

FROM AFFIRMATIVE ACTION TO DIVERSITY:  
RATIONALES FOR FACULTY DIVERSIFICATION EFFORTS IN A  
STATE ANTI-AFFIRMATIVE ACTION REGULATORY ENVIRONMENT

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## **Abstract**

This dissertation study is motivated by concerns regarding the ability of universities to attract a diverse professoriate, particularly within an anti-affirmative action climate. The emergence of state referenda banning affirmative action, coupled with litigation challenging affirmative action in higher education, has generated questions and concern among those who promote the benefits of diversity in higher education. Although affirmative action bans target faculty hiring – and not simply student admission – few scholars or policy makers have sought to understand how universities have responded to these bans in faculty hiring. This dissertation examines how state bans on affirmative action affect rationales for diversity in faculty recruitment and hiring at a public university and a private university.

This study employs a qualitative research design and uses a framework that incorporates concepts from neoinstitutional theory. Interviews with 21 faculty and administrators from a public university and a private university, coupled with a review of documents from both universities – including policy statements on faculty diversity, policy revisions in the wake of state anti-affirmative action mandates, and faculty diversity reports – form the basis of the analysis.

Despite their differences in public versus private sector, the two universities examined in this study navigated the state anti-affirmative action regulatory environment similarly and drew upon a nearly identical set of rationales to support faculty diversity policies and practices. University administrators took actions to minimize legal risk while remaining supportive of faculty diversity in principle; however, the priority for

legal compliance resulted in affirmative action programs being eliminated or reconstituted into programs that were legally permissible. Federal affirmative action statutes did seemingly little to combat the state ban on affirmative action. Findings illustrate a shift in language around faculty diversification efforts at these universities in recent years; explicit discussions of affirmative action have been largely replaced with a broadening use of the term “diversity.” Faculty accounts reveal myriad interpretations of the diversity rationale in this regulatory environment, leading to heightened confusion in faculty search deliberations and an often-conflicting array of diversity-related rationales. This study finds that the state anti-affirmative action regulatory environment did not result in diversity no longer mattering in higher education; rather, it changed how diversity mattered.

The study’s focus on university behavior within the context of state affirmative action bans generates knowledge about the relationship between public policy and higher education and produces insights on whether universities ultimately acquiesce to or resist pressures to alter behavior and rationales as a result of public mandates. The study also illustrates how the interaction of internal and external pressures for and against affirmative action in faculty searches leads to how faculty recruitment and hiring policies are understood, re-interpreted, and put into practice. Ultimately, the study furthers our understanding of the regulatory factors that may contribute to the persistent underrepresentation of scholars of color. The manner in which universities respond to the state anti-affirmative regulatory context contributes to not only the organizational context for faculty diversity, but also affects the ways in which the policy is interpreted and enacted by faculty, which in turn may have an impact on hiring outcomes.

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## Chapter 1

### INTRODUCTION

Despite ongoing efforts to racially diversify faculty at universities nationwide, faculty of color continue to be underrepresented in American higher education (Astin, Antonio, Cress, & Astin, 1997; Harvey & Anderson, 2005; Moody, 2004; Ryu, 2010; Trower & Chait, 2002; Turner & Myers, Jr. 2000). This underrepresentation is in stark contrast to the increasing racial diversification of not only our nation's college students but also of the U.S. population. In 2007, while 24% of bachelor's degree recipients were from underrepresented minority (URM) backgrounds, only 9.5% of full time faculty were of URM backgrounds (Ryu, 2010). This number contrasts sharply with the fact that individuals from URM backgrounds, defined here as African American, Hispanic/Latino, and American Indian/Alaska Native, represented 29.8% of the U.S. population in the year 2010 (Humes, Jones & Ramirez, 2011). Many universities have employed affirmative action policies in an effort to diversify their faculty; however, the efficacy of affirmative action policies for diversifying the faculty remains unknown and somewhat controversial (Slaughter, Ehrenberg & Hanushek, 2004; Tierney & Bensimon, 1996; Turner & Myers, Jr. 2000; Washington & Harvey, 1989).

Since 1996, six states have banned the use of affirmative action in public university admission, hiring and government contracts either through state ballot referenda or legislation. In addition, the *Hopwood v. State of Texas* lawsuit rendered the use of affirmative action illegal for seven years at both public and private universities in the three-state jurisdiction of the 5<sup>th</sup> Circuit Court of Appeals. The rescission of

university affirmative action has received significant nationwide attention, prompting protest among those who feel that affirmative action bans are detrimental to the advancement of campus racial and ethnic diversity and its subsequent benefits (Fisher, 2006; Laird, 2005; Lewin, 2007). Many researchers have sought to understand the manner in which the rescission of affirmative action policies impacts a university's ability to recruit, enroll, and retain a diverse student body (Colburn, Young, & Yellen, 2008; Garces, 2010; Grodsky & Kurlaender, 2006; Marin & Flores, 2008; Orfield, et. al., 2007; Orfield & Miller, 1998; Tienda, et. al., 2003); however, scant research attention has focused on the effects of affirmative action policy rescission on faculty diversity. As a result, we have a weak understanding of how the ban on affirmative action has affected rationales for diversity in faculty recruitment and hiring at both public and private universities.

Media reports of university responses to the ban on affirmative action in hiring suggest considerable variety in the actual impact. Despite language in state referenda that clearly prohibits the use of racial preferences in hiring, some suggest that the state affirmative action bans do not completely negate a university's ability to consider race in the hiring process, because to do so would be in violation of the federal affirmative action mandates that require affirmative outreach (Nowinski, 2006; Schneider, 1998). At the University of California, a Task Force on Faculty Diversity asserts that Proposition 209<sup>1</sup> can be interpreted as, "supporting the University's commitment to provide equal opportunity in hiring," and that the University, "must take steps to address the barriers that prevent full participation of minorities in academic careers" (UC President's Task

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<sup>1</sup> Proposition 209 is the state ballot measure that banned the use of affirmative action at public institutions in California in 1996.

Force, 2006). In a separate account, a California State University professor admits to confusion over what the ban means for faculty hiring, stating:

Faculty don't know if affirmative action is outlawed or modified and no one wants to engage in a lawsuit to get clarification. The safest bet is to do nothing or to say, 'Until someone sorts this out, affirmative action is dead' (Schneider, 1998).

Other faculty accounts suggest that a ban on affirmative action conveys a message that is unwelcoming of diversity, which in turn can deter minority faculty from working at universities with such bans. According to former UC Berkeley Chancellor Robert Berdahl, many minority faculty do not want to work at universities where student diversity numbers are dwindling in the wake of anti-affirmative action referenda (Nowinski, 2006), suggesting that the impact of these bans may stretch beyond actual hiring procedures. The mix of accounts, coupled with a lack of research on the topic, reflects many possible organizational responses to the ban, yet ultimately demonstrates a lack of clarity over the extent to which the ban impacts faculty recruitment and hiring procedures.

Although the existing bans on affirmative action only pertain to public universities in selected states, it is also important to understand the possible effect of affirmative action bans and the legal climate on universities not formally under the jurisdictions of such bans. While research has not addressed this topic with regard to faculty diversity and hiring, the threat of litigation can affect the manner in which private universities employ their affirmative action programs in student admissions (Jaschik, 2005; Malveaux, 2004; Miksch, 2007). Recent studies of undergraduate admission practices in the midst of anti-affirmative action mandates and lawsuits specifically point

to a reduction in the use of affirmative action at universities not restrained by the ban (Grodsky & Kalogrides, 2008; Miksch, 2007). Indeed, many programs not officially under the jurisdiction of mandates that ban affirmative action – including fellowship, internship, and pre-college programs at CalTech, Harvard, Princeton, SUNY, Carnegie Mellon University, Virginia Tech, Southern Illinois, and the Ford Foundation – have made changes to their eligibility criteria to broaden concepts of diversity to include non-minority students (Glater, 2006; Miksch, 2007; Roach, 2005; Schmidt, 2006).

Alternately, other accounts specific to student recruitment suggest that private universities stand to benefit from the affirmative action ban, in that underrepresented minority students may gravitate towards enrollment at universities that do not have bans on affirmative action (Fisher, 2006; Lewin, 2007). The myriad accounts regarding the impact of affirmative action bans and the legal climate on public and private university use of affirmative action in admissions raise questions as to whether these bans have had a similar impact on faculty recruitment and hiring practices.

Despite the fact that affirmative action bans target faculty hiring – not simply student admission – scholarly study of the impact of these bans on faculty hiring is virtually absent. In particular, few have sought to understand how universities have responded to state-mandated bans on affirmative action. To better understand the relationship between the ban on affirmative action on the ability of public and private universities to attract and hire diverse faculty, this dissertation study asks: *how do state bans on affirmative action affect the rationales for diversity in faculty recruitment and hiring at a public and private university?* The proceeding discussion further identifies

the focus of this study by outlining the context of faculty diversification and hiring in American higher education.

### **The Problem of Underrepresentation**

Historically, the American professoriate was socially and ethnically exclusive to whites and Protestants until the era of expansion immediately following World War II. The diversification that took place, however, largely revolved around the inclusion of Jews, Catholics and, to a lesser extent, those of lower socioeconomic status (Metzger, 1987). By the end of the expansion in 1970, the professoriate remained well over 90% white and approximately 80% male, and the number of African American faculty outside of historically Black colleges, “remained so miniscule that they lent themselves more to anecdotal pointings than to census counts” (ibid). In 2005, only 9.9 percent of full time faculty in the United States were from URM backgrounds (U.S. Department of Education, 2006).

While the underrepresentation of faculty of color has been an intractable problem for decades, support for faculty diversity in higher education appears strong. University administrators acknowledge the ways in which a diverse faculty enhances higher education and many have provided official statements of support. For example, Stanford President John Hennessy and Provost John Etchemendy recently re-affirmed the University’s commitment to faculty diversity with this statement:

A more diverse faculty enhances the breadth, depth, and quality of our research and teaching by increasing the variety of experiences, perspectives, and scholarly interests among the faculty. A diverse faculty also provides a variety of role models and mentors for our increasingly diverse student population, which helps us to attract, retain, and graduate such populations more successfully (Hennessy & Etchemendy, 2007).

Such statements by university leaders nationwide have become more and more common and demonstrate institutional concern for and commitment to faculty diversity in higher education.

In addition, a fair amount of scholarship has examined how faculty of color are changing our universities, providing further support for diversification of the ranks. Faculty of color are cited as serving as important role models and mentors to minority students, and as contributors to a more student-centered value system in academe (Antonio, 2002; Mickelson & Oliver, 1991; Washington & Harvey, 1989). Faculty of color have also been shown to positively impact student learning and exposure to diverse ideas (Milem, 1999; Smith, 1989; Umbach, 2006), make distinct contributions to institutional missions (Allen et al, 2002; Milem, 1999), and play an important role in broadening conceptions of scholarship beyond research and publishing (Antonio, 2002). Furthermore, faculty of color influence change in academic culture by raising issues that pertain to their marginalization, introducing conflict, and providing leadership for change (Reyes & Halcon, 1988; Tierney & Bensimon, 1996; Turner & Myers, Jr., 2000). Finally, faculty of color are cited as affecting our conceptions of knowledge because of their often unique epistemological perspectives and by raising important, fundamental questions of knowledge production in academe (Collins, 1986; Delgado Bernal, 1998; Delgado Bernal & Villalpando, 2002; Scheurich & Young, 1997).

Despite this body of research and apparent university commitment, universities nationwide struggle to diversify their faculty ranks. Research points to several factors that contribute to the low number of URM faculty in American higher education. The low Ph.D. production among URM students – often referred to as the pipeline problem –

and the competition to hire from the URM pool are frequently cited by university administrators and faculty as the greatest challenge to diversifying the professoriate (Carter & O'Brien, 1993; Knowles & Harleston, 1997; Moody, 2004; Smith, et. al, 2004). However, while low Ph.D. production among URM students has been established, many scholars assert that the struggle to diversify faculty cannot be fully explained by low Ph.D. production (Moody, 2004; Nelson et. al., 2007; Smith et. al., 2004; Washington & Harvey, 1989). In one study, Washington and Harvey (1989) found that the proportion of African American and Hispanic faculty is less than their representation in the Ph.D. pool, even during periods of growth in faculty hiring nationwide. A more recent study of minority faculty in science and engineering points out that the number of URM Ph.D. recipients is significantly greater than the number of URM faculty holding assistant professor positions, also suggesting factors other than a small minority pipeline (Nelson et. al., 2007). Additional factors cited in the research as contributing to the low numbers of URM faculty include low tenure rates among faculty of color, subtle forms of personal and institutional racism in the recruitment and promotion processes, and lack of a supportive work environment (Carter & O'Brien, 1993; Perna, 2001; Reyes & Halcon, 1988; Swoboda, 1990; Turner & Myers, Jr. 2000).

Explanations for low URM faculty numbers other than the pipeline argument have also been explored. One line of inquiry suggests that minority faculty candidates are not the objects of high demand as universities might suggest. Numerous studies have described the experiences of faculty, postdoctoral fellows and administrators of color, and conclude that the typical hiring experience is not one characterized by competitive courtship or bidding wars (Menges & Exum, 1983; Mickelson & Oliver, 1991; Reyes &

Halcon, 1991; Turner & Myers, 1997). Indeed, a study by Smith and colleagues (1996) of minority scholars who had recently earned doctorates with funding from three prestigious fellowship programs found that 54 percent of the scientists in the sample – all underrepresented scholars of color – were not pursued for faculty positions. The competing beliefs regarding a university’s ability, and perhaps, desire to hire faculty of color raise continuing questions about faculty recruitment and hiring processes. For example, if diversifying the faculty is a clear organizational objective, how is that objective enacted in a complex environment characterized by normative and regulatory pressures that may or may not be complementary?

### **Affirmative Action and Faculty Hiring**

The use of affirmative action in faculty hiring dates back to the early 1970s when the American Association of University Professors endorsed affirmative action in faculty hiring and charged the professoriate with promoting diversity to remedy past discrimination (Turner & Myers, 2000). This use of affirmative action is aligned with federal regulation stating that any federal contractor – which includes universities receiving federal funding – must employ “specific affirmative practices to promote equal opportunity in hiring and advancement” (UC Berkeley Faculty Equity, 2008). Although there have been many legal challenges to the use of affirmative action in university admission, the use of affirmative action in faculty hiring has not come under direct legal challenge.

Despite the lack of legal challenges to faculty affirmative action, the emergence of anti-affirmative action state mandates coupled with legal challenges in the admission arena have become a part of the legal climate in which universities operate. Most

recently, in 2003, the cases challenging the use of affirmative action in admission at the University of Michigan – *Gratz v. Bollinger* and *Grutter v. Bollinger* – rose to the level of the U.S. Supreme Court, presenting the Court with “the most important civil rights case in 25 years” and generating a record number of amicus briefs from individuals, universities and organizations arguing both for and against affirmative action (Williams, 2003). Although the Court ultimately ruled that race may be considered as one factor among many in admissions programs to achieve the educational benefits of a diverse student body, organizations such as the Center for Individual Rights and the Pacific Legal Foundation continue to engage in litigation against universities that use racial preferences in admission and financial aid or sponsor race-conscious programs (Malveaux, 2004; Miksch, 2007). The threat of litigation by such organizations has placed pressure on universities that use affirmative action, so much so that several universities have either stopped practicing affirmative action in admission or have expanded eligibility criteria for programs once designated for underrepresented minority students (Glater, 2006; Miksch, 2007; Roach, 2005; Schmidt, 2006).

Although the extent to which the threat of litigation has permeated the faculty hiring arena is unclear, media accounts suggest that these threats have begun to emerge in faculty hiring. Conservative organizations such as the Center for Equal Opportunity have recently called attention to faculty affirmative action issues at Virginia Tech and the American Bar Association, challenging these organizations to withdraw any consideration of race in faculty hiring and threatening lawsuits (Center for Equal Opportunity, 2006; Clegg, 2006; Wilson, 2002). Roger Clegg, president of the Center for Equal Opportunity, observes that, “legal challenges concerning faculty hiring are

mounting, and it is emerging as the next big front in the battle against racial preferences” (Clegg, 2006, p. B13).

Although the Supreme Court has deemed the consideration of race in admissions constitutional, the ruling does not preclude states from eliminating affirmative action through legislation. In 1996, California voters passed Proposition 209, a state constitutional amendment that eliminated the use of racial preferences in the state’s public sector for admissions, hiring and government contracts. Several successful ballot initiatives modeled after Proposition 209 have followed – Washington’s Initiative 200 in 1998, Michigan’s Proposition 2 in 2006, Nebraska’s Initiative 424 in 2008, and most recently Arizona’s Proposition 107 in 2010. To date, only one state, Colorado, has voted to reject such legislation. In 2000, Florida Governor Jeb Bush enacted the “One Florida” initiative by gubernatorial edict, also eliminating affirmative action in the state’s public higher education institutions. Clearly, the environment in which universities operate has changed substantially in states that have adopted such measures. As states have increasingly become subject to anti-affirmative action legislation, more and more public universities must now conduct faculty recruitment and hiring practices within an environment that both bans the practice of affirmative action and yet, compels compliance with federal affirmative action laws that require affirmative outreach. Because these anti-affirmative action mandates have emerged during the past 15 years, study of how universities function within a state anti-affirmative action regulatory environment remains in a nascent stage.

## **Study Contributions**

Given our current understanding and continuing concerns regarding affirmative action and faculty diversity, the purpose of this study is to examine how regulatory bans on affirmative action affect rationales for diversity in faculty recruitment and hiring at a public and private university. Interviews with faculty that have served on search committees and university administrators with oversight on faculty affairs and diversity, coupled with a review of documents – including university policy statements on faculty diversity, policy revisions in the wake of state anti-affirmative action mandates, and faculty diversity reports – form the basis for my analysis.

By focusing on the university as the unit of analysis, my study aims to understand organizational behavior under these coercive anti-affirmative action conditions. These conditions are fairly unprecedented in terms of an outright ban on specific hiring behavior, and understanding how universities behave under these conditions will provide insight into the changing autonomy of universities. My study's focus on university behavior within the context of state affirmative action bans will also generate knowledge about the relationship between public policy and higher education. This focus will produce insights regarding how both public and private universities respond to public mandates and whether universities ultimately acquiesce to or resist pressures to alter behavior and rationales for behavior as a result of state policy changes. Existing studies of student admissions in the context of state anti-affirmative action regulatory environments (e.g. Grodsky & Kalogrides, 2008) illustrate the impact of the regulatory environment on public and private university behavior in admission and imply that university behavior with regard to faculty recruitment and hiring exhibits a similar

dynamic. My study will clearly illustrate accounts of change in faculty hiring practices coupled with the rationales advanced by university leaders, attorneys and faculty to explain and legitimate these changes in response to the state anti-affirmative action regulatory environment.

More specifically, my study aims to reveal how universities understand the competing internal and external demands regarding affirmative action in faculty hiring. Universities find themselves grappling with not only the competing state and federal regulations regarding affirmative action, but also with how these external regulations interact with the value placed on faculty diversity, support that has been articulated broadly by university leaders and scholars throughout the United States. My study attempts to understand how the interaction of internal and external pressures for and against affirmative action in faculty searches leads to how faculty recruitment and hiring policies are understood, re-interpreted, and put into practice.

Ultimately, through the use of a framework that incorporates concepts from neoinstitutional theory, my study aims to further our understanding of the regulatory factors that may contribute to the persistent underrepresentation of scholars of color. The manner in which universities respond to the state anti-affirmative regulatory context contributes to not only the organizational context for faculty diversity, but also affects the ways in which the policy is interpreted and enacted by faculty, which in turn may have an impact on hiring outcomes.

## **Chapter 2**

### **LITERATURE REVIEW**

The organization of this literature review is as follows. First, I provide a review of relevant studies of faculty recruitment and hiring not specific to minority faculty hiring, including information on the components of faculty searches and the factors that generally influence hiring. I then summarize the origins and emergence of affirmative action in the United States, along with conceptualizations of the term “diversity” relevant to this study. Next, I review studies of the perceptions and usage of affirmative action for faculty hiring in American higher education. Finally, I conclude by discussing studies that examine the role of regulation and public policy on university behavior, focusing on those that address the regulation of affirmative action.

#### **Components of Faculty Searches**

The scholarly literature on faculty searches, not specific to the hiring of underrepresented minority faculty, is fairly limited overall, particularly when compared to the more extensive body of reports and manuals that provide guidance to job candidates and/or to search committees (e.g. Horner et. al., 2001; Mason, 2005; van der Vorm, 2001; Watts, 1993). In general terms, faculty searches in higher education are typically characterized as including the following components: the appointment of a search committee; defining the job and composing a job advertisement; recruitment of applicants for the applicant pool; screening the applicants; interviewing candidates; conducting reference checks; selecting a candidate; and, if hired, supporting the selectee’s transition to the college or university. Within this realm, the limited scholarly

work on faculty hiring focuses primarily on candidate selection, specifically on the factors that influence the choice of a particular candidate.

### **Factors Influencing Faculty Hiring**

While it is important to note that not all faculty hiring decision-making is driven by identical motivations across university types (Finnegan, 1993; Twombly, 2005), several factors that drive hiring decisions do emerge consistently. The notion of candidate fit with the hiring department or university – “fit” being defined as the fit between the applicant’s research and teaching experience and the needs of the hiring department – emerges as a critical, if not the most important, factor in a faculty hiring decision (Landrum & Clump, 2004; Sheehan, et. al., 1998). Watts (1993) further highlights the importance of determining candidate fit by noting that the selection interview itself provides the best opportunity for assessing the potential match between the individual and the needs of the university. At research universities in particular, some of the literature contends that the recruitment and selection of new faculty have been dominated by the prestige system within the academic marketplace, in that the prestige of a candidate’s academic credentials plays an integral role in the search and hiring process (Burke, 1988; Caplow & McGee, 1958). Furthermore, the quality of a faculty candidate’s scholarship is repeatedly noted as a very important factor in hiring decisions, particularly at research universities (Burke, 1988; Landrum & Clump, 2004). Most of these studies imply conceptualizations of faculty hiring that are primarily focused on the individual attributes and characteristics of the job candidate, paying far less attention to organizational processes and factors related to the hiring college or university. Even less attention is paid to regulatory forces that can shape university policies related to faculty

recruitment and hiring, a critical omission of the current research by virtue of the individual-centered frameworks.

In a study of which criteria have the most value in the faculty applicant selection process, Landrum and Clump (2004) surveyed 89 search committee chairs of assistant professor faculty searches in the field of psychology. Their survey, featuring rank order, agreement, and importance scale questions, found that match or fit with department is the by far most important criterion in applicant selection, followed by research and teaching experience. These findings confirm those of a previous study of search committee chairs within the field of psychology (Sheehan et. al., 1998), but the Landrum and Clump study extends the previous work by utilizing more varied types of survey items as well as by collecting university and departmental data. Indeed, differences emerged in the evaluation of job applicants depending on the type of university (public versus private) or type of department (undergraduate-only versus undergraduate and graduate program), but a job applicants' race and gender were very low on the scale of factors deemed important in hiring.

While the broad survey approach taken by this study yields meaningful findings, the use of a survey possibly clouds the meaning what survey respondents defined as "important," particularly with regard to race and gender. Whether respondents understood "important" to mean important as a plus factor, important alongside scholarship, important as a university objective, or an alternate definition, remains unclear. Furthermore, this study is limited to the perceptions of a single search chair within each surveyed department and does not represent the views of other committee members. Such additional viewpoints would yield data that would allow for the

triangulation of data either confirming or contrasting the views represented by the search chairs, as well as generate additional perspectives from faculty search participants not chairing searches. Still, this study of search chairs within the field of psychology does yield notable findings. In particular, the notion of an applicant's race and gender not ranking high in the list of qualities deemed important in hiring invites the question as to whether university policies, state policies, or legal threats regarding affirmative action have any role in such findings. However, this important organizational angle – one that explores the regulatory environment – remains unexplored in this and other related studies.

In Burke's 1988 study of faculty appointments and terminations at six elite universities – the basis of which was formed on 306 faculty interviews – she finds that, "several chairmen simply admitted that intuition played a large part in the selection process" (p. 74). While departmental needs are acknowledged by the faculty interviewees in the study, Burke finds that the search process is essentially subjective and largely driven by priorities defined by the faculty committee members. A separate theoretical paper by Cole (1995) examining the use of Total Quality Management principles in faculty hiring also supports the notion of subjectivity in hiring, referring to the faculty search process as one that, "traditionally exists as a piecemeal and subjective process that is influenced more by individualistic personal biases and perceptions than by a more studied and collaborative assessment of institutional constituent needs" (p. 61). Again, a key critique of these studies' assertions of subjectivity and intuition in hiring decisions is that they assume an individual-centered framework of analysis.

While few studies examine the organizational forces that can potentially impact faculty recruitment and hiring, one study (Henninger, 1998) examines one facet of this topic through a multiple case study. Henninger looks specifically at business schools and examines whether newly imposed standards by The Association to Advance Collegiate Schools of Business (AACSB), an international business school accreditation and professional oversight organization, would have any impact on the review of faculty qualifications in hiring, tenure and promotion decisions at accredited universities. Specifically, the AACSB's newly issued standards were more broadly defined than previous standards, and did not state a requirement for faculty to hold a Ph.D. By conducting observations, document analysis and interviews with 40 academic deans, department chairs and faculty at bachelor's- and master's-level accredited universities, Henninger ultimately found that the new standards had little to no impact on hiring decisions. Despite the new standards, deans and chairs continued to place heavy emphasis on the Ph.D. degree received by a faculty candidate and regarded professional experience well below the Ph.D. qualification. The new AACSB standards specifically addressing openness to hiring a Ph.D. from a discipline outside of business also resulted in having a very slight impact. Henninger's findings suggest that long-standing faculty qualifications and norms can be slow to change in the wake of new professional standards, and recommends that more faculty be involved in the process of developing standards to yield greater faculty buy-in.

The main takeaway from this study for the purposes of this dissertation is that professional norms appear to be fairly dominant in higher education and need to be considered when examining influences on organizational behavior. While this study

overall informs the dissertation because it demonstrates the importance of examining organizational factors that can potentially affect the manner in which faculty candidates are evaluated and hired, it is limited in how it addresses the role of the regulatory environment in faculty searches. The newly issued standards that are examined in this study cannot be equated with government or legal regulations because they are not tied to government funding or the threat of litigation. As such, we cannot deduce from this study how universities respond to or comply with such regulation with regard to faculty hiring. Further, given the study's focus on business school hiring practices, it is unclear how generalizable these findings are to recruitment and hiring in non-professional school settings. Additional studies examining organizational factors impacting the use of affirmative action policies in particular will be reviewed in a subsequent section of the literature review (see Affirmative Action and Faculty Hiring).

### **Background and Status of Affirmative Action**

While affirmative action policies have been most notably applied to student admission to higher education, affirmative action is also utilized in fair labor practices as a policy guideline for faculty hiring. The term "affirmative action" was first coined in 1961 in an Executive Order issued by President John F. Kennedy establishing the President's Committee on Equal Employment Opportunity (Wilson, 1985). However, it was not until 1965 that President Lyndon B. Johnson issued Executive Order 11246, which barred federal government contractors and subcontractors from discriminating against employment applicants on the basis of race, creed, color, religion or national origin – in alignment with the Civil Rights Act of 1964 – and required employers to take affirmative action to overcome the effects of past discrimination. In 1967, President

Johnson signed Executive Order 11375 which added “sex” to the categories prohibited from discrimination, and specific actions outlined in the order include recruitment, compensation, and training (Equal Rights Advocates, 2008). Combined, these executive orders regarding affirmative action signaled the federal government’s intention to use its powers to enable past victims of discrimination to gain access to positions and opportunities previously unavailable to them (Washington & Harvey, 1989).

The Civil Rights Act of 1964 was amended by the Equal Employment Opportunity Act of 1972, which broadened the scope of the Civil Rights Act to apply to employers with 15 or more employees, hence affecting colleges and universities. Although colleges and universities seemed to support the fight against discrimination, many colleges and universities and the academics within them resisted the changes to their hiring procedures (VanderWaerdt, 1982). Some within academe perceived the Equal Employment Opportunity Act as a threat to academic standards and felt as though they would be forced to hire unqualified women and minorities to comply with government regulations (ibid). Still, despite some backlash against affirmative action, in 1973, the American Association of University Professors endorsed affirmative action in faculty hiring and charged the professoriate with promoting diversity to remedy past discrimination (Turner & Myers, 2000). The AAUP’s use of affirmative action is aligned with federal affirmative action regulations, yet the advent of state bans on affirmative action has created a clear tension between state and federal affirmative action policies in terms of hiring. Although there have been many legal challenges of the use of affirmative action in university admission, the use of affirmative action in faculty hiring

has not directly come under legal challenge at the federal level, and diversifying the faculty remains a broadly supported goal for American higher education.

### **Conceptualizations of Diversity**

The concept of diversity in higher education is commonly perceived as having a relatively recent history, yet within the context of admission to elite universities, Stulberg and Chen (2011) assert that the term “diversity” was utilized as early as the first half of the twentieth century. They do, however, state that diversity has meant different things at different times since its initial usage by college administrators “to exclude groups of students that they believed threatened their campus culture and traditions,” such as Jews (p. 52). Indeed, during the 1920s, elite universities aimed for “geographic diversity” in their admission to ensure student representation from outside of the urban centers located next to their universities, yet Karabel (2005) states that they did so in an effort to retain a Protestant ethos and to limit the enrollment of Jews. Some of this resistance to Jews appeared to change in the 1940s, however, when the concept of diversity at Harvard began to espouse a mix of students that was inclusive along religious and class lines (Karabel, 2005). During the 1960s, the social movements of the era coincided with the term “diversity” in higher education becoming associated with historically marginalized groups such as racial minorities (Karabel, 2005; Stulberg & Chen, 2011). Pointing to even broader conceptualizations of diversity, Stulberg and Chen (2011) cite a 1961 *New York Times* article quoting Columbia College’s director of admission asserting Columbia’s “commitment to diversity of student interests, talents, and backgrounds” (p. 57). As illustrated through these examples, the dialogue and definitions of diversity in

higher education have stemmed primarily from the term's usage in the context of student admission and enrollment.

Beginning in the 1970s, diversity in higher education became more closely associated with racial and ethnic diversity due in no small part to legal cases regarding the consideration of race in admission. The landmark 1978 *Bakke* case's use of "diversity" focused on diversity in terms of race, with Justice Powell's opinion bringing attention to the educational benefits of diversity and supporting the consideration of race as one of many factors in an admission decision. Takagi (1992) asserts that accusations of discrimination against Asian Americans in admissions to elite universities in the 1980s eventually led universities toward a discourse on the educational benefits of diversity and away from the explicit racial targeting of affirmative action in admission. However, given the strong association between race and diversity stemming from *Bakke*, Liu (1998) cites that in the years following *Bakke*, "diversity" has been portrayed by commentators as a new name for racial politics.

In 1996, the diversity rationale utilized by Justice Powell in *Bakke* was challenged by the Fifth Circuit Court of Appeals, which, as cited by Liu (1998, p. 381), held that "any consideration of race or ethnicity ... for the purpose of achieving a diverse student body is not a compelling interest under the Fourteenth Amendment." Through this ruling, the legal use of race as a key premise of "diversity" in higher education was compromised. As a result of the Fifth Circuit's ruling as well as other legal challenges to race-based affirmative action, race as a key premise of diversity began to fall out of favor not only legally, but also in the court of public opinion, according to Milem (2003). Milem asserts that many in the public do not value racial diversity in higher education,

and that while the public arena is generally supportive of democratic ideals, “the debate over affirmative action is constructed in a way in which vocal portions of the public argue that affirmative action violates the very principles that led to its creation” (p. 128).

