these non-transfer attrition rates are affected by affirmative action bans. It is possible that affirmative action would result in issues with stereotype threat or impostor syndrome for uPOC, but it is also possible that bans result in “othering” by making uPOC students feel unsupported by the state at large, affecting their desire to persist in legal education (Allen & Solorzano, 2001). Williams (2021) agrees that bans likely caused attrition problems with uPOC enrolled in law school.

Given this theory and the limited availability of J.D. enrollment data disaggregated by race and ethnicity, we focus our analysis on estimating the extent to which the implementation of a statewide affirmative action ban impacts the proportion of uPOC who complete their juris doctor (J.D.) degree at public law schools.<sup>8</sup>

## METHODS

### Data

For our analyses, we considered uPOC students to be Black, Hispanic/Latine, and Native American.<sup>9</sup> To understand the effects of affirmative action bans on J.D. completion, we first conducted several internet searches to identify those states that had implemented bans on affirmative action in higher education admission decisions. For each state, we referenced the relevant legislation that codified the ban, identifying the years in which the legislation was introduced and in which the law went into effect.

We utilize publicly available data from the Integrated Postsecondary Education Data System (IPEDS) to estimate the number of students completing J.D. programs at each public law school in every state. These data are aggregated at the institutional level based on surveys conducted by the U.S. Department of Education’s National Center for Educational Statistics (NCES) and include information regarding institutional characteristics, cost, admissions, enrollment, student financial aid, degree and certificate completions, student persistence (e.g., first-year retention rates), and institutional resources (IPEDS, n.d.). Surveys are conducted in the fall, winter, and spring each year (see Appendix for more information).

<b>Variable</b>	<b>Type</b>	<b>Data Source</b>
uPOC Graduate Enrollment	Outcome	IPEDS
uPOC J.D. Completion	Outcome	IPEDS
Ban Implementation	Predictor	Relevant Legislation
State UPOC Proportion	Covariate	U.S. Census Bureau

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<sup>8</sup> Initially, we set out to examine the effect of affirmative action bans on uPOC enrollment in graduate programs at public universities. The data on uPOC enrollment are unreliable for states with bans after 2007 due to changes in reporting requirements during the study period surrounding the definition of racial/ethnic identities. Thus, we focus here on J.D. completion, and include graduate enrollment for states that implemented affirmative action bans before 2007 for which we do not have pre-treatment data on J.D. completion.

<sup>9</sup> Since we use U.S. Census data, we rely on its definitions of racial/ethnic identities.

State GDP	Covariate	U.S. Census Bureau
State Likelihood of Banning Abortion	Covariate	Center for Reproductive Rights

**Table 1. Study Variables**

The most recently available data on J.D. completion is 2020–2021, but due to the varied responses across states to the COVID-19 pandemic, we dropped this year from the analysis. Thus, although the time period for these data varies by state, in general they range from 2008 to 2019.<sup>10</sup> Given the recency of IPEDS data on J.D. completions, pre-ban data on J.D. attainment among uPOC in California, Florida, Texas, and Washington are not available. Idaho implemented a ban in 2020, and therefore there is no available data on J.D. completion post implementation. Since the difference-in-differences approach requires measurement of the outcome both prior to and following treatment, these states are excluded from our analysis of J.D. completion.

Rather than completely exclude these states from the study, we use IPEDS data on graduate school enrollment to study how the implementation of an affirmative action ban impacted the enrollment of uPOC in California, Florida, Louisiana, Mississippi, Texas, and Washington (hereafter, “early adopters”).<sup>11</sup> These data are available prior to 2008; however, there is inconsistency in the reporting of race in 2007–2009. Thus, we restrict our analyses to the years preceding 2007.<sup>12</sup>

We also incorporate data from the U.S. Census Bureau for state-level characteristics that we used as covariates (e.g., gross domestic product [GDP]) in our models (see “Analytical Approach” below).

Lastly, as we note below regarding our approach to applying our doubly robust difference-in-differences approach, we use data from the Center for Reproductive Rights (CRR). In response to the Supreme Court’s reversal of *Roe v. Wade* in June 2022, the CRR rated each state according to its likelihood of outlawing or severely limiting abortion access (CRR, 2022). States were rated from one to five, with one representing expanded access to abortion, two representing legally protected access, three representing access that is not legally protected, four representing limited access and a high possibility of outlawing access, and five representing no access (i.e., states that made abortion illegal). This variable is a strong proxy for political climate and useful in predicting a state’s propensity to adopt an affirmative action ban.

<sup>10</sup> California was an exception; its data on J.D. completions dates back to 2004.

<sup>11</sup> We do this to identify whether similar trends observed in our J.D. completion analyses are observed among these states.

<sup>12</sup> The data on uPOC enrollment are unreliable for states with bans enacted after 2007 due to changes in reporting requirements during the study period surrounding the definition of racial/ethnic identities. In 2007, IPEDS released new guidance for reporting race/ethnicity data that was not uniformly required until 2010. Because of this, the data is inconsistent or missing for many states during this period.

<b>Treated State</b>	<b>Year Ban Legislation Introduced</b>	<b>Year Ban was Enacted</b>	<b>Last No Anticipation Year</b>	<b>First Post-Treatment Year</b>
California	1995	1996	1995	1997
Texas (and Louisiana and Mississippi) <sup>1</sup>	-	1996	1995	1997
Washington	1997	1998	1997	1999
Florida	1998	1999	1998	2000
Michigan	2005	2006	2008	2010
Nebraska	2007	2008	2010	2012
Arizona	2009	2010	2012	2014
New Hampshire	2011	2012	2014	2016
Oklahoma	2011	2012	2014	2016
Idaho <sup>2</sup>	2019	2020	2022	2024

**Table 2. Treated States with Ban Implementation and Treatment Years for Analyses**

*Note:* California, Florida, Texas, and Washington years refer to graduate enrollment analysis. Arizona, Michigan, Nebraska, New Hampshire, and Oklahoma years refer to the J.D. completion analysis.

<sup>1</sup> Texas' affirmative action ban was decided by court case and does not have a legislation introduction year: this decision also affected Louisiana and Mississippi (see Footnote 5).

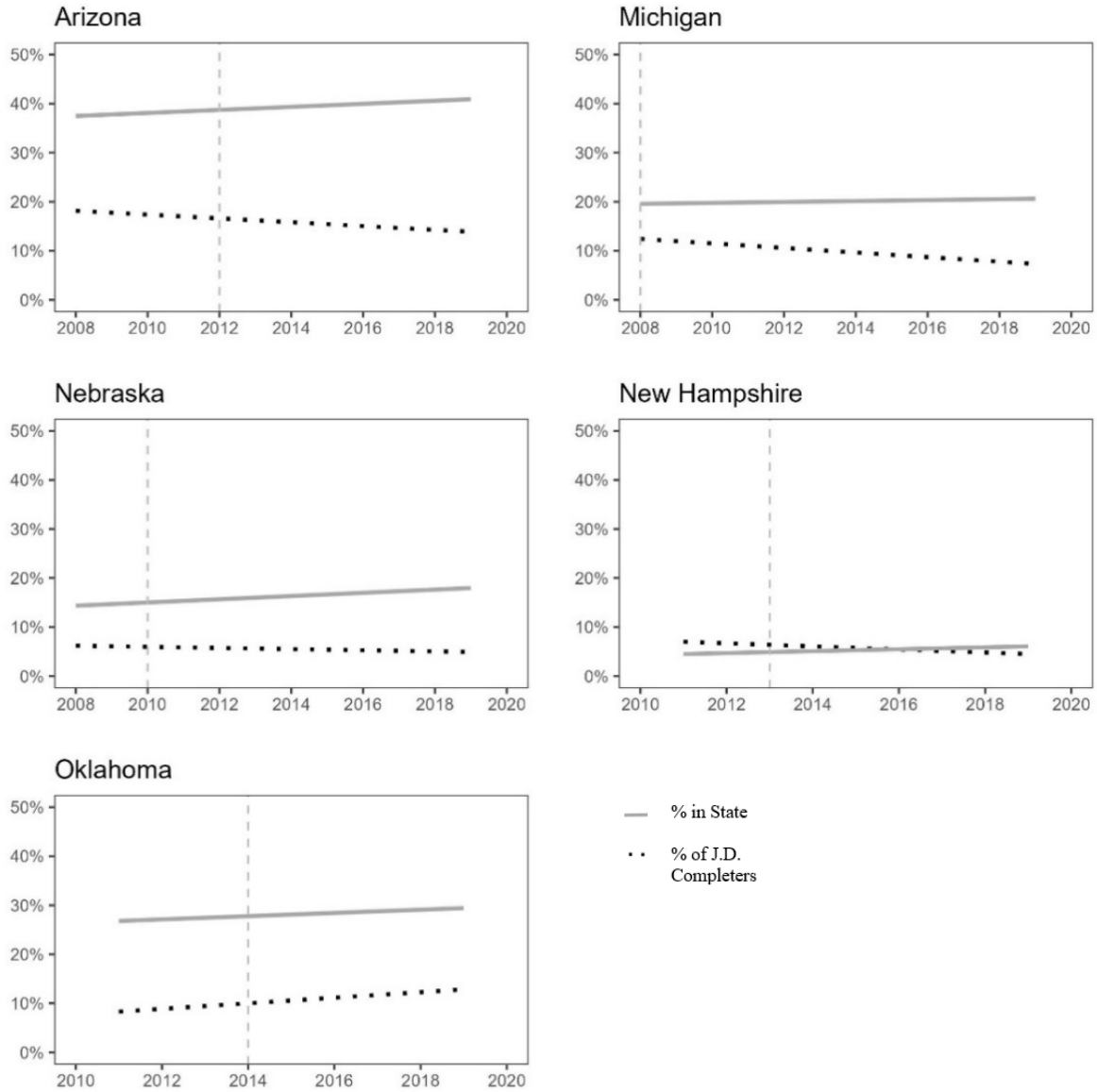
<sup>2</sup> Idaho was not included in any analysis due to its recency.

