

**The Impact of Redistricting on Latino Education Policy:
A Texas Case Study**

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Introduction

As the Latino/a population continues to experience rapid growth, low rates of Latino/a educational attainment stubbornly persist and remain one of the most serious problems facing the United States. As the title of a major book on this topic suggests, we are indeed facing a Latino educational crisis (Gandara and Contreras, 2010). In Texas, history, politics, and demographics have combined to make this crisis at least as bad as it is any other state. Moreover, in the higher education arena, Texas faced the unique challenge of the 1996 Hopwood decision which ended race-conscious affirmative action in higher education. (See Chapa 2005; and, Chapa and De La Rosa, 2005) Latino/a elected representatives in the 75th regular session of the Texas State Legislature, responded by developing and passing H.B. 588, the bill enacted the Top Ten Percent plan (TTP), which had its first impact on the entering class of 1998. TTP has been successful in restoring the Latino enrollments to their pre-Hopwood level and sustaining steady growth since then. Figure 1 shows the impacts of Hopwood and TTP at The University of Texas at Austin (UT), the state's most selective public institution. TTP has worked to democratize the access to Texas' selective public institutions and spread the geographic origins of the UT's entering class across the state. Redistricting is the central determinant of the number of Latino/a representatives in the Texas Legislature and it ultimately constrains the opportunities to pass laws that promote Latino/a access to higher education.

This paper seeks demonstrate the admissions rule from a different angle than what is traditionally examined. We highlight the demographics behind Texas' recent legislative redistricting cycle and the representational impact between redistricting, the Texas legislative context, and policy outcomes like the TTP. Redistricting brings about the realignment of political representation and given the growth of the Latino community in Texas that means more Latino

legislative districts and subsequently more representatives that are inclined to work towards Latino interests. By understanding the political machinations of the Texas legislature, redistricting, and underlying demographics, we can gain a better understanding of the political and policy context in which the TTP exist. We use the case of the TTP as a historical example of how it is that Latino members, who reside in the legislature, in part due to changing demographics, the success of the voting rights act, and the redistricting process, operate within a very specific legislative context and have been able to alter policy discourse to substantively represent the Latino community (Welch and Hibbing, 1988).

The Effect of Changing Demographics

The U.S. Constitution mandates the decennial enumeration of the population so that “Congressional Representation and direct Taxes shall be apportioned among the several States..., according to their respective Numbers” (Article I, Section 2). In 2010, Texas gained 4 four additional seats in Congress. The 2010 Census also revealed rapid demographic changes. Texas' population experienced tremendous growth between 2000 and 2010. The total population had increased by 4,293,741. Even more striking is the fact that approximately 65% of this total increase was due to the even more rapid growth of Texas' Hispanic population. In 2010, more than 1 out of every three Texans was a Hispanic. The non-Hispanic population increased by 1,535,549. This shift in demographics provided the opportunity to increase the number of legislative districts with a Latino majority population, but resistance to this has stalled a final result for Texas' redistricting (See Tolson, 2012). Table 1 shows the rapid growth of Texas' Latino population, the increased number of Congressional seats due to this growth and the great gap between Latino population percentage and representation in the Texas House and Senate.

So, whatever Latino representatives have been able to accomplish has occurred despite the disparity between Texas' Latino population and its presentation in the Legislature.

The latest redistricting cycle is a story of extraordinary growth in the minority community and the struggle to compel the legislature and the courts to accurately reflect that growth in new districts. Texas growth, which is largely Latino growth, given fair districts could lead to a realignment of political power and ultimately a significant change in political discourse and policy. The redistricting process often appears to be of interest mainly to politicians and politicos. However, since redistricting can minimize or maximize Latino representation in the political process, it should be of interest to all of us. Redistricting can have the power to set the political context, and that context can dictate whether policies that promote or hinder Latino educational access and success can thrive. In short the descriptive and substantive representation of Latinos and the promotion of their interests can hinge on redistricting.

Texas' Legislative Context

This section examines the context of the Texas State Legislature and how legislative and political structures can affect members and the policy process. As we have mentioned before, it is important to understand this context since it gives us an impression of the system in which policy is designed within the legislature. By understanding the implications of the Texas legislative structure we can have a better grasp on the redistricting process itself and the significance of the original creation and continued efforts to protect the top ten percent rule. It is within the following context of powerful structures and racially-polarized or *racialized* policy debates that Latino and minority members have successfully crafted and defended legislation like the top ten percent rule.