Even with these challenges, diversity within the higher education community has frequently continued to be defined as an educational tool. Higher education scholars Milem, Chang, and Antonio (2005)’s concern with realizing the educational benefits of diversity led them to define diversity as “engagement across racial and ethnic lines comprised of a broad and varied set of activities and initiative,” coupled with “an interest in opposing unfair forms of exclusion, prejudice, and discrimination (p. 4).” Milem and colleagues also cite that the term “diversity” has often been incorrectly used in place of the term “multiculturalism,” a term that they define as a “recognition or celebration of different cultures (ibid, p. 5),” and a term widely used in the 1980s and 1990s in association with the introduction of non-Western content into higher education curricula (e.g., Giroux, 1995; Ravitch, 1990; Rhoads, 1995). Although Milem and colleagues are clear in their definition of diversity, they also acknowledge the other ways in which diversity is often utilized in higher education settings, with the most common use of the term being to describe student body racial composition (Milem, Chang, & Antonio, 2005).

Within the business world, the term “diversity” emerged as a successor to affirmative action beginning in the late 1980s, with the term typically encompassing racial diversity as well as women, the same underrepresented groups targeted by federal affirmative action efforts. Kelly and Dobbin (1998) chronicle how affirmative action became “diversity management” in business and human resources circles, particularly

pointing to a lack of support for affirmative action from the Bush and Clinton administrations between 1988 and 1996 leading to the recasting of affirmative action measures as diversity initiatives. In their words, “human resources managers and supportive executives argued that diversity programs – including antidiscrimination policies, training programs, and recruitment practices nearly identical to EEO/AA measures – produced a ‘strategic advantage by helping members of diverse groups perform to their potential.’” (p. 973). In their analysis of the emergence of diversity terminology in the business world, Kelly and Dobbin (ibid) cite a 1990 Harvard Business Review publication which supports the business case for diversity – stating that “learning to manage diversity will make you more competitive” – as well as legal compliance reasons for pursuing diversity (Thomas, 1990). The business case for managing diversity was in response to changing demographics prompting businesses to become more responsive to both a more diverse workforce as well as more diverse consumer markets (Kelly and Dobbin, 1998). However, a perceived lack of governmental support for affirmative action programs during the late 1980s and 1990s provided the context for creating the business case for diversity programs.

The complex history of “diversity” in higher education and its associations with race and affirmative action are important to acknowledge, and, according to Stulberg and Chen (2011), allows for the consideration of diversity “with respect to other identities and social locations, like gender and gender identity, sexual orientation, economic background, and disability status, for instance (p. 60).” While there has been a historical connection between race and diversity since the 1970s if not earlier, the anti-race, anti-affirmative action regulatory environment that emerged since the 1990s due to litigation

and state referenda has set the stage for an array of definitions for diversity to emerge, definitions that extend beyond simply associating race with diversity.

### **Affirmative Action and Faculty Hiring**

Very few studies have specifically examined the use of affirmative action in faculty hiring, and all of the located studies are at least 15 years old. This small body of work tends not to focus on the effects of affirmative action regulation from an organizational lens, but rather on the manner in which individual faculty perceive and utilize faculty affirmative action policies. In one such study, support for affirmative action in faculty hiring was assessed in a survey of 115 state university and community college faculty by Vozzola and Higgins (1994). Using two surveys of questions regarding various affirmative action hiring scenarios and a third survey featuring agreement and open-ended items relating to affirmative action and hiring policies, Vozzola and Higgins found that few faculty support the practice of offering a position to a talented minority candidate when another candidate, perceived as of significantly higher quality, is also a finalist. They also found that while most faculty in the sample support the diversity and equal opportunity goals of affirmative action, many have “reservations” about how the policy is implemented.

A shortcoming of Vozzola and Higgins’ study is that these “reservations” are not fully probed in terms of the nature of these reservations and the viewpoints from which they emanate. In addition, the study’s sampling methods are not well described, which leads one to further question the faculty viewpoints represented in the study’s findings (were the faculty participants selected at random, were they volunteers eager to express views on affirmative action, or something else?). As such, the findings are to be taken

with some caution. However, in the words of Vozzola and Higgins, “‘good’ affirmative action programs must ensure that the values of both pluralism and quality are respected and reflected in search procedures” (p. 27), and faculty not observing these qualities in their university’s affirmative action programs may come to resent the outcomes of the policy. These particular findings prompt further investigation regarding the extent to which organizational or regulatory mechanisms influence normative beliefs regarding faculty diversity as well as whether these mechanisms influence faculty behavior in the recruitment and hiring process.

Additional studies have examined organizational forces impacting the successful execution of affirmative action programs. In a case study of three universities deemed to have achieved some measure of success with affirmative action for women faculty, Hyer (1985) finds that four specific factors contribute to the successful policy implementation: (1) institutional leadership for affirmative action; (2) coalition building and activity on behalf of women faculty; (3) the nature of government intervention; and (4) structural and/or environmental influences on policy implementation. With regard to government intervention, Hyer finds that the federal government was most influential to universities as a catalyst in the early stages of campus affirmative action policy adoption and implementation, yet the campuses in her study received little ongoing assistance from the government beyond the early stages of policy adoption.

The notion of university administrative leadership playing an important role in successful policy implementation is also supported by Newcombe and Conrad (1981). While Newcombe and Conrad’s study focuses on the implementation of federal Title IX policies in university athletic programs, connections can be made with this study due to

its examination of policy implementation in a higher education setting, specifically one that relates to increasing representation of a specific underrepresented group (in this case, women). While these studies indicate that organizational contexts play a nontrivial role in the implementation and execution of affirmative action policy, the studies cannot be fully applied to the case of faculty hiring today because the regulatory and legal tensions that currently exist between federal policies supporting affirmative outreach and state level bans on affirmative action did not exist at the time that these studies were conducted. Both studies are over 20 years old and examined universities within a context that was widely adopting and implementing affirmative action policies, a sharp contrast to the present regulatory context.

In a case study of the organizational context for faculty affirmative action, Hanna (1988) focuses specifically on how institutional leadership, government regulations, decentralized hiring practices, and institutional context affect the use of affirmative action for female faculty hiring and promotion at Stanford and UC Berkeley. She draws on interviews with over 50 faculty and administrators from both universities, coupled with supporting documents, to gain insight on both general affirmative action practices as well as information on 10 specific faculty appointments that took place between the early 1970s and the mid-1980s. In her study, she focuses on specific *a priori* constructs – institutional leadership, faculty liaisons, government regulation, the campus culture and context (which, while not specifically defined, seems to focus on tradition and governance patterns), and the limitations of centralized initiatives. Hanna’s study ultimately finds that institutional leadership plays an important role in fostering support for faculty affirmative action policies, yet that institutional leadership on its own is

insufficient to fully impact decentralized faculty hiring, retention and promotion decisions. With regard to government regulations – specifically federal mandates regarding affirmative action – she finds that they have no direct organizational influence but rather an indirect effect through spurring commitment to affirmative action by chief university administrators.

There are some limitations to Hanna’s study. A key limitation is the study’s focus on affirmative action practices over 20 years ago and with specific regard to the hiring of female faculty. While helpful to understand the context for hiring in the 1980s, the difference between the government regulations, political and regulatory context and the overall dynamics of the 1980s versus today limits the applicability of Hanna’s study to the hiring of underrepresented minority faculty in today’s higher education and regulatory context. In addition, and of particular importance to this dissertation, Hanna limits her examination of external pressures to federal government mandates, which does not allow for an examination of state mandates or external legal pressures. While such state and legal pressures had not yet fully emerged in the affirmative action landscape at the time of Hanna’s study, it is a central issue in today’s landscape that will be addressed in my study.

Despite these limitations, this study is significant to the design and approach of my dissertation study as it specifically examines how organizational factors impact the use of affirmative action policies in faculty recruitment and hiring. Hanna’s use of multiple sources – interviews and documents – to weave together a comprehensive view of the organizational context for female faculty affirmative action (which at the time was still a fairly young policy in higher education) informs my decision to employ a case

study approach in this dissertation. As I aim to understand a complex, current phenomenon about which little is documented, the ability to draw from several vantage points and data sources to understand the relationship between organizational contexts – particularly legal challenges to affirmative action emerging from the regulatory environment and any tensions between federal and state affirmative action policy – and the manner in which universities recruit and hire diverse faculty are critical to the execution of my study.

A more recent study by Smith and colleagues (2004) approaches the topic of minority faculty hiring and the search committee process on a broader, quantitative scale. The study involved an analysis of the outcomes of approximately 700 searches at public research universities nationwide, and examined whether specific interventions account for the hiring of diverse faculty. For each search, data were collected on three key interventions: whether the job description used to recruit faculty explicitly engages diversity at the department or sub-field level; whether the search utilized a special hire<sup>2</sup> strategy, and; whether the search was conducted by an ethnically/racially diverse search committee. An analysis of this data found that each of the three above listed interventions increased the likelihood of a minority faculty hire.

Whereas this study by Smith and colleagues yields critical information that enables a greater understanding of minority faculty hiring, it raises further questions regarding what these findings suggest about the role of organizational factors. Does the incorporation of diversity in the job description change any organizational norms or processes regarding faculty diversity? Does the existence of racially diverse search

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<sup>2</sup> A ‘special hire’ is defined in the study as being either a waiver of a search, a target of opportunity hire, or a spousal hire.

committees speak to the existence of organizational procedures ensuring diverse committees, or more broadly, does it speak to the value that a university places on faculty diversity? This study also recommends that future qualitative inquiry on the topic be pursued to gain a greater understanding of the phenomenon.

Overall, while these studies of faculty hiring provide important insights into the hiring process and the role of diversity, they do not reveal anything about universities under the current set of regulatory pressures regarding racial preferences and affirmative action overall. Furthermore, these studies reveal little about university behavior with regard to faculty recruitment and hiring under such conditions.

### **The Role of Regulation and Public Policy on University Behavior**

Much of literature that examines the role of regulation and public policy on American higher education tends to focus on issues relating to funding (e.g. Breneman, 1995; Callan, 2002; Delaney & Doyle, 2007; Jones, 2006) and financial aid (e.g. Cornwell & Mustard, 2002; Heller, 2003; Heller & Marin, 2004; St. John, 2004). The emphasis on funding and financial aid issues is understandable, given the importance of government funding and financial aid policy on American higher education. However, this focus neglects to address other aspects of regulation and public policy that can also affect the behavior of universities.

A smaller but considerable number of empirical studies focus on issues relating to the regulation of affirmative action in higher education, most of which examines on the effect of policy enactment or rescission on student application behavior and enrollments by race, particularly emphasizing the effects on underrepresented students (e.g., Contreras, 2004; Garces, 2010; Geiser, et. al., 2000; Lomibao, et. al., 2004; Long &

Tienda, 2008). These studies tend to employ quantitative methods and have primarily emerged since the mid-1990s after the onset of Proposition 209 in California and the *Hopwood* decision in Texas. A study by Card and Krueger (2004) exemplifies this kind of scholarship. In their study, the authors seek to understand whether the elimination of affirmative action in California and Texas prompted any changes in prospective freshman applicant behavior among black and Hispanic students, specifically observing student SAT score-sending behavior given its correlation with the decision to apply to a given school. Using College Board data on SAT test takers from the two states spanning from 1995-2001 and employing regression analyses, Card and Krueger find that high achieving minority students were no less likely to have their SAT scores sent to selective public universities in Texas and California. Overall, they ultimately suggest that prospective minority applicants are not sensitive to the changes in the minority enrollment that California and Texas public universities have experienced as a result of the rescission of affirmative action. Their data, however, are unable to illuminate why this is the case, such as whether this is due to students being unconcerned by the student demographics on campus or because they feel that the benefits of attending a selective university outweigh any other negatives.

This particular study, while important to chronicling the effects of anti-affirmative action mandates on student applicant behavior, focuses much more on the effect of policy change and less on the processes by which such change takes place and the mechanisms that can in turn affect outcomes. This orientation towards understanding effects and outcomes is characteristic of the body of literature that chronicles the relationship between affirmative action and American higher education. What is less well understood

is the process by which policy is transmitted into practice within universities. This is particularly the case with regard to faculty recruitment and hiring, which is not addressed in this study or in any of the literature that looks at anti-affirmative action mandates.

A recent study by Grodsky and Kalogrides (2008) also takes a quantitative route towards understanding the effects of the rescission of affirmative action, but unlike other similar studies, it employs organizational theory as a central component of its conceptual framework. The study seeks to understand the prevalence with which colleges and universities consider race in college admissions decisions over time, particularly examining the time period spanning 1986-2003. They posit that a college's likelihood of considering race in admission can be shaped by both organizational attributes as well as the historical, political and regulatory contexts that can constrain organizational behavior. Drawing on data from 1,300 American colleges and universities, the study authors test the salience of various organizational and contextual factors that they believe could influence a university's likelihood of employing racial preferences in admissions decisions. They ultimately find that the consideration of race in admissions decisions declined sharply after the mid-1990s, particularly at public universities under affirmative action bans but also at public and private universities not directly under anti-affirmative action regulation. They suggest that the policy environment – particularly the threat of litigation that looms over universities that practice affirmative action – has played a key role in prompting the decrease in the use of racial preferences. This finding is consistent with the work of Miksch (2007), who in a separate study describes the decline of race-conscious programming at colleges and universities in the wake of anti-affirmative action lawsuits and negative publicity.

The organizational approach of Grodsky and Kalogrides' study is clearly significant in this area of scholarship, as it brings to our attention the salience of several previously unexamined factors. First, they recognize differences in the sector in which a university resides. They assert that public universities are accountable to a wider set of actors than private universities, and that public universities by definition are committed to serving the eligible students from their state which commonly includes an explicit commitment to a diverse student body. They also acknowledge the role of university status on behavior, and ultimately find that more prestigious universities are more likely to engage in affirmative action than less prestigious ones.

Grodsky and Kalogrides also test the effect of history on affirmative action usage by examining a university's proximity to race riots; however, their study ultimately reveals that proximity to race riots has no effect on a university's propensity towards the use of affirmative action. In terms of demographics, the authors observe that the racial composition of young adults in the state may influence a college's decision to consider race. Regarding political context, the authors cite the control of legislative bodies over public colleges and universities, and hypothesize that increases in the racial/ethnic diversity of state legislatures could buffer colleges and universities from pressures to cease engaging in affirmative action. This was found not to be the case in their study, but the importance of political context broadly, in terms of the climate surrounding affirmative action, is recognized as something that contributes to the threat of litigation. Finally, the context of regulation is considered in their analysis, particularly examining the passage and implementation of initiatives like Proposition 209 as well as court cases such as *Hopwood* in Texas. Indeed, the regulation of racial preferences is found to play

an integral role in how universities behave with regard to admission, with universities in these regulatory settings becoming less likely to employ racial preferences in recent years.

While Grodsky and Kalogrides' work illustrates that there has been a decrease in the consideration of race at universities both directly and indirectly affected by affirmative action bans, there is still much to be learned about how this process has taken place. Their study is unable to address the interaction of processes that yield the outcomes that they describe, a process that is likely quite complex. The study reveals little about the competing demands that colleges and universities must weigh as they make decisions about whether and how to consider race in admission, much less in faculty hiring. In particular, there is little insight provided regarding the policy tension between state affirmative action bans and federal requirements for affirmative action; as the federal affirmative action policies apply exclusively to hiring, studies of admission do not address the issue as it is not salient in the admission arena.

## **Chapter 3**

### **CONCEPTUAL FRAMEWORK**

The preceding literature review demonstrates that there remains much to be learned about how bans on affirmative action affect faculty recruitment and hiring at public and private universities. Although previous studies have suggested how subjective factors and implementation methods can impact faculty hiring generally speaking, few studies have specifically examined the manner in which affirmative action policies or the rescission of such policies affect rationales for diversity in faculty recruitment and hiring. The studies that have examined diverse outcomes in faculty searches are limited in that they do not account for how the regulatory environment can impact faculty recruitment and hiring practices. Indeed, a limited look at individual faculty members' interpretation and enactment of a policy fails to understand the regulatory and legal pressures surrounding those processes. While offering important insights, previous studies focus little attention to how the recruitment and hiring of diverse faculty takes place within the context of the regulatory environment, and whether universities interpret and enact recruitment and hiring policies differently based on the regulations and legal pressures to which they are subject. Furthermore, while some quantitative studies have identified correlations between faculty search traits and diverse hiring outcomes, the effect of the regulatory environment on faculty recruitment and hiring has gone under-examined and under-theorized. Therefore, this study employs concepts from institutional and neoinstitutional theory to further understand how the regulatory environment affects

rationales for diversity in faculty recruitment and hiring at a public university and a private university.

An institutional framework allows for an examination of several questions nested within the dissertation. It allows an examination of how rationales for diversity in faculty recruitment and hiring practices at both a public and private university are affected by the presence of regulatory pressures in the university context, juxtaposed against the normative values placed on faculty diversity by university leaders nationwide. Through the use of an institutional framework, this study closely examines how these multiple pressures regarding faculty diversity and hiring are negotiated within the present regulatory environment. Methodologically, the examination of two highly selective research universities – one public and one private – provides a basis for comparison across organizational form. Thus, I observe similarities and differences in how each university has negotiated the regulatory environment in articulating and utilizing rationales for diversity in faculty recruitment and hiring. As previous studies of affirmative action in faculty searches are limited in number, and most have employed individual-level frameworks, this institutional approach makes a unique contribution to the study of faculty searches and diversity as well as to the study of organizational behavior in higher education.

Based on the conceptions of neoinstitutional theory, my study focuses on two specific areas: variation among organizations in their response to the state anti-affirmative action regulatory environment, and differences within organizations in their response to the regulatory environment. First, as social organizations, universities are nested within an environment which consists of rules and socially defined categories that

motivate their behavior. While there are various specific motives that drive organizational behavior, my framework applies the concept of the legitimacy imperative (Meyer & Scott, 1983) as one of the key forces guiding faculty hiring rationales, policies and practices relative to affirmative action and diversification efforts. The legitimacy imperative recognizes that organizations are driven to behave in a way that establishes or maintains legitimacy. Accordingly, the organizational behavior driven by such legitimacy motives can be understood through the lenses of the three pillars of institutions: the regulative pillar (where the motivation is to avoid sanctions), the normative pillar (where the motivation is value driven), and the cultural-cognitive pillar (where the motivation rests on the taken-for-granted following of scripts) (Scott, 2008).

For my study, it is especially important to understand and recognize the role of the regulatory environment in shaping the behavior of universities, particularly in the context of changing regulation and legal pressures surrounding the use of affirmative action. The regulatory environment in which universities find themselves today is unprecedented, and our knowledge of how this environment has affected faculty recruitment and hiring is limited. Therefore, I frame my study with an institutional framework that highlights the regulative pillar of institutional theory, while also examining the extent to which regulatory pressures surrounding faculty affirmative action are transformed into normative and cultural-cognitive rationales and mechanisms. Further, to guide my data analysis of organizational responses, my framework allows for identifying a range of rationales for faculty hiring from the top administrative tier of each university organization (university leaders and attorneys) as well as from the departmental faculty who are ultimately responsible for executing hiring decisions.

## **Foundations of Institutional Theory**

Early institutional theorists emerged in the late 19<sup>th</sup> century and continued to craft their formulations of the key components of what is considered early institutional theory until the mid-20<sup>th</sup> century. Economists, political scientists and sociologists are the primary scholars associated with the tradition of institutional theory and have each contributed concepts and insights as the theories have been developed. Some of the main tenets of early institutionalism, as described by Scott (2002), include the idea that institutions are social phenomena worthy of their own theoretical explanation, the definition of legal frameworks and arrangements that characterize governance, and sociological comparisons of institutions and how they operate in different societies.

Over the past 40 years, scholars have revised many of the early conceptualizations of institutional theory and have called attention to issues not fully addressed in early institutional thinking. A common limitation of early institutional work is that it gave little attention to individual organizations as institutional forms; as a result, theorists during the 1970s and 1980s paid greater attention to organizational forms and fields (Scott, 2008). At the same time, neoinstitutional theory emerged, which focuses on how “action is structured and order made possible by shared systems of rules that both constrain the inclination and capacity of actors to optimize as well as privilege some groups whose interests are secured by prevailing rewards and sanctions” (Powell & DiMaggio, 1991, p.11). Neoinstitutionalists, particularly those hailing from sociology, are concerned with how individuals within the same group can perceive and interpret the same cultural frames differently. As large, complex organizations, colleges and universities are well suited for study through the lens of neoinstitutional theory because

of the theory's attention to both shared systems of rules both within organizations and across organizations in a field (which, for example, in the case of higher education, could be among departments within a university, or among universities of the same type), as well as how meaning can be constructed differently by actors in the same organizational context. Furthermore, neoinstitutional theory asserts that organizations actively and strategically respond to pressures in the institutional environment. This neoinstitutional emphasis on organizational power and agency is in sharp contrast to earlier institutional accounts that depicted organizations as being somewhat passive and possessing a more limited response repertoire (Scott, 2008).

### **Legitimacy**

Drawing from both institutional theory and neoinstitutional theory, I utilize the concept of the legitimacy imperative as a source of inertia for organizational behavior. In other words, organizations are motivated to behave in a way that establishes or reinforces their legitimacy within their institutional environment. Most recently, neoinstitutionalists have focused on the concept of legitimacy to gain a greater understanding of how organizations relate to their environments. Legitimacy within the study of organizations has been broadly conceptualized as pertaining to societal evaluations of organizational goals (Pheffer & Salancik, 1978; Scott, 1991). More specifically, Meyer and Scott (1983) define organizational legitimacy as, "the degree of cultural support for an organization – the extent to which the array of established cultural accounts provide explanations for its existence" (p. 201). Strategic choices by organizations are constrained by legitimacy concerns; the degree to which there is consensus in the relevant

sector or field (be it internal or external to the organization) about the appropriateness of the decisions made will ultimately affect the legitimacy of the organization (Scott, 1991).

While universities are distinct from other industry sectors, universities, like other organizations, are driven by various legitimacy imperatives and behave in a manner that establishes or reinforces their status and legitimacy within their field. Some examples of such organizational behavior might include: compliance with accreditation standards; maintenance of a particular academic governance structure; stability of traditional fields of study; the provision of financial aid for needy students; contributions to the communities surrounding the university; or even increasing the average SAT score of admitted students to raise a university's U.S. News and World Report rankings. The faculty hiring decisions made by universities play an important role in a university's legitimacy, particularly among universities of higher status and selectivity. Within the scope of faculty hiring, the legitimacy imperatives experienced by universities may include pressure to hire "faculty stars," pressure to hire faculty with certain types of credentials, or pressure to hire faculty that provide certain field coverage within a department.

### **The Three Pillars of Institutions**

In my study, we can further understand the legitimacy motivations of universities regarding faculty affirmative action through the lenses of the three pillars of institutions. Scott (2008) asserts that the three pillars elicit three related, but distinguishable bases of legitimacy; accordingly, there are different legitimacy motivations driving university rationales and behavior with regard to the different pillars. Here, I describe the three

pillars of institutions and then discuss how they each provide access to different kinds of legitimacy for universities.

As defined by institutional scholars, institutions are comprised of three pillars: regulative, normative, and cultural-cognitive elements, which Scott (2008) states that, “together with associated activities and resources, provide stability and meaning to social life (p. 48).” Each of the three pillars emphasizes a different angle of the factors that comprise and sustain institutions, and scholars from different disciplinary traditions tend to focus on particular pillars and how they specifically shape institutions. The regulative pillar is the focus of the work of many economists and economic historians. The normative pillar is emphasized primarily by early sociologists, yet continues to be employed by sociologists and political scientists. The cultural-cognitive pillar tends to be championed by sociologists and organizational scholars within the neoinstitutional tradition.

The regulative pillar of institutions is characterized by the prominence given to rule setting, monitoring and sanctioning activities (Scott, 2008). In this arena, regulatory processes “involve the capacity to establish rules, inspect others’ conformity to them, and, as necessary, manipulate sanctions – rewards and punishments – in an attempt to influence future behavior” (ibid, p. 52). Within the realm of higher education, regulative forces may include the manner in which state or federal government regulations affect the behavior of an entire public university system, as well as how rules internal to a university affect that particular university’s organizational behavior. The existence of rules tends to dominate discussion of the regulatory elements of an organizational field, be they formally established rules and laws or informal rules. However, the sheer

enforcement of rules and potential sanctions alone are not the only driving forces behind the power of such rules. Weber (1978) notes that rulers attempt to cultivate a belief in the legitimacy of the rules, rather than simply rely on their enforcement.

The normative pillar of institutions emphasizes the role of values and norms in social behavior, specifically, “rules that introduce a prescriptive, evaluative, and obligatory dimension into social life” (Scott, 2008, p. 54). Sociologists have largely championed the normative systems that influence institutions, placing emphasis on how common beliefs and values exist within institutions to constitute an important basis of a stable social order (Scott, 2008), with some emphasizing the important moral roots of institutions (Stinchcombe, 1997). Normative pressures are also cited as contributing to institutional isomorphism, primarily through professionalization (DiMaggio & Powell, 1991). Instead of more traditional arguments pointing to competition and efficiency as the cause for organizational change, DiMaggio and Powell (1983) state that the rise of professions – a set of organizations within a field – now serve as a strong normative force in generating isomorphic change among these organizations. In higher education, some normative beliefs might include the provision of accessible higher education for all students (such as through open enrollment community colleges) and the facilitation of educational opportunity for culturally and socioeconomically diverse students. An important aspect of the normative pillar involves the expectations of individual actors to behave in a way that they are supposed to behave. These expectations of behavior are embedded in roles; roles, in turn, shape the manner in which institutions form and are sustained through the expectations placed on certain actors by others within the same context.

The cultural-cognitive pillar of institutions focuses on how individuals mediate the external world of stimuli, and how cultural frames can differentially impact perceptions among individuals within the same group (Scott, 2008). It emphasizes how cognition plays a critical role in how individuals make sense of what surrounds them, and that individuals in the same situation may interpret things differently. Scott (2001) further elaborates on this premise by stating:

Persons in the same situation can perceive the situation quite differently, both in terms of what is and what ought to be. Cultural beliefs vary and are frequently contested, particularly in times of social disorganization and change (p. 39).

As an example, cultural-cognitive forces within higher education may be observed in how different students within the same university interpret a campus event differently; what one student deems to be culturally insensitive, another student may deem benign or harmless. The cultural-cognitive pillar of institutions is a defining premise of neoinstitutional theory, which Powell and DiMaggio (1991) describe as giving greater attention to cognitive frames and cultural frameworks rather than to normative or regulative systems.

It is through the regulative, normative and cultural-cognitive pillars of institutions that legitimacy is achieved by organizations. As legitimate organizations are those operated in accordance with the law and regulation, universities are motivated to conform to regulatory mechanisms because they aim to avoid sanctions and acquire resources. With regard to the normative pillar, universities are motivated to behave in ways that allow them to adhere to value-based systems including standards and other mechanisms that separate right from wrong. These normative forces are more likely to be internalized

by individuals as compared to regulative forces. The cultural-cognitive pillar of institutions suggests that a university's behavior is motivated by the following of taken-for-granted scripts. Because of the embedded preconscious nature of the beliefs driving culturally-cognitive motivated behavior, this pillar is believed to operate at the "deepest" level (Scott, 2008, p. 61). Conforming to each of these motivations grants universities different types of legitimacy; as one example, the hiring of faculty stars is one of many cultural-cognitive, taken-for-granted approaches to legitimacy. Each of the institutional pillars provides greater insight into the ways in which universities are motivated to behave, rationalize faculty hiring practices with respect to affirmative action, and establish legitimacy.

### **Institutional Logics and Organizational Rationales**

Within neoinstitutional theory, the concept of institutional logics lays the foundation for understanding the institutional environment in higher education, particularly amidst the regulatory forces that are of interest in my study. Institutional logics are defined as "the belief systems and associated practices that predominate in an organizational field" (Scott, et al., 2000, p. 170). Within organizations, multiple and often competing logics may exist due to the array of specialized arenas within an organization (Scott, 2008), and some of the biggest struggles that can face an organization have to do with which logic regulates a given activity or applies to a category of people (Friedland & Alford, 1991). Universities are a site where a number of institutional logics converge, and scholars have examined the role of institutional logics in the context of higher education, exploring topics that include academic governing boards (Bastedo, 2009) and academic restructuring (Gumport, 2000; Gumport, 2002).

Bastedo (2009, p. 211) states that logics are, “a set of characteristics that define the theory of action to be used in policy development,” thus highlighting the role of logics in shaping organizational actions. Further, Gumport (2002) points out that multiple logics can be in use at any given point in time within a postsecondary organization, and also that tensions or strain between logics can emerge and form the bases of political conflict.

Ultimately, accepted logics are the basis upon which organizational rationales and their resulting practices are formulated in higher education settings. As a guide for my data collection and analysis, I draw upon the construct of organizational rationales, specifically identifying the rationales for diversity-related faculty hiring practices employed by university leaders, attorneys and faculty to respond to institutional pressures presented by the regulatory environment. Rationales represent institutionalized ways of thinking and providing accounts for behavior in this setting; they are logics-in-use that are discovered through interviews and other accounts by organizational actors.

Rationales with respect to affirmative action and diversity-related practices in American higher education have been explored by scholars and cited in legal opinions. Moses and Chang (2006) point to the diversity rationale as being rooted in philosophical origins, with philosophers ranging from the ancient Greeks to John Dewey arguing that “the ideal of diversity is worth wanting because it enriches a democratic society and cultivates adults who can function more effectively as citizens of a complex and connected world” (p. 9). In the courts, the diversity rationale – particularly the educational benefits of a diverse student population – was cited by Justice Powell in *Regents of the University of California v. Bakke* (1978) as an appropriate justification for using race as one of many “plus” factors in competitive university admissions, and

Ancheta (2003) details the manner in which the courts have generally supported the diversity rationale as a compelling governmental interest. However, Liu (1998) traces the origins of the diversity rationale in legal opinions regarding education back to 1950 opinion in *Sweatt v. Painter*. Antonio and Clarke (2011) describe the use of the diversity rationale by universities to support the creation of Chief Diversity Officer positions in American higher education, and further distinguish between the diversity rationale, which emphasizes the learning benefits that can result from a diverse population, and a remedial rationale, which is more equity and social justice-oriented; they also define a space where elements from both the diversity rationale and the remedial rationale can be combined to form a mixed rationale.

Given my interest in understanding the implications of the state anti-affirmative action regulatory environment on public and private universities, understanding these conceptualizations of the diversity rationale and the remedial rationale in American higher education is helpful for analyzing my data examining topics related to diversity and categorical preferences in faculty hiring. While not limiting my analysis to these rationales, the use of the diversity rationale and the remedial rationale enables me to illuminate not only those rationales but also an array of rationales used by university stakeholders to explain and legitimate faculty hiring practices in either institutional setting in response to the regulatory environment. Further, it will be important to differentiate between the rationales communicated by administrative tier of the organization – university leaders and attorneys setting policy – and the rationales understood and communicated by those who execute faculty hiring, the departmental faculty.

## **Application of the Theories to the Current Study**

Using the described components of institutional theory as a frame, this study accounts for the ways in which the regulatory environment affects rationales for diversity in faculty recruitment and hiring at both a public and private university. As previous studies of diversity in faculty hiring have focused little on the role of the regulatory environment, this study makes a unique contribution to the field by examining the regulative pressures that presently surround the use of affirmative action at American universities and how these pressures shape the processes undertaken by both public and private universities as they recruit and hire faculty.

