

# NEXO

The Official Newsletter of **The Julian Samora Research Institute**  
The Midwest's Premier Latino Research Center

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*JSRI's mission is to generate, disseminate, and apply knowledge to serve the needs of Latino communities in the Midwest and across the nation.*

MICHIGAN STATE UNIVERSITY | University Outreach and Engagement  
Julian Samora Research Institute

**Julian Samora Research Institute**  
University Outreach and Engagement  
Michigan State University  
219 S. Harrison Road, Room 93  
East Lansing, MI 48824  
(517) 432-1317  
[jsri.msu.edu](http://jsri.msu.edu)



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# NEXO

NEXO is the official newsletter of the Julian Samora Research Institute (JSRI) University Outreach and Engagement at Michigan State University (MSU) in East Lansing, Michigan. All contents remain the property of the original authors or artists, JSRI, and/or MSU. Some of the views expressed by contributors may not represent those of JSRI or MSU. Reproduction of this publication without written permission of JSRI is restricted except for educational purposes. Printable copies of the newsletter are available online.

JSRI at Michigan State University is committed to the generation, transmission, and application of knowledge as it relates to Latinos and Latino communities throughout the Midwest and the nation.

Editor

**Rubén O. Martinez**

Layout Designer



**MICHIGAN STATE**  
UNIVERSITY  
**Shawn Hamer**

**Julian Samora Research Institute**  
University Outreach and Engagement  
Michigan State University  
219 S. Harrison Road, Room 93  
East Lansing, MI 48824  
(517) 432-1317  
Fax: (517) 432-2221  
Email: jsamorai@msu.edu

## Perpetuating Health Disparities



**Rubén O. Martinez**  
Director  
Julian Samora Research Institute

In 2012, when the U.S. Supreme Court upheld the Affordable Care Act (ACA), it created a “health-law coverage gap” when it struck down the provision requiring states to expand Medicaid coverage. This new coverage gap (as opposed to the old coverage gap having to do with out-of-pocket costs for prescription drugs) has to do with the millions of low-income U.S. citizens, mostly persons of color, who will likely remain without health insurance because the political leaders in the states in which they reside decided not to expand Medicaid to adults making less than 139% of the federal poverty level (FPL) (based on modified adjusted gross income). As they stand now, 26 states are expanding Medicaid coverage, four are considering doing so, and 21 are not expanding coverage.

States refusing to expand Medicaid will perpetuate the longstanding disparities in health coverage and outcomes among minorities that the Affordable Care Act begins to address. Most are in the South and the mountain West with conservative governors who are ideologically opposed to ACA; regions where health coverage is badly needed by African Americans and Latinos. The coverage gap includes those adults with incomes above Medicaid eligibility levels, which vary by state, and thus do not qualify for Medicaid, but at the same time do not earn enough to qualify for premium tax credits to purchase coverage through state or federal health insurance marketplaces (which begin at 100% FPL). As such, they have limited options to obtain coverage, and are likely to remain uninsured.

How many people are falling into the coverage gap? According to the Henry Kaiser Family Foundation, nearly five million poor uninsured *nonelderly* adults will fall into the coverage gap because of the refusal by elected officials to expand Medicaid coverage. These are adults between the ages of 19 and 65. About one in four Latinos will fall into the coverage gap and will be left without a coverage option. With Latinos concentrated in several key states (Arizona, California, Illinois, New Jersey, and New York) which are moving forward with Medicaid expansion, the impact is somewhat less than it otherwise would have been. Two other key states (Florida and Texas) with high concentrations of Latinos, however, are not moving forward on Medicaid expansion.

Together, Florida and Texas alone account for more than one-third (36.2%) of the persons that fall into the coverage gap. Both Texas and Florida were recently ranked by *24/7 Wall St.* among the states with the worst health coverage in the country. By far, Texas will have the largest number of uninsured persons in the coverage gap (over one million), and approximately 56% will be Latinos. In Florida, of the nearly three quarters of a million who will be in the coverage gap, approximately 26.2% will be Latinos. Ironically, two of the most visible Latino legislators (Rubio and Cruz) on the national scene are from Florida and Texas. Neither, however, is supportive of the

Affordable Care Act, nor do they have viable alternatives to address the needs of the uninsured.