### **Analytical Approach**

We first examine the extent to which the proportion of uPOC J.D. completers (or uPOC enrollment in graduate programs for early-adopter states) changed pre-ban to post-ban. (See Figures 1 and 2.) However, this comparison does not account for confounding effects due to time (see Figure 3a).

**FIGURE 1**

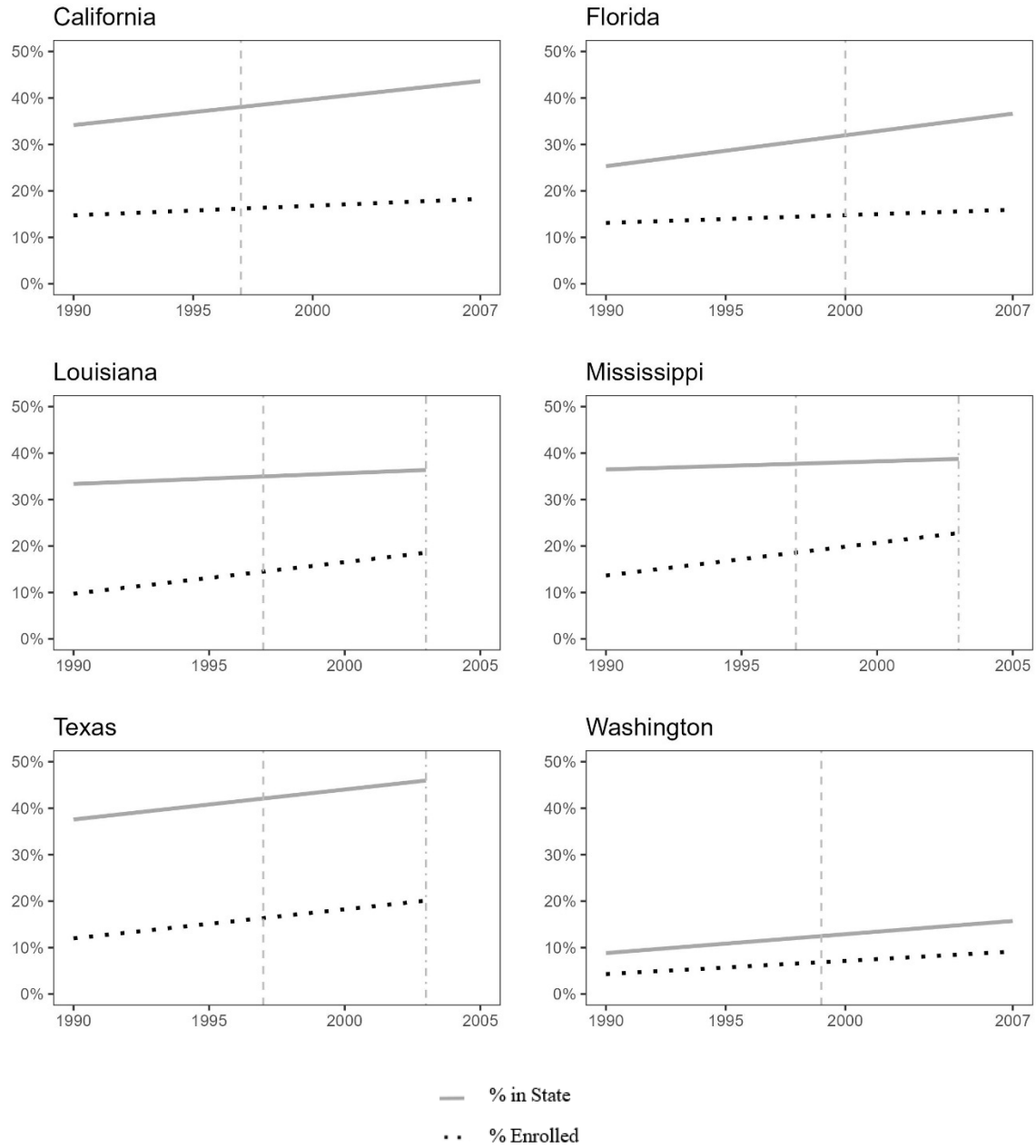
**Comparison of Percentage of uPOC J.D. Completers and uPOC in State Population (Treated States)**



*Note:* The vertical dashed lines indicate the first post-treatment year for that state.

**FIGURE 2**

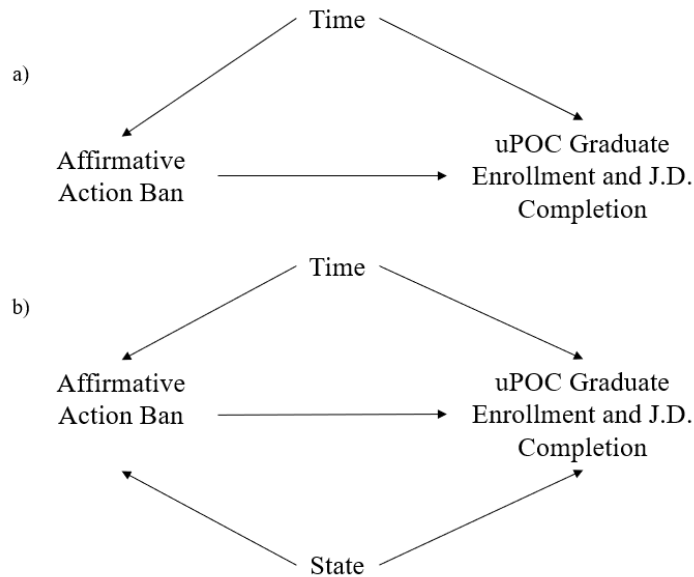
**Comparison of Percentage of uPOC Graduate School Enrollees and uPOC in State Population  
(Treated States)**



*Note:* The vertical dashed lines indicate the first post-treatment year for that state. Affirmative action was banned in Texas via court case in 1996, but was overturned in 2003. This was the same for Louisiana and Mississippi, which were also affected by the same case decision. Thus, in the images for Louisiana, Mississippi, and Texas the first dashed line represents the first post-treatment year, and the second line represents when the affirmative action ban was overturned.

To address the confounding related to time, we utilize a doubly robust staggered treatment difference-in-differences (DiD) method (Callaway & Sant’Anna, 2021; Sant’Anna & Zhao, 2020) to estimate the extent to which variation in the proportion of uPOC J.D. completers at public law schools was explained by the implementation of a state-level ban on race-conscious admission. The difference in difference approach matches a treatment group to a control group. However, to do so, it introduces a second possible confound, which is related to the group (i.e., state: see Figure 3b). We are able to address both time and state confounds by focusing on the within variation of the treatment and control groups and then comparing the within variation in the treatment group to that of the control group.