Universities are the unit of analysis in my study; however, I examine both the broad organizational rationales and behavior of each university relative to faculty affirmative action as well as the rationales utilized by university leaders, attorneys and faculty at each case study site, as these individual rationales emerged within the defining organizational context of interest. In doing so, I aim to identify both changes in organizational behavior and changes in cultural-cognitive understandings regarding rationales for diversity among organizational participants. To understand the rationales for diversity in faculty recruitment and hiring utilized within the state anti-affirmative action regulatory environment, I utilize the three pillars of institutions as lenses through which to examine these rationales at both universities, and I employ the concept of the legitimacy imperative that drives organizational behavior. Individual participants within each organization – in this case university administrators and faculty – are motivated to advance rationales and behave in ways that will help their university establish, maintain, or gain legitimacy. Accordingly, it is important to understand how the regulatory

environment – particularly the rescission of affirmative action in several states – affects any behavior that is motivated by legitimacy imperatives, and my study seeks to understand these internal processes further.

The use of the three pillars of institutions enables me to make sense of the different channels through which legitimacy imperatives shape rationales for diversity and university behavior as they relate to faculty affirmative action. A university's desire to avoid sanctions reflects the coercive force of the regulative pillar that affects university behavior. This is consistent with the conclusions drawn by Grodsky and Kalogrides (2008), who deduce that regulatory bans on affirmative action have motivated public and private universities to curtail their use of affirmative action in admission (although their quantitative study could not directly examine this motivation). With regard to the normative pillar, the motivating force behind behavior is more value-driven (Scott, 2008); normative forces also shape the professions, and can define legitimate action and best practices in the arena of faculty hiring. The cultural-cognitive pillar motivates behavior based on the taken-for-granted following of scripts (Scott, 2008). Each of these pillars enables me to identify and understand the various motivating forces influencing rationales for diversity and affirmative action in faculty recruitment and hiring at both a public university and a private university.

Utilizing the three pillars as a frame also enables me to see where there are multiple and competing concerns with regard to affirmative action practices in faculty hiring. Based on my review of the literature, media accounts, and my prior research (Muñiz, 2006), I expected areas of tension. From a regulative perspective, state bans on affirmative action contend with federal mandates that require affirmative outreach in

hiring. From a normative perspective, beliefs about the value of diversity and the practices that lead to enhanced diversity in higher education are reflected in statements from university leaders, the American Association of University Professors, and accrediting organizations. From a cultural-cognitive perspective, the idea of diversity as an asset is a deeply embedded culturally supported notion for some (Kelly & Dobbin, 1998), while perhaps less so for others within the university environment. For a public university, state law appears to require a direct response from the university to maintain legitimacy and avoid sanction, but this regulatory influence is less clear at a private university, which may be more affected by legitimacy concerns from the normative or cultural-cognitive pillars. In light of these myriad motivations and public versus private university landscape, the lens of the three institutional pillars enables me to make sense of the rationales for faculty hiring practices at each university.

These pillars further aid in my analysis because they enable me to examine whether the regulatory environment affects a private university that is not within the sanctioning domain of an affirmative action ban. For a public university, attaining legitimacy with regard to regulatory forces is about signaling compliance and displaying conformity. For private universities, however, recent affirmative action bans applying to public universities by themselves should not require such signaling of compliance. If private universities demonstrate concern in this regard, then this may be a sign of regulative forces beyond the scope of affirmative action bans (such as the threat of litigation) or that these regulative forces are being converted into more normative or cultural-cognitive channels of influence. We know from previous work on affirmative action and equal opportunity hiring (Edelman, 1992; Kelly & Dobbin, 1998) that the

coercive power of federal regulations can be transformed by the professions into normative and even cultural-cognitive mechanisms. As an example, Kelly and Dobbin (1998) found that while diversification via affirmative action was first mandated by law, it eventually became conceived of as a competitive practice in corporate settings. In my study, I aim to discover whether a similar story emerges; while affirmative action is banned by law at certain public universities, practices may be changing at universities not affected by the ban because the regulatory environment has affected normative channels (i.e. university attorneys at private universities instruct search committees on how to avoid lawsuits) or perhaps even cultural-cognitive channels. The extent to which the regulatory environment has affected universities not directly affected by the ban is of particular interest in my study.

The three pillars of institutions also help me to further understand any possible differences between the rationales utilized by university leaders, attorneys and departmental faculty in response to affirmative action bans in faculty recruitment and hiring. The mechanisms through which regulative elements affect organizational behavior rest ultimately on coercion due to sanctions, yet organizations and the actors within them may symbolically adhere to regulations without any real belief in them. As such, both the normative and cultural-cognitive pillars remain very important to examine to understand the depth with which regulatory pressures have permeated an organization. Because these normative and cultural-cognitive pillars operate on a deeper level than the regulative pillar (Scott, 2008), my study looks closely at whether these regulatory pressures surrounding faculty affirmative action have gone past sheer regulatory compliance and have acquired a valued or taken-for-granted cultural status within a

university. If indeed they have, then the regulatory pressures have then transformed into more powerful and self-perpetuating beliefs within the university, perhaps even to the point of no longer requiring specific rules and thus operationalizing different mechanisms through which universities behave regarding faculty affirmative action. The cultural – cognitive understandings of rationales for diversity among organizational participants will be of particular interest, as these understandings ultimately shape university behavior in the realm of faculty recruitment and hiring. The mechanisms encapsulated by the three pillars provide a framework with which to identify and understand how universities ultimately respond to anti-affirmative action regulation in the realm of faculty recruitment and hiring.

As my study is specifically concerned with how faculty recruitment and hiring at a public and private university are affected by the regulatory environment, identifying the rationales used by university leaders, attorney and faculty to explain and legitimate faculty hiring practices allows me to understand the varying or similar ways in which the two universities in my study respond to the present-day regulatory pressures. Further, I am able to identify similarities and differences within each university regarding the rationales employed in response to the regulatory environment. Are individuals within both universities utilizing similar rationales in response to the regulatory environment despite the affirmative action ban not applying to Private University? Because Public University resides in the public domain, I anticipated that it would largely comply out of fear of sanctions, yet members of the university community may have also responded to the affirmative action ban with other rationales (e.g. the diversity rationale or the remedial rationale). I expected Private University to show signs of compliance due to its

desire to protect itself from litigation, but also demonstrate a greater aggressiveness in pursuing race conscious rationales in faculty hiring, perhaps even capitalizing by the fact that they were not under the strict jurisdiction of the state affirmative action ban. While not limiting my analysis to these rationales, understanding a full array of rationales present in both university settings enables me to better understand organizational behavior within the regulatory environment, an environment that has placed increasing regulatory and legal pressure on universities to not use affirmative action policies in hiring.

## Chapter 4

### METHODOLOGY

This dissertation study aims to gain a greater understanding of how the regulatory environment regarding affirmative action affects rationales for diversity in university faculty recruitment and hiring and employs a qualitative research design. The decision to approach this study qualitatively is twofold. First, a qualitative approach is appropriate given the study's focus on process, meaning and understanding (Merriam, 1998). Qualitative research seeks to find out *how* things happen, and is an effort to understand situations in their uniqueness as part of a particular context (Merriam, 1998; Patton, 2002; Ragin et. al., 2004). The product of qualitative study is richly descriptive, conveying what the researcher has learned about the phenomena of interest (Creswell, 2003; Denzin & Lincoln, 1994; Merriam, 1998; Patton, 2002). A chief concern of qualitative research is to understand the phenomena of interest from the participant's insider perspective, often referred to as the *emic* (Merriam 1998). As this dissertation study aims to gain insight into how university faculty recruitment and hiring are affected by the regulatory environment, a qualitative approach allows for a detailed examination from an insider perspective. Second, a qualitative approach is appropriate for this study given its effectiveness in examining phenomena that are not well understood due to lack of existing theory or research that adequately addresses the phenomenon of interest (Merriam, 1998; Patton, 2002; Creswell, 2003; Strauss & Corbin, 1990), as is precisely the case here.

Within the qualitative research paradigm, this study employs an explanatory case study approach. The case study method allows researchers to “retain the holistic and meaningful characteristics of real life events, such as . . . organizational and managerial processes” (Yin, 2003) and is very specifically rooted within the context of the case being examined (Merriam, 1998). An explanatory case study approach in particular is an appropriate strategy for studies that pose “how” or “why” questions, when the investigator has little control over events, and when the focus is on a contemporary phenomenon within some real-life context (Yin, 2003). As this study is concerned with *how* universities are affected by the regulatory environment, as well as with the contemporary phenomena of affirmative action policy rescission and issues relating to faculty diversity, the explanatory case study approach is an appropriate fit for this study. Further, it is important to note that through my case study approach, I seek to understand the changing nature of diversity considerations within faculty recruitment and hiring, but not diversity relative to other considerations in faculty hiring. To enhance validity and generalizability, this study uses a multiple case approach (Merriam, 1998). Analytic conclusions drawn from two cases can be more powerful than those that come from a single case alone (Yin, 2003).

### **Case Study Settings**

Two highly selective research universities, Private University and Public University, serve as the sites for this study. While Public University and Private University have many similarities, the two universities were also chosen for the potential of these two different organizations to reveal interesting differences in responses, processes and understanding with regard to the effect of the regulatory environment on

the use of affirmative action in faculty recruitment and hiring. Several criteria were considered in the selection of study sites.

First, as the study aims to understand how a state anti-affirmative action regulatory environment affects faculty recruitment and hiring, I selected two universities that are both located in a state that passed a statewide ballot measure prohibiting the use of racial preferences in public education, employment, and contracting. The state currently remains under this anti-affirmative action mandate. Although the two universities are both situated in the same state regulatory context, each of the two is subject to different types of governance based on their public versus private status. Public University, due to its public status, is under the jurisdiction of the state mandate banning affirmative action in hiring; however, it employs focused outreach and recruitment efforts to attract faculty candidates of diverse backgrounds and ensure diverse faculty applicant pools. Private University, on the other hand, is openly able to consider race in hiring decisions because the state mandate prohibiting racial preferences only pertains to public universities and other public entities. Studying both a public and a private university enables me to examine how similarly or differently each university interprets and responds to anti-affirmative action regulatory pressures, offering greater analytical power than what can be learned from a single case. The difference in public versus private status yields important information about how each university navigates the regulatory context to implement recruitment and hiring policies and utilize rationales for diversity in faculty searches, particularly in the face of increased legal pressures surrounding the use of racial preferences in both university hiring and in admissions. Accordingly, the cases are

compared with one another to yield any such potential insights.

Both universities are defined in the 2005 revision of the Carnegie Classification as research universities with very high research activity (RU/VH), and were previously defined as “Research I” in the 1994 Carnegie Classification. As faculty hiring at research universities bears significant implications for the production of knowledge, the focus on faculty at research universities is imperative to the study as research points to the value placed on diverse perspectives within the context of knowledge production. In addition, the decision to study two research universities of similarly high status precludes the rationale that these universities would fail to attract top minority faculty candidates because universities of higher status made more competitive job offers. To choose less selective universities as the focus of this study would create the possibility of informants to suggest that they struggle to diversify their faculty because they are losing minority faculty candidates to more prestigious universities. While this is a very real hiring issue for less selective research universities, my study aims to focus on rationales for diversity and issues affecting minority faculty hiring when the applicant pool is not compromised by higher status universities hiring top minority candidates and thus removing them from the faculty applicant pools of non-elite universities. This allows the study to further hone in on issues related to the effects of the regulatory environment on the university’s faculty recruitment and hiring with regard to affirmative action policies, rather than focus on the problem of losing candidates to higher status universities.

Another important criterion for selecting cases is organizational commitment to faculty diversity. Both Public University and Private University have initiatives geared at increasing faculty diversity, including university funded offices and senior leadership

positions devoted to attracting faculty candidates of diverse backgrounds. These particular university traits are important for the selected cases to possess because they allow me to examine whether such initiatives have been affected by the present day regulatory environment.

## **Data Collection**

### Stage 1: Document and Archival Records Collection

The first stage of this study was to collect and review documents and archival records relating to each university's history and use of affirmative action practices in faculty hiring and of faculty diversity at each university more generally. The documents and archival records collected during this stage of the study included, but were not limited to: university statements and publications on faculty diversity, university memos about affirmative action and faculty hiring, faculty senate and university trustee reports that address faculty diversity, faculty senate minutes where agenda items included issues related to faculty diversity, and related newspaper articles during the time period of interest. These documents provided important context for the interviews conducted in this study and informed the interview protocol. The collection and review of these documents was vital to understanding the organizational context for faculty diversity on each campus, and illuminated the circumstances under which faculty diversification policies and protocols were created and implemented. These documents provided a written record of each university's behavior, policies and public language with regard to faculty searches, and by examining these documents I gained an understanding of each university's response to the regulatory environment. In addition, these documents and archival data served as an important source of evidence for triangulation in the data

analysis stage of the study. They enabled me to compare written university faculty outreach and hiring policies with the level of policy understanding and actual practices reported on by the faculty and administrator informants.

#### Stage Two: Interviews with Faculty and Administrators

After completing the document and archival records collection, I interviewed faculty and administrators at each university as described in further detail in the subsequent section entitled “Informants/Sampling.” After receiving approval for my study from the institutional research board, data collection began by contacting faculty and administrators directly via email at both research sites. I located informants’ contact information on the internet through campus directories and faculty home pages. Informants were first contacted in an email that briefly described the nature of the study, the selection criteria for informants, and anonymity. Follow-up telephone calls and email were made as needed, and interviews were scheduled accordingly at the informant’s convenience.

The next step in the data collection was to conduct, audio-record and transcribe semi-structured one-on-one interviews with faculty and administrators. The semi-structured interview approach (also known as the “general interview guide approach” (Patton, 1990)) utilized in this study is ideal in that it allows for uniform inquiry regarding the key questions guiding this study as well as in providing opportunities for open flow of conversation (Hammer & Wildavsky, 1993; Merriam, 1998). Interviews were conducted in a manner that communicated to the interviewee that I, as the interviewer, have some background on the topic, but that the role I assume is intended to display neutrality rather than partisanship (Hammer & Wildavsky, 1993).

The interview protocol was designed to elicit information regarding how each university's faculty recruitment and hiring practices and rationales relative to diversity have been affected by the regulatory pressures against affirmative action. I asked each informant to speak retrospectively regarding practices as they were prior to and during the onset of the present day regulation banning the use of affirmative action at public universities, as well as to current university faculty hiring practices. Such data provides evidence of organizational response to affirmative action bans in the faculty hiring arena. In terms of the point of view, I asked each informant to address their own interpretation of university views and practices regarding affirmative action and faculty searches along with any first hand experiences they might share (e.g., as a member of a faculty search committee, or as someone who has shaped university faculty recruitment and hiring policies). By asking questions relating to whether legal considerations have prompted changes in recruitment and hiring protocols and whether values and rationales surrounding the use of affirmative action have changed since the onset of the affirmative action ban, I glean information on the institutional logics and rationales for organizational behavior. Questions relating to *how* any changes in recruitment and hiring behavior are a result of the affirmative action ban provide insight into university responses to the affirmative action ban. Topics addressed in the protocol include: definitions of affirmative action, knowledge of university affirmative action policies and protocols for faculty hiring; faculty recruitment and hiring practices pre- and post-state referenda banning racial preferences; rationales for hiring practices over time; tensions between state and federal regulations regarding affirmative action in hiring; current faculty

diversity efforts; university context/support for faculty diversity; and personal views and reflections. The protocol can be found in Appendix A.

Immediately following each interview, I employed the following procedures. I checked to make sure that the tape recorder functioned properly during the course of the interview. In addition, I wrote my own observations about the interview itself, including how the interviewee responded to the interview, my role in the interview and any additional information that would help establish the context for interpreting and making sense out of the interview (Patton, 1980). These post-interview measures and reflections are an important form of quality control to guarantee that the data obtained are useful, reliable and valid (ibid). Each faculty member or administrator was interviewed once. All interviews took place during the time period spanning August, 2009 and March, 2010.

### **Informants/Sampling**

Informants from the two universities were selected using two sampling procedures. First, I sampled administrator informants – which included university-level administrators with oversight of faculty affairs and diversity issues during the passage of the state ban and in the aftermath – utilizing a purposeful sampling method. This sampling method is based on the assumption that the investigator wants to discover, understand and gain insight and therefore must select a sample from which the most can be learned (Merriam, 1998). Because of their organizational authority on faculty recruitment matters, these university-level administrators are uniquely situated to share insight on the implementation of faculty diversification policies and protocols. Not only are these individuals able to discuss the university's position on faculty recruitment and

hiring, they are also the individuals charged with shaping and enacting relevant university policies within the context of the regulatory environment. As such, they were able to speak directly to the phenomenon regarding any effects of the regulatory environment on university faculty recruitment and hiring practices. These administrators were individually identified via university web sites based on job history, job description and departmental affiliation. They either currently occupy or formerly occupied positions with oversight on faculty development, faculty affairs and faculty diversity matters. Some administrators interviewed for the study held full time administrative appointments and were not members of the faculty, while others were faculty members that had served in an administrative capacity at some point during their faculty appointments.

After identifying the university-level administrator informants, I employed a snowball sampling technique to identify additional faculty informants. Department level faculty were sought from each case study site to further understand the manner in which the regulatory environment and university policies were transmitted to academic departments and their respective hiring committees. Although a number of potential informants were suggested through the snowball sample, it was important to also delineate criteria that deemed the snowball sampled informants eligible to participate in the study. Based on a review of the literature and on my pilot study, the following criteria are believed to be helpful in identifying faculty informants who have participated in the hiring process and maximize range, and therefore were used as criteria for sampling faculty informants:

- 1) Search Committee Experience: Faculty informants that have served on at least one search committee at either Public University or Private University were interviewed. This helped to characterize their experiences with faculty searches within the context of one of the case study sites.

- 2) Length of Tenure at the University: Faculty informants that could provide retrospective accounts of faculty hiring both prior to and after the passage of the ban on affirmative action were interviewed. This helped to garner faculty perceptions of whether there has been change in hiring practices and rationales over time.
- 3) Rank: Tenure track faculty across ranks were eligible to be interviewed. Given the length of tenure criterion, all faculty informants ended up being tenured faculty with associate, full or emeritus status.
- 4) Academic Discipline: Faculty informants were drawn from across academic disciplines.
- 5) Race/Ethnicity: Faculty across racial and ethnic backgrounds, both white and non-white, were interviewed.
- 6) Gender: Both male and female faculty were interviewed.

Informants who fit these criteria are believed to have the most potential to provide data regarding how faculty affirmative action policies are affected by the regulatory environment as well as how they are interpreted and enacted at their respective universities

In total, 21 informants were interviewed: 10 from Public University and 11 from Private University. Seven of the informants are women, and 14 are men. Thirteen of the informants are either current or former university-level administrators at either Public University or Private University, and 11 have served as department chairs. More information regarding the informants can be found in Table 1.

### **Data Analysis**

The first stage of data analysis involved an analysis of collected documents and archival records from each of the case study sites. These documents were coded and analyzed for information on how each university has been affected by the regulatory

environment with regard to faculty affirmative action and how each university implements their affirmative action hiring practices. I also coded for stated diversity protocols and initiatives in faculty searches, longitudinal trends of university faculty by race, and the organizational environment with regard to faculty diversity and searches at each university (i.e. any indicators of support, resistance or ambivalence to faculty diversity). The use of ATLAS.ti, a qualitative computer software program, facilitated the data analysis process. It offers a variety of tools for analyzing textual data, such as data coding, annotation, and the linking and mapping of concepts. This first stage of analysis contributed to the preparation of interview protocols and a knowledge base on each university's faculty diversity and hiring policies with which to enter the interview phase of data collection. It enabled the construction of a conceptual organizational rubric, in which each university's policies, protocols and overall climate with regard to affirmative action and faculty hiring were identified. The first stage of data analysis also served as an important source of data for triangulation with interview data.

The second stage of data analysis was to transcribe and analyze the faculty and administrator interviews. Interviews were analyzed utilizing a multi-stage process. During the first stage, I employed a grounded theory approach to allow for the emergence of themes directly from the interview data (Glaser & Strauss, 1967). This approach allowed for the broadest possible interpretation of the data without the limitations of specific constructs or rubrics. After a thorough review of the data utilizing grounded theory, the second stage of data analysis employed organizational concepts from my conceptual framework. The concepts derived from organizational theory, such as rationales and the legitimacy imperative, facilitated additional coding and subsequent

data analysis. To employ my conceptual framework at the second stage of data analysis allowed for a more open interpretation of data so as not to be constrained by the specific concepts described in my organizational framework. Further data analyses were conducted according to the qualitative methods offered by Yin (2003), Glaser and Strauss (1967) and Miles and Huberman (1994), which include the use of inductive coding, descriptive and analytic memos, pattern matching, and triangulation of data to identify emergent themes and meanings from the interviews.

I then compared the findings from the faculty and administrator interviews – each of whom, to the extent possible, offered present and retrospective accounts of university practices – with the documents and archival records that state the policies and procedures around affirmative action and faculty hiring within each university pre- and post-referendum. The use of these multiple sources of evidence brings several advantages. First, it allows me to address a broader range of historical, attitudinal, and behavioral issues. Second, it enables the development of converging lines of inquiry, a process of triangulation. Thus, any finding or conclusion in a case study is likely to be much more convincing and accurate if it is based on several different sources of information (Yin, 2003). The use of multiple data sources in the analysis enables me as the researcher to learn to what extent the faculty hiring policies and practices set up by the two universities are affected by the changes in the regulatory environment regarding affirmative action.

The comparison and contrast of data from the two case study sites enabled me to gain greater analytical insight into several key concepts tied to the research problem. First, it allowed an analysis of how the regulatory environment has affected the affirmative action policies and procedures for faculty hiring at each university. How

similar or different are the universities with regard to faculty diversity hiring policies and practices? How do these similarities or differences impact search committee interpretation and enactment of affirmative action policy and rationales for diversity? An understanding of the regulatory environment and related faculty diversity policies on each campus set the context for a more detailed examination and comparison of the two case studies. Second, the contrasting cases enabled an examination of whether any *similar* findings are present regardless of organizational differences. We know, for instance, that the level of faculty diversity at both universities, regardless of their organizational differences, is roughly the same. How, then, has each university enacted its policies in a manner that has yielded relatively similar outcomes despite differing regulatory requirements (with Public University having to adhere to the state affirmative action ban whereas Private University does not)? What other similarities between the two cases exist despite organizational differences? Such observations across cases can lend themselves to theory building. Third, the contrasting cases enabled an examination of whether any *different* interpretations and enactment of policy exist despite both universities' stated commitment to faculty diversity. For example, how do faculty perceptions and attitudes toward the use of affirmative action in faculty hiring differ at each university? What regulatory and university-specific factors lend themselves to any possible differences across the two cases? As stated previously, the comparison and contrasting of the two cases enables more powerful analytic conclusions than those that come from a single case (Yin, 2003).

## **Validity**

The following measures are noted as measures that enhance the internal validity of qualitative studies and were employed in this study:

Data Triangulation: As noted previously, this study utilized multiple data sources – documents and interviews – to confirm the emerging findings. Such a process facilitates the convergence of multiple perspectives and data sources and enables the researcher to construct coherent justification for themes regarding the phenomena being studied (Creswell, 2003; Mathison, 1988).

Member checking: Member checking took place, allowing informants to review their contributions for validity and as a way of corroborating the essential facts and evidence presented (Creswell, 2003; Merriam, 1998; Yin, 2003). The informants may disagree with the researcher’s conclusions and interpretations, but these reviewers should not disagree over the actual facts of the case (Yin, 2003). As different participants may have different renditions of the role of affirmative action in the hiring process, this member checking procedure helps to further identify and confirm the various perspectives to be presented in the final dissertation (ibid). Any corrections made through this process enhances the accuracy of the case study, hence increasing the construct validity of the study overall (Merriam, 1998; Yin, 2003).

Peer Examination: The product of this dissertation study and its components were reviewed by colleagues at various stages as an overall quality measure and to ensure that the account of the research resonates with people other than the researcher (Creswell, 2003; Merriam, 1998; Yin, 2003).

Negative or Discrepant Information: The product of this study features negative or discrepant information that runs counter to prominent themes of the study, accounting for different perspectives that emerge from the data. Documenting instances where data run contrary to themes adds to the credibility of an account for a reader (Creswell, 2003).

Researcher Bias: As a qualitative researcher, it is important to systematically reflect on who I am in the inquiry and how this shapes the study (Creswell, 2003). As a female, and as a Mexican American, I have benefited from affirmative action in university admissions as well as in other arenas that give preference to women and underrepresented minorities. I also have six years of professional experience as an undergraduate admissions officer at a highly selective university, working closely with my colleagues and with university attorneys to ensure that affirmative action practices were executed in a manner that was both legal and enabling of the university's desire to enroll a diverse student body. This background unquestionably informs my decision to pursue this dissertation topic; however, I am conscious of the ways in which my own personal experiences may affect my interpretation of this study's findings. Throughout the course of the study, I have reflected in writing on how my own perspectives and biases may affect my interpretations of the data.

### **Limitations**

This case study focuses on two high-status research universities. As such, comparisons with other types of universities cannot be made.

The hiring and retention of women in academia, as discussed in the literature review, is an important dimension of affirmative action in faculty hiring. Whereas women are underrepresented in academia, they tend to have relatively high representation

in several humanities and social science disciplines. For example, in one department at Private University, female faculty comprise nearly 40 percent of both the tenure track faculty and of the faculty with the rank of full professor. As gender was noted as a salient issue in only a small subset of the data collected in the study, the extent to which gender is addressed in this dissertation is limited.

Diversity is one of many factors that may be considered in a faculty hiring decision. In my study, I seek to understand the changing nature of diversity considerations within faculty recruitment and hiring, but not diversity relative to other considerations in faculty hiring. As such, my ability to discuss other hiring considerations relative to diversity is limited.

As a case study that entails interviews, an additional limitation of this study inherent to interview-based research lies in the researcher's presence. As a female, and as a Mexican-American, it is acknowledged that the researcher's presence and identity may bias responses.

Due to the sensitive nature of the topic being studied, both the case study sites and the informants of this study shall remain anonymous. This is a less than desirable choice because it precludes the disclosure of some important background information about the case study sites and informants. At times, I found that the provision of anonymity constrained my writing in that I was forced to limit the inclusion of some descriptive and analytical detail. However, the provision of anonymity is a critical measure taken to protect both the informants and the universities that are the focus of this study. Throughout the course of writing this manuscript, I worked closely with members of my faculty committee to determine whether parts of my manuscript revealed too much detail,

and I was careful to write and revise this manuscript in a manner that yielded insights from the data yet did not reveal detail that would risk violating anonymity. Care has been taken to systematically convert the case sites and informants' identities to pseudonyms.

## Chapter 5

### ACCOUNTS OF CHANGE

The findings in this chapter focus on accounts of change in faculty diversity recruitment and hiring practices within the state anti-affirmative action regulatory environment that began to emerge in the 1990s. The accounts of change depicted by study informants and documents center primarily on two forms of change: change in the language used to discuss affirmative action in faculty searches, and change in program eligibility criteria regarding affirmative action in faculty searches. Both forms of change are evident at both case study sites, albeit with some subtle differences. This chapter explores the nature of these changes on both campuses, as well as informant accounts suggesting that faculty diversification efforts were weakened as a result of these changes. Indeed, these changes in language and program eligibility criteria are, in fact, indications of shifts in rationales for diversity in faculty recruitment and hiring and in related cultural-cognitive understandings among informants at both universities. My analyses of these changes provide the foundation to discuss in greater detail (in the next two chapters) the rationales used by university leaders, attorneys and faculty to explain and legitimate these changes.

Before providing analytical specifics of the accounts of change revealed by the data, I will first draw primary from archival data to provide a broad overview of what took place at the two case study sites immediately after the passage of the state ban on affirmative action along with site-specific and national faculty demographic data. Through the introduction of this archival data, I aim to reveal what I learn from these data

and provide context for understanding the changing nature of diversity considerations in faculty recruitment and hiring at both case study sites.

### **The immediate aftermath of the affirmative action ban: An introduction**

As mentioned in Chapter 4, the two case study sites, Public University and Private University, are located in a state that passed a statewide ballot measure prohibiting the use of racial preferences in public education, employment, and contracting. Media accounts, university memos and faculty senate reports documented the immediate responses made by members of both campus communities to the passage of this high profile ballot measure. Each university's president issued a public statement regarding their university's continued commitment to diversity despite the new ban on affirmative action. The statement immediately issued by the president of Public University asserted that the campus would remain fully committed to retaining a diverse environment that serves the needs of community members from all backgrounds while implementing the new legislation. In an open letter to the public universities throughout the state, the system-wide leader of the state's public universities articulated the importance of enhancing outreach efforts to fulfill the university's responsibility as a public institution, efforts permissible under the new legislation. The statement made by the president of Private University reiterated that the state ban on affirmative action only applied to public universities and did not apply to Private University, thus assuring the campus community that their affirmative action practices and diversification efforts could indeed continue.

According to media accounts, student reaction to the passage of the ban was particularly intense at Public University, where protests against the ballot measure had taken place in the months leading up to the election and continued in the aftermath.

While a minority of students was in favor of the ballot measure, most students at Public University were vocal in their opposition to the measure because of the perceived negative impact on the diversity of the student body. In the days immediately following the election, students opposed to the measure held demonstrations, marches and even occupied campus buildings, urging the university to denounce the measure and continue all possible efforts to support campus diversity. Such protests were held by students at several campuses in the state's public university system, and additional protests were staged at government buildings throughout the state. While some students at Private University actively protested the ballot measure and supported efforts taking place at Public University, these efforts were on a much smaller scale, presumably because Private University students had less of a direct stake in the outcome of the ballot measure.

Faculty reaction to the passage of the ban at Public University was mixed. Some faculty were very outspoken against the new mandate, while others remained silent. According to media accounts and study informants from Public University, some faculty feared that their campus would become marred with a reputation that was unwelcoming of diversity as a result of the mandate. Some study informants recalled that some of their faculty colleagues made the decision to leave Public University for other faculty positions upon the passage of the ban because of the perceived detrimental impact of the ban on campus diversity. One study informant from Public University said that he took early retirement in protest of the affirmative action ban and what he perceived as a lack of support for diversity practices at the university after the passage of the ban. At Private University, while a handful of faculty members were actively engaged in protesting the measure, little organized action emerged as a result of the passage of the ban. One

informant from Private University stated that a group of racial minority faculty began to meet regularly following the election so that they could discuss faculty diversity recruitment efforts in light of the attacks to affirmative action within the state and nationwide.

Within the university administration at Public University, the post-election response was swift. The system-wide leader of the state's public universities immediately announced that the provisions of the ballot measure had to be implemented immediately on each campus; he also issued guidelines to the campus presidents regarding the administration of financial aid programs in light of the new mandate. The president of Public University issued a memo to deans and department chairs requesting an expedited audit of university programs and practices that could be affected by the new mandate. Just prior to the election, a legal memo from the system-wide Office of the General Counsel was circulated to each of the public university campuses and delineated the legal challenges facing race-conscious financial aid programs, citing that recent court cases were becoming increasingly skeptical of such programs. The circulation of this memo prior to the actual passage of the ban signaled a growing concern throughout the public university system regarding the state anti-affirmative action regulatory environment. At Private University, although the campus was not directly under the jurisdiction of the ban, some informants recalled the university gradually going through a process to audit the campus' affirmative action practices after the passage of the ban.

### **Faculty Demographic Data**

While my study is concerned with understanding changes in rationales for diversity in faculty recruitment and hiring in the context of the state anti-affirmative

action regulatory environment, I also felt it important to learn whether there were any noteworthy faculty demographic trends that emerged during the time period of interest in my study. Data from both universities reveal similarities through their faculty demographic trends during the past 15 years (Table 2 and Table 3). Female faculty have experienced the largest gains, growing in representation at Private University from 17.8% in 1995 to 23.6% in 2005 (an increase of nearly 33%), and at Public University a growth from 22.6% in 1995 to 27.3% in 2005 (an increase of nearly 21%). Asian faculty at both case study sites increased between 33% and 40% during the time period spanning 1995 and 2005, while Black, Hispanic, and Native American faculty numbers remained flat. While these data only illustrate the number of faculty employed during a given year, and do not reveal the actual number of gains and losses among faculty across ranks, they are helpful in providing the general context of compositional diversity among the faculty on each campus during the time period of interest.

