

child firearm deaths and automatically improve the grade of many States. I urge my colleagues to take up and pass commonsense gun safety legislation that will close the gun show loophole and improve child gun access prevention laws so that we might prevent kids from gaining access to guns, and improve the quality and safety of our communities.

#### PROMOTING DIVERSITY IN INSTITUTIONS OF HIGHER EDUCATION

Mrs. CLINTON. Mr. President, I ask unanimous consent that the following letter to the President, regarding his Administration's decision to file a brief opposing the University of Michigan's use of affirmative action, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE

Washington, DC, January 17, 2003.

Hon. GEORGE W. BUSH,  
President of the United States,  
Washington, DC.

DEAR MR. PRESIDENT: On Wednesday, as your Administration prepared to file its Supreme Court brief opposing the University of Michigan's use of affirmative action to achieve diversity in its student body, you reiterated your commitment to increasing the number of minorities on college campuses. I applaud this commitment, but do not believe that replacing traditional affirmative action with "race neutral" percent plans will fully accomplish our shared goal of promoting diversity throughout our institutions of higher education. I am especially concerned that such plans necessarily depend on racial segregation in high schools and, further, that a Court decision banning traditional affirmative action could trigger a domino effect undermining our nation's anti-discrimination laws.

The Michigan cases are among the most important ever to confront the Court since *Brown v. Board of Education*. Over the past several decades, the story of American higher education has been a story of gradually expanding opportunity for historically excluded or marginalized groups. Anti-discrimination laws and financial aid policies have opened the doors of higher education for millions of minority students. But as you said on Wednesday, "We should not be satisfied with the current numbers of minorities on Americans college campuses. Much progress has been made; much more is needed."

At the very top schools in this country, including Michigan, significant racial diversity is largely attributable to affirmative action. By traditional affirmative action, I do not mean quotas, and neither does the University of Michigan. I mean the use of race as one of many factors—along with geography, socioeconomic status, and other life-shaping attributes or experiences—to achieve an educationally diverse student body. Michigan's affirmative action policies work this way, and for 25 years such policies have been constitutional, just as they are today.

If our best colleges, law schools, and medical schools were to end traditional affirmative action today, without adopting any alternative, minority enrollments would drop by two-thirds or more. So a critical question, as you suggested, is whether there are alternatives to traditional affirmative action

that might do as good a job—or better—at keeping the doors of selective institutions open to qualified minority students.

You applauded the innovation of states that have adopted "percent plans" guaranteeing college admission to top high school graduates. I agree with you that after five years, the Texas "10 percent plan," where all students who graduate in the top 10 percent of their high school class are guaranteed admission to a state university of their choosing, has shown some impressive results. After an initial drop in 1997, minority enrollment at UT-Austin, one of the state's flagship schools, has rebounded almost to the levels achieved under traditional affirmative action.

In addition, UT-Austin is now drawing students from a larger number of high schools and from a wider geographic area, a change that benefits white as well as minority students. The entering class of 2000 included students from 135 schools that had not been represented there before 1996. Those schools included predominantly minority, inner-city schools as well as predominantly white, rural schools. And, despite worries that 10-percenters from poor high schools might not be prepared for the academic rigor of UT-Austin, the most recent evidence is that 10-percenters of all races are performing as well as other students who scored 200 or 300 points better on the SAT. Retention is generally higher among 10-percenters than among other students.

Notably, these results have occurred despite the fact that average SAT scores—the often cited measure of merit among opponents of traditional affirmative action—have decreased, not increased, among 10-percenters and among black and Hispanic students at UT-Austin. Like traditional affirmative action, the 10 percent plan admits qualified students with lower test scores over students with higher scores, recognizing that test scores are not the "be all and end all" of an applicant's merit, potential, or character.