**FIGURE 3**  
**Causal Pathway Diagram<sup>13</sup>**



The staggered difference-in-difference extends this method to multiple time periods (Callaway & Sant’Anna, 2021) and allows us to estimate group-time treatment effects. There are still two critical assumptions to this extension of the DiD method. The first is that of parallel trends; that the trend of the treatment group would have followed the same path as the control group absent the intervention. Although by its definition, this assumption cannot be explicitly tested (we cannot know what would have happened if the treatment group had not gotten the treatment), we can examine whether the trends prior to the intervention are similar. This does not conclusively prove or disprove parallel trends—prior trends might be similar but parallel trends might still be violated, and vice versa (Huntington-Klein, 2022). To check for similarity in prior trends, we report dynamic treatment effects in the following section and explain what they mean regarding prior trends.

<sup>13</sup> Source: Adapted from Huntington-Klein, 2022.

To reduce the risk of violating the parallel trends assumption, we apply a doubly robust method (Sant’Anna & Zhao, 2020). We do this by, for each state (regardless of whether it adopted a ban), estimating its propensity to adopt an affirmative action ban using the following characteristics: state GDP, population of uPOC as a percentage of the state’s population, and likelihood of limiting abortion.<sup>14</sup> For each treatment state, we use these propensity scores to create a weighted comparison group from the remaining untreated states. We do this by weighting each control state by its inverse probability weighting, giving greater weight to those control states with the most similar propensity scores to the treatment state and incrementally less weight to those with less similar propensity scores. As a result, each treatment state is compared to the weighted average of its control group.

We then include the same covariates used in our propensity modeling as control variables in our DiD estimation, including as control variables the same covariates used to generate the inverse probability weights.<sup>15</sup> This allows us two opportunities to address the confounding influence of group and time, and better isolate the causal effects of an affirmative action ban. We perform an analysis for each treatment state/control pairing and then aggregate the results and adjust the standard errors.

The second critical assumption of the DiD methodology (whether staggered or not) is that anticipation of the policy should not alter behavior prior to the treatment (in this case, the effective date of the ban). Using the staggered DiD approach, we are able to avoid anticipation issues by selecting the first “pre-anticipation” period. In most cases, the legislation or the voter referendum banning affirmative action began one year prior to the codification of the ban. Thus, we assume that the students completing their J.D. studies two years after the ban are the last group to have been admitted to law school where the assumption of no anticipation still holds. Therefore, our analysis excludes the second year following ban implementation for each of the treated schools. Consequently, we estimate the effect of the affirmative action ban to be the difference between the proportion of J.D. degrees awarded to uPOC up to two years after the ban and the proportion awarded four years or more after the ban for each state. (See Table 2.)

For the six early-adopter states, we utilize the year before the ban was implemented as the last pre-anticipation year and the year after the ban was implemented as the first post-treatment year. (Note that although we include these analyses, our primary focus is on the five states for which we can estimate J.D. completion. We use these analyses primarily to identify whether any trends we observe in J.D. completion are also observed in graduate enrollment in these early-adopter states.)

Following the DiD analyses, we conduct sensitivity analyses.<sup>16</sup> A sensitivity analysis quantifies the amount of bias in the sample that would be necessary to change the interpretation of inferential findings or the direction of the relationships under study. Additionally, this technique determines the robustness of the findings against potentially confounding variables that were not measured or included in the statistical models.

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<sup>14</sup> We use the latter of these characteristics as a proxy for the political environment in the state.

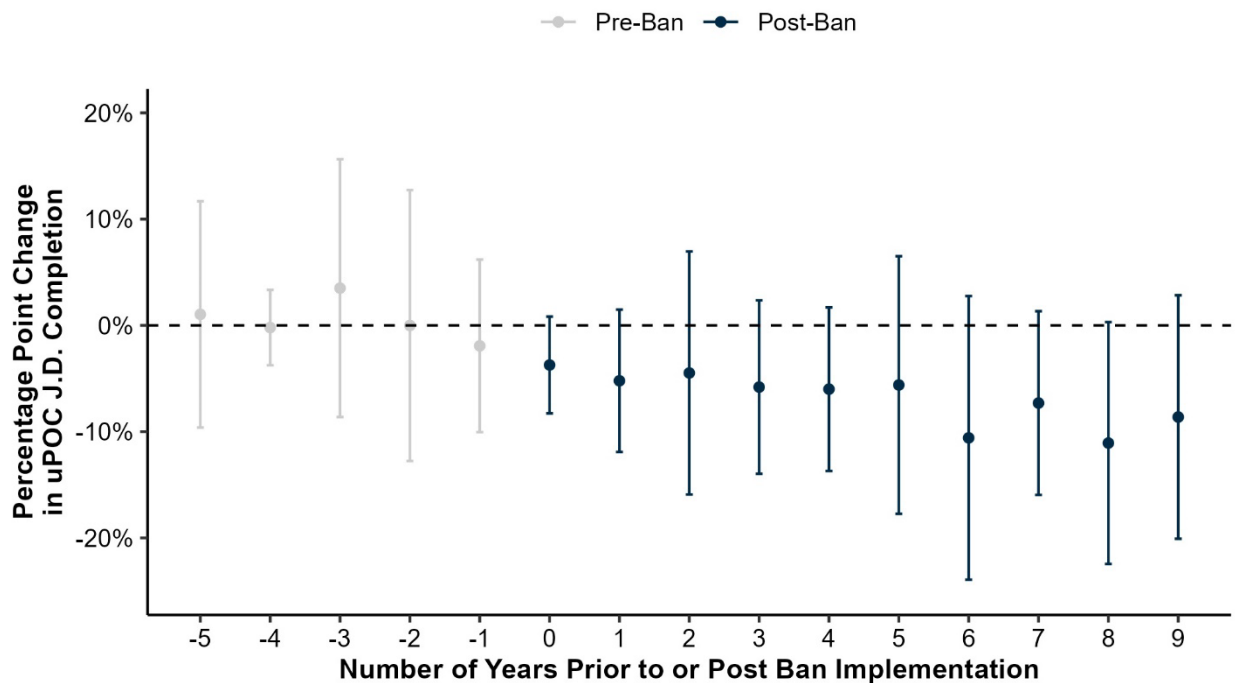
<sup>15</sup> We use the *did* package in R (Callaway & Sant’Anna, 2021) for our doubly robust staggered treatment difference in differences estimation.

<sup>16</sup> We use the *konfound* package in R (Rosenberg et al., 2018) to conduct our sensitivity analyses.

## Findings

Figure 4 shows the dynamic effects of adopting an affirmative action ban, with the red lines indicating pre-treatment effects (which, in a DiD model should approximate zero) and the teal lines indicating post-treatment effects. As shown in Figure 4, our model appears to satisfy the prior trends assumption; the size of the effects in the pre-treatment periods are virtually zero and none exceed the magnitude of any of the post-treatment effects. This indicates that the trends between the states with affirmative action bans and those without were sufficiently similar prior to the implementation of the ban and that any post-treatment effects can reasonably be attributed to the ban. On average, we find that adopting an affirmative action ban leads to a 5 percentage-point decrease in the proportion of uPOC completing their law degrees. The effect increases in magnitude over time, from a decrease of 4 percentage points one year after the ban to 7 percentage points five years later. The average effect, as well as five of the nine post-treatment estimates are statistically significant ( $p < 0.05$ ).