National data on tenured and tenure track faculty demographics provide additional context for understanding trends in faculty diversification (Table 4). Generally, the national statistics are similar to the statistics from each case study site, with one noteworthy exception: the number of Black faculty nationally has grown at a slightly greater rate than that which was observed at Public or Private University. Black faculty have increased their representation among U.S. faculty from 4.6% in 1995 to 5.2% in 2007, whereas at Public and Private University, the percentage of Blacks among the faculty has either remained identical or decreased slightly.

The lack of change among URM faculty coupled with growth among female and Asian faculty at both case study sites during the time period of interest is of particular

note; however, progress among URMs, particularly among African American faculty, has historically been very slow since their inclusion among faculty nationwide. While these numerical data coupled with my data collection are insufficient to make any claims regarding the cause of these demographic gains and losses, they do set the context for my research on changing rationales for diversity and invite additional inquiry to explore whether these trends have any relationship with the state anti-affirmative action regulatory environment.

### **Changes in Language – “The Ascension of Diversity Discourse”**

The data collected for this study show that amid the emerging anti-affirmative action regulatory environment, there were indeed changes in the language used in faculty recruitment and hiring practices at both case study campuses. These overall changes in language, which I refer to as the ascension of diversity discourse, are broadly characterized as shifting from language that explicitly identified targeted racial and ethnic groups within each campus’ affirmative action program, to a broadened language that employed greater use of “diversity” terminology. Here, I elaborate on the specific kinds of language changes that the data reveal as taking place in the state anti-affirmative action regulatory environment, which I group into three categories: less talk of “affirmative action;” fewer references to specific underrepresented racial and ethnic groups, and, finally; the ascent of diversity and inclusion-oriented language.

#### *Less talk of “Affirmative Action”*

As Public University was placed under a state mandated ban on affirmative action, study informants from the Public campus community understood that change in faculty diversification practices had to take place as a result of the ban. The changes

were fairly immediate according to members of the campus community, and the language utilized to describe diversification practices in the wake of the ban typically omitted use of the term “affirmative action.” Tim, a professor and former university level administrator, described the changes he observed on campus in language around recruitment and hiring after the passage of the affirmative action ban:

It meant that some of the practices that we had that were, well, you had to change the vocabulary. So you couldn’t talk about affirmative action so much but you could talk about diversity. It meant that minorities, that the university’s minority post docs became the university’s opportunity post docs.

He noted that not only had the term “affirmative action” become out of favor, but that the names of campus fellowship programs were also changed to reflect greater inclusivity, not limited to “minority” candidates. That being said, Tim further elaborated that although these changes in language took place, he said that campus administrators and faculty were still “making sure that we have a proactive stance in seeking out minority applicants and defining our job, our new positions in a way that would not exclude them unnecessarily. All of that remained in place.” As such, whereas the language had to change, Tim stated that the university’s commitment to inclusion and desire to seek out minority faculty candidates remained firmly intact.

Marcus, another faculty member at Public University, agrees that use of the term “affirmative action” on campus disappeared following the passage of the ban, but has a somewhat different perspective than Tim regarding the university commitment to faculty diversity. He stated:

Ever since [the ballot measure], you know, came and did away with affirmative action, there's been a lot of lip service to, well, how to still do affirmative action but not calling it that, right? Basically they want to come out sounding very positive about things, diversity, diversity, the whole thing of diversity but, again, it's still a numbers game, you know, and everybody wants a token, what would you call it, window dressing.

It was evident that the language of affirmative action had to change after the mandated ban, yet Marcus questioned the level of commitment at the university to diversifying the professoriate after the passage of the ban. He emphasized the "lip service" being paid to faculty diversity efforts within the university community, and ultimately suggests that the commitment to faculty diversification amidst the state anti-affirmative action regulatory environment was merely a surface level commitment despite much public talk of diversity.

Sebastian, another faculty member at Public University, feels that the mandate banning affirmative action set back both dialogue and university efforts regarding the diversification of the faculty, but that there was already some movement away from affirmative action prior the passage of the ban. He stated:

When I came, affirmative action was being used and was in favor, and so there was a good conversation for a while, and then in the...uh...90's it started going the other way and then we had [the ban on affirmative action], and so then it became...you know, then we were set back basically a decade or two. (laughs) Then we had to start having the conversation again but now in a different light.

While Sebastian suggests that affirmative action began to fall out of favor among some members of the Public campus community prior to the passage of the ban, it still appears that the ban represented an abrupt change in the institutional environment that generated changes to the conversation on campus. As a result of the ban, Sebastian asserts that the nature of conversations regarding affirmative action and rationales for diversity in faculty recruitment and hiring necessarily took a different tone and language. His suggestion that the mandated ban “set back” the conversation on campus by “a decade or two” makes clear his impression of the negative effect of the ban on conversations to promote faculty diversification efforts at the university, even in the context of some movement away from affirmative action prior to the ban. Sebastian’s words, alongside the myriad comments describing the shift away from the use of affirmative action language, suggest that the legitimacy of affirmative action was challenged and ultimately compromised at Public University as a result of the state ban and overall regulatory environment. Indeed, both the force of the regulatory environment and the University’s desire to maintain organizational legitimacy prompted Public University to change its affirmative action behavior to avoid regulatory sanctions.

While study informants from Public University were unanimous in reporting changes to the language of faculty affirmative action during the 1990s, another Public University faculty member, William, offered a subtle distinction regarding faculty conversations on affirmative action after the passage of the ban by stating, “I think privately they spoke pretty much the same way. Publicly, people sort of cleaned up their language.” Despite the differing opinions regarding university commitment and dialogue regarding faculty affirmative action, study informants from Public University agreed that

the language of faculty affirmative action had to change in light of the state mandated ban on affirmative action.

Although Private University was not prohibited from using affirmative action, members of the campus community cited similar changes in language around affirmative action during the 1990s on their campus. Isaac, a faculty member at Private University, elaborated on his observations regarding use of the term “affirmative action” over the years, highlighting a more recent resistance to using the term on campus:

Those of us who were involved in ways of making changes in the demographics of the undergraduate, graduate and faculty population weren't, of course, afraid about it but in the university at large...uh...one could sense a reluctance to talk about affirmative action certainly to act on it, and certainly not to call it that...um...and that's at the point then in the mid 90's, especially into the late 90's that the idea of diversity began to emerge as a substitute idea for affirmative action.

The general reticence to which Isaac referred regarding the use of affirmative action in campus conversation coincides with the state anti-affirmative action regulatory environment and high profile lawsuits that emerged in the 1990s. Accordingly, Private University faculty and administrators involved in efforts to diversify the campus – be it faculty or other populations – report a decline retrospectively in their usage of the term “affirmative action” from the mid-1990s on forward.

Also not unlike Public University, Private University changed the name of an affirmative action program for prospective faculty. Several professors commented on the removal of the words “affirmative action” from the name of an institutional fund to

attract faculty candidates from underrepresented backgrounds. While informants were generally unable to precisely identify when the name change took place, a review of faculty senate reports focusing on faculty recruitment reveals that the name of the faculty recruitment fund in question was actually changed prior to the passage of the state ban on affirmative action. Although informants were unclear as to the specific timing of the name change, many felt that it was prompted by legal concerns, further supporting the notion that the term “affirmative action” began to fall out of favor prior to the passage of the ban. Like Public University, the legitimacy of affirmative action practices at Private University appeared to be threatened, and the university – in its desire to maintain its own legitimacy – was responsive to the regulatory environment. Comments from Private University informants reflect a decreasing use in affirmative action language, thus suggesting the university’s desire to avoid regulative sanctions.

*Fewer references to specific underrepresented racial and ethnic groups*

As affirmative action was under particular scrutiny within the regulatory environment of the 1990s, informants from both universities recalled that, during that time, there began to be a decline in references to specific underrepresented racial and ethnic groups in conversations and written statements regarding faculty searches. While informants spoke of gradual changes taking place before the passage of the state mandated ban on affirmative action, the decline in references to race was particularly abrupt immediately following the passage of the ban. Miriam, a professor at Public University, described her recollection of how search committee conversations took place immediately after the ban:

One thing that happened is that I think that, you know, race and ethnicity couldn't be flagged explicitly in the [search committee] conversation any more in that way that you might have done in the past. You might have said, "You know, this is a great African American candidate and we really need to have representation. We haven't had any candidates recently, and this person looks great and, you know, that should be a factor in our consideration."

Similarly, Eva, another professor at Public University, also discussed the distinction between faculty search discussions pre- and post-mandate. To illustrate this distinction, she cited the example of talking to colleagues at other universities who might know of potential candidates for a search:

Prior to [the mandate], there might have been conversations where you'd reach out to a fellow...uh...you know, other folks to say, "Who is coming up in your field? Can you encourage them to apply?" But it might have gotten as specific as to say, "You know, are there any women or underrepresented minorities that are coming out of your institution that you can send our way?" That doesn't happen anymore.

Although the mandated ban on affirmative action did not prohibit outreach efforts targeting women or those from underrepresented racial backgrounds, based on Eva's comment, it seems as though some faculty interpreted the mandate as extending beyond the hiring decision to outreach and recruitment efforts. Miriam noted that while there may have been some initial confusion regarding legal outreach practices, eventually her colleagues came to understand what was permissible:

You know, giving people information about a job search, inviting them to apply is not preferential treatment because it doesn't go to whether they actually get hired or not. So there was some ambiguity about that in the immediate wake of the ban on affirmative action but ultimately, I think, people concluded that outreach was permissible and eventually got some...not only, I guess, general counsel opinions kind of effect but also the...I think the courts ruled eventually that that was fine.

While it was clear among Public University faculty that race or gender could not be considered in a faculty hiring decision after the passage of the ban on affirmative action, the spectrum of permissible outreach activities in faculty searches prior to the hiring decision may have been less clear in the immediate aftermath of the ban and appears to have led to some self-censoring.

The theme of self-censoring among faculty seems to have resulted, in part, from a sense that their actions were being watched by peers, campus attorneys, and administrators for legal compliance with the state mandate. Faculty member Heather recalled an element of self-censorship after the passage of the mandate, driven by the concern of being singled out and being the potential subject of litigation. She stated:

You never know about what someone will take umbrage. The fear is that somebody is going to rat on what went on. The fear of misrepresentation and that it could become a case, and no one wants to be a case.

From Heather's perspective, she was concerned with how her words might be interpreted by her peers, and as a result she knew she had to be exceedingly careful with how she spoke. From Miriam's observations, she said, "I think that certain forms of [search committee] conversations became impermissible even though it might have been through

a kind of gradual self-silencing or, you know, because you operate in the shadow of the law.” Miriam asserted that her faculty colleagues at Public University were well aware that they worked “in the shadow of the law,” which, in turn, pushed them towards eliminating the discussion of race in faculty searches through self-censorship.

While the affirmative action ban placed on Public University could have generated specific university guidelines on permissible discussion topics among search committees, in Miriam’s experience, the source of language enforcement to not discuss a faculty candidate’s race or ethnicity comes from a much more personal, collegial source. She elaborated:

You know, that became off limits but it became off limits not through a formal mandate from the university but because at some level if you said that then people would say, “But we can’t think about that anymore. We can’t, you know, run the risk of violating the mandate.”

For Miriam, her faculty colleagues on search committees are the key enforcers of permissible language used to discuss faculty candidates, particularly language regarding a candidate’s racial or ethnic background. Sebastian agreed that his faculty colleagues enforced their own guidelines for faculty searches, and further suggests that there was a lack of assertiveness in approaching the subject of diversity. He stated, “it wasn’t as though somebody tried something and were threatened with litigation or anything. They just didn’t try. It was self-imposed.” While none of the Public University interviewees could point to any specific faculty search guidelines prohibiting the discussion of race, the scope of the state mandate banning affirmative action was so well known that they seemed to mostly censor themselves regarding race.

Private University also experienced some retrenchment in race and ethnicity-specific language in faculty searches and other campus dialogue, which is in contrast to the manner in which affirmative action and race were discussed on campus in the years leading up to the state ban on affirmative action. Prior to the passage of the ban, Edward detailed that Private University was in “an in-between era when there was still use of targeted minorities, underrepresented minorities, historically disadvantaged minorities but that was shifting. The ground was shifting.” And while Edward noted that the language had gone through various iterations in the preceding years, he asserted that it was only after the passage of the ban that, “we see the language of affirmative action gone,” including the disappearing use of terms targeting specific racial and ethnic minority groups. Despite not being directly under the jurisdiction of the state anti-affirmative action mandate, Edward identified the passage of the ban as a significant event shaping campus dialogue, even within the context of “shifting” ground regarding affirmative action.

Another Private University professor, Ryan, remembers attempts at peer censorship regarding diversity conversations in faculty searches post mandate. He reflected on a discussion that took place within a faculty search committee on which he served in the late 1990s:

I would raise the issue of diversity and I can almost remember somebody saying that, “Aren’t we done with that?” ... They didn’t refer specifically to [the state mandated ban on affirmative action] but it was as though I were raising a pesky annoyance from another era. (laughs)

It was clear to these faculty that, although the state mandate did not formally apply to Private University, the mandate contributed to a regulatory environment that shaped discussions of faculty searches and rationales for diversity in faculty recruitment and hiring in a manner similar to what was being experienced at Public University.

On both campuses, a clear distinction between can be made between faculty diversity-related reports and documents produced prior to the state mandated ban on affirmative action and those produced after the passage of the ban. Those from the former era are more likely to target specific groups of interest in faculty searches, such as African Americans, Mexican Americans, and Native Americans, whereas more recent materials are less likely to be group specific. For example, a Private University faculty diversity brochure produced after the ban on affirmative action emphasizes the importance of many forms of diversity among the faculty, whereas earlier job advertisements were explicit in stating that the university especially welcomed applicants from specifically identified racial and ethnic groups, as well as women. These language changes are mirrored in materials produced for student and staff outreach. Xavier, a professor at Public University, summarized the experience he had overseeing the production of publications during the era immediately following the state mandate:

For a period of time, we were supposed to revise all of the publications, all of the information about everything from undergraduate outreach and admissions and financial aid ...uh...graduate student recruitment brochures...uh...anything bearing on faculty information dispersed across the country that sounded as though we were making...that we were giving any kind of special consideration

to members of minority groups or to women or to, you know, uh...and we were supposed to send material to the office of the president first to get approved. There was clear enforcement taking place regarding the nature of information highlighted on print material produced by Public University. The elimination of any language that favored particular groups was a priority after the passage of the affirmative action ban, particularly at Public University.

Publications from Private University also reflect similar changes over time in the race-specific language used. Omar, a faculty member at Private University, recalled, “a formal statement about changing language in recruitment brochures that departments had to refer to diversity rather than targeted programs and specific [groups]” in the wake of the state mandated ban and affirmative action lawsuits targeting other universities. Omar suggests that the university took this stance quite consciously despite not being directly under the jurisdiction of an affirmative action ban, stating, “it seemed to me that conversations shifted dramatically after [the state mandate] quite dramatically...after the university repositioned themselves.”

#### *The ascent of diversity and inclusion-oriented language*

Study informants describe how, in place of references to specific groups and affirmative action, campus dialogue and search committee discussions began to gravitate more toward the use of diversity-oriented and inclusive language. Indeed, one of the most dramatic changes in language described by study informants at both universities is how the term “diversity” came into popular use. This term was seemingly a replacement term for specific references to affirmative action, targeted racial and ethnic groups and, in some instances, women in fields where they are underrepresented among the faculty.

Tim from Public University described his observations regarding the shift made on his campus away from “minority” language and towards “diversity” language after the state passed the anti-affirmative action mandate. He detailed the shift as follows:

So the discussion is the one that goes on among say between the provost and his deans saying, you know, instead of saying, you want me to make a special effort to hire minority faculty...so anyway, you can't say that now, right, in so many words. So you say instead, diversity is really important, right, for the health of your program and all of your programs.

He points out the importance of providing language that is permissible to make a case for hiring minority faculty, yet is able to do so without utilizing the term “minority.” Instead, the term “diversity” is used to meet the language needs of those who wish to attract and hire candidates from minority backgrounds. Sebastian from Public University also described this new hiring language, recalling that the templates provided to departments for faculty job advertisements after the ban was passed stated that “you can say and should say the [Public University] is very interested in, you know, people who can bring progress to its agenda on diversity.” While Public University could no longer emphasize a commitment to affirmative action practices due to their desire to avoid regulatory sanctions, they could instead emphasize their interest in attracting a diverse faculty applicant pool.

Private University experienced a similar shift in language toward the use of diversity. Many study informants were acutely aware of the shift, and some, like Isaac, could specifically recall when the shift from affirmative action to diversity language took place.

I think the big shift that has occurred from my time of arriving at [Private University] to today is that in the early 90's and through I'd say the mid 90's, probably 95, 96, something like that, the vocabulary of diversity was not yet diversity but definitely affirmative action. You know, the idea of diversity was obviously embedded in the idea of affirmative action but it was definitely a background term.

Isaac cited a clear distinction between the terms "affirmative action" and "diversity," stating that the latter term did not come into popular use until the mid-1990s. Edward also discussed the timing of the emergence of "diversity" in the discourse around affirmative action in educational settings, noting that it was initially cited in the 1978 Supreme Court case of *Regents of the University of California v. Bakke*. He elaborated as follows:

But see, even then, through the 80's, conceivably at that point, people could have emphasized diversity, right? But they didn't. It wasn't until really later...late 80's, early 90's and mid 90's that you'd hear that term but it was constitutional precedent that...for that language to emerge but it doesn't until way later until you start getting these propositions to get passed, right? Then it becomes the dominant language.

Although diversity is a concept that has been in existence within the affirmative action discourse for many years, Edward was very specific in noting that diversity did not emerge as a dominant term until the passage of various state propositions banning affirmative action across the country, a trend which began in the mid-1990s.

Donald, another longtime faculty member at Private University, also perceived the effect of the regulatory environment on the language shift to diversity that he has observed around the university over the years:

As a result I suppose of various court cases around the country, the language has been made much vaguer, talk of diversity...uh...you know, categories that count for diversity and that might get say, an extra half FTE or something out of the provost's office have broadened considerably. So, you know, I've seen that change.

Although Private University was not directly affected by any bans on affirmative action or any lawsuits, the faculty and staff with whom I spoke observed the shift to "diversity" language on campus and its likely correlation with the anti-affirmative action regulatory environment in higher education.

While the language changed towards a broader notion of diversity at Private University, parallel changes in thinking may not have been universal. Jessica, a faculty member at Private University, offered her observation of the contrast between the thinking about faculty diversity and the new language of faculty diversity:

There were an infinity, as I understood it, an infinity of available dimensions for diversity, and so we would just make that argument about people but there's no question...it didn't change our minds...I think our thinking was still in the old mold and the words we used were in the new mold but it was a little bit of a charade I think.

From Jessica's vantage point, her own thinking and the thinking of her department colleagues suggest that the diversity emphasis in faculty hiring remained on

underrepresented minority candidates and women, despite the university's shift to a more broad diversity-oriented language. The language changes in the midst of the state anti-affirmative action regulatory environment were quite apparent to Jessica and other informants from Private University, but Jessica's comment suggests that the emphasis for some faculty may have, in fact, remained placed on traditionally underrepresented groups that were the emphasis of earlier affirmative action programs. The range in how faculty emphasized diversity speaks to the cultural-cognitive elements of institutions as well as to the strength of faculty autonomy given her department's independent behavior. These topics will be explored further in Chapter 7.

### **Changes to Program Eligibility Criteria**

Study informants from both Public University and Private University report – to varying degrees – the elimination of affirmative action programs on their campuses as well as changes made to the eligibility criteria used in programs aimed at diversifying academia or other sectors of the university. The state mandated ban on affirmative action necessitated changes to programs and practices at Public University, yet many affirmative action programs and practices at the Private University also experienced changes in the aftermath of the state mandate.

#### *Elimination of affirmative action programs*

One of the key differences found in this study between Public University and Private University has to do with the elimination of campus affirmative action programs; Public University experienced the outright elimination of affirmative action programs across campus, whereas Private University experienced a seemingly limited-scale elimination of programs. This is one topic in which the informant accounts from at each

campus diverge. Informants from Public University were well aware of sweeping elimination of campus affirmative action programs, whereas informants from Private University offer a mix of accounts including the elimination of some affirmative action programs as well as the revision and broadening of other affirmative action programs.

In speaking with Public University administrator Brooke about the campus' affirmative action programs, she was quick to state that many faculty recruitment and target of opportunity programs had been in place, but "then [the affirmative action ban] happened and all of those programs were eliminated." Indeed, several study informants from Public University used words such as "eliminated," "disappeared," and "shut down" to describe what happened to campus affirmative action programs after the passage of the state ban on affirmative action. Regarding the target of opportunity program used to hire underrepresented minority faculty, faculty member Sebastian said that after the passage of the ban, he was told that "it's not legal... We can't have something that looks like that anymore." Further, in Sebastian's words, it was made clear to him and others that as a result of the ban, "we can't make formal decisions or have formal programs that are race based." Within the faculty recruitment arena, the mandated ban on affirmative action affected target of opportunity funding as well as other faculty recruitment activities with a specific eye toward hiring racial and ethnic minority candidates. However, the scope of the mandate was felt well beyond faculty recruitment and also affected a number of other programs deemed important by study informants, including undergraduate and graduate admission, as well as graduate and postdoctoral fellowship programs aimed at diversifying the faculty pipeline.

Private University did not appear to experience a high profile, sweeping elimination of all campus affirmative action programs like Public University in the aftermath of the state ban on affirmative action. Instead, informants shared a mix of accounts, including some informants who spoke of program elimination after the passage of the ban, whereas others spoke to changes being made to existing affirmative action programs. Faculty member Omar described the incentives offered by the provost's office to hire underrepresented minority faculty prior to the ban on affirmative action, saying "it had little to do with their research interests or their areas of expertise, so it was extremely targeted based upon background." He then goes on to say that, "all of that went away when [the affirmative action ban] was passed. All of those efforts were almost immediately dropped." Similarly, faculty member Jessica remembers that, regarding prospective minority faculty scholars, "there were shifting policies. First there were FTE slots for such people and then there were no longer slots for people." While Jessica was unable to identify the precise year of the elimination of faculty lines once available for minority scholars, she does identify the late 1990s as the general time period when it took place, the same time that many affirmative action lawsuits in education and several related state referenda were in the national spotlight. Both Omar and Jessica suggest that the elimination of specific faculty hiring incentives for underrepresented minority scholar were a result of the state anti-affirmative action regulatory environment and the university's desire to avoid sanctions.

Although some informants described the elimination of faculty affirmative action programs, a more common thread described by Private University informants suggests that there was a greater awareness of changes to affirmative action programs rather than

to a sweeping elimination of programs. Max, an administrator at Private University, stated that although his university was not targeted by any affirmative action bans or lawsuits, the regulatory climate that emerged as a result of the bans and lawsuits did indeed shape practices at his university. In his words, “it affects how you deliver your affirmative action programs based on faculty and graduate student affirmative action. So that we’re not totally out of the woods even though we’re a private university.” As such, although affirmative action programs were not entirely eliminated at Private University, changes to some programs did indeed take place as a result of the state anti-affirmative action regulatory environment.

Some faculty at Private University also mentioned that, in recent years, there has been an increased emphasis on proper documentation of diversity in the faculty search process. An example of this observation is raised by Donald, a faculty member who stated that he’s noticed changes in required reporting practices around faculty hiring:

We are now required to document our efforts...our diversity...making sure we get a diverse pool and we’re required to document that much more thoroughly than we used to, and, I mean, in the past, you know, you just wrote a paragraph in the appointment papers and that was it, and now it’s a whole separate process.

This increased emphasis on properly documenting efforts to diversify the applicant pool in a faculty search is also cited by faculty member Edward, who stated that this change was being “prompted by the feds,” yet also was a result of the university wanting to “determine whether departments are really doing a job of outreach or not.” The increase in this type of reporting mechanism at Private University is estimated by study

informants to have intensified during the past decade, which is also supported by accounts of these newer procedures in university documents.

### *Broadening of criteria*

While Public University experienced the widespread elimination of campus affirmative action programs in the wake of the affirmative action ban, some of the university's affirmative action programs and administrative positions were reconstituted and broadened in scope so that efforts to diversify would continue. Indeed, study informants at both case study sites spoke of actions taken to broaden the eligibility criteria of their respective affirmative action programs. These steps were undertaken to continue existing diversification efforts while making these programs available to a wider array of individuals (and, hence, making such programs legally permissible for Public University).

Many informants at Public University spoke of the toll that the mandate took on affirmative action postdoctoral programs, something viewed by informants as important to diversifying the faculty pipeline. Faculty member William was involved with the selection committee and the rewriting of guidelines for a campus affirmative action postdoctoral program, and spoke to how the expanded eligibility criteria affected the applicant pool:

I mean, you could use everything but race or gender, right, to make a case for yourself. It's one of those ironies of the world (laughs). You could use anything but race or gender. So we began to see an increase in the number of candidates with dysfunctional families. You know, my father was an alcoholic and my mother was a junkie, kinds of things and literally you could see...I mean, if we

had a chart, we would see, you know, a real increase in candidates using that as a foot in the door kind of thing.

William and others commented that the newly broadened postdoctoral eligibility requirements diluted the original intention of racially diversifying the faculty pipeline, and instead invited applicants to discuss how their experiences with family dysfunction and other obstacles would enable them to diversify the professoriate. Further, William spoke of the pressure he perceived from the university administration and governing board to select white candidates for these particular postdoctoral fellowships. He said that he was told by one administrator that, “you can expect some heat if we don’t see some white university post docs.” It was clear that selection committees for these fellowship programs at Public University had to be very conscious of their decision making processes, as the outcomes of these former affirmative action programs would receive a great deal of public scrutiny.

Another example of broadening criteria after the passage of the affirmative action ban had to do with the broadening scope of administrative positions dealing with campus affirmative action. Luke, a professor at Public University, described how an administrative position once dedicated to the advancement and support of African American faculty was expanded to include additional groups:

What was happening appropriately is other groups particularly women were getting interested in the same kind of position... So the [position] I think now covers all of those categories. It’s not about affirmative action officially...uh...it’s about diversity and...it’s about academic personnel and the

mobility of underrepresented people still, and includes all of the categories - underrepresented and women and so forth.

As affirmative action programs were illegal at Public University given the anti-affirmative action mandate, faculty and staff positions constituted as being solely driven by affirmative action programming had become obsolete. The new focus on “diversity” for these positions, as opposed to affirmative action, made these positions more appropriate in the era under the mandate. All of these actions on the part of Public University reflect their desire to maintain regulatory legitimacy and avoid legal sanctions.

Study informants from Private University also attest to changes being made to campus affirmative action programs that focused solely on individuals from certain racial and ethnic groups. Much like Public University, many affirmative action programs at Private University also broadened eligibility criteria in the aftermath of the mandate banning affirmative action, reflecting their responsiveness to the regulatory environment and desire to avoid sanctions. A key underpinning of Private University’s revised and broadened affirmative action programs is that diversity is now “broadly defined,” according to faculty member Victoria. She stated that while the university continues to make efforts to attract racially and ethnically diverse faculty as well as women in certain fields, “we obviously have to be careful in not defining diversity too narrowly.”

Faculty member Donald asserted that affirmative action at Private University prior to the anti-affirmative action regulatory environment that emerged starting in the 1990s “was seen as applied only to a few very well defined groups.” Donald described how a university-funded faculty hiring incentive previously reserved for scholars from targeted racial and ethnic groups has been broadened to include other racial and ethnic

groups as well as other forms of diversity. He provided an example of how the changing definition of diversity in recent years has come into play in a hiring situation:

Once upon a time if we were doing a search and, you know, somebody who was, you know, Bolivian turns up who looked really interesting they would have said, no, that person doesn't count (laughs) for the affirmative action book. And now we would say, "Well, you know, how many Bolivians are on the faculty? This is somebody who would really add diversity."

Isaac also spoke to how operating definitions for affirmative action at Private University were broadened across many programs. He raised the example of campus diversification programs that use external grant funding, and how the state anti-affirmative action regulatory environment affected the work of those trying to secure such funding. He stated: "if we wanted to, for instance, apply to the Mellon Foundation or the Ford Foundation for funds that were targeted, we had to expand the notion of the targeted population beyond the traditional notions of U.S. minority," to include others such as those with disabilities and those from economically disadvantaged backgrounds. This being the case, it became clear to Isaac and others that programs and practices would have to be broadened in scope, and that "a fellowship only for Chicano students, for instance, was something that we would not do."

### **Perceived Weakening of Efforts to Diversify the Faculty**

An observation raised by several study informants is that the shift away from affirmative action and towards more broad diversity criteria has led to the weakening of efforts to diversify the faculty. While informants from both campuses suggest that there was some relaxation of diversity efforts after the passage of the ban on affirmative action,

this account was especially common among informants from Public University. Faculty member William summarized his thoughts regarding the ban and its effect on the recruitment of underrepresented minority scholars to the faculty at Public University:

From the standpoint of those of us who push on diversity was that this is kind of a get out of jail card for department chairs who don't want to diversify. That the spotlight is off, the pressure is off...uh...and, you know, sort of go back to the old boy network and that sort of thing, and, so, I mean, I doubt that you would get an honest answer talking with folks (laughs) in other departments about that but certainly our feeling was, well, we've lost one of the few, you know, arrows or clubs that we have in sort of trying to force them to diversify.

The notion that the mandate banning affirmative action was a “get out of jail card” for faculty members and departments who do not prioritize diversity in faculty hiring is one that is stated repeatedly by faculty members at Public University who feel strongly about the importance of pursuing diversity. Marcus also referred to the existence of “an old boys network to deal with” in faculty searches, and asserted that such a network is in direct competition with the pursuit of faculty diversity. He went further to say that while some departments on campus may take measures to interview diversity candidates, at the end of the day, “the unspoken truth behind that is that they're not going to be serious about bringing them on.” For Marcus, the elimination of affirmative action made it easier for departments to not seriously consider or hire faculty from racial and ethnic minority backgrounds. Indeed, such comments suggest that diversity as a normative value in academe – a notion commonly expressed by university leaders nationwide – may not, in fact, be a value that is held uniformly among faculty when hiring faculty colleagues.

Brooke offered a perspective that takes into account the academic hiring priorities that faculty consider in hiring decisions. She noted that while faculty were generally supportive of the notion that the campus needed a diverse faculty, when it came down to hiring and engaging the new diversity terminology, many faculty “might have at worst been complacent and kind of mired in their sense of merit, merit and merit.” From her perspective, “diversity” simply did not have the strength of affirmative action in campus dialogue or faculty hiring discussions, especially when competing against faculty notions of “merit” in hiring. While not asking any informants directly about the hierarchy among faculty hiring considerations, Brooke’s perspective indicates that merit and prestige remain predominant factors in faculty hiring and may push diversity considerations aside.

Miriam also feels that efforts to diversify the faculty at Public University have been weakened by the state mandate. However, from her perspective, the mandate has weakened efforts not simply because it relieved the pressure to consider race and ethnicity in faculty search deliberations, but because it also marked the elimination of a “target of opportunity” program, a financial incentive offered to hire racial and ethnic minority faculty. In her words, the elimination of the target of opportunity program insofar as it included any racial or ethnic references, “made it even less likely the departments that were resistant would do hiring because there was no carrot.” The elimination of funding towards target of opportunity hiring programs can be interpreted as a weakening of the legitimacy of affirmative action practices in faculty hiring; legitimate programs are programs that are funded, so if this hiring program is no longer

funded, then it may have been construed by faculty as less legitimate and resulted in racial and ethnic diversity becoming less of a priority in hiring.