In the 12 Midwestern states reside more than five million Latinos, and they too will be greatly impacted by those states refusing to expand Medicaid. Six states (Illinois, Iowa, Michigan, Minnesota, Ohio, and North Dakota) have moved forward with Medicaid expansion, while six have not (Indiana, Kansas, Missouri, Nebraska, South Dakota, and Wisconsin). While figures are not available as to how many Latinos will fall into the coverage gap in these states it is estimated that more than half a million persons in the Midwest will fall into the coverage gap.

The problem is structural in nature. That is, it is created by policies that specify who is eligible and who is not eligible to receive allocations of public goods—in this case, health insurance coverage or support for it. Our political and judicial leaders have created a policy problem that could easily be addressed if concern for the public good prevailed over the libertarian and anarchist dogma that has greatly divided this country in recent decades.

This crack in the healthcare law continues the attack on the poor and the working poor in this country – the population the Affordable Care Act was intended to help. Workers earning incomes above the coverage gap can obtain insurance with taxpayer-funded subsidies, but those in the coverage gap are left to fend for themselves. Of course, that is one of the principles of current libertarian ideology – that individuals should take care of themselves and their families. In this case, the principle seems to apply only to those in the coverage gap.

It is common to hear libertarian politicians, for example, assume the moral high ground with regard to the dignity of work when they possess the wealth to meet their material needs and enjoy the many pleasures that life has to offer. Their view implies that those who do not work or do not earn enough to make a living are deprived, lazy and morally bankrupt. What they forget is that all inequalities are structural, and all social structures are made by humans. There is nothing inherently natural about the social structures that generated the inequalities in income and wealth that we find today both here in this country and abroad.

They are primarily the result of policies that have been imposed on the less fortunate and less powerful in society by those fortunate to have been born into more favorable and powerful circumstances. By having access to think tanks,

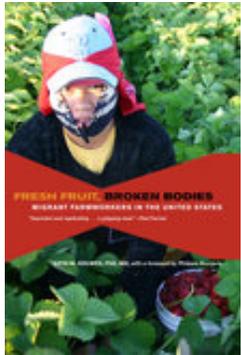
communication networks and the media they are able to perpetuate myths that legitimize inequality and which favor their status in society. Take for instance the recent economic outlook report by the Congressional Budget Office which the conservative mythmakers are using to launch another assault on the Affordable Care Act.

The report is generally positive, projecting deficit declines through 2015, growth in housing construction and business investment, and increases in real GDP. Decreases in the unemployment rate and increases in labor force participation are also projected, albeit slowly in both cases. Slower growth is projected in the labor force due to the aging of the Baby Boomers. Some decreases in labor force participation will occur due to federal tax and spending policies, including those tied to the Affordable Care Act. For example, some workers may choose not to work at all, to work part-time to keep getting coverage subsidies, or to work fewer hours because subsidies decline with rising incomes. The decline in full-time equivalent workers is estimated to be at about two million in 2017 and 2.5 million in 2024.

Rather than focusing on the overall positive tone of the report, our anarchist-leaning politicians have been sounding the alarm on the impact of the Affordable Care Act on the labor force despite the fact that the report stated the impact will be small and negligible for most occupations. Moreover, they overlook the likely increased productivity that will occur from healthier workers and instead seek to access Federal monies to design their own programs without expanding Medicaid. And they certainly do not mention that workers in the coverage gap may have to reduce their working hours to earn an income that will make them eligible for health insurance coverage. To be sure, if the pattern of stagnant wages continues, these workers are not likely to move up into the tax-subsidized, higher-income worker categories.

Finally, as we gear up for another election cycle we will hear the usual rhetoric of individualism, exceptionalism, and the mythologized free market all within a religious and anti-intellectual framework—this will occur as thousands of poor people continue to die for lack of healthcare. As this occurs we should remember that there's more to life than working oneself to death, especially in a society where political leaders are willing to promote social suffering on the basis of flawed ideological commitments. 

## Fresh Fruit, Broken Bodies: Migrant Farmworkers in the United States



By Seth M. Holmes  
Berkeley:  
University of  
California Press  
(2013).