As Lopez, Valenzuela, and Garcia point out in Levinson and Pollock (2011), the Texas legislative structure can serve to privilege some interest groups, stakeholders, and legislators over others. Multiple factors such as short legislative sessions, committee structures, and complex policy debates converge to result in some members being “in the know,” while others take a more limited role in the development of certain policies.

Short Sessions

Texas is unique for its intense, short legislative sessions. They are only 140 days long, beginning in January of every odd-numbered year (Texas Constitution, Article 3 Sec. 5). In addition, issue-specific, 30-day special sessions can be called at the request of the Governor. These short sessions are a historical result from the reconstruction era in which Texas’ leaders responded to the excesses of a sitting governor, with a governmental structure that limited the power of the executive and, in-general, produced a limited-government approach to policymaking (Texas State Historical Association, 2009). The implications are profound, for a growingly diverse state with a huge economy, robust natural resources, and complex policy matters, short legislative sessions can lead to a rush of legislative activity in a very short period of time.

Committees and Organizing Bodies

Complex legislative matters result in the need for committees that can examine issue thoroughly before they reach the floors of each chamber. Thus, like many legislative bodies, Texas has a committee system. Similar to Congress, such a system encourages member specialization (Asher, 1974) in policy issues. In other words, certain members will have access to more information and studied issues longer than others increasing their legislative capacity (Burns, Evans, Gamm, and McConnaughy, 2008) to deal with certain issues, depending on

committee assignment. This sort of specialization leads to the development of certain key members that serve as cues for others that may not be so well informed about the specific issue at hand (Kingdon, 1989). As stated earlier, short sessions place an increased importance on legislative capacity to deal with complicated issues, along with committees, we then have a legislative structure in which key policies may be debated by only a select few members, while the remainder observe and subsequently cast a vote based on a variety of cues or political pressures in a short period of time.

In addition to individual members serving as cues for others due to committee assignments, officers of a Caucus may also hold a position of trust among the members of the legislature on certain issues, these issue-based groups can facilitate the credibility, expertise, and create a channel of communication necessary to influence and policymakers decision (Kingdon, 1989). Such organizations include each political party, but also other legislative groups. For example, two groups that are particularly important in the history of the Top Ten Percent plan are the Mexican American Legislative Caucus (MALC) and the Senate Hispanic Caucus (SHC). In the Texas House, the MALC is comprised of over a quarter of Texas House Members and holds a key position when it comes to discussing issues that affect the Latino community. Many states join their House and Senate Latino caucuses into one organization, however in Texas there are two separate and distinct non-partisan organizations that are dedicated to Latino issues. Established in 1973, MALC is the oldest and largest Latino legislative caucus in the country (MALC, 2012). MALC Members are either Latino or represent districts with a Hispanic voting-age population over 50 percent. MALC has at least one member on every legislative committee, 10 committee chairs, and 14 vice chairs (Texas House, 2012). The Senate Hispanic Caucus (SHC), which examines Hispanic issues in the other chamber, was established in 1987 and

currently has 12 members. SHC members are either Hispanic or represent 30 percent Hispanic or 30 percent black plus Hispanic districts (SHC, 2012). The chair of the SHC must be Hispanic or represent a district of at least 60 percent Hispanic population. It should be noted that a chair of MALC and a chair of SHC authored the top ten percent rule - Rep. Irma Rangel and Sen. Barrientos, respectively (H.B. 588, 1997). We will discuss this more in detail later in next major section of the paper.

Electoral Accountability and Parties

As with any elected body, electoral accountability can play a role in influencing decisions (Theriault, 2005). There are 150 members in the Texas State House and 31 Texas State Senators (Texas Constitution, Article 3 Sec. 2). In Texas, Members of the House of Representatives serve 2 year terms and State Senators serve 4 year terms (Texas Constitution, Article 3 Sec. 4). With legislative sessions every other year, 1 term for a Member of the House means that you participate in only 1 legislative session. Thus, the pressure to represent your district well may be quite high. The saying, “elections have consequences” was clearly represented in the 82nd legislative session.