While fewer faculty expressed these perspectives at Private University, similar thoughts were shared regarding the possible weakening of efforts to diversify the faculty as a result of the shift from “affirmative action” to “diversity.” These comments are in line with commentary from Public University faculty, in that they suggest that the legitimacy of affirmative action was challenged and somewhat eroded as a result of the state ban and legal challenges to affirmative action, which then resulted in a decreasing emphasis on race in faculty hiring. Faculty member Edward summarized what he perceives to be the effect of the state anti-affirmative action regulatory environment on how faculty considered diversity candidates: “I would venture to say that maybe it meant they grew more complacent...the question of diversity didn’t seem as compelling as affirmative action.” This complacency regarding a diversity rationale in faculty recruitment and hiring is reflected in other comments by Private University informants. Faculty member Aaron feels that the shift to “diversity” has weakened the strength of Private University’s recruitment efforts targeting specific underrepresented racial and ethnic groups among the faculty. He elaborated as follows:

When you talked about targeted minorities, we used to talk about looking in particular ways, and diversity has become more of a catch all phrase, and...uh...and so it doesn’t have the sort of sting or weight or impact that it eventually it used to.

According to Aaron, the “catch all” nature of diversity terminology is not as effective as more targeted language referencing specific underrepresented minority groups, hence weakening efforts to attract members of such groups to the faculty.

Similarly, from Max’s perspective, the shift from “affirmative action” to “diversity” meant that a more broad set of individuals would be considered as diversity candidates, and that this would lessen the emphasis to hire faculty members from traditionally underrepresented racial minority backgrounds. In his words, many search committee deliberations in the wake of the mandate have manifested as follows:

We have a first generation person or we have a lot of women and then you didn’t have to worry about whether you had an African American in the pool or a Mexican American Chicano faculty member in the pool. So in a sense that really weakened the affirmative action of the social justice cause of trying to increase the historically underrepresented groups because it allowed the faculty search committees to feel comfortable, it lowered the bar.

The existence of a more broad set of individuals that could be considered diversity candidates meant that the former emphasis on underrepresented racial minorities was no longer the sole emphasis of the rationale for diversity in faculty recruitment and hiring. As a result, faculty search committees not strongly committed to diversity did not feel pressure to assemble a racially diverse pool, since the presence of underrepresented racial minority candidates in an applicant pool was no longer a firm requirement for diversity in a faculty search. Not only was the legitimacy of affirmative action put into question, but the resulting decreased emphasis on traditionally underrepresented groups suggests that

the supposedly normatively held value of diversity in academia – when it comes to racial and ethnic diversity – is less evident.

Omar’s comments are consistent with other informants, in that he too perceived less emphasis on racial and ethnic diversity as a result of the state anti-affirmative action regulatory environment. He stated that, after voters passed the ban on affirmative action:

I felt like I could not bring up the issue in the same way that I could before as an individual faculty member in individual recruitment discussions. After that shift, it seemed to me it went...bringing up the desire to try to diversify the faculty would have had far less credibility than they have had before.

For Omar, he perceived a clear difference in how receptive his faculty peers at Private University were to discussions of faculty diversification pre- and post-mandate. His comment that he had “far less credibility” to discuss racial diversity after the ban on affirmative action points to the effect of the ban on the legitimacy of affirmative action even at Private University, which was not directly under the jurisdiction of the ban. Indeed, he went on to say that the explicit discussions within his department regarding efforts to generate and consider a diverse pool of faculty applicants, “all of that was dropped once the shift occurred.” He referred to “the shift” as the shift in university policy after the passage of the state ban on affirmative action to reflect a broadened approach to diversity.

## **Chapter Summary**

Data from both case study sites show that changes to faculty diversification practices took place in the context of the state anti-affirmative action regulatory

environment that emerged in the 1990s. Affirmative action, both as a term and as a practice, became less commonly used on both campuses. This is not surprising for Public University given the fact that they were under a state mandated ban on affirmative action, but Private University also experienced similar changes despite not being under the jurisdiction of the mandate, illustrating both universities' similar responsiveness to regulative forces despite hailing from different sectors.

The changes observed in both language and program eligibility criteria reflect each university's desire to avoid legal sanctions and maintain their own legitimacy. Indeed, these changes in organizational behavior relative to faculty affirmative action further reflect shifts in rationales for diversity in faculty recruitment and hiring and in related cultural-cognitive understandings among informants at both universities. The anti-affirmative action regulative forces – that is, the state ban on affirmative action, alongside other legal threats to affirmative action – appear to have challenged the legitimacy of affirmative action at both case study sites. Study informants recalled, and documents from both campuses confirm, less explicit use of the term “affirmative action” over time, beginning in the mid to late 1990s, as well as a decrease in the explicit targeting of racial and ethnic minority groups that were the focus of earlier affirmative action programs. Many faculty self-censored their use of race-related language in faculty search discussions out of concern for violating the mandate, with some even censoring their language with regard to faculty outreach despite the fact that the ban on affirmative action did not apply to outreach, speaking to the power of regulative forces. While the state mandated ban on affirmative action was an abrupt change in policy which, according to informants, triggered these major changes in how affirmative action was

discussed and used, data from both campuses suggest that affirmative action was falling out of favor even prior to the passage of the ban. The data point to the fact that the ban coupled with legal threats to affirmative action challenged the legitimacy of affirmative action practices in faculty searches. As a result, the ability to utilize the language and practice of affirmative action, as well as rationales for diversity in faculty recruitment and hiring, appeared to be compromised at both Public University and Private University.

The threats to the legitimacy of affirmative action programs and the subsequent elimination of many such programs also revealed insights regarding the cultural cognitive understandings among faculty regarding rationales for diversity in faculty hiring and the value that individual faculty place on racial and ethnic diversity in faculty hiring. While university leaders and websites often praise the importance of diversity in higher education – suggesting that diversity is a normatively held value in academe – at the department level, the value placed on diversity by faculty is neither normative nor taken for granted according to informant accounts. Informants from both campuses shared anecdotes about colleagues who were less interested in prioritizing race in faculty hiring; they shared that these colleagues viewed the ban on affirmative action as a sort of “get out of jail card” because they didn’t have to consider race in faculty hiring anymore (at Public University) or because they had to lessen the explicit consideration of race to protect the university legally (Private University). Overall, there was less insistence and urgency among faculty to pursue rationales for racial and ethnic diversity in faculty hiring given the regulative forces working against affirmative action. For those informants that did place a high value on racial diversity in faculty hiring, they expressed that they felt less able to raise rationales for racial diversity as a consideration in search

discussions due to the anti-affirmative action regulative forces and the decreasing legitimacy of affirmative action. The range among faculty in how they value diversity also speaks to the strong nature of faculty autonomy. While university leaders may profess strong support for faculty diversity, department-level faculty will ultimately hire who they want to hire and may not necessarily prioritize diversity in a hiring decision despite suggestions of diversity being normatively valued in academe. As discussed by several informants, merit and prestige remain strong considerations for faculty hiring.

In place of affirmative action, data from both campuses chronicle the ascension of diversity discourse and the accompanying broadening of criteria aimed at diversifying the professoriate. Faculty hiring programs formerly under the category of affirmative action were reconstituted in more broad terms to include individuals representing other forms of diversity, such as those from racial and ethnic backgrounds beyond the traditionally targeted groups. These changes from “affirmative action” to “diversity” were evident on both campuses. While Public University dealt with a more sweeping elimination of affirmative action programs on their campus than Private University, both campuses experienced the elimination and reconstitution of programs to include a broader set of individuals in the rationales for diversity utilized in faculty recruitment and hiring (and in rationales for diversity campus-wide), once again pointing to how both campuses were responsive to the same regulative forces despite hailing from different sectors. Although Private University could still legally engage in affirmative action practices, a general resistance to using the term “affirmative action” loomed as a result of the anti-affirmative action regulative forces according to many interviewees from the Private campus. The

sources of this resistance, along with the rationales for these accounts of change, will be further explored in Chapters 6 and 7.

**Chapter 6**  
**RATIONALES PROVIDED BY**  
**UNIVERSITY LEADERS AND ATTORNEYS**

This chapter focuses on the rationales provided by university leaders and attorneys at both case study sites for changes that took place in faculty diversity recruitment and hiring efforts within the state anti-affirmative action regulatory environment. I describe the primary rationales that emerge from interviews with study informants and document analysis: a *compliance rationale* and a *diversity rationale*. While there are some slight differences between the case study sites in how these rationales are advanced, informant accounts state that both universities first and foremost turned to a compliance rationale to justify changes in faculty diversification efforts and to ensure that the university would not be the target of litigation. The diversity rationale, which places value on how diverse individuals enhance the learning environment, subsequently emerged as a result of stakeholders at each university asserting the importance of pursuing faculty diversification even if the law prohibits the targeting of specific racial and ethnic groups. I conclude the chapter by discussing the coexistence of the compliance and diversity rationales at both case study sites. Overall, the data suggest that both universities are exposed to and affected by the same regulatory environment through regulative, normative, and cultural-cognitive channels, and behaved similarly despite being from different sectors (public versus private).

## **The Compliance Rationale**

Study informants at both universities asserted that the compliance rationale was the most prominent rationale advanced by university leaders and attorneys during the time period immediately following the passage of the state ban on affirmative action.

At Public University, informants stated that the messages from the top levels of the administration were clear in the wake of the state mandated ban on affirmative action: legal compliance was of paramount importance to those governing university actions, and in the aftermath of the mandate, the legal compliance rationale would guide and legitimate diversification policies and practices at the university. Faculty member Xavier recalled the compliance rationale being presented to him and others by university leaders and the governing board as follows:

There was a very strong message that there was to be NO special consideration given to any candidate on the basis of race, ethnicity, religion or gender. And that (pause)...and that the State...uh...and especially conservative, legal and advocacy groups were watching very closely that the governing board members themselves had empowered themselves within the university to ferret out ANY breach of [the mandate]. They made it clear to us ALL the time.

The presence of the compliance rationale seemed to drive university practices, particularly during the time immediately after the passage of the mandate, and the perception among Xavier and others that their actions were being monitored appeared to further advance the compliance rationale.

According to faculty member Luke, the primary driver behind the compliance rationale and subsequent changes to university practices was the law. However, he

believes that “there were multiple forces working around that time” which drove the advancement of the compliance rationale. He elaborated as follows:

The office of the president probably was gun shy...*Bakke* and all of this kind of stuff...a lot of faculty probably were quietly supportive of the change and, um, gun shy in relation to the legislature.

The references to “gun shy” constituencies suggest a concern for the regulatory environment and the possibility of legal challenges to the university as a result of their actions. In addition, the notion that some faculty were “quietly supportive” of the mandated ban on affirmative action further supported compliance with the mandate and did little to challenge the retrenchment of affirmative action practices.

The presence of the legal compliance rationale translated into university directives, such as faculty and administrators being instructed to make an inventory of all existing programs to ensure their compliance with the mandate. Brooke described these efforts as coming from the university governing board, and pointed to a specific board member who was driving much of the enforcement. She went on to say that this board member worked with a conservative legal organization in an effort to communicate and enforce legal compliance, saying that “they were just trolling our websites, challenging the programs.” Brooke’s account is similar to Xavier’s recollections, noting a sense of being monitored for compliance by governing board members and legal advocacy groups.

Within the context of this regulatory environment and Public University’s advancement of a legal compliance rationale framing its policies and practices, informants recalled that faculty members became more concerned with their actions in the realm of faculty search efforts. As discussed in Chapter 5, the language used in the

context of faculty recruitment changed after the affirmative action ban, and many informants pointed directly to the compliance rationale as the reason for those immediate changes. For example, Miriam found that, in search committee settings, discussing faculty candidates from underrepresented backgrounds became a more precarious conversation, one in which some of her colleagues did not want to engage due to fear of breaking the law:

You know, so you're asking us to do something that's unlawful so I think it gradually disappeared because you could aspire to diversity but you could not discuss in concrete ways, right, the issue of building...how do you make it happen because that might involve a preference and the alternative to that was to say that, you know, we can't discriminate but nobody wants to accuse colleagues of discriminating.

While diversity was a permissible pursuit in recruiting an applicant pool, it was illegal for search committees to discuss race when considering faculty candidates, thus presenting a conundrum for search committees interested in pursuing diversity. Awareness of the law and of the need for compliance manifested itself in how search committee members discussed their faculty candidates.

At Private University, study informants recalled the compliance rationale being a strong message from university leaders and attorneys after the passage of the state mandated ban on affirmative action coupled with legal threats to university affirmative action taking place across the country. However, some suggested that the emergence of the compliance rationale came about more gradually, rather than only in response to the passage of the ban on affirmative action. Faculty member Isaac explained how he

observed the compliance rationale emerge over time, with its origins in earlier challenges to affirmative action and the law:

You know, like something that's very obvious to all of us, affirmative action, you know, was always under great criticism throughout the 70's and 80's, and by the 1990's...the idea of affirmative action and the use of the term affirmative action was under such critique and such criticism that people really basically were starting to be afraid of using it.

Although there were legal threats to affirmative action prior to the 1990s, it was not until the 1990s that informants like Isaac perceived the emergence of a dominant compliance rationale shaping affirmative action practices and limiting usage of the term “affirmative action.” The cumulative effect of decades of critique, coupled with the emergence of multiple legal threats to affirmative action that took place in the 1990s, set the context for the ultimate decline (and in some cases, the elimination) of affirmative action practices and language at universities like Private University. As a result, the compliance rationale emerged as a dominant rationale to explain and legitimate such university policies and practices.

According to administrator Teri, a campus audit of affirmative action practices took place shortly after the passage of the state ban on affirmative action, which she cites as being “super intense” and “a very eye opening experience.” Of particular note, it made her and her colleagues realize that, “we hadn't been doing a faculty affirmative action report or plan in all of those years.” She recalled that the audit raised awareness among administrators of campus affirmative action practices across the spectrum and led to increased communication of the importance of compliance.

Victoria remembers discussing the proper use of affirmative action practices in faculty searches with her colleagues after the passage of the ban. She recalled attending faculty meetings where legal compliance issues related to faculty practices were discussed, and remembers the messages she received from university leaders and attorneys regarding faculty search practices as follows:

You know, so just doing extensive outreach to try to capture diversity, that's totally fine and highly advised...um...and then...or things that are not really okay like giving a preference. And so if you have two candidates who you judge to be equal and one is a woman and one isn't, you can't hire the woman just on the basis of that.

According to Victoria, this reflected changes to previous practices, where race could in fact be considered as one of many factors in a hiring decision. The legality regarding what was "totally fine" versus "not really okay" was at the forefront of how she and her faculty colleagues were told to approach faculty hiring and diversification practices within the state anti-affirmative action regulatory environment. Being a female candidate in a field where females are underrepresented was deemed an unacceptable factor on which to base a hiring decision; the same went for underrepresented racial and ethnic minorities as well.

Part of the compliance rationale appears to have emerged as a result of uncertainty regarding the legality of affirmative action in faculty hiring. As stated in Chapter 1 of this dissertation, legal challenges to affirmative action in higher education have primarily focused on student admission and have not specifically challenged faculty hiring. This, coupled with federal mandates supporting the use of affirmative action in

hiring, has resulted in a lack of clarity regarding the legality of faculty affirmative action practices in higher education. From Victoria's standpoint, this lack of clarity has manifested itself as follows:

You probably know that the law is not very clear as to affirmative action in faculty hiring. It's pretty clear now because of the recent Supreme Court decision in terms of affirmative action and student admission. And, yes, you can take diversity into consideration as one of many valued traits of the student body. But there really isn't clear law on [faculty affirmative action] and there actually have been a few decisions that have been opposite from each other.

Victoria went on to suggest that the mixed legal signals from the courts regarding faculty affirmative action have served to elevate and support the compliance rationale on her campus. The university would rather be conservative in its guidance and avoid legal trouble, rather than interpret the lack of clarity in a manner that favors affirmative action and allow practices that might make the university vulnerable to lawsuit.

Jessica remembers how the compliance rationale was explained to her, which, in her words, "came out of the legal rulings." As a department chair during the emergence of the state anti-affirmative regulatory environment, she recalled how she was tutored by university attorneys and senior administrators regarding how to proceed with faculty diversification practices:

We were allowed to make the argument in hiring decisions...making the diversity arguments but it couldn't be restricted to what do they call those? The minorities, the targeted minorities. But I remember the university (pause) uh...having

meetings that the chairs had to go to so that we learned this new vocabulary and we learned what was acceptable and what wasn't.

Similar to Victoria's anecdote about not being able to base a hire on gender, Jessica also remembers being told that hiring on the basis of race – such as “targeted minorities” – was no longer acceptable. The initial shift in practices was explained with a compliance rationale, and was coupled with instruction to department chairs on how to proceed with diversification efforts in faculty hiring. The fact that she was told that she could make “diversity arguments” to support a faculty hire so long as it was not restricted to race indicates the coexistence of a diversity rationale with the compliance rationale in faculty hiring at Private University. I elaborate on both the diversity rationale and its coexistence with the compliance rationale later in this chapter.

Aaron shared his recollection of the broad campus awareness of anti-affirmative action regulative forces, and that this awareness may have figured into the compliance rationale used to guide and explain faculty affirmative action practices. He stated, “I think, you know, the tensions in the world around are important questions, right? [The state mandate], the Michigan decision...and, I mean, those are things that are in people's minds.” In stating this, he made clear that the regulatory environment was difficult to ignore, and that concern for the regulatory environment had penetrated the thinking and actions of the university leadership.

### *Looming Threat of Litigation*

A defining characteristic of the legal compliance rationale is the perceived threat of litigation, which only served to fuel the advancement of the rationale. At Public University, several informants recall a sense of being monitored by both the university's

governing board and external organizations for any possible breach of compliance with the ban on affirmative action. Brooke remembers receiving several letters from watchdog organizations addressing many types of campus affirmative action programs:

We'd just get a letter from the [watchdog organization] like challenging the med school admissions at [another public university campus], challenging one of our post doc programs, the selection process. And we would just respond to these.

Sometimes we would make changes.

Within this regulatory context, Sebastian remembers a great deal of concern regarding lawsuits and permissible and impermissible activities at the university. In his words, "probably one of the big effects of the mandate was to make everybody completely gun shy. So if they thought there was a whiff of a chance that they might get in trouble for doing X, they didn't do it."

An interesting outgrowth of the looming threat of litigation was concern for studying the success of programs that had utilized some form of affirmative action. Miriam recalls such a concern regarding diversity programs on her campus and an institutional hesitance to take a closer look at them:

I think the universities also didn't want studies because they felt legally at risk. If diversity doesn't work, then why are we still doing affirmative action? So there may have been some anxieties about looking too closely at programs. It's sort of like leave well enough alone. If it ain't broke, don't fix it.

As such, the looming threat of litigation resulted in Public University not only becoming gun shy about executing certain diversity programs and practices, but also becoming

concerned about the manner in which their existing programs were being studied and evaluated.

At Private University, the threat of litigation clearly loomed and was referred to as a key driver behind the compliance rationale that guided statements and directives by university leaders in the aftermath of the state mandate banning affirmative action. Faculty member Omar recalls how the compliance rationale was explained to him regarding university affirmative action policy:

I do remember conversations where it was said that this policy could no longer be pursued, and the reason was even though we were a private institution, there was a concern that it might be vulnerable to lawsuits because of the way in which it received public funding although that was just a state law.

It was of particular note to Omar that university leaders pointed to compliance even though the state mandated ban on affirmative action only applied to public institutions and not Private University. He further elaborates on this notion:

It was very unclear to some of us what the applicability was of [the state mandate] to a private institution and it seemed to me that the university taking a risk averse approach. That is it was designed to minimize any risk of lawsuit.

Indeed, Private University's risk averse approach to affirmative action meant that legal compliance was the rationale to which university leaders pointed as it explained and legitimated changes in its diversification policies and practices.

Similarly, Isaac agreed that one of the drivers behind how the university explained and legitimated its faculty diversification practices had to do with its awareness of possible legal challenges. From his vantage point as a faculty administrator, the

university wanted to maintain its commitment to diversity, yet knew that they would be under some scrutiny despite not being under the jurisdiction of the state mandated ban on affirmative action. He explained:

[Private University] was not backing away from that but the university was very conscious that it would have to be done under increasingly restricted legal guidelines of what counted as fair ways of doing that and legal ways of doing it.

So for us, you know, it really often felt like we were walking a very fine line.

This account, along with others from both case study sites, suggests that there was a great deal of uncertainty regarding rationales for diversity in faculty hiring and how exactly to pursue diversification efforts within increased legal constraints. To not be able to discuss race in the context of a faculty decision, yet still want to pursue diversity, was a difficult matter, and not one in which the faculty had been given extensive guidance or examples of how to safely proceed. The primary charge was simply to comply with the law and try to avoid any behaviors that would invite a lawsuit.

Edward also remembers the risk averse posture taken by Private University leaders in the context of the state anti-affirmative action regulatory environment, and that the university “was protecting itself” legally through its actions and its advancement of a compliance rationale. He went on describe his recollection of the threat of litigation and watch dog organizations monitoring their programs during that time:

Edward: No university wanted to be a target for, well, at that time increasingly...I mean, they were making it clear that we're watching you. What's it called?

The...uh...(pause) I don't remember the name of the group that filed all of these lawsuits over time... It's an organization that's basically...it was looking at

institutions for the best cases to go forward to file suit...that would go all the way to the Supreme Court.

Marcela: And you remember being told or hearing that Private University was being watched?

Edward: Oh, absolutely. Absolutely. We were on top...we were on the list of the top five institutions. We knew. Well, at least that's what was coming down to me is that, yes, we are being watched and we better be careful because we don't want to...one, we have to protect ourselves and we have to be smart in doing the things that are important for us...uh...and yet...uh...creating an environment where we're not obviously in breach of the law.

Edward is clear in his memory of the university being a potential target for litigation, and this generated a compliance culture in the context of the anti-affirmative action regulatory environment, particularly after the passage of the state ban on affirmative action.

Max's recollection of the threat of litigation is similar to Edward and others at Private University. He specifically elaborated on the manner in which the "conservative right" would attack the legality of affirmative action programs at his university and others.

They would...uh...go into the internet and look for programs that were only...that had anything to do with exclusivity and then they'd start really attacking them. So, you know, that was their full time job and came after you that way, and kept the fire burning on that, you know, litigation was going to happen if the institution didn't acquiesce and broaden their definition of diversity.

As a result of this looming threat of litigation, Max said that “everybody adjusted but the public institutions got hit the hardest because they had to be race neutral.” Overall, the manner in which informants described their recollection of being monitored and accounts of how they responded to threats of litigation is quite similar at both Private University and Public University.

### *One-sided Fear of Litigation*

Not only did study informants speak repeatedly of the threat of litigation, Brooke from Public University added additional specificity to this point by stating that, “it was a one sided fear of litigation.” She elaborated on this point as follows:

They were only afraid of litigation from people who were against affirmative action. MALDEF<sup>3</sup> sued them. They didn't...that was not a fear of litigation. You know, they weren't afraid of litigation from minority advocacy organizations. There was just this incredible dominant white culture bias that surrounded everyone's fear of litigation that nobody was really acknowledging. There were only afraid of litigation from the [conservative organization]. They were not afraid of litigation from MALDEF or from any other groups representing people of color who were excluded from the university.

Indeed, the references made by informants at both universities to threats of litigation only associate the threats of concern as coming from individuals or organizations against affirmative action. No informants from either case study site perceived that their respective universities were concerned about lawsuits from those in favor of affirmative action, such as minority advocacy organizations. While no data counters Brooke's

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<sup>3</sup> MALDEF stands for Mexican American Legal Defense and Education Fund.

statement regarding the one-sided threat of litigation, Brooke is the only informant who asserted a “dominant white culture bias” that went without acknowledgment at her university in the midst of the state anti-affirmative action regulatory environment.

### *Significant Role of Campus General Counsel*

According to study informants, the general counsel’s office at both case study sites played an enormously important role in how both universities communicated and employed the rationales driving policy and practices after the passage of the anti-affirmative action mandate and in the context of the regulatory environment. The attorneys for each university were looked to for guidelines on how to adjust policies and practices; however, based on informant accounts, the attorneys further took the lead in establishing the dominant rationale for university practices in the context of the state anti-affirmative action regulatory environment.

From a purely practical standpoint, the office of the general counsel on each campus made sure that the university was in compliance with the law. At Public University, this meant ensuring compliance with the state mandated ban on affirmative action. Immediately after the passage of the mandate, Brooke remembers that the office of the general counsel issued direction asking university offices and units to “eliminate all of your race and gender conscious programs, and they wanted us to monitor, you know, they wanted us to police, to make sure that no one was still engaging in race or gender conscious activities.” It was clear to Brooke that the role of the general counsel would be one of strict enforcement and limitation of any activities that appeared to be race or gender conscious in the post-mandate era.

Beyond sheer compliance with the stated mandate ban on affirmative action in hiring and admission, Luke recalled that the general counsel's office at Public University placed restrictions on money used for outreach based on race and ethnicity. As the state mandate did not explicitly ban such outreach activities, Luke felt that this restriction "wasn't necessary. That was an interpretation by the office of the president that I think was backed by a flow of sentiment in the university that was hostile." Luke went as far to suggest that the general counsel set the tone for the university leadership, and the leadership responded by continuing the risk averse trajectory. He said, "the president at the time of [the passage of the ban], I think using the example of general counsel, probably took the occasion to be more aggressive in stopping things than was necessary." As such, the general counsel played an important role in not only ensuring compliance with the law, but even going beyond compliance with the stated law and restricting outreach to communities formerly targeted by affirmative action. Furthermore, the interplay between the office of the general counsel and the university leadership is of particular note here, as the leadership took cues from the general counsel and revised policies and practices accordingly.

Sebastian also spoke of how, for several years following the passage of the state ban on affirmative action, "the university was pretty shut down about this stuff and the general counsel was very conservative about everything." In contrast, he mentioned that the university recently appointed a new lead general counsel, and, as a result, "they're not as conservative as they used to be. They're willing to talk about things a little harder than just kind of an automatic, no, no, no response for several years after [the ban]." Sebastian's comments regarding the shift in guidance as a result of a new general counsel

further speaks to the impact of not simply the office of the general counsel, but to the individual occupying the lead general counsel position at the university. This person has the ability to guide the interpretation of the law and dictate compliance guidelines for university-wide practices accordingly.

At Private University, similar comments regarding the visibility and impact of the office of the general counsel in affirmative action matters emerged from informant accounts. When Isaac described his awareness of the rationales given to him and others at the university regarding affirmative action policies and practices within the emerging anti-affirmative action regulatory environment, he immediately pointed to legal compliance rationales:

We had been instructed by Private University administration to be very careful of, that we could not commit the university to any funding or programs that approached the limits of the newly emerging legal definition precisely under the propositions that were enacted in [our state], and the revised Supreme Court rulings concerning what counted as appropriate remediation of former, uh, disadvantages. So, yes, we were very, very aware of it. There was nothing, you know, nothing, uh, indirect or suggested about it. It was very direct and very above board. We knew that we could not proceed under the old patterns of affirmative action.

When I asked Isaac where these messages came from, he was quick to respond that “they were coming directly from the legal office of Private University (laughs).”

Donald was also quite direct about how he perceived the flow of messaging and the drivers behind the rationales when it came to changing affirmative action practices in

the context of the state anti-affirmative action regulatory environment. He stated, “those changes came very much top down, I think, and I always assumed they were dictated by the university counsel’s office.” He went on to discuss his interaction with attorneys from the general counsel’s office through his work, and, like Jessica and Victoria, specifically remembers meetings beginning in the late 1990s where an attorney from the general counsel’s office would address administrators and department chairs regarding the ramifications of the latest court cases on the university’s faculty and graduate student recruitment practices. According to Victoria, while the university provost attended these meetings to discuss appointments, promotions and the importance of faculty diversity, it was the general counsel’s staff that would go into the nuts and bolts of faculty hiring and diversity. She recalled that the attorney that gave the session “has a slide that I call the spectrum because it’s in rainbow colors. It shows things you absolutely cannot do, like, you’re only going to hire a minority from this search.” The measures taken by the university’s office of the general counsel to educate faculty and administrators demonstrates the normative channels through which the regulatory environment shaped faculty hiring practices, and reinforces the integral role of the general counsel in faculty diversification efforts.

Not unlike Luke’s commentary regarding the interplay between the office of the general counsel and the leadership at Public University, Max also perceived that Private University’s legal office was taking a leading role in establishing the policies and culture surrounding university diversification practices rather than the university leadership. Within the regulatory environment shaped by the passage of the state mandate and other lawsuits challenging affirmative action in higher education, Max observed the following:

All of the sudden instead of the leadership...the...you know, the president, the provost, the deans of the academic colleges and schools, having the say on which way you were going to go, all the sudden the legal office was dictating what programs...which programs you could keep and which policies you could or could not, and that was a, you know, that's what changed.

As a result of the more conservative rationale and approach taken by the legal office, which was supported by the university leadership, Max saw subsequent changes to affirmative action and diversity practices:

You had to tone down your programs and...um...in a sense weaken them from the original social justice cause for fear of litigation, and there was such an aggressive assault from the conservative right on programs that were race exclusive that have also kept the legal office worried.

The perceived lack of support from the university leadership for maintaining race exclusive campus diversification programs – which, from Max's perspective, stemmed primarily from the guidance offered by the legal office – meant that existing programs had to be changed. It further signaled to Max that the legal office, rather than the university leadership, was taking the lead in university policy setting within the arena of affirmative action practices.

In discussing the role of university leadership in either supporting or countering the legal interpretations and compliance rationales put forth by university legal counsel, Isaac from Private University suggested that the administration was cooperative with the risk averse positions the university legal counsel put forth, rather than the leadership being inherently conservative. He explained:

Now it, of course, did happen that the legal rulings tended to go a certain way and did reflect a more conservative position politically than had been the case in the 60's and 70's, and the administration was fine with that but...uh...you can't therefore say that they pushed a personal position. I think that they followed what were the dominant political and legal interpretations of the day as opposed to opposing or leading, you know, a movement to try to have them changed as other universities have done. You know, [another university] did contest it and, you know, uh...so we were not at the forefront of that conversation. In fact, in my opinion, we were at the forefront of quickly jumping on the new limited definitions.

While Isaac did not feel that the university leadership was inherently conservative, he did feel that it was less than aggressive in offering leadership to verbally oppose the attacks on affirmative action, or even be a leading part of the national dialogue taking place.

#### *Other Sources of Compliance Rationale Messaging*

While most of the study informants referred to their respective university attorneys as the primary drivers behind communicating a legal compliance rationale, followed by university leadership, informants also referred to other sources of messaging. Marcus from Public University discussed what he perceived to be a variety of sources of the compliance rationale and resistance to affirmative action communicated to him and others at the university:

I couldn't tell you which was the major, you know, place for the opposition to emerge but there was obviously the academic senate, which was very conservative part of the university, and the academic senate leadership statewide,

you know, some presidents were more rigorous than others in opposing or favoring, rather, the [mandated ban on affirmative action]...uh...and then we had the governing board members themselves.

After considering the many sources of messaging regarding the compliance rationale and resistance to anything approximating affirmative action, Marcus eventually decided on what he feels was the primary source of the messaging: “I’ll say the members of the governing board because, obviously, you know, that’s where the political power is in terms of the conservative politics in this state and in terms of higher education.”

