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180 **Commentary** *by Ronald Trowbridge, Ph.D.,
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'Top 10 percent' law has flunked

I have never heard a single individual say that he or she is against our Constitutional right to "equal protection" of our laws. Yet many of us have no interest whatsoever in equality when it is at odds with what we regard as social justice.

A case in point is the recent decision of the Massachusetts Supreme Court that held homosexual marriage is constitutionally protected by the "Due Process" clauses of the 5th and 14th Amendments and the "equal protection of our laws" clause of the 14th Amendment. Many obviously oppose this equality on moral or religious grounds, and are pushing a constitutional amendment to overturn the Massachusetts precedent.

The same aversion to equality holds with Texas' top 10 percent law. Having once served as Chief of Staff to Chief Justice Warren Burger and the presidential Commission on the Bicentennial of the U.S. Constitution, I was recently invited to offer a lecture to 400 Texas high school students on the Constitution. I observed, "Some of you will be admitted to the University of Texas or Texas A&M this year who ought not to have been, and some of you will be denied admission who ought to have been accepted."

Why? Because admission to public Texas colleges is now based primarily on the inequalities of

school location and class ranking, rather than on a consistent, equal standard of academic merit.

When the National Association for the Advancement of Colored People and the Texas League of United Latin American Citizens recently denounced any change to the 10 percent law on the grounds they want "to give poor and minority students an equal chance to get into college," they were somewhat disingenuous: it is not equality or the letter of the law of the 14th Amendment they seek; rather it is social justice.

Now do not misunderstand me; a strong case can be made for social justice and diversity, but it is not one of equality, which is at odds with discriminatory or preferential treatment either for or against certain groups.

Academic inequality has actually been compounded in Texas. Minorities have ostensibly been given special treatment not only through the 10 percent law, but even an extra edge with the 2003 five-to-four decision by the U.S. Supreme Court in the University of Michigan case to permit race as a factor in college admissions.

I say "ostensibly" because the 10 percent law actually helps Caucasians more than Blacks and Hispanics. Enrollment at the University of

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Law hurts minorities while doing nothing for diversity

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Texas, reports State Rep. Garnet Coleman, was 14 percent Hispanic and 3 percent black; at Texas A&M, 9 percent Hispanic and 2 percent black. In light of the demographics of Texas, these percentages are relatively quite low.

And there is another unintended consequence of the 10 percent law: we are told that it fosters diversity; it does not—in fact it works to the contrary.

As the president of the student government at the University of Texas recently observed, “The top 10 percent rule has the potential to result in a freshman class with disproportionate levels of students being admitted under one criterion—their class rank.”

He advocates, for reasons of di-

versity, “allowing admissions officers the flexibility to look past class rank when determining the rest of the class.”

As a former college professor, I am troubled that the 10 percent law is also anti-educational. It encourages students to take classes that are less competitive so they can maintain higher grade point averages.

For those who prefer social justice over equality, and for those who favor equality over social justice, all can have much of their cake and eat it, too: with virtually all public colleges in Texas exercising the option allowed by the U.S. Supreme Court, diversity will flourish through academic merit, athletic skill, musical talent, artistic performance, and the gift of each individual applicant’s talent.

But the fact remains—the top 10 percent law is riddled with inequalities, unfairness, anti-intellectualism and backfiring ironies. It has been tested by experience since 1997, and it has flunked.

Ronald Trowbridge, Ph.D., resides outside Houston and is a fellow at the Texas Public Policy Foundation. A former chief of staff to U.S. Supreme Court Chief Justice Warren Burger, Trowbridge founded the Maine Heritage Policy Center and was a vice president of Hillsdale College.