On November 2, 2010, Republicans dominated the political composition of every piece of state government (Texas Tribune, 2010). Governor Rick Perry won his third full term by defeating his Democrat challenger, former Houston Mayor Bill White. In addition, the GOP had a statewide sweep of office for the fourth election in a row. While the Texas Senate maintained its previous composition of 19 Republicans and 12 Democrats, the Texas House had a foundational shift. Largely riding on the national anti-Democrat wave, voters changed the composition of the Texas House from 77 Republicans and 73 Democrats to 99 Republicans and 51 Democrats. Following the elections, two additional Democrats switched parties leading to a

101-49 party composition in the House (Ramsey, 2010). The Republican two-thirds majority marks a party composition that has not been seen since the days following the Civil War. Given the partisan composition Texas Democrats often only had one legislative tool at their disposal, a strict adherence to parliamentary procedure (Burka and Blaksee, 2011). Minority members in particular relied on parliamentary points of order to derail several initiatives that were deemed harmful to their communities (H.B. 12, H.B. 400, H.B. 743, S.B. 14, S.B. 1581). MALC Chairman Trey Martinez Fischer earned a reputation for “killing” bills by derailing key legislation on a technicality (Burka and Blaksee, 2011). While the significance in party shift has several complex implications that may operate in many different ways, the results were perhaps most clear in certain policy discourses.

Racialized Policy Proposals and Debate

As we discussed in length earlier, redistricting was a key issue during Texas’ 82nd legislative session in 2011. With changing demographics and the possible realignment of political power for the next ten years, much was at stake for all communities in the state. However, redistricting was not the only racialized legislative issue. The 82nd Session of the Texas State Legislature was a powder keg of racialized policy proposals and debates. Minority members have testified to the nature of these intense debates and racialized context in several court documents and cases that followed the legislative session (see *State of Texas v. Holder*, Case No. 1:12-CV-00128; DOJ, 2012). The Mexican American Legislative Caucus identified over 45 bills, introduced in the Texas House, as cautionary anti-immigrant or anti-Latino, three major topics dominated the racialized polarizing discussions: immigration, voter identification, and redistricting (MALC, 2011). Together, these policy fields saw a tremendous amount of legislative activity and contentious debate.

In Texas, as in many states across the country, immigration was a hot topic. On the heels of efforts to get state government into the regulation and enforcement of immigration laws in Arizona (S.B. 1070), Republican legislators in Texas promoted Arizona-like policies (for example: H.B. 12, H.B. 17, H.B. 296). Although Governor Perry initially indicated the Arizona-like legislation was not desired in Texas (Perry, 2010), he later deemed a ban on sanctuary cities an “emergency item” for the legislature’s immediate consideration (Perry, 2011). By marking the issue an emergency item, bills about sanctuary cities could be considered earlier than other pieces of legislation. Ultimately, the sanctuary cities bill was delayed due to a point of order by MALC Chairman Trey Martinez Fischer at one point in the regular session and then delays in the Senate left no time for its passage (H.B. 12). The proposal was revived by the Governor in a special session, but once again failed, this time it did not pass out of committee (H.B. 9, H.B. 10, H.B. 11, 82nd (1)). In addition to a proposed ban on sanctuary cities, other anti-immigrant proposals made their way through the legislative process, however all substantive proposals failed. A few of these failed examples are the removal of in-state tuition for undocumented students (H.B. 464), state ordered procedures in dealing with the arrest of undocumented immigrants (H.B. 17, H.B. 296, H.B. 311), the collection of citizenship and immigration data from students in the public schools (H.B. 21, H.B. 22), the modifications on the issuance of birth records to citizens of immigrants (H.B. 292), and restrictions on the eligibility of U.S. citizens to state benefits if they were born to immigrants (H.B. 293).

Another racialized debate surrounded Senate Bill 14, the Voter Identification and Fraud bill. Despite knowing the fact that the photo ID law may have the potential to effect hundreds of thousands of racial/ethnic minority citizens, the proponents of the bill tabled numerous amendments offered by Latino and African American members that would have ameliorated the

bill's potential disenfranchisement (DOJ, 2012). In a preclearance case filing on the Voter ID law, the United States Department of Justice explains how proponents of the legislation deviated from traditional parliamentary procedures when obstacles arose and employed many shifting justifications for the law, several of which "lacked substantial grounding in fact." Data showed that Hispanic registered voters of all races were 46.5% more likely to lack the forms of required voter identification than Anglo voters. (DOJ, 2012).

These racialized debates, the intensity of short legislative sessions, the power of committee assignments, leadership, and caucus positions, and the pressures of elections and partisanship makeup the dynamic context of the modern Texas State Legislature. It is within this context that Latino and African American legislators seek to alter policy discourse and debated redistricting. Further, it is within this sort of context that the Top Ten Percent rule was recently modified (S.B. 175, 81st R).