#### *Federal versus State Mandates Regarding Faculty Affirmative Action*

A unique issue facing affirmative action in faculty hiring has to do with legal tensions between federal regulations requiring affirmative action practices versus the anti-affirmative action mandates and legislation that have been passed in six states. Awareness of this regulative tension differed among informants by campus; most of the informants at Public University – particularly senior university administrators – had an understanding of the tensions between federal and state mandates and aimed to communicate this to the faculty ranks, while fewer informants from Private University were aware of the tensions and how they could affect hiring on their campus.

At Public University, informants described the importance of federal affirmative action mandates in preserving some elements of outreach and affirmative action practices in faculty hiring. In Brooke’s words, “our best tool for pushing back [against the state mandate] was to say, we’re still an affirmative action employer. We’re still subject to the affirmative action regulations.” Because of the federal regulations, some administrative practices remained in place, such as the filing of affirmative action reports and the

creation of an annual affirmative action plan. Public University was even subject to an affirmative action compliance review from the U.S. Department of Labor shortly after the passage of the state ban on affirmative action.

Although these federally required administrative processes remained in place, the state affirmative action ban prompted uncertainty and confusion regarding permissible hiring practices. Sebastian recalled some of the questions that began to emerge among faculty in the immediate wake of the ban: “You know, what are we allowed to do? What are we not allowed to do? Are we allowed to mention diversity in the job ad? Can we hire people because they’re, you know, a certain ethnic group?” Luke also remembered how faculty and administrators understood these issues:

I would say, at the decanal level, the deans and...not so much the chairs but certainly everyone in the administration understood affirmative action was still federal law, okay? You know so that was clear, and so some grants in the sciences had that attached. (laughs) You know? So there was confusion because for some people they, you know, good riddance, bad rubbish, and they thought it was all gone but that’s because they weren’t paying particular attention...anyone who was paying attention knew that there were limits on what you could and could not do in relation to affirmative action.

Regarding the limits of permissible hiring practices, Tim highlighted how he remembers the campus general counsel handling these issues:

That’s one of the matters that the office of general counsel tended to...I mean, in my memory of this, tended to emphasize, so, you know, what was prohibited at one level was required in the other. And so trying to sort of...finding the fine line

there and knowing when you can invoke the federal mandates to protect yourself from the state mandates was one of the things, of course, that these lawyers were...you know, they spent quite a bit of time giving directives on.

As both Tim and Luke served in university administrative capacities during the passage and immediate aftermath of the affirmative action ban, they had a heightened awareness of how the federal and state mandates differed and how that could potentially affect university practices. They were also in a position to observe the broad administrative and faculty understanding of these tensions, coupled with general counsel involvement.

Like Luke, William also mentioned the issue of federal grants for research coming into Public University, and how the stipulations to receive such funding raised awareness among faculty regarding federal versus state compliance with affirmative action mandates:

It wasn't tension so much as, well, you know, to what extent can we use the federal requirements to make sure that we keep some pressure on because one of the things we said to department chairs was, well, look, this applies to the state unless we want all of our federal research bucks cut off and they would then shudder when we would say that because that's the oil that keeps the research engine going. You're still under, you know, federal guidelines in terms of affirmative action and...uh...what we would end up doing and this is quite problematic for us is having lawyers running the university. I mean, the question becomes, well, what's permissible and what isn't? You know, and what's federal and what isn't? And so...and the lawyers tended to err on the side of caution.

Even among those with awareness of both federal and state mandates regarding affirmative action, confusion over permissible practices remained. Furthermore, the issue of the campus general counsel guiding the trajectory of university programs and practices comes up once again, with William's concern that the confusion over permissible practices makes the university vulnerable to attorneys "running the university."

Although there was a great deal of confusion over permissible practices given conflicting federal and state mandates, that was not necessarily a bad thing, according to Heather:

The conversations I can remember were (pause) we are not allowed (pause) well, first of all, it is still ambiguous to me, and I think maybe many of us don't try to really chase this down because it's better to keep it in a state of ambiguity. It's allowed more flexibility in case the worst is true, and you're not allowed to mention race but federal, for hiring, federal affirmative action guidelines still hold, and they allow you to mention it, and I believe that that trumped [the state mandate] for faculty hiring because its employment law. Am I right on that?

Not unlike Miriam's earlier observation that many affirmative action programs did not want to be closely studied within the state anti-affirmative regulatory environment, Heather felt as though there was an upside to not looking too closely at permissible versus impermissible practices in faculty searches. For Heather, the result of this was having potentially more flexibility than what may have been the case with clear, concrete directives from university administrators.

At Private University, informants were far less familiar with the tensions between federal requirements for affirmative action and the state anti-affirmative action regulatory

environment. While most had not heard of any conversation at Private University regarding these tensions relevant to faculty hiring policies, some informants did communicate an awareness of the conflict. Omar remembered trying to invoke federal law as a way to support faculty affirmative action practices but he was met with resistance from some of his faculty peers and administrators:

There was a concern that the university might be vulnerable to lawsuits to, uh, charge, uh, of taking race into account. That was not convincing to everyone, and a few of us argued that it was inappropriate to have such a concern because federal law still applied, federal law allowed this sort of targeted recruitment at that time.

In this case, state anti-affirmative action regulative forces had not wholly permeated faculty beliefs at a cultural-cognitive level. Also at Private University, Edward understood that regardless of state anti-affirmative action regulations, federal affirmative action laws remained in place and would shape faculty hiring:

The hiring...the search process was more defined and there always had to be that part of the federal government language inserted...uh...about opportunity like non-discriminatory, you know, that kind of rubberstamp stuff that...boiler plate stuff that the feds always required.

Beyond Edward and Omar's discussion of these issues, most other informants from Private University had little awareness of the conflicts between state and federal mandates in the realm of faculty searches. Ultimately, these findings suggest that the enforcement mechanisms supporting federal affirmative action mandates were perceived by informants as far less of a threat than state anti-affirmative action enforcement

mechanisms, evidenced in part by the fact that there was a relatively low level of awareness regarding federal affirmative action mandates. Whereas the intersection between federal mandates and research compliance provided one avenue through which faculty and administrators became aware of the conflict between state and federal mandates, the concern for the federal mandate was unanimously lower among study informants.

### *Effect of Compliance Rationale on Campus Culture*

The impact of the legal compliance rationale appears to have gone beyond restrictions and changes to practice. Several study informants spoke of how the compliance rationale affected the culture surrounding faculty diversification practices on each case study campus. At Private University, Teri remarked that even though her university was not under the state mandated ban on affirmative action, “with [the mandate], the climate changed.” Omar elaborated how the compliance rationale affected campus culture:

There’s an understood shift by the university administration regarding its legal capacity to pursue targeted efforts, and that shift leads to a cultural shift in the department to say, we don’t have to worry about this anymore. We can go back to the way we did business before. We can just make our arguments for why we want to recruit for different positions and we don’t have to worry about diversity at all. And that’s why, certainly in my department and in many other departments, you see a in my opinion, a very, very limited effort to try to diversify the faculty afterwards, following very spotty attempts to do so, nothing systematic and nothing that is driven at the level of the president and the provost.

Like Omar, Aaron, also believed that the campus culture around diversity practices was affected by the state ban on affirmative action and lawsuits targeting affirmative action in higher education nationwide. Although Aaron feels that there have been greater campus efforts to enhance faculty diversity in recent years, the legal compliance rationale stemming from the regulatory environment has had a lasting impact on the culture around the pursuit of diversity in faculty recruitment and hiring. He said:

I think it's a legal compliance that changes into a culture. You know, that that becomes the sort of attitude that's around, and so numbers don't change, you know, even as there are all of these other things supposedly that you work with [university administrator responsible for faculty diversity] and you've got to change the papers, and you've got to do the searches but it doesn't change.

Despite a number of practices and efforts put into place by administrators to support new diversity efforts in the context of the state anti-affirmative action regulatory environment, Aaron feels that the culture of legal compliance has superseded these efforts.

At Public University, a similar risk averse and compliance-oriented response seemed to emerge which affected the culture around diversification practices. As detailed in Chapter Five, informants from the Public University described how many departments, particularly those who did not view diversity as a priority, relaxed their faculty diversity recruitment and hiring efforts in the wake of the state mandated ban on affirmative action. William described this response as a “get out of jail card free” for faculty members who did not want to pursue affirmative action practices in faculty hiring, and as a result of relieving the pressure to pursue faculty affirmative action, the culture in

many academic departments around the university changed. In addition, Eva described the cultural shift on campus as follows:

People were...people thought they couldn't do things because of [the mandate] which they could have done. So it was a little of, you know, "Oh, we can't do this because that's against the law." It wasn't necessarily against the law. It's just everybody backed off from any kind of...any kind of process that they thought might be...uh...favor one group over another, and so it took a little bit of bravery, I think, in some sense for people to say, wait a minute. Let's figure out what we can do and how, you know, let's stand up in some sense to these laws and figure alternatives that will ensure that we actually do have a diverse pool, and we do hire diverse faculty and make sure they succeed.

Although there appears to have been a conservative response of compliance, there was also a counter-response that empowered some faculty to figure out how to proactively address faculty diversity and enhance the diversity of the applicant pool.

### **The Diversity Rationale**

As faculty and administrators at both Public University and Private University adjusted to the compliance rationale advanced by university leaders to guide faculty hiring practices in the context of the state anti-affirmative action regulatory environment, there was still a desire expressed by members of both university communities to continue advancing diversification efforts. As mentioned in Chapter 5, the presidents at both Public University and Private University issued public statements regarding their university's continued commitment to diversity despite the new ban on affirmative action, so the challenge for each university was to convert these normative beliefs and

commitment to diversity into practice. The diversity rationale, according to study informants, emerged to provide support for faculty diversity recruitment and hiring efforts, particularly amid the new legal constraints to affirmative action. As Walter from Private University summarized the thrust of the diversity rationale, simply put, “it enriches the learning experience when you have people that come from various backgrounds.” Indeed, according to Moses and Chang (2006) and Justice Powell’s opinion in *Regents of the University of California v. Bakke* (1978), the primary tenet of the diversity rationale is that it places value on how individuals from diverse backgrounds enhance the learning environment.

The diversity rationale appears to have emerged similarly at both case study campuses according to informant accounts. Informants reported that both the state ban on affirmative action and legal threats to the use of affirmative action in higher education shaped how the leadership at both universities began to utilize a diversity rationale once legal compliance had been addressed. From Brooke’s vantage point at Public University, the diversity rationale emerged as a result of needing to think carefully about notions of merit after the state banned the use of affirmative action. She explained:

The tone has really changed from the sort of 80’s and 90’s affirmative action which was go out and find a woman or a brown person and hire them to we need to understand how we define merit, and incorporate the university’s mission to serving our diverse state into our definition of merit when we’re evaluating faculty. So if we are going to be a public university that’s going to serve a diverse state, we need to have faculty who can serve those students, who can do that kind of community service, who are addressing those kinds of research questions.

Brooke further went on to discuss the shift from a rationale that is purely based on the value of addressing underrepresentation to one that addresses the importance of meeting the needs of a diverse world. She said:

So there's really just been this giant shift of seeing it as, it's not just a representational thing. It's not just get one brown person, get one woman and then you're done. You know, the kind of tokenism approach which was very demeaning to women and scholars of color. It was very demeaning because then you get into this, "Well, we just hired you because we knew you were black," or "We just hired you because they said we couldn't do any more hiring until we found a woman." To now, you know, the conversation is just continuing to push to it's a diverse planet. If we don't address diversity, we're not going to continue to be relevant and we need faculty who can deal with this and that's a really...and it's just been gradual. It's really been very gradual.

Brooke described the beginnings of a rationale that advances the importance of diversity from an educational and relevance perspective. Although this rationale emerged gradually, the questions leading to the use of the diversity rationale at Public University appeared to begin as a result of the limitations placed on affirmative action efforts due to the state ban and other litigation.

While Public University worked through what was and was not permissible in the realm of faculty diversity recruitment and hiring efforts after the state ban on affirmative action, a University statement of principles advancing the tenets of the diversity rationale began to take shape. As described by Sebastian, it took several years for the statement to

gain widespread support, once again illustrating the more gradual adoption of the diversity rationale as compared to the compliance rationale:

The system wide committee, you know, drafted a statement of principles on diversity which after a couple of years, was adopted by the system wide academic senate and then the president signed on and then the governing board who now were a different group (laughs) signed on, and that statement provides a really good, concrete policy base on which to say, yes, the institution cares about this, they hold it in high esteem. It wants motion forward and this is why, you know...the posting on the wall over there but...uh...so that's very helpful. So when people ask me, "Well, diversity, you know, can we talk about diversity?" "Here, the governing board members have said, you know, this is really important. So, yes." But, "No, you can't hire people just based on their race." So you have to frame things the right way and here's the right way.

As opposed to the string of messages from legal counsel articulating the compliance rationale, this statement of diversity principles from the university, crafted by faculty and administrators, advances the diversity rationale instead. While it took some time, the diversity rationale did eventually gain visibility in how the university positions itself with faculty recruitment policies and practices.

At Private University, Isaac, like Brooke from Public University, also believed that the emergence of the diversity rationale was driven by the legal restrictions placed on affirmative action:

It was in the context of that legal shift around the country, the question of affirmative action as a legal tool that the university then developed other methods

of continuing its commitment to enhancing the quality of education for formally disadvantaged populations but meaning by that term now, no longer simply students of color but disadvantaged in varieties of ways - regionally... um... economically most importantly... uh... but other forms as well. Disabilities... uh... (pause)... ways of getting at populations who in the past typically were not at the core of the Private University undergraduate or graduate student population. So that's where diversity then really took over as a way of continuing that work in what used to be done by affirmative action but in a revised and different way.

He precisely identifies the importance of the legal compliance rationale as a key precursor for the diversity rationale. Without the legal challenges to affirmative action, the rationales for the practices may not have changed in the manner in which they did. The inclusion of groups not previously the target of diversification efforts emerged as a result of the legal questions challenging the narrow definition of previous affirmative action beneficiaries.

Jessica's comments also support the idea that the notion of a diversity rationale came about through legal compliance, although she was actually unclear as to whether a change in law or a change in university policy affected the affirmative action practices at Private University:

My recollection is that in 2000 or so...maybe 1999, the law changed so that we weren't allowed any more...or maybe it was just university policy but I think it was the law. I thought it was a federal law that changed...that said we could speak in terms of diversity but diversity had to have a number of dimensions, and was that a federal law?

Despite the lack of clarity regarding the source of the changes, the take-away for Jessica was that diversity needed to have a number of dimensions when invoking the diversity rationale in faculty recruitment.

The diversity rationale is not without its issues. William pointed out what he views as a flaw in how the diversity rationale is framed:

My big thing about diversity is, you know, uh...we make the argument, we being the university and other proponents of diversity...we make the argument that diversity is good primarily because it benefits white students. You know, it's great for these white students to have this experience. They're going to be better in the business world. They're going to be better human beings.

William further went on to say that the diversity rationale does not factor in what he feels is another important issue; the rationale is not based on "social justice issues of these folks were denied places in this university and almost every other university in the United States for most of the history of those universities and they need to be here." The contrast that he makes here illustrates that the diversity rationale used in the aftermath of the affirmative action ban is indeed a departure from previous remedial rationales that emphasize equity and social justice for affirmative action practices. As discussed in Chapter 3, the remedial rationale has been used to support the use of affirmative action and other diversification programs in American higher education (Antonio & Clarke, 2011), particularly prior to Justice Powell's use of the diversity rationale in his opinion in *Bakke* (Moses & Chang, 2006).

Like William and others, Tim also made a contrast between the advancement of the diversity rationale by university leaders and the previously used remedial rationales

that often supported affirmative action practices. In referring to comments made by a Public University leader:

My sense is that it quite went on and, you know, he talked about diversity and the value of the diversity rather than the social justice of affirmative action but the point was to, you know, get those numbers up and that was...that pressure which had been very substantial under the president who was here in the 80's was, I would say, less in the 90's.

The contrast he makes here further makes concrete that the diversity rationale supported by university leaders since the passage of the affirmative action ban is largely characterized as a departure from a remedial rationale focused on justice or equity, and with that shift came less emphasis on meeting number targets for hires in certain racial and gender categories.

*Broadened Definitions of Groups and Individuals within the Diversity Rationale*

A defining characteristic of the diversity rationale is that it allows for a more broad definition of groups and individuals that can be targeted in diversification efforts as compared to those that were the target of earlier affirmative action efforts. In this regard, Donald shared his perspective on what he perceived as the big change between the way that Private University used to apply affirmative action versus the manner in which the diversity rationale was – and continues to be – utilized in faculty hiring:

Yeah. Well, it...affirmative action was seen as applied only to a few very well defined groups, right, and it...you know, it really had to do entirely with group membership and not with individual characteristics, and now it is much more, you know, well, we want a diverse faculty so what does this person bring that can add

diversity? So that's been, you know, the narrative is radically different, I think...uh...the set of people who qualify is somewhat different but not hugely different. So that's the big difference that I see.

The emphasis on the ways in which a person can "add diversity" to the professoriate versus simple group membership broadens the scope of who can be hired under a diversity rationale, and is a notion that emerged repeatedly in discussions of the diversity rationale with informants from both campuses.

Omar spoke at length about how he understood the value of broadening conceptions of diversity when using the diversity rationale in faculty recruitment efforts, including the importance of an educational and intellectual emphasis:

You know, universities must embrace diversity in all of its different dimensions, there's no question about that, but what this broadening of the definition does over improving, I think the status of underrepresented communities, is that it allows universities to recruit individuals whatever their background who have demonstrated and committed and accomplished research and teaching interests in trying to better study underrepresented communities (inaudible) as well as domestically or as well as in the U.S. and that's an absolute good because it's the intellectual life that the individuals bring that is most important, and background can be part of that.

Apart from what he felt as being an important contribution to diversification efforts, the intellectual angle brings another benefit, according to Omar:

The intellectual interests raises the discussion away from numbers to intellectual contribution to the institution and that's what it should be. And that was the

barrier I faced in the faculty senate. People saw diverse faculty as a numbers game. That's why there was a concern about aggregating and disaggregating. It should be the concern about intellectual richness at the institution, and that's where diversity is appropriately positioned.

For Omar, the intellectual diversity angle of the diversity rationale is powerful because it not only helps to advance historically underrepresented scholars, but it also diverts attention away from simply numbers and representation, something that Brooke also highlighted in her comments regarding the former need to go out and "just get one brown person, get one woman and then you're done."

Omar was not alone in highlighting the value of intellectual diversity within the diversity rationale. One of the things that Public University did in conjunction with advancing a diversity rationale was to use that rationale towards establishing a diversity-oriented research center, which in turn would attract diverse faculty. Xavier explained:

If the center functions to attract people to Public University whose research is sort of squarely tied up with issues of race, ethnicity and access and... uh... immigration and the border and multicultural literature and cultural studies and (pause) political, you know, systems and that kind of thing, that's what we're looking for, and so, you know, we're beginning to sort of build excitement around the center and a new endowment that came from the [name of foundation].

As the endowment was a multimillion dollar investment, this serves as one example of a research center attracting substantial funding while utilizing the diversity rationale as a major component of their mission, further supporting the viability of the diversity rationale in an academic research setting.

Issac's remarks regarding the broadened notion of diversity within the diversity rationale capture a cautious optimism regarding what can be achieved through the diversity rationale in the state anti-affirmative action regulatory environment:

Diversity as a tool, I think, can work as well as affirmative action ever did depending on one's commitment to doing it. And I think, you know, in many ways its good that diversity includes other kinds of disadvantaged populations. I'm delighted that that includes, you know, people from economically...uh...limited circumstances, whatever their race, that's a good thing. So I certainly have no qualms about that but nevertheless, whatever your diversity definition is, it's only going to work if you make it work.

Both universities in this study have taken measures to make diversity "work" in their faculty recruitment efforts, but Isaac's mention of "whatever your diversity definition is" brings to the surface an important issue raised by many study informants: how precisely is diversity defined within the university setting, particularly in faculty searches? This topic will be explored in detail in Chapter 7.

#### *Strength of Diversity Rationale Messaging from University Leadership*

The leadership at both case study campuses made clear their support for diversity in light of the legal challenges against affirmative action and articulated the diversity rationale in guiding university policies and practices. At Public University, Eva clearly stated that, despite the ban on affirmative action, "it was always the case that the administration wanted to figure out how to remain successful at hiring women and underrepresented minorities." Sebastian also discussed the leadership's support for diversity and the diversity rationale when describing how the system-wide leader of the

state's public universities created a faculty diversity task force after the ban on affirmative action. He elaborated:

[The leader] had good points and bad points. One of his good points was he was pretty strong on the diversity agenda. So he did that, you know, the leadership thing, and he hired [name of university president] and a number of others who were better in this area. So, you know, there was a change in the tone from the top that got some of this going."

Similarly, Brooke remembered the president as being "all about how do we retain our commitment to diversity in light of this policy," referring to the state policy banning the use of affirmative action. Despite the president's vocal support for diversity and articulation of a diversity rationale, Brooke perceived the feeling among faculty to be mixed regarding how to address and advance faculty diversity. She explained:

People didn't necessarily want to do anything about diversity but they certainly weren't against it. You know, they might have at worst been complacent and kind of mired in their sense of, merit, merit and merit but people were generally supportive of the notion that we need diverse faculty and we need diverse students.

The complacency she describes regarding the pursuit of faculty diversity suggests that the leadership's support for faculty diversity did not fully penetrate the faculty ranks. Perhaps the importance of faculty diversity was accepted by many faculty in concept, but not to the extent that it would strongly shape faculty hiring practices.

While many from Public University said that top university leadership offered support for diversity, Heather described the support for diversity and the diversity

rationale among campus administrators to be “mixed.” As one example, she pointed to one particular administrator who served at the time of the ban on affirmative action and the immediate aftermath:

We had a very conservative administrator who handled faculty hiring and stuff, named [X] and he’s a [name of disciplinary specialty]...uh...a very conservative Lutheran who had no feel for any of this.

Whereas the senior-most leaders of Public University adopted and advanced diversity rationales after the ban on affirmative action, not all campus administrators were perceived to be as uniformly supportive of diversity and the diversity rationale.

At Private University, several informants commented on the university leadership’s role in advancing the diversity rationale. In particular, many recalled what Victoria referred to as an “erudite” speech given by the university president immediately following the passage of the state mandated ban on affirmative action. The speech drew praise among informants for how it articulated the importance of diversity at highly selective universities; however, Omar felt that there was not enough follow up to fully integrate the spirit of the speech into university practices. He said:

So intellectually, I thought [the speech] was great. Conceptually, I thought it was great. I thought it presented a great (inaudible) university but what I didn’t see flow from that to the administration, through his provost and to other administrators, what I did not see was an active program to try and embrace and implement the concepts that...and goals one might argue that he was identifying in his speech.

Victoria also elaborated on the importance of senior leadership support for the diversity rationale, but said that senior leadership alone has not been enough to successfully weave the diversity rationale into faculty hiring practices.

Obviously, you know, the president and provost don't hire faculty... it really is important for the deans to pay attention because there's only so much that the provost's office can and should do, and as a department chair who felt like our department was being micro managed by the then provost, whose name I won't mention (laughs), you know, I think it's fine to provide information and resources but I think there's only so much direct pressure that can come from the central university. It really needs to come from the deans. You know, which is where... what the departments report to.

Aaron spoke similarly to Victoria, stating "I think my experience here is that it really takes leadership at the dean's level as well as in departments pushing," in terms of making progress with faculty diversity. Despite verbal support for diversity and the diversity rationale by senior university leaders, informants from both case study sites share similar concern that the rationale has not been fully pushed by deans, department chairs and faculty at large in terms of faculty hiring. Their comments suggest that the diversity rationale required more than simply presidential statements of support to shape faculty hiring practices in the wake of the affirmative action ban.

#### *Strength of Diversity Rationale Messaging from University Attorneys*

The office of the general counsel at Private University has played a key role in advancing the message of the diversity rationale due in no small part to protect the university from any litigation that could emerge from improper use of racial preferences

associated with affirmative action. Victoria spoke about how for many years, the campus general counsel has advised faculty on the appropriate use of the diversity rationale in faculty hiring. She noted how the development of guidance from the general counsel has been an ongoing process since the shift towards the diversity rationale took place:

In terms of recommendations, I think they're still coming up with recommendations for things that we can and can't do. You know, they recommend tying diversity efforts to the institutional mission, and justifying it based on the mission of the institution, and not just to focus on gender and race and ethnicity because that's too obvious, and smacks too much of sort of classical affirmative action. And to really couch things in terms of educational benefits and what is the educational benefit since that's...in the end, that's the main role of universities...um...the educational benefit of having faculty diversity.

At Public University, the office of the general counsel's messaging in support of the diversity rationale came years after the passage of the state ban on affirmative action. Many informants felt that this was due to the conservative nature of the general counsel at the time of the ban. In Brooke's experience:

We could not get the office of the general counsel to work in any proactive way with departments and programs to achieve their academic goals. I mean, they were not willing to engage in a...you know, it was all...they just said, "No, you can't do that. We might be sued." That was sort of their standard answer, and they wouldn't say, "This is what you can do."

Eventually, however, they have become more supportive of the diversity rationale. According to Brooke, "Now you will see on their website paragraph after paragraph

describing what you can do but they didn't start there. They started with this very restrictive...just, you can't do it anymore and that was unacceptable to the academic mission." Indeed, at the present time, guidance can be located on the general counsel's website to support the advancement of a diversity rationale in university policies and practices.

### *Effect of the Diversity Rationale on Campus Culture*

The shift in messaging from the campus general counsel to support a diversity rationale, coupled with university leaders' support for the diversity rationale, has contributed to campus cultures at both case study sites that became more accepting of broadened diversity practices over time. At Public University, concerns regarding compliance with the affirmative action ban initially made it more difficult for the diversity rationale to shape the culture around faculty hiring; however, informants pointed to a broader campus culture that is very supportive of diversity. Several informants cited the arrival of a new university president as helping to improve the culture on campus regarding diversification efforts. Sebastian from Public University felt that it was a major statement for this newer president to publicly denounce the state mandated ban on affirmative action. He said:

You know, the first thing he said, "[the mandate] is a terrible law. It should be repealed." So that actually changed the feeling on campus. If the president is willing to step out and say that knowing that the watch dog, you know, groups are going to go ape over this and they're going to totally be watching, he didn't care. While the need for legal compliance – and the university attorneys – played a dominant role in advancing the compliance rationale and campus culture regarding faculty

affirmative action practices in the initial aftermath of the state ban, Sebastian's comments point to the emergence of a culture that allows for both the denouncement of the ban and vocal support for diversity. Heather agreed that, "the climate actually coming from the top administration is very supportive of diversity."

William also described the challenge of working against a fear of violating the affirmative action ban to facilitate a culture that was supportive of faculty diversity.

Toward this end, he recalled being tasked to strategically recruit new faculty:

We were very concerned about sort of the campus climate and the outside reaction to Public University and the law...people were saying things across the country about this being a hostile environment. You know, I told [the university president] if we could make, uh, a couple of appointments of stars and that everybody knows, and they come here, then it's kind of, oh, well, things must not be that bad at Public University... So he gave me permission to go after some people and I went after them and for various reasons we weren't able to get them.

While they were initially unsuccessful at recruiting faculty stars that they felt would help promote a positive image of campus culture, the president's financial backing of these potential hires indicated the president's interest in fostering a culture supportive of diversity. The combination of the appointment of a president that supported diversity efforts, coupled with a select number of faculty like William with a fundamental interest in diversifying the faculty ranks, helped set the tone for the campus community to embrace the diversity rationale as part of the campus culture for faculty hiring.

Over time, it appeared that the culture around diversity in faculty hiring at Public University has continued to improve. Xavier spoke to the present day feeling on campus

to express his perception of how long it has taken for the university to be “hopeful” about diversity and to shake the fear of litigation as a result of the affirmative action ban. He said:

I think we’re more hopeful again. You know, I think we feel like there are still huge structural issues, you know... A lot of the new faculty of color are, you know, newly minted PhD’s. I mean, in [my department] we just hired two women... women of color who just finished their PhD’s and they’re going to be stunning additions to the department. So, yeah, it’s more...I would say it’s more hopeful and really...uh...the intimidation and the chill and fear factor, I think, is easing away.

The effect of the diversity rationale on campus culture has been quite gradual at Public University, with the key barrier being concern for the regulatory environment and wanting to be careful of not violating any laws. While there was support for diversity on campus, particularly with the diversity rationale being verbalized by university leadership, the chill caused by the enforcement of the compliance rationale slowed the impact of the diversity rationale on campus culture around faculty hiring.

Not unlike Public University, at Private University, a similarly gradual effect of the diversity rationale on campus culture, particularly hiring culture, has taken place. Ryan explained how he has seen the attitudes regarding faculty diversity recruitment and hiring change over time, in particular the willingness to consider the diversity rationale in a search:

I would say even I remember being on some committees (pause) shortly after...I would say in the late 90’s and I would raise the issue of diversity and I can almost

remember somebody saying that, “Aren’t we done with that?” You know, like isn’t that...um...over like as though, you know, that is so 70’s or so 60’s or whatever, and they didn’t refer specifically to the state ban but it was as though I were raising a pesky annoyance from another era. (laughs) And people don’t say that anymore, I don’t think...um...I think people have a sense that affirmative action issues remain where even though they’re not...you know, they’re called diversity now, and we have someone like [administrator responsible for faculty diversity] for instance, and we have a faculty search and she comes in and encourages us to kind of take diversity into account

Ryan’s comments allude to faculty awareness of the importance of diversity, including an organizational actor responsible for promoting faculty diversity. While he did not explicitly state that his colleagues are proactive in utilizing the diversity rationale in hiring, he did say that there is less faculty resistance to considering the diversity rationale in hiring.

Edward spoke about how diversity can emerge and retreat as a goal that the university will emphasize, further reinforcing the notion that the diversity rationale had a more gradual if not inconsistent effect on the campus culture.

I wonder...I mean, the institution goes to...there’s a time when it emphasizes [diversity] as an important goal and there are other times where, you know, it falls by the wayside and then something will provoke it and there will be another effort to say, yes, we realize that this is a work that we must continue to focus on in order to achieve progress. You know, we get reportings of it every year in the senate by the numbers.

The reactive nature of the university leadership and the inconsistency of diversity as a university goal for faculty hiring may have contributed to the less than full adoption of the diversity rationale into the hiring culture at Private University.

Victoria also discussed her experience using the diversity rationale in faculty hiring, and that while she perceives the rationale to be generally accepted today, she also noted that there remains a culture of compliance:

Recognizing the value of the diversity and using that as one of many criteria in making a hiring decision is probably okay, and the university has decided that we're going to do it. So we think we feel, you know, okay about what we're doing and, you know, [the university attorney] is always, you know, watching us and advising us and we ask him if we have questions. So, you know, we feel okay. This is consistent with the comments of many faculty at both Private University and Public University; the diversity rationale was broadly supported by university leaders in the aftermath of the affirmative action ban, but its effect on the campus culture was more gradual and co-existed with the compliance rationale.

The changes in campus culture around diversity in faculty hiring cannot be simply pinned down to the diversity and compliance rationales, according to Aaron. He elaborated as follows:

The recent economics and how that plays into it. So the sort of surrounding political or social climate around race plays here...the demographic shifts that we've seen in our state...uh...have played in the...I mean, and the changing undergraduates. Also, you know, the sort of time frame that you're talking about is when [our programs on race and ethnic studies] came into being. You know, it

wasn't there when I first came here. You know, so the student activism and now that's affected the issue. So the climate both on campus and off, I think, has influenced the trends for faculty thinking about affirmative action.

Beyond the sheer rationales, there are myriad factors ranging from broader politics to student activism that Aaron feels have shaped the culture of faculty hiring. In summary, though, informant comments overall suggest that the diversity rationale's effect on campus culture can be characterized as less dominant or consistent than the compliance rationale, mirroring the greater dominance of the compliance rationale on campus practices in the immediate aftermath of the affirmative action ban,. Although there is a generally favorable opinion of diversity, the diversity rationale has not fully penetrated the faculty hiring culture in the same manner as compliance.