**FIGURE 4**  
**Dynamic Effects of Affirmative Action Bans on J.D. Completion**

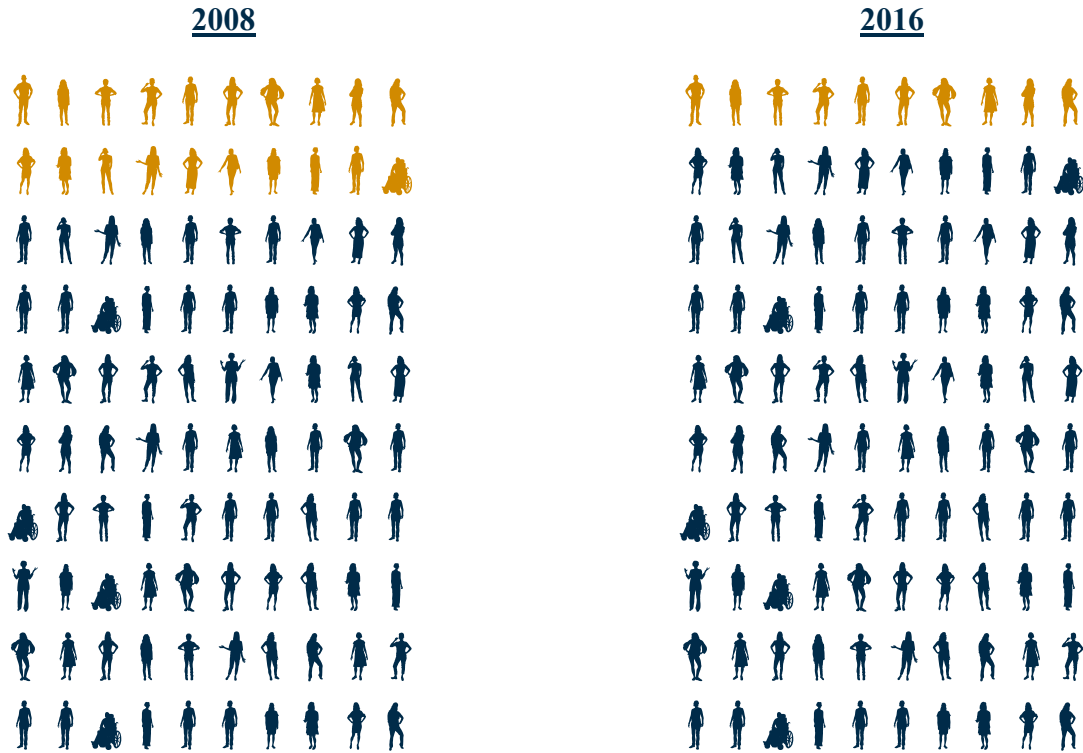


A simple hypothetical may better illustrate the practical importance of this effect. Take for example, a smaller public law school that graduates 100 total students, of which 20 identify as uPOC. If that school is located in a state that implements a ban in 2008, we would expect the number of uPOC graduates to decrease by 4 in 2009, 7 in 2014, and 10 in 2016, meanwhile the number of non-uPOC graduates would grow concomitantly (See Figure 5). Ultimately, the school would comprise nearly 90 percent White and Asian students. Meanwhile, the percentage of uPOC citizens in those states would grow from an average 20 percent to 22 percent over that same 8-year period.



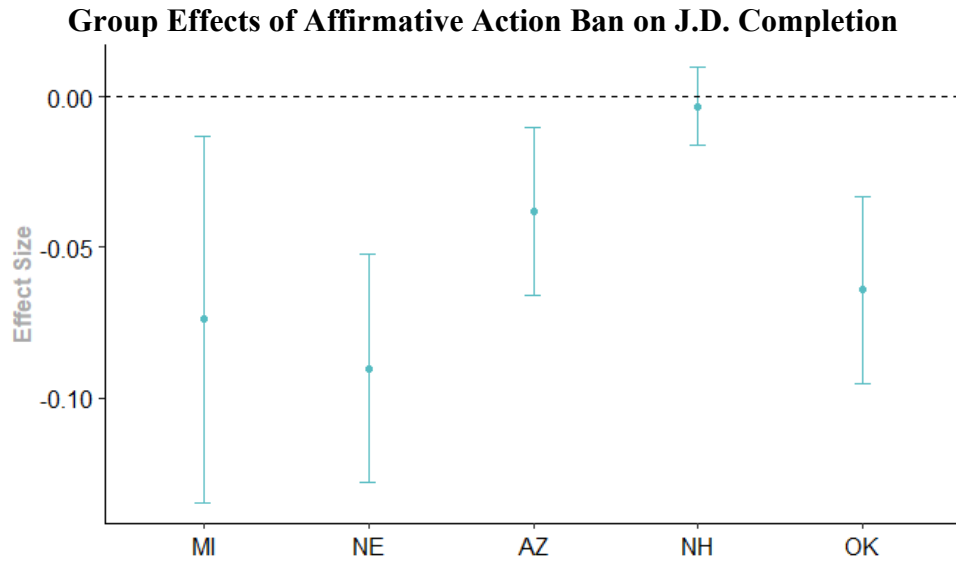
FIGURE 5

Proportion of Graduating Law School Classes That Are uPOC  
uPOC Students Are Represented in Gold



We also examine the group effects for each of the five states that implemented affirmative action bans after 2007 (see Figure 6). We find that the average treatment effect on the treated (ATT) is a decrease of 3 percentage points, although the individual effects range from a decrease of 1 percentage point to a decrease of 7 percentage points. Michigan, Nebraska, and Oklahoma all have statistically significant negative relationships with completion. The average treatment effect (ATT), as well as the individual effects for four of the five states are statistically significant ( $p < 0.05$ ). Arizona and New Hampshire have non-significant but negative relationships with uPOC completion post-ban (Table 5).

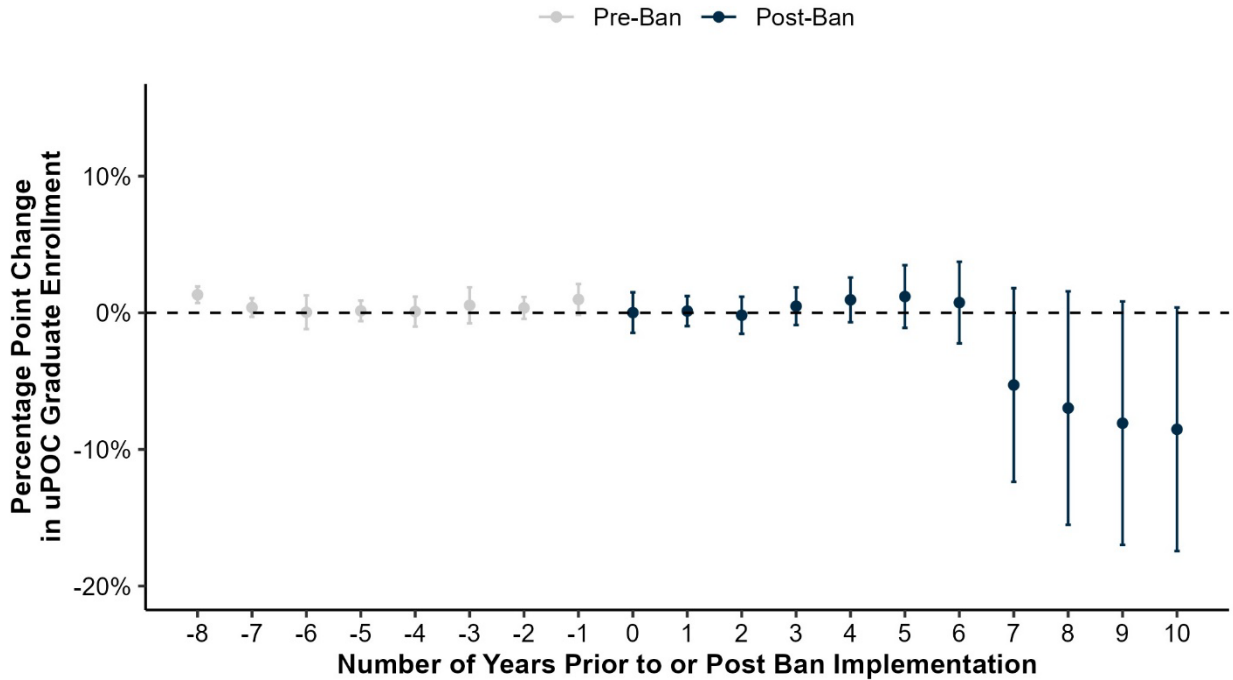
**FIGURE 6**



For the early-adopter states, we find a similar, albeit smaller, negative association between affirmative action ban implementation and the proportion of uPOC enrolled in graduate programs. On average, an affirmative action ban resulted in a 2 percentage-point decrease in the proportion of uPOC graduate school enrollees (see Figure 7). The average dynamic effect is statistically significant, but none of the post-treatment individual effects are. The average effect is largely driven by the periods seven or more years post ban implementation around which the confidence intervals are considerably wider. This is caused by the reduction in the number of states for which we have data seven or more years post treatment. (Florida and Washington implemented bans in 1998 and 1997, respectively.)