The Top Ten Percent Plan

Up to this point we have discussed the changing demographics in the state of Texas, the redistricting process and its effect on minority representation, and the Texas legislative context with its various implications for the passage of bills, especially those dealing with Latino and African American communities. Given a thorough understanding of the context in which policy is developed in the legislature and how redistricting can often set the scene for representation, we now turn to discuss several implications on our discussion of the top ten percent plan (TTP). The Top ten percent bill and the legislative effort for its passage and maintenance is a story of coalition building and compromise, but also on-going debate and tension. The top ten percent plan has worked to democratize the access to Texas' selective public institutions and spread the geographic origins of the UT's entering class across the state. The admissions system in place at

UT before the top ten percent plan preferentially gave the opportunities for public higher education to those who already had all the advantages. Besides having well-educated parents with high incomes, students from the top feeder schools had the best teachers in the best facilities with the best programs, from pre-school through high school. Access to Advanced Placement courses allows them to earn GPAs above a 4.0. This is not possible in high schools that do not offer such courses. Now students from every high school have a shot at a publicly supported higher education. And, while the ten percent plan cannot level the playing field and eliminate the disparity in resources between schools, it makes the competition for admission fairer by assessing how well a student can do with the resources and opportunities available to him or her. It is grossly unfair to penalize students because they do not have access to resources that are not equally available to all students such as AP courses, science labs, etc. In a state and country where minorities are typically concentrated in highly segregated schools, the top 10% plan percent also has diversity implications (Chapa, 2005).

New Modifications to the TTP

Despite on-going controversy and multiple attempts at modification of TTP for many sessions, the bill remained unaltered until the adoption of S.B. 175, 81st regular session, 2009, authored by suburban legislators Rep. Dan Branch and Senator Florence Shapiro. In 2008, according to University of Texas at Austin officials, 81 percent of the Texas residents in the freshmen class at UT Austin were automatically admitted under the TTP (Top ten percent plan, 2009). The administration and a group of legislators argued that UT required more flexibility in admissions to allow for highly sought after students not in the TTP to have access to the university (Top ten percent plan, 2009).

After a contentious debate, the legislature passed S.B. 175 to cap the number of automatic admits at 75% of UT resident enrollment capacity. The way the cap works is that UT calculates an estimate to determine what GPA rank a prospective student should have so that they can be guaranteed automatic admissions to the university. For the two years of operation, essentially the Top 8% rank will gain automatic admissions (UT Austin, 2012). UT can enroll by percentile rank up to 75% of its capacity and then employ holistic admissions criteria for the remainder of its freshman class.

Legislators also built in several provisions to protect against ill consequences. First, there is a provision of code that sunsets the admissions scheme after the 2015-2016 academic year, causing a review of the results of the cap and new legislation (Section 51.803 (a-3), Education Code). A few of those provisions are a ban against legacy admits (Section 51.803 (a-4), Education Code), increased reporting requirements (Section 51.803 (a-6), Education Code), limitations on out-of-state admissions (Section 51.803 (j), Education Code), a return to the traditional TTP if a court case or institutional policy bans race/ethnicity in the admissions process (Section 51.803 (k), Education Code), and a scholarship program (Chapter 56, Subchapter R, Education Code).

Latinos and African American Members Changing the Policy Discourse

A quick look at the history of the TTP or House Bill 588 in 1997, during the 75th Regular Session and the mark of Latino members is explicitly felt. The authors of the legislation were Representative Irma Rangel from South Texas and Senator Gonzalo Barrientos from Austin. In response to Hopwood decision, banning affirmative action in admissions as it had been previously practiced the authors set out to ensure the flagship would be attainable to students

from all areas of the state from differing backgrounds. It provided a clear merit goal and signal to students, uniform across the state despite geographic region of residence.

In the legislative arena, TTP has always been a hard fought battle. In the House, a vote of 79 to 68 is clearly not overwhelming support (Record Vote: House #153 79 Yea, 68 Nay, 1 present not voting). An examination of the votes shows a coalition of diverse members that offered their political support. The fact that the automatic admissions law satisfied the interests of rural Anglos and geographically diverse minorities is one of the most interesting political aspects of the bill's passage and continued existence. Together this group of members pushed for every student in the state regardless of socioeconomic status and geographic region to have access to the state's flagship institutions, albeit capitalizing on the segregation of minority students (Tienda and Niu, 2006). Keep in mind that when it comes to other legislative issues this same group of members are often on completely opposite sides of the political spectrum as we demonstrated in the previous section of this paper.

