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## **Laycock: On top 10-percent law, let's alter it, not toss it**

By Douglas Laycock, LOCAL CONTRIBUTOR

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The Texas 10-percent law guarantees that the top 10 percent of every high school class — measured solely by grade-point average — can be admitted to any public university in the state. The Legislature is now engaged in a polarized debate about this law. Both sides are partly right, and both sides believe some myths — and there is a solution that would give both most of what they want.

This law matters only at the University of Texas at Austin and Texas A&M at College Station. At the state's other campuses, nearly all top-10-percent students would be admitted anyway. But the law is overwhelming UT-Austin; the number of top-10-percent applicants claiming guaranteed admission will soon exceed the number of students the university can responsibly admit and hope to educate.

The law's critics say it is bad policy to base admissions decisions on the single criterion of class rank. Test scores, strength of curriculum, essays, recommendations, activities, leadership, hardships overcome and athletic or artistic talent all become irrelevant.

Students of modest ability who played it safe, avoided hard courses, grubbed for grades and finished in the top 10 percent are admitted ahead of more talented and ambitious classmates who took honors courses, had leadership roles in extracurricular activities and finished in the second 10 percent. This gives students the wrong incentives, and it's unfair to the stronger students. This is all true.

Critics also emphasize that the law hurts students at strong, highly competitive high schools, which is also true. But the law also creates unfairness within each high school, preferring students with the best grades over students with the best overall records — and no one claims any social justification for that.

The law's supporters say it is the best tool yet devised for motivating students at low-achieving high schools. University officials can promise students in those schools that 10 percent of them are guaranteed admission to the flagship universities. They are competing only with their own classmates; they need not

outperform affluent students elsewhere. They do not have to trust the universities to be fair; students at their school are guaranteed admission.

This, too, is true. The law is an essential means for motivating students in inner-city, rural and small-town high schools.

Each side also believes some myths. The law's critics believe it admits unqualified students who flunk out. But with the help of retention programs, top-10-percent students from weak high schools progress toward their degrees with about the same success rates as other students.

The law's supporters believe it is a mechanical means of ensuring ethnic diversity at the university. They think traditional affirmative action depends on discretionary efforts by university officials, but that the 10-percent law works automatically. Not true.

Targeted recruiting, financial aid and retention programs have been essential to make the law work at minority high schools. Neither traditional affirmative action nor the 10-percent law can succeed without committed effort by university officials. The two approaches work in complementary ways, and Texas needs both.

Focus now on the points that each side is right about. It is unfair, and creates bad incentives, to admit all students on the single criterion of class rank. But guaranteed admissions from each high school powerfully motivates talented students in low-achieving high schools. A simple legislative solution would implement both insights:

- First, vary the size of the guarantee so no campus has to take more than half its freshman class under a percentage law. Depending on applicant flow, it might become a 6-percent guarantee at UT-Austin, a 10-percent guarantee at A&M and a 20-percent guarantee elsewhere. That solves the problem of UT-Austin being overwhelmed by guaranteed admissions, and it leaves seats available for more applicants from the strongest high schools.
- Second, retain the guarantee that every high school is entitled to its share of admissions. University officials could still go to low-achieving high schools and promise that a percentage of every school's graduating class would be guaranteed admission. That keeps the law's recruiting and motivational benefits.
- Third, let the universities choose the students to be admitted from each high school. Let recruiters tell high school students that they are still competing only with their own classmates, but they are competing on the full range of academic criteria. Their grades will matter, but so, too, will the courses they choose and their writing skills, activities, recommendations and test scores.

It would be a mistake either to repeal the 10-percent law or to leave it as it is. The key to a win-win solution is to separate its essential feature from its incidental ones. Ten percent instead of some other number is incidental, and 10 percent is overwhelming UT-Austin. Admitting students solely on the basis of grades is incidental, unfair and gives students the wrong incentives.

But the essence of the 10-percent law is that it guarantees admission to students from every high school in Texas. We can honor that guarantee without keeping the features that cause the problems.

Laycock is a professor of constitutional law at UT-Austin. These views are entirely his own and do not represent the views of the university.

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