FIGURE 7

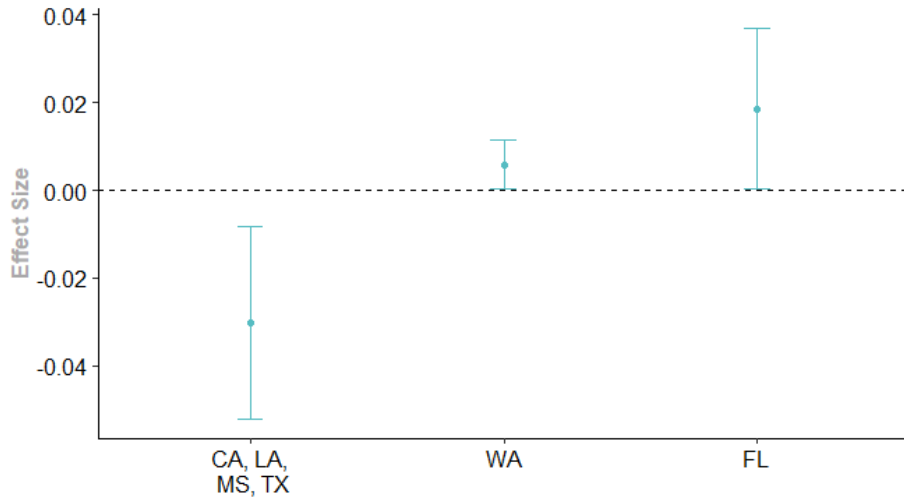
Dynamic Effects of Affirmative Action Bans on Graduate Enrollment



Grouping the six early-adopter states by the year in which the ban was implemented, we find that, similar to our J.D. completion results, implementation of an affirmative action ban resulted in a 2 percentage-point decrease in uPOC enrollment in graduate school. Notably, states that implemented their bans in 1996 (California, Louisiana, Mississippi, and Texas) primarily drive the negative effect. In these states, adopting a ban resulted in an average 4 percentage-point decrease in uPOC enrollment in graduate school ( $p < 0.05$ ). Interestingly, Florida and Washington have a small positive association between an affirmative action ban and uPOC enrollment. This may indicate that race was a non- or insignificant factor in admissions decisions at Florida and Washington’s public colleges and universities prior to the adoption of their affirmative action bans.

**FIGURE 8**

**Group Effects of Affirmative Action Ban on Graduate Enrollment**



In summation of the above findings, we see that affirmative action bans are detrimental for uPOC hoping to complete their law degrees or enroll in a graduate-level program. The implementation of a state-level ban significantly decreases the proportion of uPOC in terms of both J.D. completion and graduate enrollment (for early ban adoption states), though the effects are larger for J.D. completion.

## DISCUSSION/RECOMMENDATIONS

In the literature review above, we note the disparities between the proportion of uPOC in the United States and the proportion receiving graduate and professional degrees. When it comes to legal education and the legal profession, these disparities grow. Even while diversity is marginally improving in 1L cohorts (ABA, 2022a), it will take time for the proportionality to catch-up to our national demography. It will take even longer for those effects to trickle into the demography of practicing attorneys. For example, the ABA (2022a) recently reported that 61 percent of law students are White. This is a positive trend. But there are 1.3 million active lawyers in the U.S., 81 percent of whom are White. On the other hand, law schools graduate approximately 39,000 students on average per year (ABA, 2022b). This means that systematic change in the demographic composition of practicing attorneys will take time and a consistent effort to increase the proportion of uPOC law school graduates.

Currently, 13 percent (approximately 169,000) of practicing attorneys are 65 years of age or older and likely nearing retirement. Considering the aging of the U.S. population in general, this segment of the legal profession is likely to grow. Given the increased racial and ethnic diversity of law school graduates over the last two decades, it is reasonable to assume that the vast majority of lawyers nearing retirement are White. This means that the next several years hold the potential to drastically alter the demographic composition of practicing attorneys if, as expected, predominantly White lawyers retire and are replaced at a greater rate by uPOC law school graduates and bar admittees.

On the other hand, any negative impact on enrollment among uPOC law students will have a lasting impact on the long-term objective of aligning the population of practicing attorneys with the U.S. population. Our findings suggest that, although the size of the effects varies, on average, affirmative action bans are having such an effect—these bans negatively affect the proportion of uPOC completing a J.D. and enrolling in graduate programs over time.

As the population of uPOC increases in the United States, we would expect to see steadily and proportionately increasing numbers in law school enrollment and completion. However, our findings indicate that despite increasing racial and ethnic diversity of the overall demography of the U.S., the proportion of advanced degrees awarded to uPOC students is declining in states with affirmative action bans. If this trend continues or is exacerbated by a federal ban via the impending Supreme Court ruling, the equity gap between uPOC and non-uPOC at the graduate and professional level will only grow over time, making it difficult if not impossible to achieve racial diversity and representation in the profession.

Our findings support several previous studies on uPOC enrollment in graduate programs of study (see Garces, 2012a, 2012b, 2013; Garces & Mickey-Pabello, 2015; Mickey-Pabello & Garces, 2018). Affirmative action bans detrimentally affect the proportion of students of color who complete a J.D. or enroll in graduate study. We do not, however, find a decrease as large as the one suggested by Rothstein and Yoon (2008). In their study, Rothstein and Yoon estimated a 60 percent decline in the number of Black 1L students enrolled without affirmative action. We too estimate a decrease in uPOC law school graduates post-affirmative action ban, however, we observe a smaller decline. In part, the differences between our findings and Rothstein and

Yoon's (2008) may be due to our estimation techniques: where they used grid data analysis, we used difference-in-differences estimation. The benefit of DiD estimation is that we are able to control for more extraneous variables than possible in a grid analysis.

### **Recommendations**

As we wait to hear on the determination of the Supreme Court on affirmative action, it is important to note that these policies were adopted to give equal opportunity to communities who have been and, in many cases, continue to be harmed by discriminatory systems and practices. Additionally, studies that simulate the impact of race-neutral admission practices on uPOC enrollment find they do not yield the same level of racial and ethnic diversity achieved with race-conscious admission practices (e.g., Reardon et al., 2017; Wightman, 1997). Despite the partisan controversy surrounding race-conscious admissions, our findings add to empirical research demonstrating the detrimental impact of eliminating affirmative action in college and university admissions. Should the Supreme Court rule against race-conscious admissions, those seeking to diversify incoming classes of law and other graduate students will have to rethink their approaches to comply with the new legal landscape. In the meantime, it may be beneficial to include SES indicators as a component of affirmative action *with* race as Pruitt (2015) suggests. Further, it could allow for experimentation to examine how student characteristics other than race might continue to yield racial and ethnic diversity in an era of race-neutral admissions—an idea that Nelson et al. (2016) examined in their study. Likewise, we recommend that law and graduate admissions councils in states allowing race-conscious admissions continue to leverage these practices while they can.

### **Limitations**

As with any study, there are limitations to our findings. First, our analysis is limited to public law and graduate schools, which are legally bound by affirmative action policy changes. Private schools are not bound by these laws. Consequently, states with a high proportion of public law schools (and graduate schools in general) will, presumably, be more affected than those with more private schools. In our analysis, our treated states consisted of 42 percent public schools overall, while nationally 43 percent of law schools are public schools. For the states specifically included in our J.D. completion analysis, 57 percent of the law schools are public.

Moreover, schools set their own admissions policies and there is variation even within states regarding whether race is a consideration in admissions. This means that affirmative action bans would have a differential effect within states. For example, The University of Texas at Austin considers race in admissions, while Texas A&M University does not. We would expect that if Texas were to adopt an affirmative action ban, the effect would be more substantial at the University of Texas at Austin and essentially nonexistent at Texas A&M University. This would mean that our results likely underestimate the effects these bans would have on uPOC J.D. completion and graduate enrollment—these results should therefore be considered conservative. Regrettably, data that are sufficiently granular to correct for this are unavailable.

Second, due to the 2007 change in the collection of race/ethnicity data and the subsequent impact on missing data in IPEDS, we are unable to provide a complete analysis of all states with an affirmative action ban for J.D. completion. For several of these states (the early adopters), we were able to supplement this data with graduate enrollment. Due to the data inconsistency, we are unable to compare the extent to which affirmative action bans affect graduate enrollment in

early adopter states to those that implemented bans after 2007. Thus, our analyses of graduate enrollment are an imperfect proxy for J.D. completion. Additionally, the ban in Idaho was so recent that we are unable to analyze its data in either model, but we hope to do so in the future when more post-treatment information is available.

Finally, although we control for as much variation as possible in our analysis, the possibility of missing other influential variables is ever present. To sustain our conclusions, we conducted sensitivity analyses and robustness checks. The sensitivity analyses validate our findings for 3 out of 4 models: the J.D. completion dynamic effects model, the J.D. completion group effects model, and the graduate enrollment dynamic effects model. Sensitivity analyses do not support our findings for the graduate enrollment group effects model. To invalidate our findings regarding J.D. completion dynamic and group effects, an unmeasured confounding variable would have to be correlated at  $r = |0.49|$  or  $r = |0.39|$  respectively (both moderately strong correlations) with both the predictor and outcome variables. To invalidate our findings regarding graduate enrollment dynamic effects, an unmeasured confounding variable would only need a weak correlation of  $r = |0.13|$  with both the predictor and outcome variables to substantially change our inferences.