The early evidence is very encouraging, and I am cautiously optimistic that for some schools, racial diversity can be achieved through alternatives like this one. Even so, I think it would be a mistake to shut the door on traditional affirmative action and treat percent plans as a panacea for increasing minority enrollments. While they hold promise, they also come with pitfalls.

As I am sure you are aware, Texas's other flagship institution, Texas A&M-College Station, continues to struggle with raising black and Hispanic enrollments, even under the 10 percent plan. California's 4 percent plan and Florida's 20 percent plan, though similar in concept, differ from the Texas plan in one crucial respect: They do not guarantee top graduates admission to a state university of their choosing. As a result, minority enrollment in California has increased at less selective schools like UC-Irvine and UC-Riverside, but not at the most selective schools. Between 1997 and 2001, the number of black freshmen dropped from 252 to 138 at UC-Berkeley and from 204 to 125 at UCLA. Florida's 20 percent plan, after its first year, has kept minority enrollment in the state system steady. But the flagship school, the University of Florida, saw a 40 percent drop in black enrollment and a 7.5 percent drop in Hispanic enrollment.

My primary concern, however, is that the very success of percent plans in enrolling substantial numbers of minority students is entirely dependent on racial segregation at the high school level.

For the past 30 years, the Supreme Court has turned its back on remedying inequality in elementary and secondary schools based on race or income, even going so far as to

say that "at least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages." As a result, 50 years after *Brown*, racial segregation is increasing in our public schools. Seventy percent of black students now attend predominantly minority schools, up from 63 percent in 1980. Forty-six percent of Hispanic students in Texas, 42 percent in California, and 59 percent in New York go to schools that are 90 to 100 percent minority. And racially segregated schools, except predominantly white schools, are almost always schools with high poverty. The average black or Hispanic student goes to school with more than twice as many poor classmates as the average white student.

Any policy of college access that is in tension with efforts to integrate public schools cannot be the best option. Instead of motivating improvement in poor and segregated high schools, percent plans give minority parents an incentive to keep their children in those schools, instead of transferring them to integrated and more academically competitive schools. And no parent should have to make a trade-off between college access and high school quality.

In fact, the Texas 10 percent plan exposes the depth of inequality that can exist in a single state. Texas has 1,500 high schools. In the year 2000, nearly half the 7,600 freshman at UT-Austin came from 74 high schools, around 50 students per school. The other half came from 718 high schools, roughly 5 students per school. Approximately 700 high schools sent no student to UT-Austin in 2000.

Just as traditional affirmative action should never distract us from the task of strengthening our elementary and secondary schools, neither should percent plans. If we are serious about expanding minority access to higher education, then we should not only take a closer look at traditional affirmative action and its alternatives; we should also fully fund Title I and increase the maximum Pell Grant. The 10 percent plan will never reach students in the poorest schools unless we commit the resources to turn those schools around and make college more affordable. These are commitments we should already be making to help the 90 percent of students not covered by the 10 percent plan.

Moreover, although percent plans have been somewhat successful in sustaining minority enrollments at the undergraduate level, none of them has proven effective at graduate or professional schools. In 1995, for example, before traditional affirmative action was eliminated at the University of Texas Law School, 7.4 percent of first-year students were black and 12.5 percent were Mexican-American. But today, only 4 percent are black and 8 percent are Mexican-American. Similarly, at UC-Berkeley's law school, Boalt Hall, there were 14 blacks and 17 Hispanics in the 2001 entering class, down from 20 blacks and 28 Hispanics in 1996. At UCLA Law School, the 10 blacks and 26 Hispanics in the 2001 entering class were substantially fewer than the 19 blacks and 45 Hispanics in 1996.

Between 1997 and 2001, the number of blacks fell from 10 to 6 at UCLA Medical School and from 12 to 7 at UC-San Francisco Medical School. In the MBA program at UC-Berkeley, there were 3 blacks and 5 Hispanics in the 2001 entering class, down from 11 blacks and 15 Hispanics in 1996. And at UCLA, there were 9 blacks and 13 Hispanics in the 2001 first-year MBA class, compared to 13 blacks and 18 Hispanics in 1996.

