

Affirmative Action and The California Bar Exam

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An educator wants to look at the impact of affirmative action programs on the career prospects of minority law students. Seems fair enough, but his chief obstacle: The State Bar of California, which won't release the relevant data.

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Affirmative action and the bar exam

A California professor studying affirmative action should have access to law school performance statistics.

Americans have been debating the fairness and efficacy of racial preferences in college and graduate school admissions for more than 30 years. Now a UCLA professor is seeking to test his hypothesis that affirmative action programs actually hurt the career prospects of minority law school graduates. But he has been hampered in his research by the indefensible failure of the State Bar of California to provide the statistics he needs.

The professor, Richard H. Sander, has requested data about the performance of white and minority law school graduates on the bar examination, along with information about the schools they attended and their grades. In resisting his request, bar officials cite the need to protect the privacy of test takers and to honor an agreement that test material will remain confidential. At the same time, some defenders of affirmative action have argued against releasing the data because they think Sander's project could have only one purpose: to discredit the idea of racial preferences.

The privacy and legal arguments strike us as spurious, a view shared by the executive director of the California First Amendment Coalition, which has joined Sander and his colleagues in asking the state Supreme Court to order the release of the information. Sander has promised that no individual student would be identified by the statistics, which would break down performance by law school.

It's also unfair to accuse Sander of seeking to dismantle racial preferences. True, his hypothesis is that affirmative action students are disserved because they derive less benefit from an elite law school than students who meet the usual admission standards. This is the "mismatch" theory, which suggests that students who are weaker than their classmates will often do better academically — and on the bar exam — if they attend a less-competitive school.

The mismatch theory may be mistaken. But suppose it were found to be valid? That wouldn't necessarily lead to the abolition of racial preferences. Another result might be the strengthening of mentorship and other programs to help less-well-prepared students achieve at higher levels.

An additional objection to Sander's project is that good marks on the bar exam don't guarantee success in the practice of law. Perhaps so. If the exam does a poor job of measuring the credentials of lawyers, it ought to be revised. But that has no bearing on Sander's request.

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Regardless of what we think of Sander's hypothesis, he should be given the data he seeks. Defenders of affirmative action should not fear a serious examination of how well it's working.