To further test the robustness of our results, we systematically conduct all of the analyses described above multiple times, removing a different treatment state each time. Doing so diminishes the agreement in prior trends and results in more sensitive, and therefore more unreliable estimates. This is an indication that the models reported above are the best fit possible with the data. Lastly, we test the models with neighboring non-treated states as stand-ins for the treated states. This allows us to determine whether the relationships from our DiD analysis are spurious. The models with stand-in states are not significant and do not pass the sensitivity analyses.

Despite these limitations, we consider our results to be a reasonable and conservative estimate of the negative effects of affirmative action bans on the J.D. completion (and graduate enrollment) of uPOC.

## CONCLUSION

In sum, the present study establishes one primary conclusion: banning affirmative action has a negative impact on the J.D. completion and graduate school enrollment of uPOC. This is detrimental for underrepresented people of color in that it negatively affects their lifetime earning potential and feelings of belonging in an academic environment. This is also detrimental for other students enrolled in graduate study or completing their J.D.s, as institutional diversity has educational benefits for all students (Aronson & Bridgeman, 1979; Denson & Chang, 2016; Gurin et al., 2002; Pettigrew & Tropp, 2006; Scott et al., 2023; Whitla et al., 2003; Wolfe & Fletcher, 2013). Based on our findings, and those before us, we echo the conclusion that affirmative action is still serving an important purpose, and that banning it in all states would negatively impact the opportunities for uPOC in legal education specifically and graduate education broadly.

## REFERENCES

- Alexander, M. (2010). *The new Jim Crow: Mass incarceration in the age of colorblindness*. The New Press.
- Allen, W. R., & Solorzano, D. (2001). Affirmative action, educational equity and campus racial climate: A case study of the University of Michigan Law School. *Berkeley La Raza Law Journal*, 12(2), 237–364. <https://doi.org/10.15779/Z388D40>
- American Bar Association (2022a). *ABA profile of the legal profession 2022*. <https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf>
- American Bar Association (2022b). *Standard 509 disclosure*. <https://www.abarequireddisclosures.org/Disclosure509.aspx>
- Antonovics, K., & Backes, B. (2014). The effect of banning affirmative action on college admissions policies and student quality. *Journal of Human Resources*, 49(2), 295–322. <https://doi.org/10.3368/jhr.49.2.295>
- Aronson, E., & Bridgeman, D. (1979). Jigsaw groups and the desegregated classroom: In pursuit of common goals. *Personality and Social Psychology Bulletin*, 5(4), 438–446. <https://doi.org/10.1177/014616727900500405>
- Atkins, T. D. (2020). #ForTheCulture: Generation Z and the future of legal education. *Michigan Journal of Race and Law*, 26(1), 115–170. <https://doi.org/10.36643/mjrl.26.1.fortheculture>
- Backes, B. (2012). Do affirmative action bans lower minority college enrollment and attainment? *Journal of Human Resources*, 47(2), 435–455. <https://doi.org/10.3368/jhr.47.2.435>
- Bonadies Torres, G. (2020, January 6). *Affirmative action in higher education: Relevance for today's racial justice battlegrounds*. American Bar Association. [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/blink-to-the-future-part-ii/affirmative-action-in-higher-education--relevance-for-today-s-rac/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/blink-to-the-future-part-ii/affirmative-action-in-higher-education--relevance-for-today-s-rac/)
- Bowman, N. A., Stroup, N. R., & Fenton-Miller, S. (2022). Promoting graduation outcomes for racially minoritized law school students: Examining the role of finances, racial representation, and prestige. *Journal of Postsecondary Student Success*, 1(4), 54–83. [https://doi.org/10.33009/fsop\\_jpss130217](https://doi.org/10.33009/fsop_jpss130217)
- Bravata, D. M., Watts, S. A., Keefer, A. L., Madhusudhan, D. K., Taylor, K. T., Clark, D. M., Nelson, R. S., Cokley, K. O., & Hagg, H. K. (2020). Prevalence, predictors, and treatment of impostor syndrome: A systematic review. *Journal of General Internal Medicine*, 35, 1252–1275. <https://doi.org/10.1007/s11606-019-05364-1>



- Callaway, B., & Sant'Anna, P. H. C. (2021). Difference-in-differences with multiple time periods. *Journal of Econometrics*, 225(2), 200–230.  
<https://doi.org/10.1016/j.jeconom.2020.12.001>
- Carnevale, A. P., Rose, S. J., & Cheah, B. (2013). *The college payoff: Education, occupations, lifetime earnings*. Georgetown University: Center on Education and the Workforce.  
<https://repository.library.georgetown.edu/bitstream/handle/10822/559300/collegepayoff-complete.pdf>
- Carter, P. L., & Welner, K. G. (Eds.). (2013). *Closing the opportunity gap: What America must do to give every child an even chance*. Oxford University Press.
- Center for Reproductive Rights. (2022). *After Roe fell: Abortion laws by state*.  
<https://reproductiverights.org/maps/abortion-laws-by-state/>
- Chan, J., & Eyster, E. (2003). Does banning affirmative action lower college student quality? *American Economic Review*, 93(3), 858–872.  
<https://doi.org/10.1257/000282803322157124>
- Chetty, R., & Hendren, N. (2018). The impacts of neighborhoods on intergenerational mobility I: Childhood exposure effects. *The Quarterly Journal of Economics*, 133(3), 1107–1162.  
<https://doi.org/10.1093/qje/qjy007>
- Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241.
- Cortes, K. E. (2010). *Do bans on affirmative action hurt minority students? Evidence from the Texas Top 10% Plan* (IZA Discussion Paper No. 5021). Institute for the Study of Labor (IZA). <https://www.iza.org/publications/dp/5021/do-bans-on-affirmative-action-hurt-minority-students-evidence-from-the-texas-top-10-plan>
- Denson, N., & Chang, M. J. (2016). Dynamic relationships: Identifying moderators that maximize benefits associated with diversity. *The Journal of Higher Education*, 86(1), 1–37. <https://doi.org/10.1080/00221546.2015.11777355>
- Elias, J., & Perez, N. (2022, September 16). What would the end of race-conscious admissions mean for minority enrollment? *The Chronicle of Higher Education*, 69(2), 1.
- Espinosa, L. L., Murk, J. M., Taylor, M., & Chessman, H. M. (2019). *Race and ethnicity in higher education: A status report*. American Council on Education.  
<https://www.equityinhighered.org/resources/report-downloads/race-and-ethnicity-in-higher-education-a-status-report/>
- Feingold, J., & Souza, D. (2013). Measuring the racial unevenness of law school. *Berkeley Journal of African-American Law & Policy*, 15(1), 71–116.  
<https://doi.org/10.15779/Z384C8W>

- Fischer, M. J., & Massey, D. S. (2007). The effects of affirmative action in higher education. *Social Science Research*, 36(2), 531–549. <https://doi.org/10.1016/j.ssresearch.2006.04.004>
- Fisher v. University of Texas at Austin*, 570 U.S. 297 (2013). <https://www.law.cornell.edu/supremecourt/text/11-345>
- Fisher v. University of Texas at Austin*, 579 U.S. 365 (2016). <https://www.law.cornell.edu/supremecourt/text/14-981>
- Gaertner, M. N., & Hart, M. (2013). Considering class: College access and diversity. *Harvard Law and Policy Review*, 7(2), 367–403. <https://scholar.law.colorado.edu/faculty-articles/107/>
- Gaertner, M. N., & Hart, M. (2015). From access to success: Affirmative action outcomes in a class-based system. *University of Colorado Law Review*, 86(2), 431–476. <https://scholar.law.colorado.edu/faculty-articles/47>
- Garces, L. M. (2012a). *The impact of affirmative action bans in graduate education*. The Civil Rights Project. <https://files.eric.ed.gov/fulltext/ED533648.pdf>
- Garces, L. M. (2012b). Racial diversity, legitimacy, and the citizenry: The impact of affirmative action bans on graduate school enrollment. *The Review of Higher Education*, 36(1), 93–132. <https://doi.org/10.1353/rhe.2012.0050>
- Garces, L. M. (2013). Understanding the impact of affirmative action bans in different graduate fields of study. *American Educational Research Journal*, 50(2), 251–284. <https://doi.org/10.3102/0002831212470483>
- Garces, L. M., & Mickey-Pabello, D. (2015). Racial diversity in the medical profession: The impact of affirmative action bans on underrepresented student of color matriculation in medical schools. *The Journal of Higher Education*, 86(2), 264–294. <https://doi.org/10.1353%2Fjhe.2015.0009>
- Gurin, P., Dey, E. L., Hurtado, S., & Gurin, G. (2002). Diversity and higher education: Theory and impact on educational outcomes. *Harvard Educational Review*, 72(3), 330–367. <https://doi.org/10.17763/haer.72.3.01151786u134n051>
- Gratz v. Bollinger*, 539 U.S. 244 (2003). <https://www.law.cornell.edu/supct/html/02-516.ZS.html>
- Grutter v. Bollinger*, 539 U.S. 306 (2003). <https://www.law.cornell.edu/supct/html/02-241.ZS.html>
- Hersh, J. (2021). *Affirmative action and the leadership pipeline* (Vanderbilt Law Research Paper No. 21-23). [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3850294#](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3850294#)