#### *Co-existence of the Compliance Rationale and the Diversity Rationale*

Although the diversity rationale has been slower to penetrate the faculty hiring culture due to the factors related to compliance, the compliance rationale and the diversity rationale are technically able to coexist in faculty hiring according to informants. The compliance rationale had the most immediate impact on faculty hiring practices at both case study sites; later, the focus on diversity broadly defined within the diversity rationale enabled university leaders to advance diversity in a way that was within legal compliance and did not directly challenge the affirmative action ban. In discussing how to engage diversity while dealing with the compliance rationale, Edward said that "diversity was a cornerstone of *Bakke* so that you could see why it was easy to latch on to the terminology." Edward's reference to the U.S. Supreme Court's decision in *Bakke* suggests mindfulness of legal compliance, in particular borrowing directly from

language used as part of a Supreme Court opinion in support of diversity in higher education.

Merging the diversity and compliance rationales together to shape faculty hiring practices is something with which Brooke had had experience. After the elimination of racial and gender criteria from various faculty hiring and fellowship programs due to the affirmative action ban, Brooke found herself recasting program criteria in a way that was aligned with both diversity and compliance. Of this experience, she said:

One of the first things I did was to rewrite the criteria for those programs so that they might target faculty who would contribute to diversity without using race and gender as proxies for their contributions, so we just changed it from being a program for women and minorities...all of those programs we've changed them to being programs that were for faculty who would contribute to diversity through their teaching, research and service.

By utilizing “contributions to diversity” as a criterion instead of racial and gender categories, Brooke was both utilizing the diversity rationale and compliant with state law, hence illustrating one example of rationale coexistence in the recasting of program criteria. As described in Chapter 5, similar comments were shared by informants from both universities describing the ascension of diversity discourse in faculty hiring and program criteria.

Further capturing the shift from more traditional affirmative action practices to a combination of compliance and diversity rationales in faculty hiring, Brooke described changes in the language contained in job advertisements over time at Public University:

We used to say women and minorities are encouraged to apply back in the early 90's in affirmative action days, and then the general counsel said, "You can't say that anymore." So then we just said, "The university is an AA/EOE employer," and so the next generation is to not just stop there but say, you know, the department of [x] is interested in faculty who will contribute to diversity in higher education through their teaching, research and service or some variation, and I'm actually starting to see ads now.

This transition from strict definitions of groups to espousing the educational value of diversity details the manner in which the rationales came into coexistence in hiring.

Since the compliance rationale after the affirmative action ban eliminated Public University's ability to identify specific groups, the diversity rationale was welcomed by many since it met the university's interests in both compliance and faculty diversification. To employ the compliance rationale addressed legitimacy concerns from a regulatory standpoint; to employ the diversity rationale alongside the compliance rationale further demonstrated regulatory compliance yet also addressed and included the values and beliefs in faculty diversity supported by some faculty.

In discussing how Private University advanced diversity in faculty hiring while protecting itself from litigation, Edward described a "balancing act" that was undertaken by university administrators. He said:

You know, it was how can we go forward with what are still important goals of the university because anyone, any time would recognize that we're not a diverse faculty. So they knew the work that had never been accomplished and that there weren't still...a lot of work had to be done. So it was a question of how to you

calibrate the language of...the legal language, the legal practice and the university goal [of diversity]. I mean, I didn't see great tension anywhere in that.

Further, not unlike the efforts Brooke described to attract scholars who will make contributions to diversity, Edward described how members of Private University's administration have worked to attract diversity in faculty searches by recruiting scholars who study race.

As long as we (pause)...as long as its couched in terms of people who do work...who study race and ethnicity rather than minority scholars, then it conforms to the law, right? That's the dividing line and as long as...whether it was [the affirmative action ban], immediately after the ban, as long as you're saying that, then there's no legal quarrel and there's nothing they can pin on you, right?

Edward's commentary reflects a clear awareness of how the diversity rationale and the diversity discourse is in alignment with legal compliance and could be defended in the event of litigation if need be. The alignment of the two rationales makes them able to coexist in theory and in written job announcements and university policies, yet as touched upon earlier, challenges remain to fully embracing the diversity rationale in faculty hiring in the departmental ranks, which will be further elaborated upon in Chapter 7.

## **Chapter Summary**

A legal compliance rationale and a diversity rationale were the primary messages communicated by university leaders and attorneys to their respective university communities in the aftermath of the state ban on affirmative action. According to both

informants and documents, the compliance rationale emerged first and most significantly, seemingly so that universities could ensure that their faculty hiring practices were within the scope of the law and would not place them at risk of lawsuit. Informants from both case study sites observed the major role of university attorneys in how the rationale was communicated to faculty and administrators; they also perceived the threat of litigation to be a strong motivator behind the top-down advancement of a compliance rationale. In addition, informants from both case study sites reported that faculty hiring practices were quickly changed after the affirmative action ban to reflect legal compliance and to protect each university from litigation. Thus, my findings suggest that the state anti-affirmative action regulatory environment, via the compliance rationale, penetrated each university environment through both regulative and normative channels of institutions. In terms of the regulative channel, the regulatory environment prompted both universities to signal compliance and behave in a manner to avoid litigation or sanctions. Through normative channels, the regulatory environment influenced faculty hiring practices through administrative and legal guidance to search committees on proper faculty hiring practices and through the manner in which faculty proceeded with search committee discussions.

Another noteworthy element of the compliance rationale has to do with the conflict between state and federal affirmative action mandates. Both Public University and Private University were primarily concerned with being compliant with the anti-affirmative action regulatory environment driven by the state ban; they were less concerned about being in compliance with federal mandates in support of affirmative action. Prior to the state ban on affirmative action, both state and federal affirmative action laws were in alignment, yet the passage of the state ban led to the state and federal

mandates being in direct conflict. The threat of sanctions for violating the state anti-affirmative action mandate were perceived by informants as greater than those that could emerge as a result of violating federal laws. This suggests that federal enforcement mechanisms were less visible or effective than state enforcement mechanisms and perhaps that the federal affirmative action mandate has waned in its power over colleges and universities. Whereas some informants were aware of the need to signal federal compliance in order to receive certain research dollars (particularly federal research monies targeting the sciences), the notion of regulatory compliance and legitimacy seemed far more tied to compliance with the state ban on affirmative action.

The diversity rationale emerged more gradually in the language used by university leaders and attorneys to support faculty hiring practices on each campus. While university leaders were quick to state their support for how diversity enhances the overall learning environment, the translation of those messages into policy changes was slower to be adopted than were policy changes driven by the compliance rationale. Once each university tended to legal compliance, they were then able to consider how to advance and support diversity both in rhetoric and in actual practices that were within the limits of the law. The commentary from informants suggest that the tenets of the diversity rationale articulated at both case study sites are very much in line with how scholars such as Moses and Chang (2006), Antonio and Clarke (2011) and legal opinions such as Justice Powell's in *Bakke* have characterized the diversity rationale. While the diversity rationale was widely supported by university leaders, there is a sense among informants that department-level faculty are inconsistent about how they utilize the diversity rationale in faculty hiring due to varying beliefs in the value of faculty diversity.

The inconsistency among faculty regarding the weight of the diversity rationale in faculty hiring decisions illustrates the cultural-cognitive aspect of institutions; my findings support the notion that diversity as an asset is a deeply embedded and culturally supported notion for some (Kelly & Dobbin, 1998), yet perhaps not so much for others in the context of faculty hiring.

Despite the public and private university sector difference between the two case study sites, both universities responded similarly to the state ban on affirmative action and the conflicting (state versus federal) affirmative action regulatory environment. Furthermore, the compliance rationale and diversity rationale have generally been able to co-exist in faculty hiring programs at both case study sites, with faculty job announcements and fellowship program criteria capturing evidence of both rationales coexisting. Given the breadth of what can be considered as diversity and the lack of pre-prescribed racial or gender categories within the diversity rationale, the use of the diversity rationale is within legal compliance and does not place a university in direct violation of any laws. Although the two rationales are technically able to work in concert, informants suggest that there have been challenges to adopting the diversity rationale into faculty hiring culture due to concerns for compliance and proper execution of hiring practices, as well as due to the presence of faculty who may feel neutral or less interested in diversity in the midst of other hiring priorities. The varying ways in which department-level faculty interpret and prioritize the diversity and compliance rationales – a cultural-cognitive dimension of organizations – will be further explored in Chapter 7.

## **Chapter 7**

### **MULTIPLE RATIONALES AT WORK AT THE DEPARTMENT LEVEL**

In Chapter 6, I described the two primary rationales – the compliance rationale and the diversity rationale – that were advanced by university leaders to guide faculty hiring practices in the context of the state anti-affirmative action regulatory environment. In this chapter, I explain how department level faculty understood, interpreted and put into practice the diversity and compliance rationales in faculty hiring.

While there were two primary rationales advanced by university-level administrators and attorneys, informants suggest that there have been multiple rationales at work at the departmental level among faculty serving on faculty search committees. The organizational response to the state anti-affirmative action regulatory environment at the ground level by academic departments reflects far more range than what appeared among the responses by university-level administrators ordering compliance and diversity. Given the departmental domain over faculty hiring, it is appropriate to explore the differences in response between university-level administrators and department-level faculty, and gain a better understanding of how the range of rationales within departments can factor into faculty hiring deliberations.

In the context of the co-existing compliance and diversity rationales at both universities, faculty interpretation of these rationales for hiring purposes was frequently tied to the question of “what counts as diversity?” Interview data illustrate that, as a result of the coexisting compliance and diversity rationales offered by university-level administrators, many questions arose – and continue to arise – regarding the

characteristics that can and cannot be considered “diversity” in faculty hiring. The multitude of interpretations by department-level faculty for what counts as diversity resulted in both an array of rationales being advanced along with uncertainty over which rationales were appropriate to use in faculty hiring situations. Indeed, the uncertainty among faculty regarding what counts as diversity created the context for myriad rationales to emerge and become part of the dialogue in faculty hiring. I describe each department-level rationale below and how it manifested among faculty in hiring deliberations. My data illustrate that the presence of multiple rationales, coupled with the uncertainty about proper rationales, has resulted in some gaming of the diversity rationale, hence affecting a key aspect of the faculty search process.

Before presenting the specific department-level rationales, I provide context by sharing initial faculty reactions over how to interpret and enact the diversity rationale while also considering compliance, prompting the emergence of the question, “what counts as diversity?” and setting the stage for the emergence of multiple rationales among department-level faculty.

### **Setting the stage for multiple rationales: What counts as diversity?**

The pronouncements of the compliance and diversity rationales by university leaders were met with many questions and mixed interpretations of diversity by department-level faculty. While it seemed clear to many that, in Isaac’s words, universities could no longer focus on “the old specific racial categories,” the factors that could be considered were, and continue to be, much more of an open question. Given the coexistence of the compliance and diversity rationales, some of the questions regarding what “counts” as diversity have had to do with whether it was legally permissible to

consider certain groups or individuals to be “diverse” for hiring purposes. Heather summed up the faculty confusion as follows:

I’d say mostly what happened was the shift of the discourse and the confusion about whether or not you could mention these things, and I guess it also...part of why it feels confusing is because it’s one set of legal framing for faculty hiring and it’s another for what we spend so much time reviewing on which is students.

Similarly, Isaac also commented on both faculty hiring and graduate student admission, stating that, “in those two contexts, um, you know, certainly our commitment to affirmative action, to what used to be called affirmative action, continued but it could not continue in that sort of very clearly defined and focused way.” He went on to elaborate on the difference between the two and the particular high stakes nature of faculty hiring:

The questioning of what counts as diversity arises in those situations. Where it is an issue, in my opinion, and does tend to create more heat is in the hiring of faculty because that’s something we control, and it matters a great deal because we’re not just, you know, admitting somebody who is going to be here for what, five or six years, we’re admitting somebody who may spend their lifetime here.

Since the hiring of diverse faculty can be attached to target of opportunity or other hiring incentives, the questions regarding a diversity designation can play a key role in a faculty hire that may have long term ramifications for a department.

A key tenet of what can count as diversity when accounting for both the diversity and compliance rationales has to do with diversity being broadly defined, so, by definition, any guidance on what counts would not provide specific parameters. From her vantage point as a former department chair and administrator, Victoria said that,

regarding faculty job announcements, “anything we write, start that with something about diversity broadly defined.” She further spoke of her hiring experiences within the diversity framework that emerged amidst the state anti-affirmative action regulatory environment, saying that “we obviously have to be careful in not defining diversity too narrowly. So we say diversity broadly defined but our real focus is on gender and racial ethnic diversity.” While the broad definitions of diversity are characteristic of the diversity rationale, the need to be “careful” suggests mindfulness of compliance and legal considerations since a narrow definition of diversity could place universities at risk of lawsuit. This further speaks to the coexistence of the diversity and compliance rationales.

Given the broad scope of what can potentially count as diversity, some uncertainty and confusion have endured among faculty and administrators at both Public University and Private University. Regarding whether to place greater weight on state or federal affirmative action laws in considering what counts as diversity, Sebastian said that, “these kinds of questions are still very much in the air and people still very much don’t know the answers.” The lack of specific guidance was echoed by Isaac, who said, “I don’t think the university instructed us in specific ways of changing from affirmative action to diversity but by experience, we learned how to do that.” It seems as though faculty understood that they could not solely consider select racial and ethnic groups and women, as was the case in previous iterations of affirmative action; however, beyond an understanding of the need to broaden the criteria for diversity, no clear cut list of what did and did not count as diversity was offered by faculty administrators or campus attorneys. The criteria were – and continue to be – purposefully kept broad and loosely defined, which is in part a reaction to the legal environment and in part to organizational

goals for diversifying the faculty. Ultimately, the uncertainty over the definition of diversity helped create the context for multiple diversity-related rationales to emerge in faculty hiring, which in turn has led to some confusion over which rationales are appropriate for faculty hiring.

### **Compositional Rationale**

One of the frequently referenced rationales for faculty hiring was a compositional rationale, which I characterize as being driven by the racial and gender compositional wishes of the hiring department. As an example, if a department hopes to hire a female colleague because they have few female colleagues, I would identify this as a compositional rationale because they aim to increase the female composition of the department. While bearing similarities to both the diversity rationale and the remedial rationale, there are some key differences. Unlike the diversity rationale, the compositional rationale is more specific to race and gender than the broadly defined notion of diversity that characterizes the diversity rationale. In addition, the compositional rationale does not emphasize the importance of a diverse community to enhance the learning environment, as is the case with the diversity rationale. Unlike the remedial rationale, the focus of the compositional rationale lies more heavily on sheer representation and less on advancing social justice for the targeted populations.

Informants spoke of the compositional rationale as being potentially relevant to many types of faculty hires, be it with a junior or senior hire, or across disciplines. The context of a hiring department was especially important to consider when advancing a compositional rationale and was frequently tied to the question of what counts as diversity. Omar, for example, remembers being told that “diversity was to be defined

appropriate to the department and that there was no explicit targeting through a university policy anymore.” He further spoke of the conversation this policy change prompted in his department:

That immediately led to a very interesting discussion about whether this...um...women who we might be trying to recruit and who were experts in [name of academic sub specialty], the under representation of women in that sub specialty, whether or not it included certain international faculty, people who were born and raised in other countries and exactly what the threat was of misunderstanding of diversity.

Isaac also spoke to the importance of departmental and disciplinary contexts in advancing a compositional rationale and questioning what counts as diversity in faculty hiring:

The process of having to report on the structure of the search did not change at all. In fact, maybe even required a little bit more attention because of this ambiguity as to what counted as diversity. For instance, at Private University, in many of the engineering departments, to hire women is still a matter of diversity because there are still relatively few women in the sciences, and particularly in the engineering departments. In the humanities and social sciences, on the other hand, that’s not the case.

In yet another example of how context could factor into what counts as diversity, Isaac further went on to talk about the roles of faculty rank and the faculty hierarchy:

So the hiring of the full professor you might still think of diversity, of gender as a diversity factor but not necessarily at the assistant professor level in the humanities and social sciences. So those kinds of things have to be documented.

Whereas each of these different examples illustrates scenarios where the compositional rationale could be used, it also shows the pliability of what could count as diversity depending on the particular hiring context. Each of the examples appears to point to underrepresentation in the given context as a justifiable factor in what could count as diversity.

### **Class Rationale**

Socioeconomic class background has emerged as a factor that could potentially count as diversity in college admission, and is part of a larger dialogue surrounding the viability of advancing class based affirmative action programs (Kahlenberg, 1996; Nealy, 2009; “Reactions,” 2009). In the realm of faculty hiring, a class rationale also arose as a potential rationale in faculty diversity designations and in faculty hiring overall, but it was not without uncertainty. Heather was one informant to discuss whether a faculty candidate’s class background could be considered as a diversity factor, and contrasted class with race as follows:

It’s hard to know how to admit class, how to bring it into the conversation especially if by the time you come to apply for a job or even to get into graduate school, you have already moved up educationally in terms of class background, but you don’t get dislodged from your racial category... If someone is visibly African American, no matter how class privileged, you know they’ve had some shit.

Max also articulated the confusion among faculty regarding the consideration of class in hiring within the new diversity rationale parameters, and specifically examined the intersection of class, race and national origin. He said:

The faculty and the policy makers get confused like when you say diversity broadly defined then they don't see any reason why they should not be nominating the...you know, a Greek woman or a Hispanic from Argentina or from Uruguay and regardless of what class they're from or whether they had privileged backgrounds or not and whether it's...you know, disadvantaged... uh...you know, because the broader diversity model doesn't say it has to be a disadvantaged diversity person, right? So somebody from, you know, Brazil or Argentina or from Nigeria says I want to be here in the United States and get their PhD and stay here, right? Then in a sense, they qualify under diversity.

For Max, the expanded potential diversity considerations, such as class, can, in his words, “compromise on your true goal” which for him places more emphasis on social justice and serving domestic populations. While Heather and Max were the only informants that raised a class rationale as being something that might count as diversity in faculty hiring, other informants discussed class as part of a broadened notion of diversity in the realm of graduate admission. However limited the references to a class rationale in faculty searches, they nonetheless are a part of the array of rationales invoked by department-level faculty and contribute to the uncertainty over proper rationales for faculty hiring.

### **Intellectual Diversity Rationale**

While intellectual qualities weigh significantly into any faculty hiring decision at both Public University and Private University, the intellectual diversity rationale

introduces yet another set of interpretations of what might count towards diversity in hiring. As discussed in Chapter 6, one angle of an intellectual diversity rationale can focus on hiring faculty who study race and ethnicity; indeed, both Public University and Private University have academic departments, programs or research centers that focus on the study of race, many of which were founded on the premise of the diversity rationale and do not rely on hiring scholars from underrepresented backgrounds (although many are from such backgrounds). Another interpretation of the intellectual diversity rationale – that which focuses solely on the basis of the unique intellectual expertise that a candidate can bring to a department – can stretch the boundaries of what some informants feel should count as diversity.

Informants perceive that an intellectual diversity rationale focused solely on unique intellectual expertise is utilized by some faculty to capitalize on the broadened notions of diversity and the benefits that can be derived from a diversity designation. In other words, if search committee members perceive diversity to be an attribute that will strengthen a candidate's case, they may label a favorite candidate as diverse because they bring a unique intellectual diversity to the department. As such, many informants felt that this type of intellectual diversity rationale is ultimately used to game the diversity rationale and the manner in which diversity can be defined in a faculty hiring situation. The lack of guidelines regarding what counts as diversity makes the notion of an intellectual diversity rationale more difficult to challenge.

Recalling an experience he had on a search committee to hire an endowed university chair, Ryan said that some of his colleagues “interpreted diversity in the wildest and wildest sense,” trying to identify scholars as diverse because they worked on

obscure topics such as early Turkish texts. “It was all I could do to kind of bite my tongue and say, ‘you know, don’t kid yourself,’” he recalled of the interaction. Ryan elaborated on this further, specifically situating the changes he saw regarding what counts as diversity as a response to the state ban on affirmative action:

I think the initial reaction of the university and everybody was kind of walking on hot coals, and, uh, you know, trying to take diversity in a wider sense and for me, the faculty was just going crazy and I wanted to kind of tap somebody on the shoulder and say, “Come on. You don’t know what you’re talking about.”

(laughs) And it’s true that you could have a broader concept of diversity but under your conception, almost anything is possible because, you know, when you look at your faculty and you find some new topic that somebody worked on and that’s diversity. So almost any new faculty you bring in is working on something that nobody has worked on before. That’s part of why...that’s what makes them distinctive, you know, so don’t be silly, so to speak (laughs).

The presence of the intellectual diversity rationale in the arena of multiple department-level rationales invoked in faculty hiring further challenges the parameters that can be drawn around what counts as diversity and lends to additional confusion. It also points to some of the gamesmanship that has entered the faculty hiring arena in that search committee members may stretch notions of diversity to the advantage of a favorite candidate.

### **Resource Rationale**

Some informants observed the emergence of a resource rationale amidst the multiple rationales invoked by department-level faculty as they worked through the

expanding definition of diversity. I define the resource rationale in faculty hiring as being driven by the desire to capitalize on available resources – be they partial or full FTEs to support a diversity hire or target of opportunity funds – in order to hire a particular candidate. In particular, departments may try to stretch their definition of what falls under the classification of diversity to tap into hiring resources that they may not otherwise have. Donald raised the issue of how the newly expanded notions of diversity could be used strategically by departments in faculty hiring. He said:

I imagine that there are cases where departments will go after somebody who might not be their top choice in the search...um...but is, you know, a non white, non American...thinking that they can get the extra faculty slot from somewhere and they might do that now where they probably wouldn't 20 years ago. So, yeah, it's a strategy.

Donald's comments speak to change over time in how departments have made cases for a diversity hire, and further suggest that the broadening notion of diversity has influenced some departments to utilize a resource rationale to justify the acquisition of diversity incentive funding for faculty hiring.

When the funding allotted for diversity hires at Private University changed to become diversity broadly defined, Jessica said that “we'd be terribly disappointed, wouldn't we, if we got all...uh... (pause)...I don't know, Norwegian (laughs) just because we hadn't had any Norwegians.” Not unlike Ryan's critique of his colleagues making a case for a diversity hire on the basis of the intellectual diversity rationale, Jessica's comment suggests that, for her, the intent of the diversity funding was not to hire a scholar simply on the basis of their difference nor simply to capitalize on available

resources. This further contributes to the idea that an element of gamesmanship has entered the faculty hiring process as a result of uncertainty regarding what counts as diversity.

### **Global Diversity Rationale**

According to informants, a global diversity rationale frequently emerged as faculty discussed the possibility of considering international faculty candidates as diversity candidates. In particular, informants discussed whether foreign born underrepresented minorities should count as diversity and whether they should be considered for diversity FTEs and other benefits previously targeting only U.S.-born underrepresented minorities. The introduction of a global diversity rationale as part of a diversity conversation that previously focused on U.S.-born populations was a point of contention for a number of study informants.

Several informants were quick to point out that the academic labor market has become global and that short lists for faculty positions in many fields can be heavily populated with candidates from abroad. Tim explained how he has observed this phenomenon in hiring situations:

So some of them might end up if they become residents, U.S. residents (inaudible) minorities but it's just a completely different world of applicants than the conventional American categorization of minority populations. So there might be lots of Hispanics but most of them come from Argentina. There might be Blacks but they come from Africa, etcetera. And so the awareness of affirmative action issues then becomes complicated. You might hit the jackpot, right, we got someone qualified who is a minority but they're not perceived as minorities.

In his comments, Tim touches on the delicate issue of nationality and whether nationality (U.S. versus international) deems a “minority” hire as being more or less legitimate in terms of what they bring to faculty diversity.

Brooke described how difficult it can be to talk about what counts as diversity in a university context where, “you go to any faculty meeting, the white people all have accents. They’re from Australia; they’re from Great Britain; they’re from Eastern Europe.” She remembered one time where she engaged a department’s faculty in a conversation about diversity and they justified their own department’s diversity in global terms:

This was about a decade ago and talking to them about diversity and they just looked at me like I was crazy, and they said, “What do you mean? We’re diverse.” And I’m sitting in a conference room with about 12 guys there. They all looked white to me but in fact, they’re all men but that didn’t seem to register, and they said, “This is so diverse.” And it’s true, they were all from a different country. They were wildly diverse. Nobody had the same cultural background, but they were all men and there were no blacks and no one who would call themselves Chicano. You know, nobody who was from an indigenous Northern... uh... American population of any kind. So it’s really hard to have the conversation.

Like Brooke, Sebastian also described conversations where faculty colleagues considered global diversity to be an appropriate diversity qualification and would say things like “we’ve got, you know, we have a Russian and we have an Indian and, so we’re very diverse.” In light of the university’s interest in a more “diverse” faculty, Sebastian has

found himself responding to these sorts of comments regarding global diversity in the manner he explained here:

You say, well, that's true. You are. You're very diverse but still you, you know, there are vast swaths in the United States that don't seem to be represented so maybe you should worry about that a little bit.

Brooke took a similar tactic in responding to faculty who suggest that global diversity is an appropriate form of faculty diversity on its own:

I am a foaming at the mouth affirmative action kind of gal but even I think it's good to have international scholars, but it does make for a more complicated discussion. And so I actually try to divide the conversation up often into there's diversity and then there's equal opportunity, and diversity is about, we want all voices here and international scholars are a fabulous aspect of our commitment to diversity. Opportunity is about we want to address the barriers that keep out groups that have been historically excluded from higher education opportunities and that's women and domestic minorities. So I actually really try to make sure we're having two conversations. One is about promoting diversity but the other is about looking at the way bias operates to exclude and discourage women and domestic minorities from pursuing academic careers or for being successful even once they're here, how are they treated?

While Brooke and Sebastian said that the domestic versus foreign born diversity issue has complicated conceptions of diversity in faculty hiring, they also seemed to agree that it is important to separate out the issues for each population in order to effectively engage faculty in

conversation on the topic.

When it comes to the matter of specific funds allocated for diversity hires, Heather seemed to be able to make sense of what counts as diversity through a candidate's citizenship:

Target of opportunity hires are not available unless you're a US citizen. And so those are already screened and so there's sometimes discussion, will that person count or not? So the pre-screening actually handles a lot of that. People are aware of the irrationalities, you know, sometimes things like a technicality or whatever. There certainly are cynical comments like about people with Latino names who are totally white skinned and come from really privileged backgrounds and they happen to be American citizens, you know? But that counts. So it could still go through.

While Heather described several technicalities and challenges that can determine whether a diversity hire is warranted, citizenship can serve as a key litmus test for target of opportunity funding in a faculty hiring situation at Public University. At Private University, Donald discussed the treatment of international faculty candidates as potentially counting as diversity, and shared an example comparing and contrasting his experiences in searches over time:

Once upon a time if we were doing a search and, you know, somebody who was, you know, Bolivian turns up who looked really interesting they would have said, no, that person doesn't count (laughs) for affirmative action book. And now we would say, "Well, you know, how many Bolivians are on the faculty? This is somebody who would really add diversity."

Ultimately, he went on more specifically to say that an underrepresented minority candidate from another country could, in fact, count as diversity today at Private University:

I think we could hire a, you know, an African linguist, you know, a black African linguist and go to the provost's office and get an extra half faculty slot now whereas I don't think we would have been able to 20 years ago.

According to Heather and Donald's accounts, there appear to be differences in how international candidates can be eligible for diversity faculty funding and target of opportunity hires on their respective campuses. Regardless of these differences, broadened notions of what can count are evident, and many questions and uncertainties regarding global diversity as part of the diversity rationale continue to arise.

According to informants, a factor that can influence support for global diversity in faculty hiring has to do with the perception of a candidate's contributions as mentors and role models for an ethnically diverse student community, particularly for domestic underrepresented minority students. In Ryan's words, "it's important for the students to see some people that they can connect with" among the faculty. Victoria shared one example of this train of thought relating to international faculty as diversity candidates:

It's complicated. Who counts and who doesn't count? And, you know, if you look at the black faculty we have, some but not all of them are African American. Some of them came from other countries yet they're fully involved in African American Studies programs and this and that, and they're mentors...um...how many years does one have to be in this country to quote, count? So, you know,

it's...and different people even within the faculty of color community have different views on that.

Max also raised this issue, and identified an example of where he could feel comfortable justifying global diversity on the premise of an international candidate's contributions to domestic minority students, yet still has questions:

If somebody that is from Argentina is articulating that kind of social justice model and diversity model, so do you say, well, why don't we bring in her because she obviously is passionate about intellectual development of underserved Hispanics in the United States even though she was raised in Argentina and is obviously, you know, comes from an intellectual family but, you know, she has a better idea and is willing to put extra time in counseling and advising and mentoring and bringing them into the research lab and create some kind of doable model that...and her lab is going to be probably half women and half minority, that's real change. That's a real goal. How do we hold somebody to the...feet to the fire on that and then give them the advantage?

Despite the contributions that this international candidate has the potential to make, Max's question of how someone can be held to creating a diverse lab and contributing to underrepresented populations lingers in terms of whether the diversity label in faculty hiring is worthwhile for such a candidate.

Ultimately, the advancement of a global diversity rationale continues to collide with remedial rationales targeting domestic-born faculty candidates, with faculty remaining unable to provide clear cut answers. Much of the tension comes from informants being able to provide examples of both international faculty that are very

involved in supporting diverse domestic students as well as international faculty who are not at all involved. Edward summed up his feelings as follows:

So I'm thinking about, let's say, someone like [Professor X]. Born outside the United States, right? Educated in the United States and he's contributed fundamentally to African American studies here and African American students, right? So that's why it's really difficult to bring this topic up because for every person, you could say, look this person is born in Argentina gives a damn about African American students or other Latino students in the United States, right? In fact, doesn't even want to associate with them. I'll give you another example a person who, like [Professor X] who would contribute fundamentally, right? So it's a slippery slope and I don't think you'll ever get policy discussion about it.

Likewise, Ryan drew from his observations and said: "I know from other faculty, uh...who are, you know, African American and, you know, don't take much interest in the issues so those are unknowns. You'll never know until somebody comes, you know, what they will be like." Given the range of participation levels that faculty point to regarding their colleagues' contributions to campus diversity, it is difficult for faculty to uniformly consider international faculty as diversity on the sheer premise of their potential contributions to diversity. The global diversity rationale is yet another example of an interpretation of the diversity rationale that has led to uncertainty among faculty regarding how to define diversity and whether global diversity is indeed a proper rationale for diversity in faculty hiring.

## **Remedial Rationale**

Behind many questions regarding what can count as diversity, particularly when posed within the context of considering international candidates, is the argument of the original intent of affirmative action as advancing equity and social justice for domestic underrepresented populations. This argument is in line with the remedial rationale that has been used to support affirmative action and other diversity programs in American higher education, placing its primary focus on social justice for historically underrepresented groups such as racial and ethnic minorities and women. William expressed his opinion regarding the importance of the domestic social justice underpinnings of affirmative action and how that cannot be ignored when considering faculty candidates, particularly faculty candidates at a public university paid for in part by tax dollars:

Yes, you can make a case that this Argentinean physicist does address some diversity issues. It is good to have Argentineans and Ugandans and everybody else here from that standpoint but that's not for me the purpose of affirmative action, it's a social justice issue and so I make this...and I, you know, I tell the president I recognize this doesn't fly politically, that (laughs) I get shot down at the State level but we have to make this argument based on diversity...um...I think he gets that more than the previous president and he'll say, you know, as he said in this thing, "William doesn't like the word diversity," kind of thing. Yeah, well, that's true.