In more recent legislative sessions, the importance of that tenuous coalition is quite evident. For example, during the floor debate on S.B. 175 in 2009, the bill that amended the TTP to provide more flexibility in admissions for the University of Texas at Austin, a member attempted to pass amendment #5 to hold rural school districts harmless against the cap. While the amendment would have ensured that students in those districts obtain automatic admissions under the TTP to the university regardless of the cap, it did nothing for urban schools. Politically, the amendment would have split the rural and minority coalition and allowed proponents of the cap to amend the TTP as desired, in many cases regardless of any minority support. In response a minority member called the amendment "dangerous" to the survival of the bill and challenged it stating:

“Explain to me when we are capping on one hand, why we are setting in place a hold harmless provision ... I have no problem accepting the amendment if it is going to apply across the board ... I don’t want to hurt anyone in rural Texas, I don’t want to hurt anybody in urban Texas or central Texas or suburban Texas or anybody else, but either we are all going to be in the boat together or this boat is going down ... I feel your pain, but I want you to feel mine as well and if you are not going to feel everybody’s pain then we have a problem ... this is a very dangerous amendment for the survival of this bill, put it on and we have a problem.” [CITATION FORTHCOMING]

The threat by this minority member to pull support for a compromise worked and in response, the authors of the divisive amendment withdrew it and the coalition of members stayed together.

Preliminary results on the effect of the new TTP Cap

The first-time freshman class of 2011-2012, is the initial class of students entering under the new admission scheme. While we certainly cannot establish longitudinal trends yet, there are several interesting results that deserve further study. In a recent report to the legislature on the effects of S.B. 175, the University of Texas at Austin share several key results. The Hispanic share of entering freshmen to UT Austin from Texas high schools dropped from 25.0% to 23.1%. UT attributes the dip, in part, to delayed and reduced state financial aid caused by the state legislature’s significant budget cuts. At the same time the UT freshman class shrunk and Hispanic enrollment went down, suburban student enrollment and suburban feeder schools held and in some categories increased. Heavy budget cuts in financial aid may have affected student decisions to go to UT and many Latino students may have either under-matched or engaged offers from other universities to pursue a more affordable education. However, at least for the first class, the result of the intersection of the new admissions policy and low student financial aid is clear – diversity suffered and more suburban students prospered.

Conclusions, the Fisher Case, and the Looming Threat to TTP

In the fall of 2012, the Supreme Court of the United States will hear *Fisher v. University of Texas at Austin* (No.11-345). The plaintiff contends that the university should not use

admissions methods that consider race to increase diversity, when other, non-race based alternatives, like the top ten percent rule are present (Merits Brief for the Petitioner, 2012). To date, the plaintiff has lost and lower courts have reaffirmed the University of Texas at Austin's limited use of race in the admissions process of non-automatic admits.

As the Supreme Court undertakes a review of the case a number of concerns arise: Will the limited consideration of race in admissions among other factors stand? If overturned, how broadly will the court rule and what are the implications for the use of race in recruiting, admission, financial aid? Regardless of ruling, how will the Texas legislature, which has previously demanded geographic and racial diversity at UT Austin now react?

While mechanisms designed to create diversity in higher education are under attack in the courts, at the same time the top ten percent rule has once again been brought into question in the Texas political scene. With the announcement that Fisher was headed to the High Court, a debated reignited in the press about admissions, diversity, and the top ten percent plan. Questioning the fairness of the TTP, the goals of diversity, and the role of government, detractors see no obligation to create a semblance of equal opportunity for those that have endured unequal resources at the k-12 level. Given the sunset provision and a provision returning to the full TTP for UT Austin if the case is lost, at some point, the state legislature will have to deal with the fall out.

Latino and African American members will have to defend diversity efforts and the top ten percent rule, it by no means will be an easy task. An examination of candidate filings for the 2012 elections reveals that with recent retirements and redistricting, anywhere from 1/3 to 1/2 of the entire Texas House will be members in their first or second term, many of which have been sent to the legislature with the clear directive to reduce the size of government. This is case-in-

point why redistricting matters. Numerous structures and policy considerations affect the process of policy development, but redistricting can set the scene for action. Without those Latino and African American members from hard fought minority opportunity seats – Would we even have a top ten percent rule to debate about?