- Hoover, E. (2022, September 2). *Affirmative action's big win always had an asterisk*. The Chronicle of Higher Education. <https://www.chronicle.com/article/affirmative-actions-big-win-always-had-an-asterisk>
- How bans on affirmative action impact black student college graduation rates*. (2012, November 30). The Journal of Blacks in Higher Education. <https://www.jbhe.com/2012/11/how-bans-on-affirmative-action-impact-black-student-college-graduation-rates/>
- Huntington-Klein, N. (2022). *The effect: An introduction to research design and causality*. Chapman and Hall/CRC.
- Integrated Postsecondary Education Data System. (n.d.). *IPEDS Survey Methodology*. <https://nces.ed.gov/ipeds/ReportYourData/IpedsSurveyMethodology>
- James-Gallaway, C. D., & James-Gallaway, A. D. (2022). Why opportunity isn't enough: Restrictive v. expansive views of equality, Texas Top Ten Percent Policy, and race liberalism. *Professional Educator*, 45(1), 1–12. <https://doi.org/10.47038/tpe.45.01.01>
- Johnson, L. B. (1966). *Public Papers of the Presidents of the United States: Lyndon B. Johnson, 1965, Book II*. U.S. Government Printing Office.
- Jones, T., & Nichols, A. H. (2020). *Hard truths: Why only race-conscious policies can fix racism in higher education*. The Education Trust. <https://files.eric.ed.gov/fulltext/ED603265.pdf>
- Jones, D. J., & Watson, B. C. (1990). *High-risk students and higher education: Future trends*. ASHE/ERIC Higher Education Reports. <https://eric.ed.gov/?id=ED321726>
- Kent, J. D., & McCarthy, M. T. (2016). *Holistic review in graduate admissions: A report from the Council of Graduate Schools*. Council of Graduate Schools. [https://www.k-state.edu/grad/faculty-resources/resources/CGS\\_HolisticReview\\_final\\_web.pdf](https://www.k-state.edu/grad/faculty-resources/resources/CGS_HolisticReview_final_web.pdf)
- Kidder, W. C. (2003). The struggle for access from *Sweatt* to *Grutter*: A history of African American, Latino, and American Indian law school admissions, 1950–2000. *Harvard Blackletter Law Journal*, 19, 1–35.
- Lancaster, C., Xu, Y., Ovrebo, E., & Hosman, E. (2019). A critical race inquiry of African American female law students' educational experiences at a racially diverse law school. *Journal of Education & Social Policy*, 6(2), 21–31. <https://doi.org/10.30845/jesp.v6n2p4>
- Law School Survey of Student Engagement. (2020). *Annual results 2020 diversity & exclusion: Diversity skills*. <https://lssse.indiana.edu/blog/annual-results-2020-diversity-exclusion-diversity-skills/>
- Long, M. C., & Bateman, N. A. (2020). Long-run changes in underrepresentation after affirmative action bans in public universities. *Educational Evaluation and Policy Analysis*, 42(2), 188–207. <https://doi.org/10.3102/0162373720904433>

- Michel, R. S., Belur, V., Naemi, B., & Kell, H. J. (2019). Graduate admissions practices: A targeted review of the literature. *ETS Research Report Series*, 2019(1), 1–18. <https://doi.org/10.1002/ets2.12271>
- Mickey-Pabello, D., & Garces, L. M. (2018). Addressing racial health inequities: Understanding the impact of affirmative action bans on applications and admissions in medical schools. *American Journal of Education*, 125(1), 79–108. <https://doi.org/10.1086/699813>
- Mottley, M. (2015). Taking a step back from civil rights: The Supreme Court’s approval of affirmative action bans. *Journal of Law & Education*, 44(1), 155–163.
- Museus, S. D., Wang, A. C., White, H. H., & Na, V. S. (2019). A critical analysis of media discourse on affirmative action and Asian Americans. *New Directions for Higher Education*, 2019(186), 11–24. <https://doi.org/10.1002/he.20320>
- Nadel, M. (2006). Retargeting affirmative action: A program to serve those most harmed by past racism and avoid intractable problems triggered by per se racial preferences. *St. John’s Law Review*, 80(1), 323–388. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=897989](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=897989)
- National Association for Law Placement. (2023). *Report on diversity in U.S. law firms*. [https://www.nalp.org/uploads/Research/2022NALPReportonDiversity\\_Final.pdf](https://www.nalp.org/uploads/Research/2022NALPReportonDiversity_Final.pdf)
- National Center for Education Statistics. (2020). *Degrees conferred by race/ethnicity and sex*. <https://nces.ed.gov/fastfacts/display.asp?id=72>
- Nelson, E. S., Pitner, R., & Pratt, C. D. (2016). Assessing the viability of race-neutral alternatives in law school admissions. *Iowa Law Review*, 102(5), 2187–2234.
- Onwuachi-Willig, A., Houh, E., & Campbell, M. (2009). *Cracking the egg: Which came first – stigma or affirmative action?* [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1295357](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1295357)
- Parrish, T. B., & Hikido, C. S. (1998). *Inequalities in public school district revenues*. National Center for Education Statistics. <https://eric.ed.gov/?id=ED423261>
- Pettigrew, T. F., & Tropp, L. R. (2006). A meta-analytic test of intergroup contact theory. *Journal of Personality and Social Psychology*, 90(5), 751–783. <https://doi.org/10.1037/0022-3514.90.5.751>
- Pruitt, L. R. (2015). The false choice between race and class and other affirmative action myths. *Buffalo Law Review* 63(981). [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2652923](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2652923)

- Quillian, L. (2017). Segregation as a source of contextual advantage: A formal theory with application to American cities. *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 3(2), 152–169. <https://doi.org/10.7758/rsf.2017.3.2.07>
- Quintanilla, V. D., Erman, S., Green, D., Murphy, M. C., & Walton, G. (2020). Evaluating productive mindset interventions that promote excellence on California’s bar exam. <https://mindsetsinlegaleducation.com/wp-content/uploads/2020/10/MILE-ExecutiveSummary.pdf>
- Raghupathi, V., & Raghupathi, W. (2020). The influence of education on health: An empirical assessment of OECD countries for the period 1995–2015. *Archives of Public Health*, 78, Article 20. <https://doi.org/10.1186/s13690-020-00402-5>
- Reardon, S. F., Baker, R., Kasman, M., Klasik, D., & Townsend, J. (2017). *Can socioeconomic status substitute for race in affirmative action college admissions policies? Evidence from a simulation model (CEPA Working Paper No. 15-04)*. Stanford Center for Educational Policy Analysis. <https://eric.ed.gov/?id=ED580828>
- Reardon, S. F., & Owens, A. (2014). 60 years after *Brown*: Trends and consequences of school segregation. *Annual Review of Sociology*, 40(1), 199–218. <https://doi.org/10.1146/annurev-soc-071913-043152>
- Regents of the University of California v. Bakke*, 438 U.S. 265 (1978). [https://www.law.cornell.edu/supremecourt/text/438/265/USSC\\_PRO\\_438\\_265\\_76-811](https://www.law.cornell.edu/supremecourt/text/438/265/USSC_PRO_438_265_76-811)
- Robbins, A. (2020). Preventing attrition: Critical interventions to close the racial gap in non-transfer attrition. *Widener Law Review*, 26(2), 143–180.
- Rocconi, L.M., Taylor, A. N., Haeger, H., Zilvinskis, J. D., & Christensen, C. R. (2019). Beyond the numbers: An examination of diverse interactions in law school. *Journal of Diversity in Higher Education*, 12(1), 27–37. <https://doi.org/10.1037/dhe0000080>
- Rosenberg, J. M., Xu, R., Lin, Q., Maroulis, S., & Frank, K. A. (2018). *28onfound: Quantify the robustness of causal inferences*. <https://cran.r-project.org/package=28onfound>
- Rothstein, J. & Yoon, A. H. (2008). *Affirmative action in law school admissions: What do racial preferences do? (NBER Working Paper 14276)*. National Bureau of Economic Research. <https://www.nber.org/papers/w14276>
- Sander, R. H. (2004). A systemic analysis of affirmative action in American law schools. *Stanford Law Review*, 57(2), 367–483. <http://dx.doi.org/10.2307/40040209>
- Sander, R. H. (2019). Are law schools engines of inequality? *Journal of Law and Education*, 48(2), 243–263.