The fact is, at the graduate level, there are few options for sustaining minority enrollments besides traditional affirmative action. Percent plans will not achieve graduate student diversity unless the undergraduate institutions they draw from are segregated.

And preferences for socioeconomic disadvantage will not help very much. Although minorities are more likely than whites to come from low-income backgrounds, the vast majority of low-income people are still white.

Finally, there is little if any evidence that percent plans provide an effective substitute for traditional affirmative action at our leading private institutions. Under Title VI of the Civil Rights Act, virtually every private institution in the country is subject to the same legal standards regarding traditional affirmative action as public institutions. Any Supreme Court decision finding traditional affirmative action unconstitutional at public universities would likely end affirmative action at private universities as well—with very troubling results.

It is one thing for Florida to guarantee top 20 percenters admission to one of the state's 11 public universities, or for the University of California to guarantee top 4 percenters admission to one of 10 campuses. But what about schools like Harvard or Stanford or Columbia? Given how small and selective these schools are, even a plan guaranteeing admission to the top half of one percent of high school graduates would not work, nor would it necessarily make good sense.

While some may think it odd to worry about racial diversity at private schools, since our public university systems serve far more students, these schools have long been regarded by the American public—indeed, the world—as the very best of what higher education can offer. And those schools generate a disproportionate number of our nation's leaders in government, business, and academia. As Justice Lewis Powell said 25 years ago in the Bakke case, which featured Harvard's affirmative action policy as the gold standard for selective admissions: "It is not too much to say that the Nation's future depends upon leaders trained through wide exposure to the ideas and mores of students as diverse as this Nation of many peoples."

The bottom line, then, is that although percent plans and other approaches may hold promise for some institutions, they are not effective substitutes for traditional affirmative action at all institutions. There is no "one-size-fits-all" alternative to traditional affirmative action that works at every school, in every system, in every state. I agree with you, Mr. President, that we need to take a closer look at ways to achieve diversity besides traditional affirmative action. But I do not agree that we should foreclose traditional affirmative action as an option for pursuing diversity where the alternatives do not work.

Finally, let me mention two additional concerns. First, no one doubts that the percent plans in Texas, Florida, and California were designed to achieve exactly what traditional affirmative action was designed to achieve, namely, increased opportunity for qualified minority students. And the barometer of success has been whether these plans are keeping minority enrollments at levels achieved under traditional affirmative action. Where percent plans have been judged successful—at UT-Austin, for example—they have lowered, not raised, average SAT scores among former beneficiaries of traditional affirmative action. The fact is that percent plans, in their motivation, design, and effect, look a lot like traditional affirmative action. If the Court agrees with your Administration that traditional affirmative action is unconstitutional, aren't percent plans simply the next shoe to drop? If we accept the constitutionality, and sometimes the wisdom, of percent plans, then logic and law dictate that we also accept the constitutionality and wisdom of affirmative action.

This is especially true for public universities like Michigan that strive to serve a

student body representative of the taxpayers who support the system. As you said yesterday, "America is a diverse country, racially, economically, and ethnically. And our institutions of higher education should reflect our diversity." I see nothing wrong with a public university doing directly what Texas, California, and Florida have been forced to do indirectly, indeed what we have applauded them for doing.

Second, I am very concerned about the unintended consequences of making a constitutional distinction between percent plans and traditional affirmative action. If admissions policies must be scrubbed clean of race, then shouldn't they also be scrubbed clean of gender? Women have made great strides in higher education, but they continue to lag behind men in areas like engineering and computer science. In fact, women are awarded 25 percent of doctoral degrees in math and the physical sciences, and only 15 percent of doctorates in engineering. Percent plans cannot solve these problems of gender inequality, just as they cannot solve every problem of racial inequality. But percent plans teach us what supporters of traditional affirmative action have long known: that there are considerations important to the distribution of educational opportunity in America other than a standardized test score.