Luke was succinct in stating his concern for African Americans in the broadened diversity hiring climate and how he perceives some hiring situations to play out:

For faculty, for parking attendants, supervisors and so forth, any brown will do.  
(laughs) You know? Somalia, you know, it doesn't matter, you know? You know,  
we got one, you know? And so the idea of the immobility of native born African  
Americans is an ongoing tension.

The tension Luke refers to here suggests that native born African Americans have faced additional obstacles in faculty hiring as a result of the presence of their foreign born African counterparts within the broadened diversity rationale climate. Since Luke perceives that "any brown will do" for some departments, to him, the lack of emphasis that the diversity rationale places on domestic underrepresented racial and ethnic groups means that native born African Americans and their foreign born counterparts could be considered similarly in hiring situations where the diversity rationale is advanced.

Max was very specific in highlighting what he perceives as the shift away from the remedial rationale in hiring as a result of the state anti-affirmative action regulatory environment. He said:

[In the past,] if you don't have a black candidate, you're probably not doing affirmative action. Okay? Well, we'll be satisfied with an American Indian or a Chicano, right? But now you could say, well we have an Argentinean in the pool. We have a Brazilian in the pool. And so you automatically have gotten away from the true social justice of affirmative action, and the faculty can report back that they did a diversity search and stop while in the past you would have said, that's not really our focus . . . and so, yes, it has...it did weaken...the whole litigation weakened a very strong focus on doing the right thing, you know, as I see it.

For Max, William and Luke, the shift away from the remedial rationale is a personally troubling outgrowth of the broadening notions of diversity within the diversity rationale. As a result, this shift has affected the groups that were the previous targets of affirmative action, and, according to some, can be detrimental to their inclusion in faculty searches.

Some informants raised specific examples of why it is important to pay close attention to domestic minorities in the context of the diversity rationale and broadened diversity criteria. Brooke pointed to the alleged racial profiling of an African American professor at Harvard as one illustration of how domestic minorities have experienced life differently and can be treated differently:

I mean, uh...the Henry Louis Gates episode, it's just a great example of the conditions of his life are simply different and how do we address that as an academic...how do we address the fact that students treat faculty of color differently? They give them less authority. I mean, all of this stuff, it's just like all of these layers and layers and layers of how the life experience for domestic minorities is different and how do we accommodate that.

William feels so strongly about the importance of advancing domestic minorities in faculty searches that he has had conversations with his university's president about this very issue. Of his dialogue with the president, William said that:

The example that stuck in [the president's] head was that, you know, I said bringing an Argentinean physicist is not the same thing as bringing in a Latino or a Latina from South Central LA, right, and, you know, this guy has probably had a privileged background in Argentina. He doesn't identify with underrepresented minorities in the United States. Nothing is going to change but you put that on

there as your diversity statistic and, uh, the much tougher battle is underrepresented represented minorities from the US ... apparently, he had not heard that argument and it just registered with him (laughs) and he uses it all the time.

Overall, the remedial rationale is in competition with many other faculty hiring rationales, including the diversity rationale, because most other rationales are not as focused on historically underrepresented groups from the United States. This is consistent with Antonio and Clarke's (2011) conclusion that the remedial rationale does in fact contend with the diversity rationale given their competing goals. While the historical elements of the remedial rationale make this particular rationale one of the more familiar and longer standing rationales for diversity in faculty hiring, the current landscape of multiple rationales at the department level makes it one of many competing for prominence in faculty hiring situations.

*Uncomfortable topic of discussion*

Many informants expressed discomfort regarding the topic of what counts as diversity in faculty hiring and the resulting rationales, providing examples of scenarios that they cite as being difficult to discuss with colleagues in the aftermath of the state ban on affirmative action. When addressing the issue of U.S. born versus foreign born individuals from underrepresented racial and ethnic backgrounds, Edward was quick to point out the sensitivity of the topic particularly given the change in policy definitions over time. In his further discussion of the topic, he raised some examples of how the conversation can evolve:

If we go back to the origins of affirmative action, it's about US minorities, right? So if we look at the historical context of that policy and, yes, it's changed over time, we can't lose sight of what...the origins of what that policy was about, right? But you've got to be careful because you push that analysis further and then you become an ethnic nationalist, right? You can become an ethnic nationalist. "Well, you know, we're just concerned about U.S. minorities." And then someone will say, "But, wait. Isn't this about diversity? Doesn't a person who let's say is born in China, was educated in the United States, doesn't that person also contribute?" Well, they do so that it gets a little (pause) complicated, right? So I still think there's a tension - it's not a huge tension but there's a tension.

The presence of foreign born faculty makes for a more uncomfortable discussion in what counts as diversity and how one can justify a diversity hire. As described earlier in this chapter, many faculty perceive minority faculty to be more likely to mentor underrepresented students and students from diverse backgrounds, and the presence of foreign born minority faculty complicates this issue. Edward discussed the tension as follows:

If you look at the majority of Asian origin faculty at Private University, they're foreign trained...foreign educated. What does that say, right? Do they not have as...are they less inclined to work with Asian American students or not, right? So it's really a touchy issue...a really touchy issue and no one is going to go there.

For Edward, it is very difficult to suggest that a foreign-born faculty member might not be as inclined to mentor the predominantly domestic student population.

The question of what counts as diversity can even become complicated and uncomfortable when considering faculty candidates that identify as coming from a traditionally underrepresented group. Heather discussed one such instance:

I do remember an occasion after I came here where there was a candidate who was a proclaimed Native American and that's often an issue given that people who are like 1/16<sup>th</sup> and aren't even tribal members, make claim, and I guess people had seen this candidate for job. We had interviewed them and an African American on the committee made quite a strong point that this person had never experienced any racism at all, and, you know, it was unclear to me if that was a fair thing, you know, but it was...uh... stepping into the unspoken to raise that. I think it made, it made me slightly uneasy but I thought it was also true. It was a little bit on my mind.

The uncertainty she expresses regarding what counts, coupled with the discomfort she felt regarding the discussion, illustrates that even discussions about traditionally underrepresented groups can be laden with uncertainty.

Heather was not alone in discussing discomfort with the topic of what counts as diversity in faculty searches. Despite his support for diversity encompassing a domestic population that has been previously underserved, Sebastian still said that the issue of what counts as diversity was problematic and uncomfortable for him. He said:

You know, I personally believe these discussions are somewhat off point and they're going to become more and more difficult as more and more people are multiracial and the world mixes around - that's really not going to be the point

(laughs) and it's already a place where I don't like to go. So...but, yeah, that's one example of where it's an issue.

Like Edward, Sebastian finds the subject of what counts as diversity in faculty searches encompasses topics that faculty "don't like to go" in terms of discussion. The root of discomfort regarding conversations over what counts as diversity appears to be the result of differences in cultural-cognitive understandings among faculty regarding the place of diversity as a consideration in faculty hiring and whether certain groups should, in fact, be privileged over others in such diversity considerations.

### **Chapter Summary**

While each university's administration advanced compliance and diversity rationales to guide faculty hiring practices, department level faculty hiring practices reflect a wide range of rationales employed in faculty hiring aimed at enhancing diversity. Indeed, at the departmental level of the university, informants reveal that multiple rationales are at work and can in fact compete with one another. These rationales included those focused on global diversity, intellectual diversity, remedial diversity focused on domestic populations, compositional diversity, class, and the acquisition of resources. Although two rationales emerged as dominant at the senior level of university response to the ban on affirmative action, there is less sense of a dominant rationale at the department level when it comes to faculty hiring. In addition, the lack of dominant rationale at the department level is coupled with a sense of confusion, disagreement and competition between the rationales at work among faculty at the department level. Although the state anti-affirmative action regulatory environment

emerged in the 1990s, informants suggest that the multiple rationales at play in departmental faculty hiring remain a current story.

The broadened notions of diversity within the diversity rationale appear to have widened the scope of potential hiring rationales by prompting the still-unanswered question of what counts as diversity. The lack of clarity among faculty regarding what counts as diversity created a context for a number of diversity-related rationales to become a factor in faculty hiring. While university leaders were quite clear about compliance and diversity guiding practices in the context of the state anti-affirmative action regulatory environment, department level faculty exercised their autonomy to utilize myriad rationales – some old, and some new – to justify hiring rationales and decisions relative to diversity. This range of diversity-related rationales reflects the cultural-cognitive dimension of organizations, in that faculty within the same context can interpret similar concepts differently. Each of the delineated diversity rationales can be perceived as a path toward some form of legitimacy by the faculty member; while one search committee member feels strongly about an intellectually diverse scholar enhancing the prestige of the department, another may perceive the hiring of a female as critical to gaining legitimacy for a department that trains many female graduate students yet has few if any female faculty. As a result, these rationales have come into conflict with one another and further complicate the already challenging process of faculty searches.

While earlier affirmative action practices had clearly defined beneficiaries (e.g., African Americans, Chicanos), all of the questions regarding what counts as a proper diversity rationale in the state anti-affirmative action regulatory environment have made the faculty search process more complex and difficult. Several faculty related that

conversations regarding what counts as diversity were uncomfortable due to the ambiguity of the new “diversity.” For some faculty, their cultural-cognitive beliefs and understandings regarding rationales for diversity remained decoupled from the state anti-affirmative action regulatory environment, whereas other faculty could point to the regulatory environment as justification for their beliefs that diversity rationales should not draw upon race and ethnicity if such rationales are to be utilized at all. Despite the differences in cultural-cognitive understandings, informants suggest that there remains the basis upon which to legitimately push for diversity among faculty, including notions of diversity that give consideration to the more traditional beneficiaries of race-based affirmative action. Faculty members point to various logics that support the legitimate pursuit of various forms of diversity in faculty hiring, including those grounded in broader societal logics that support equality of opportunity or the momentum for globalization, as well as educationally-based logics highlighting the importance of mentors for U.S. born racial minority students.

Finally, the combination of multiple and uncertain rationales appears to have markedly changed one aspect of the faculty hiring process, in that there is gaming of the diversity rationale. Faculty reported several examples of searches where colleagues attempted to stretch the definition of diversity to make a stronger case for a faculty hire or to tap into funds allocated for diversity hires. Ultimately, faculty will invoke any number of rationales that they feel will enhance their ability to hire a candidate that they deem most desirable as a future colleague, and the uncertainty regarding what counts as diversity within the diversity rationale created an avenue for faculty to capitalize on the perceived advantage that can be gained through a diversity designation.

## Chapter 8

### DISCUSSION

The state referenda banning affirmative action, coupled with lawsuits challenging affirmative action in higher education, contributed to the creation of a complicated, ambiguous and fractured regulatory environment, and how universities behaved and made sense of this regulatory environment is of fundamental interest to my study. On the one hand, it was uncertain whether the state ban on affirmative action would be successfully challenged as conflicting with federal statutes; on the other hand it was unclear if state enforcement mechanisms were in play and what repercussions, if any, would be faced by a university found in violation of the new state law. In a context where university leaders and websites often celebrate diversity, how such an unprecedented regulatory environment would be interpreted by universities and how it would impact actions and rationales is important to understand.

From a theoretical perspective, the use of the three pillars of institutions allowed me to understand the channels through which legitimacy imperatives shape faculty affirmative action and related diversity recruitment and hiring practices amidst the state anti-affirmative action regulatory environment. The coercive force of the regulative pillar affected both Public University and Private University similarly, in that both campuses rescinded some, if not all, affirmative action practices and behaved in a manner that reflected their desire to avoid sanctions and litigation. Despite their differences in sector, there are enough similarities between Public University and Private University that they strive for legitimacy in similar ways and through the same institutional

mechanisms. Both case study sites are high status elite universities, both are subject to the same set of institutional pillars, and my data illustrate that both responded similarly to the state anti-affirmative regulatory environment to maintain legitimacy and status within their institutional environment. Furthermore, as normative forces prompt isomorphic change among organizations within a field (DiMaggio & Powell, 1983), the location of Public University and Private University in a shared field also contributes to their similar behavior. Although the affirmative action ban did not apply to Private University, the university nonetheless signaled concern for the regulatory environment through its termination or changing of many affirmative action practices despite not needing to signal compliance with the ban. This is an indication that the threat of litigation is a regulative force that shaped the behavior of Private University, and that forces from the regulatory environment may have also been converted into more normative channels of influence.

Prior to the state affirmative action ban, both state law and federal law were in alignment with each other and not in conflict. However, the shock to the regulatory environment that was triggered by the state affirmative action ban signaled a split in the regulatory environment, with federal law supporting affirmative action practices and state law banning affirmative action practices. Given the new conflict between state and federal affirmative action mandates, it was initially unclear which enforcement mechanisms and signals would have a greater impact on universities and their faculty hiring practices. Data from my study reveal that the anti-affirmative action enforcement mechanisms (such as political watchdog groups) driven by the state ban emerged more prominently and had a greater impact on both Public University and Private University

than pro-affirmative action federal statutes. The existence of federal affirmative action statutes did seemingly little to combat the state ban on affirmative action and the related anti-affirmative action regulatory environment. While some informants knew that maintaining good standing with federal requirements for affirmative action was critical to remain eligible for federal research dollars, the general response by universities was one that reflected a primary concern with complying with the state ban and behaving in a manner that avoided legal challenges or sanctions. The strong reaction to state enforcement mechanisms, coupled with limited enforcement of federal affirmative action statutes, suggests that the federal affirmative action statutes have waned in their power. While faculty involved with federally funded grants (such as those from NIH) are required to comply with requests for detailed diversity data regarding the students that they train, few informants spoke of the federal statutes having any effect on university practices. Indeed, several informants simply were not aware of the pro-affirmative action federal statutes, and those that were aware said that they were largely overshadowed by the state affirmative action ban and related enforcement mechanisms.

Through normative channels, both case study sites were affected by the state ban on affirmative action in ways that shaped faculty hiring practices and beliefs regarding appropriate approaches to faculty diversity. Administrators and attorneys at both Public University and Private University provided guidance to faculty on proper faculty hiring procedures in the context of conflicting state and federal affirmative action regulation, thus contributing to the establishment of new hiring norms and practices within academia. Informants also spoke of how faculty search committee members began to self-censor their language regarding race and affirmative action, suggesting that

regulatory pressures may have transformed to shape normative beliefs regarding the shift away from affirmative action language and practices.

While affirmative action was falling out of favor amidst this regulatory environment, the university presidents at each case study site were quick to voice their support for diversity in the immediate aftermath of the state ban on affirmative action, and continued to verbalize their support for diversity at their universities well after the passage of the ban. These statements supporting diversity indicate each university's interest in maintaining legitimacy within the institutional realm of universities where, as some would suggest, diversity is normatively valued. However, my data reveal that faculty diversity – particularly racial and ethnic diversity – is not a normatively held value among university-level faculty because it lacks a presumed, taken-for-granted quality among faculty. As the legitimacy of racial and ethnic diversity – the traditional targets of affirmative action programs – was eroded as a result of regulative pressures, my data ultimately show a range of beliefs in the value of faculty diversity thus nullifying the notion of diversity as a normatively held value.

The cultural-cognitive angle of neoinstitutional theory is highlighted in my study through the different ways in which department-level faculty interpreted and made sense of the diversity rationale in faculty hiring. For some faculty, the diversity rationale encompassed global diversity and included foreign-born candidates in a faculty search, whereas for others, the diversity rationale emphasized faculty candidates from traditionally underrepresented domestic backgrounds. Myriad additional interpretations of the diversity rationale surfaced in faculty accounts, leading to heightened confusion in faculty search deliberations and an often-conflicting array of diversity-related rationales.

The movement away from equity and social justice – indeed, a retreat from race – and toward a more broadly defined notion of diversity was deemed appropriate by some and deeply troublesome for others within the same university setting. For some faculty, their pro-diversity beliefs, values and understandings remained decoupled from the state anti-affirmative action regulatory environment, whereas this was not the case for other faculty who saw the state referenda and lawsuits as a way to justify their beliefs that diversity was not an appropriate consideration in faculty hiring. Faculty hiring is an important avenue through which academic departments and universities achieve and maintain legitimacy, and conflicting beliefs over the appropriate definition of the diversity rationale in faculty hiring illustrates one of the many challenges presented by the ascent of diversity in this regulatory environment.

The presence of multiple rationales for diversity represents the crux of the shift in rationales that took place as a result of the state anti-affirmative action regulatory environment. However, in light of the long tradition of faculty autonomy, one would assume that the same variation in cultural-cognitive understandings and beliefs among faculty would have been present during the previous regulatory environment that permitted the use of affirmative action practices. While individual faculty beliefs have undoubtedly varied on this topic over time, I posit that the presence of the state anti-affirmative action regulatory environment created a space for diversity to be defined anew. This space for a new definition of diversity for hiring led to uncertainty, confusion, and competing contentions among faculty on search committees; it even prompted strategic behavior among faculty in utilizing diversity as a rationale for faculty recruitment and hiring. From an organizational standpoint, both universities examined in

this study were justified in keeping vague their definition of diversity as a rationale for faculty recruitment and hiring, because the vagueness of definition helped to protect the universities from litigation.

Universities are complex organizations, and find themselves dealing with a number of internal and external pressures when it comes to faculty diversity and affirmative action. Despite their differences in public versus private sector, Public University and Private University navigated these myriad pressures quite similarly and drew upon a nearly identical set of rationales to support diversity policies and practices in faculty hiring. In the context of the state anti-affirmative action regulatory environment, university administrators did what they could to minimize legal risk while remaining supportive of diversity in principle. The priority for legal compliance, however, quickly became evident, and resulted in many affirmative action programs being eliminated or reconstituted into programs that were legally permissible.

The prominent role played by university attorneys in shaping faculty hiring policies is of particular note. To have university attorneys dictating what practices can and cannot be undertaken in faculty searches speaks to the marked influence of attorneys in a domain traditionally controlled by faculty. The role of university attorneys in dictating the messages and policies put forth by university leaders is also substantial. Based on informant comments at Public University, there were clear shifts in legal interpretations, policies and guidelines regarding diversity and faculty hiring as a result of a new campus general counsel being hired. The influence of the campus general counsel and their staff attorneys on campus diversity practices cannot be underscored enough.

While affirmative action is a principle and policy that remains intact at the federal level, the term “affirmative action” has lost legitimacy within universities as a result of the state anti-affirmative action regulatory environment. Individuals within universities became fearful of even using the term out of concern for reprimands or lawsuits, hence leading to the ascent of the diversity discourse. Although the concept of diversity and the diversity rationale were incorporated into university practices in earnest beginning in the latter part of the 1990s, it has taken several years for universities to figure out how to put diversity into practice and gain comfort with diversity as a working principle to replace affirmative action. Even now, questions remain regarding what can count as diversity and a certain amount of gamesmanship has taken place among faculty search committees wanting to interpret the diversity rationale to their advantage, hence affecting the manner in which a faculty search can unfold and yield candidates. While uncertainty remains in this realm, over time there have been efforts to try and determine what can and cannot be done within the guidelines of diversity and establish practices that have the potential to be both effective and legal.

Consistent with Moses and Chang (2006) and Antonio and Clarke (2011), my study finds that the shift towards a diversity rationale and away from an equity and justice-oriented remedial rationale may have unintended consequences for racial and ethnic groups that were the traditional target of affirmative action programs. The array of possibilities for what counts as diversity at Public University and Private University resulted in the diffusion of diversity benefits across many groups and individuals. In addition, while some faculty diversity advocates felt strongly about the continued pursuit of faculty diversification efforts, others were able to proceed with faculty hiring without

concern for racial or ethnic diversity due to the rescission of affirmative action policies. Indeed, the ban on affirmative action and the subsequent shift to a diversity rationale led some faculty to relax efforts to pursue racial or ethnic diversity as a priority in faculty hiring. Without affirmative action or other diversity policies explicitly aimed at faculty hiring, many faculty search committees did not feel the pressure or incentive to pursue targeted efforts to hire faculty from diverse backgrounds. As William from Public University said, the affirmative action ban was a “get out of jail card” for department chairs that did not want to diversify. While diversity may be viewed by some as a proxy for affirmative action, the lack of specificity regarding what can count as diversity and the general retreat from race has resulted in efforts that are less focused on specific groups, including the traditional beneficiaries of affirmative action programs. Indeed, according to Edward from Private University, “the question of diversity didn’t seem as compelling as affirmative action.”

By examining faculty hiring, my study illustrates one case of how organizations deal with the question of diversity in the context of this particular regulatory environment. While administrators put forth messages of compliance and diversity, in the actual practice of faculty hiring, department level faculty have responded with myriad and often conflicting rationales for diversity hires amidst this regulatory environment. As such, the manner in which universities have responded to the diversity question has been somewhat complex and less than neat. Pressures to ensure compliance and avoid litigation have mitigated efforts to diversify the faculty, efforts that are already challenging even under the best of circumstances. While some efforts have shown themselves to be promising – such as the ability to attract scholars from diverse racial and

ethnic backgrounds by establishing academic programs and research centers studying race – the typical process of a departmentally-based faculty search remains challenged in its efforts to attract diversity candidates as the diversity and compliance rationales have tempered the ability of departments to speak explicitly about race or target specific racial groups or women. In sum, the state anti-affirmative action regulatory environment did not result in diversity no longer mattering in higher education; rather, it changed *how* diversity mattered.

University leaders have tremendous capacity to set the tone on their campus with regard to diversifying the faculty, be it diversity broadly defined or diversity specific to historically underrepresented groups. However, top-down messages alone regarding the value of diversity are not enough to shape faculty hiring practices. Informants from both case study sites spoke of the positive messages regarding the value of diversity put forth by their university presidents, yet faculty search committees were inconsistent in how they applied the diversity rationale in faculty hiring. The autonomy of department level faculty, coupled with an array of priorities that can come into play in a faculty hiring decision, is what yields such inconsistency regarding diversity and faculty hiring.

While faculty retain strong autonomy in their roles, it still matters what university leaders assert and support in their policies and practices. In this particular case, having university leaders that vocally supported rationales for diversity and efforts to diversify the faculty enabled those faculty with a strong interest in diversity to pursue that aim in the context of faculty searches. Without such support for faculty diversity by university leaders, the legitimacy of diversity would be limited and faculty in favor of diversity efforts would be far less able to advocate for such candidates in faculty searches. To be

certain, faculty diversity must be made a clear organizational priority that is transmitted to deans and department chairs and supported by policies, concrete strategies, and ample resources if universities have any hope of diversifying the faculty. Ultimately, faculty hiring is within the domain of academic departments; without deans and departments chairs making faculty diversity as a priority, it will be exceedingly difficult to make progress in diversifying the faculty.

## Appendix A

### Sample Interview Protocol

In my study, I aim to understand how the university responded to the state ban on affirmative action with regard to faculty recruitment and hiring. I am interested in your experiences based on your university position at that time, and aim to understand what was behind the development, interpretation, and communication of faculty recruitment and hiring policies – specifically as they relate to race-based affirmative action – during that time period and thereafter.

#### **Section I: Background/position within the university**

1. Tell me about your position at the university in the year that the ban was passed.

#### **Section II: Experiences and views of faculty recruitment and hiring at the university**

2. Tell me about your university's faculty recruitment and hiring policies prior to the ban on affirmative action, and in particular, the policy of race-based affirmative action.
3. From your perspective, was the passage of the affirmative action ban perceived as an important event with regard to faculty recruitment and hiring processes at your university? Why or why not?
4. Tell me what, if anything, happened in your department immediately after the passage of the affirmative action ban.  
*Probing questions:*
  - a. Were there any discussions or memos that came from your department chair, dean, other senior administrator on this topic? If so, what was communicated? What did you think of this discussion and how did you respond?
  - b. Do you remember if the legal office contacted or communicated with your department? If so, what was their message? What did you think of this message and how did you respond? Why did you respond in this manner?
  - c. Were there any procedural changes in the faculty recruitment and hiring process? If so, what were they and how were they communicated? Why were these changes made?
  - d. Where do you sense that the impetus for changes came from?
  - e. What do you feel was the rationale for this behavior?
5. In your department or around the university, was there any discussion given to conflicting federal equal protection clauses versus state policies in faculty hiring at that time?
6. Do you feel that the perception of campus culture after the ban on affirmative action affected your university's ability to attract and retain faculty of color?

7. Were there other factors or issues that we have not discussed that affected the response by your department or by the university to the ban on affirmative action regarding faculty hiring?

### **Section III: University objectives versus individual stakeholder objectives**

8. From your perspective, what would you say were the university's primary goals in the process of examining faculty recruitment and hiring processes after the passage of the affirmative action ban?
9. What would you say were the university's primary concerns in this process?
10. What would you say were your own goals or hopes in this process? What, if anything, did you want to see happen?
11. What would you say were your own concerns in this process?
12. What, if any, tensions did you experience between your own objectives and the university's objectives during this process?

### **Section IV: University dialogue and reaction to policy change**

13. How did faculty and administrators react or respond to the post-ban faculty hiring policies? Why did they react this way?
14. What would you say was the biggest difference between how faculty affirmative action policies were discussed and communicated prior to the ban and after?
15. How, if at all, did the campus dialogue around faculty affirmative action policy differ from affirmative action policy in student admission to your university?
16. How, if at all, has the issue of U.S.-born versus foreign-born minority faculty come up in discussions of faculty diversification and the intent of affirmative action?
17. As time has passed, how would you characterize the campus dialogue regarding faculty affirmative action?

### **Final question – referrals:**

18. Is there anyone else I should speak with regarding the university response to the ban on affirmative action in terms of faculty recruitment and hiring?

## **Appendix B**

### **Research Information Sheet for Study Participants**

**STUDY TITLE:** The Effect of Anti-Affirmative Action Mandates on University Faculty Recruitment and Hiring

**PROTOCOL DIRECTOR:** Marcela Muñiz; Stanford University School of Education, 485 Lasuen Mall, Stanford, CA 94305-3096; Phone: (650) 224-0373, Email: mmuniz@stanford.edu.

**DESCRIPTION:** You are invited to participate in a research study of how faculty recruitment and hiring are affected by anti-affirmative action mandates. The study seeks to understand how anti-affirmative action state referenda and affirmative action-related lawsuits affect the manner in which universities shape faculty recruitment and hiring policies, as well as how university stakeholders articulate decisions regarding affirmative action and faculty hiring policies to different audiences.

Interviews of 60 to 90 minutes will be tape recorded and transcribed, after which time the tape recordings and transcriptions will be kept in a locked filing cabinet that the researcher alone has access to. All identifying characteristics of participants will be removed to preserve your anonymity, and the participants' institutional affiliations will be described as either public or private selective research universities. The researcher may need to contact you by telephone or email with brief follow-up questions after the interview is concluded.

**TIME INVOLVEMENT:** Your participation will take approximately 60 to 90 minutes.

**RISKS AND BENEFITS:** There are no anticipated risks associated with this study. There are also no anticipated benefits to this study; however, as a participant in this study, you may request to receive a copy of the summary findings upon completion of this project. We cannot and do not guarantee or promise that you will receive any benefits from this study. Your decision whether or not to participate in this study will not affect your employment.

**PAYMENTS:** You will receive a \$25 gift card as payment for your participation.

**SUBJECT'S RIGHTS:** If you have read this form and have decided to participate in this project, please understand your participation is voluntary and you have the right to withdraw your consent or discontinue participation at any time without penalty or loss of benefits to which you are otherwise entitled. The alternative is not to participate. You have the right to refuse to answer particular questions. Your individual privacy will be maintained in all published and written data resulting from the study.

**CONTACT INFORMATION:**

*Questions:* If you have any questions, concerns or complaints about this research, its procedures, risks and benefits, contact the Protocol Director, Marcela Muñiz, at (650) 224-0373.

*Independent Contact:* If you are not satisfied with how this study is being conducted, or if you have any concerns, complaints, or general questions about the research or your rights as a participant, please contact the Stanford Institutional Review Board (IRB) to speak to someone independent of the research team at (650)-723-2480 or toll free at 1-866-680-2906. You can also write to the Stanford IRB, Stanford University, Stanford, CA 94305-5401.

*Appointment Contact:* If you need to change your appointment, please contact Marcela Muñiz at 650-224-0373

With your permission, the interview will be audio taped. If you do not wish to be audio taped, please indicate this to the researcher.

The extra copy of this consent form is for you to keep.

If you agree to participate in this research, please indicate this to the researcher.

Protocol Approval Date: June 16, 2009

<b>Table 1: Study Informants</b>					
<b>Pseudonym</b>	<b>Institution</b>	<b>Sex</b>	<b>Role</b>	<b>Current/former administrator</b>	<b>Current/former department chair</b>
Aaron	Private	Male	Faculty	yes	yes
Brooke	Public	Female	Administrator	yes	no
Donald	Private	Male	Faculty	yes	yes
Edward	Private	Male	Faculty	yes	no
Eva	Public	Female	Faculty	no	no
Heather	Public	Female	Faculty	no	yes
Isaac	Private	Male	Faculty	yes	yes
Jessica	Private	Female	Faculty	no	yes
Luke	Public	Male	Faculty	yes	no
Marcus	Public	Male	Faculty	no	yes
Max	Private	Male	Administrator	yes	no
Miriam	Public	Female	Faculty	no	no
Omar	Private	Male	Faculty	no	no
Ryan	Private	Male	Faculty	no	no
Sebastian	Public	Male	Faculty	yes	yes
Teri	Private	Female	Administrator	yes	no
Tim	Public	Male	Faculty	yes	yes
Victoria	Private	Female	Faculty	yes	yes
Walter	Private	Male	Faculty	no	yes
William	Public	Male	Faculty	yes	yes
Xavier	Public	Male	Faculty	yes	no

<b>Table 2: Private University Faculty by Race and Gender, 1995, 2000, 2005</b>			
	1995	2000	2005
Black	2.7%	2.8%	2.6%
Asian	8.4%	9.8%	11.8%
Hispanic	2.4%	3%	3.2%
Native American	0.1%	0.1%	0.2%
Women	17.8%	20.5%	23.6%

<b>Table 3: Public University System* Faculty by Race and Gender, 1995, 2000, 2005</b>			
	1995	2000	2005
African American	2.5%	2.5%	2.5%
Asian	10.1%	11.0%	13.4%
Chicano/Latino	4.5%	4.6%	5.0%
Native American	NA	NA	NA
Women	22.6%	24.1%	27.3%

\*Individual campus data unavailable

**Table 4: United States Tenured and Tenure-Track Faculty by Race and Gender, 1995-2009**

<b>Year</b>	<b>1995</b>	<b>1999</b>	<b>2003</b>	<b>2007</b>	<b>2009</b>
<b>Total Faculty</b>	387,405	390,541	406,568	424,184	432,710
<b>Total Female</b>	118,572	130,103	144,320	160,009	167,844
% Female	30.61	33.31	35.50	37.72	38.79
<b>Total American Indian/'Native</b>	1,397	1,619	1,745	1,869	1,878
% American Indian/Alaska Native	0.36	0.41	0.36	0.44	0.43
<b>Total Asian Pacific Islander</b>	19,623	22,664	27,586	33,496	36,533
% Asian Pacific Islander	5.07	5.80	6.79	7.90	8.44
<b>Total Black, Non-Hispanic</b>	17,951	18,788	20,380	22,070	22,437
% Black, Non-Hispanic	4.63	4.81	5.01	5.20	5.19
<b>Total Hispanic</b>	9,208	10,968	12,965	15,237	16,655
% Hispanic	2.38	2.81	3.19	3.59	3.85
<b>Total White, Non-Hispanic</b>	333,606	328,721	331,223	333,638	334,748
% White, Non-Hispanic	86.11	84.17	81.47	78.65	77.36
<b>Race/ethnicity unknown</b>	1,017	1,905	3,023	5,278	7,488
% Race/ethnicity unknown	0.26	0.49	0.74	1.24	1.73
<b>Total 2 or More Races*</b>					673
% 2 or More Races					0.16

Source: U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), (1995, 1999, 2003, 2007, 2009), Human Resources component, Fall Staff section.

\*New, optional category in 2009 IPEDS Fall Staff Survey

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