- Sant'Anna, P. H. C., & Zhao, J. (2020). Doubly robust difference-in-differences estimators. *Journal of Econometrics*, 219(1), 101–122.  
<https://doi.org/10.1016/j.jeconom.2020.06.003>
- Schmidt, P. (2008, February 8). Study challenges assumptions about affirmative-action bans. *The Chronicle of Higher Education*, 54(22), A20–A21.
- Scott, J., Wilson, P., Cochran, T., & Pals, A. M. (2023). *The educational benefits that flow from diversity: Effects of campus diversity on attrition, grades, and first-time bar passage among underrepresented law students of color (AccessLex Institute Working Paper)*. AccessLex Institute.
- Sowell, R., Allum, J., & Okahana, H. (2015). *Doctoral initiative on minority attrition and completion*. Council of Graduate Schools.  
[https://legacy.cgsnet.org/ckfinder/userfiles/files/Doctoral\\_Initiative\\_on\\_Minority\\_Attrition\\_and\\_Completion\\_2015.pdf](https://legacy.cgsnet.org/ckfinder/userfiles/files/Doctoral_Initiative_on_Minority_Attrition_and_Completion_2015.pdf)
- Taylor, A. N. (2018). Robin Hood, in reverse: How law school scholarships compound inequality. *Journal of Law & Education*, 47(1), 41–108.
- Taylor, A. N. (2019). The marginalization of black aspiring lawyers. *FIU Law Review*, 13(3), 489–512.
- Thomas, K. & Cochran, T. (2018, September 18). *ABA data reveals minority students are disproportionately represented in attrition figures*. AccessLex Institute.  
<https://www.accesslex.org/xblog/aba-data-reveals-minority-students-are-disproportionately-represented-in-attrition-figures>
- Tienda, M., & Zhao, L. (2017). Institutional and ethnic variations in postgraduate enrollment and completion. *Journal of Higher Education*, 88(4), 561–592.  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5589192/>
- U.S. Census Bureau. (2021). *Table: Race and Hispanic Origin of United States Citizens and Permanent Residents*. <https://www.census.gov/quickfacts/fact/table/US/PST045221>
- Vespa, J., Medina, L., & Armstrong, D. M. (2018). *Demographic turning points for the United States: Population projections for 2020 to 2060*. U.S. Census Bureau.  
<https://www.census.gov/content/dam/Census/library/publications/2020/demo/p25-1144.pdf>
- Whitla, D. K., Orfield, G., Silen, W., Teperow, C., Howard, C., & Reede, J. (2003). Educational benefits of diversity in medical school. *Academic Medicine*, 78(5), 460–466.
- Wightman, L. F. (1997). The threat to diversity in legal education: An empirical analysis of the consequences of abandoning race as a factor in law school admission decisions. *New York University Law Review*, 72(1), 1–53.



- Wightman, L. F. (1998). *LSAC national longitudinal bar passage study*. Law School Admission Council. <https://eric.ed.gov/?id=ED469370>
- Williams, D. C. (2021). Black law student attrition in the age of affirmative action: Why America's current diversity framework is failing. *University of Toledo Law Review*, 52(4), 653–670.
- Wolfe, B., & Fletcher, J. (2013). *Estimating benefits from university-level diversity (NBER Working Paper 18812)*. National Bureau of Economic Research. <https://www.nber.org/papers/w18812>
- Xiang, A., & Rubin, D. B. (2015). Assessing the potential impact of a nationwide class-based affirmative action system. *Statistical Science*, 30(3), 297-327. <https://doi.org/10.1214/15-STS514>
- Zajacova, A., & Lawrence, E. M. (2018). The relationship between education and health: Reducing disparities through a contextual approach. *Annual Review of Public Health*, 39, 273–289. <https://doi.org/10.1146/annurev-publhealth-031816-044628>
- Zhang, L. (2022). Regulatory spillover and workplace racial inequality. *Administrative Science Quarterly*, 67(3), 595–629. <https://doi.org/10.1177/00018392221085677>

## APPENDIX

### **Integrated Postsecondary Education Data System (IPEDS) Survey Methodology**

IPEDS is a tri-annual survey of postsecondary institutions that is administered by the National Center for Education Statistics (NCES; IPEDS, n.d.). This is a required web-based survey for all institutions that receive any federal financial assistance program, as specified in Title IV of the Higher Education Act (1965), resulting in excellent response rates. However, as we note above regarding the 2007 race/ethnicity question data, changes are sometimes made to the methodology or survey items, which results in missing or inconsistent data at various time points. IPEDS collects data on both undergraduate and graduate programs and students.

There are 12 main components broken up across the fall, winter, and spring data collection periods. In the fall, data is collected regarding the institutional characteristics, degree completions, and 12-month enrollment numbers. In the winter, data is collected regarding admissions, graduation rates, outcome measures, and student financial aid. In the spring, data is collected regarding academic libraries, fall enrollment, finance, and human resources.

We describe here only data collection facets that were involved in our analysis. Institutional characteristics (fall collection) include institution name, location, and educational offerings. Completions (fall collection) include information on awards conferred by award level, race/ethnicity, gender, and classification of instructional program (otherwise referred to as a CIP code). Twelve-month enrollment (fall collection) collects student counts by race/ethnicity, gender, and level of student. Fall enrollment (spring collection) includes information on the

number, race/ethnicity, gender, and attendance status of students (e.g., part-time or full-time) enrolled as of the preceding fall semester.

### Differences-in-Differences Analysis Tables

<b>Event Time</b>	<b>Estimate</b>	<b>95% Confidence Interval</b>
Overall average	-0.05*	[-0.07, -0.03]
-3 (3 years before ban)	0.01	[-0.07, 0.09]
-2 years	0.01	[-0.05, 0.09]
-1 year	-0.03	[-0.08, 0.03]
+1 year (1 year after ban)	-0.04*	[-0.06, -0.01]
+2 years	-0.03	[-0.06, 0.01]
+3 years	-0.03	[-0.07, 0.00]
+4 years	-0.04*	[-0.08, -0.01]
+5 years	-0.02	[-0.08, 0.03]
+6 years	-0.07*	[-0.10, -0.05]
+7 years	-0.04	[-0.11, 0.03]
+8 years	-0.10*	[-0.14, -0.06]
+9 years	-0.08*	[-0.12, -0.03]

**Table A.1. Dynamic Effects of Ban Implementation on uPOC J.D. Completion by Event Time**

\* $p < .05$

<b>Group/State</b>	<b>Estimate</b>	<b>95% Confidence Interval</b>
Overall average	-0.03*	[-0.04, -0.02]
Michigan	-0.07*	[-0.10, -0.03]
Nebraska	-0.03*	[-0.04, -0.02]
Arizona	-0.01	[-0.04, 0.01]
Oklahoma	-0.05*	[-0.06, -0.03]
New Hampshire	-0.01	[-0.04, 0.03]

**Table A.2. State Level Group Effects of Ban Implementation on uPOC J.D. Completion**

\* $p < .05$

<b>Event Time</b>	<b>Estimate</b>	<b>95% Confidence Interval</b>
Overall average	-0.02*	[-0.05, -0.003]
-6 years (6 years before ban)	0.01	[-0.01, 0.02]
+1 year (1 year after ban)	0.0002	[-0.01, 0.01]
+7	-0.05	[-0.12, 0.01]



+8 years	-0.07	[-0.15, 0.01]
+9 years	-0.08	[-0.16, 0.001]
+10 years	-0.09	[-0.19, 0.02]

**Table A.3. Dynamic Effects of Ban Implementation on uPOC Graduate Enrollment by Event Time**

\* $p < .05$

<b>Group/State</b>	<b>Estimate</b>	<b>95% Confidence Interval</b>
Overall average	-0.02	[-0.07, 0.02]
California, Louisiana, Mississippi, Texas	-0.04*	[-0.07, -0.01]
Washington	0.01	[-0.001, 0.01]
Florida	0.02*	[0.01, 0.02]

**Table A.4. Overall and State Level Group Effects of Ban Implementation on uPOC Graduate Enrollment**

\* $p < .05$