Traditional affirmative action, whether based on race or gender, stands or falls on similar logic. And if traditional affirmative action falls, I worry it is only a small step to rolling back our most basic antidiscrimination laws, like Title VII and Title IX. Given unconscious stereotypes and structural inequalities that persist in our society, there is a very fine line between taking deliberate steps to ensure access to higher education for minorities and women, and protecting them from unlawful discrimination.

Mr. President, I urge you to carefully consider the implications of eliminating traditional affirmative action in the absence of alternatives that effectively promote, and do not work against, diversity and integration in all of our public high schools, colleges, and graduate programs. And I urge you to consider the consequences your Administration's position may have for the vigorous enforcement of our nation's anti-discrimination laws.

Sincerely yours,

HILLARY RODHAM CLINTON.

#### 21st CENTURY NANOTECHNOLOGY RESEARCH AND DEVELOPMENT ACT

Mr. ALLEN. Mr. President, I rise today in support of the 21st Century Nanotechnology Research & Development Act. I want to thank my colleague from Oregon, Senator WYDEN, for his leadership on this important issue. I have enjoyed working with Senator WYDEN on nanotechnology for the past several years. I would also like to thank the other cosponsors on this legislation, the Senior Senator from Virginia—Mr. WARNER, Senators LIEBERMAN, MIKULSKI, HOLLINGS, LANDRIEU, CLINTON, LEVIN, and BAYH.

Today, our scientists and visionaries are quickly learning that there is a whole New Frontier of promise and human endeavor literally right under our eyes, at the nanoscale, when magnified for us to see.

The potential for nanotechnologies and the exciting work taking place in the nanoscience field are by all ac-

counts revolutionary. Nanotechnology is still very much in its infancy, but as the technology matures it will undoubtedly have a tremendous impact on our daily lives.

Nanoscience is quickly transforming almost every aspect of our modern world and is already significantly improving our quality of life. From computer and electronic devices, to health care and pharmaceuticals, to agriculture, energy and our national defense, nanoscience will be the foundation of many of the revolutionary advances and discoveries in the decades to come and will soon occupy a major portion of the technology economy.

Through nanoscience, researchers and scientists are already beginning to develop technologies that years ago were thought to be impossible. Memory and processing chips the size of a sugar cube have the ability to store all the information in our Nation's National Archives and the Library of Congress combined. Nanoscientists are also exploring ways nanomaterials can travel through the human body to detect and cure diseases, such as target cell therapy where limited amounts of chemotherapy drugs can, cell by cell, attack individual cancer cells and leave healthy cells intact.

As production and innovation of nanotechnologies becomes easier, faster, more efficient and less costly, every market sector in the economy will begin to feel its impact. The NanoBusiness Alliance estimates that the global market for nanotechnology related products and services will reach more than \$225 billion by 2005. The National Science Foundation conservatively predicts a \$1 trillion global market in a little over a decade.

While nanotechnology is typically defined by size—that is 1 nanometer equaling 1 billionth of a meter—the science of nanotechnology is really the ability to pick and place or manipulate atoms 1/100,000 the width of a human hair, and eventually generate materials with properties that are fundamentally new and superior to the bulk form of the same materials.

It is the promise and potential that impels the Congress to act and introduce legislation that assures this Nation remains at the forefront of the nanoscience revolution. The United States has been the leader of virtually every important and transformative technology since the Industrial Revolution, and this legislation ensures we will continue to lead the world in this new frontier.

The 21st Century Nanotechnology Research & Development Act authorizes appropriations for the coordination of an interagency and interdisciplinary program to support long-term nanoscale research in the fields of nanoscience, nanotechnology and nanoengineering as part of the National Nanotechnology Research Program. The legislation authorizes \$676 million for fiscal year 2004—a 15 percent increase from the President's budget request for fiscal year 2003—in