The framework of this piece is clear and simple: Redistricting sets the scene for the representation that residents and communities receive. For minorities, the Voting Rights Act is invoked to ensure that districts are protected and voters are empowered to ensure that they can elect candidates of their choices, often, Latino and African American members. These members, in particular, offer both descriptive and substantive representation (Welch and Hibbing, 1988) for their constituents. They alter the status quo in the policy landscape and discourse. In this case, we examined the top ten percent rule, to demonstrate how Latino and African American members operate within the legislative structure and produce policy outcomes. The fate of the state of Texas lies in the social, economic, and political potential of historically marginalized populations (Murdock, Hoque, Michael, White, and Pecotte, 1997). The responsibility to build policy that addresses the new majority-minority population of Texas will undoubtedly fall on the shoulders of Latino and African American elected officials.

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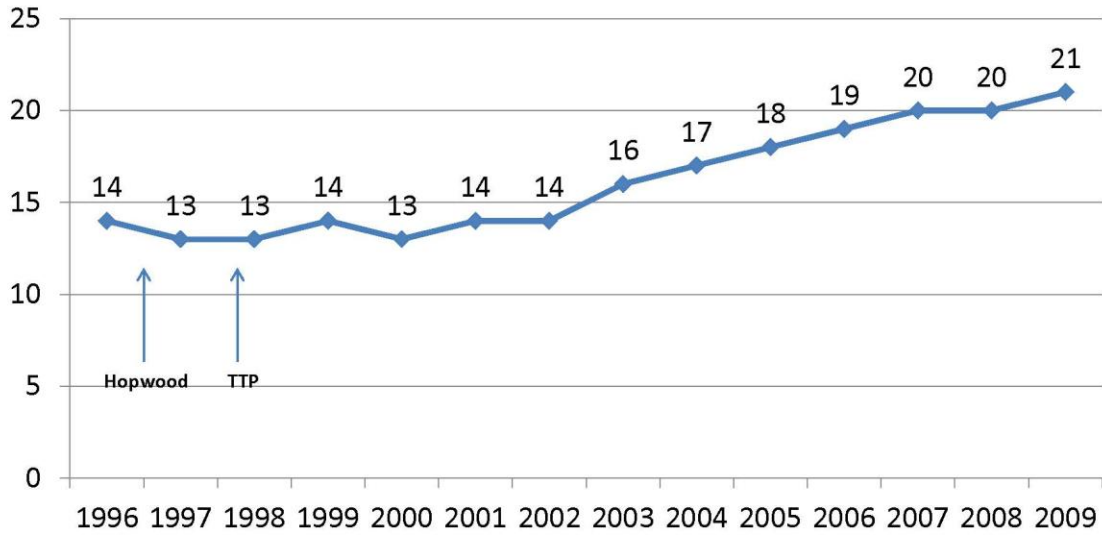
Table 1 -- Latino Representation in Texas House and Senate compared with Latinos as a percent of Texas Population

Year	Texas Population*	Texas' Latino Population		Seats in Congress	Texas House		Texas Senate	
		Number*	Percent		Number	Percent	Number	Percent
1980	14,229	2,986	21%	27				
1981					17	11%	4	13%
1983					19	13%	5	16%
1990	16,986	4,340	26%	30				
1991					20	13%	5	16%
1993					26	17%	3	10%
1999					28	19%	7	23%
2000	20,852	6,670	32%	32				
2002					30	20%	7	23%
2009					30	20%	7	23%
2010	25,146	9,461	38%	36				
2011					?	?	?	?

* in thousands

Sources: Population percentages calculated from Decennial Census counts from www.census.gov; House and Senate numbers from Steve Bickerstaff, Effects of the Voting Rights Act on Reapportionment and Hispanic Voting Strength in Texas, Texas Hispanic Journal of Law & Policy (The University of Texas School of Law), Vol. 6, No. 1 (Summer 2001), 99-122, and, John P. Schmal, THE TEJANO STRUGGLE FOR REPRESENTATION, <http://www.houstonculture.org/hispanic/tejano4.html> accessed on 5/14/12.

Figure 1 – Latino/as Percentage of Entering Freshman Class at The University of Texas at Austin, , 1996-2009



Source: The University of Texas at Austin, 2006 & 2009.