Reviewed by  
William Escalante,  
Julian Samora  
Research Institute

Dr. Seth Holmes, an anthropologist and medical doctor, is the Martin Sisters Endowed Chair Assistant Professor of Public Health and Medical Anthropology at UC Berkeley. In *Fresh Fruit, Broken Bodies* he uses ethnographic research to provide vivid accounts of the work lives and survival struggles of indigenous Mexican (Triqui) migrant farmworkers in the northwestern United States. His book focuses on how social and market forces shape the lives and health of those who experience the symbolic violence of a structurally vulnerable socio-economic position in the United States and Mexico. By migrating, living and working with undocumented migrant workers from San Miguel, Mexico, Holmes is able to examine the multiple layers and facets of market and social forces that wreak havoc on the health and well-being of indigenous Mexican farmworkers. He shows how the symbolic violence inflicted on farmworkers is a product of structural forces rather than the individual desires or intentions of a few malicious farm owners or apathetic health

professionals.

The author's strengths include examining the corporeal toll (his "broken bodies") of migration treks, oppressive farm labor hierarchies, difficult fieldwork, and poor medical treatment at the hands of health professionals in the U.S. and Mexico. It is through the analysis and interpretation of his field observations and interviews that Holmes addresses how racism and symbolic violence embedded in social structures impact, in very real and tangible ways, indigenous Mexican workers. In an attempt to avoid the good versus evil debate, Holmes documents how owners and managers are also affected and influenced by the demands of the market.

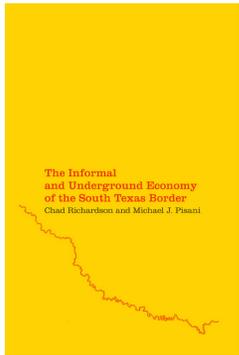
Holmes decries the situation of migrant farmworkers and states that there are not "evil" people but victims of an unjust system that pits the interests and concerns of managers and owners against those of employees. He succeeds in showing how the social suffering of undocumented indigenous Mexicans is not natural but a product of social and market structures. Rather, the naturalization and internalization of racism and ethnocentrism makes people's suffering seem normal and unchangeable. Holmes leads readers from a macro-structural level analysis to the micro-level very well by showing how the macro-structures impact people's everyday lives and are reinforced at the individual level. He concludes his work with ways by which readers, should they be so inclined, can challenge the structural violence and discusses numerous organizations working for change at local, national and global levels. From Holmes' point

of view, the only effective challenge to social and market forces that victimize all of us to different extents is to collectively stand against them. Those of us in the social sciences and medicine, he argues, are in prime positions to address social justice concerns.

Overall this book is well written and organized making it easy for students, academic professionals, or interested individuals to read and understand. It consists of a Foreword by Philippe Bourgois, seven substantive chapters including an introduction and a conclusion, and a brief appendix in which the author explains why he did not provide a methods section.

Holmes clearly demonstrates the value that qualitative field and ethnographic research can have for "big picture" discussions on policy, social structures, market forces and their very real consequences on the lives of individuals, especially those in vulnerable positions. In doing so, Holmes calls for those of us in the social sciences to investigate, theorize, and challenge how people from specific social categories are "written off, forgotten, and understood to deserve their particular forms of suffering." The multidimensional features of Holmes' analysis allow for this book to be used in college/university courses of various disciplines and levels; including social science, medicine, and public health. Dr. Holmes has provided critical insights into how the United States as a whole benefits from the dangerous and painful experiences imposed through structural violence on those who pick the fruit and vegetables that many of us enjoy every day. 🌱

## The Informal and Underground Economy of the South Texas Border



By Chad Richardson and Michael J. Pisani. Austin: *University of Texas Press*, (2012).

Reviewed by Rubén Martínez, Julian Samora Research Institute

Richardson and Pisani are long-time students of the economy of the South Texas Border. This volume is based on data from the Borderlife Project, an ongoing research project at the University of Texas – Pan American and Texas A & M International University for over three decades. The Borderlife Project provides students with opportunities to learn about the region in which they live and to gain research experience through faculty-led research projects. As such, the Project includes several research studies that have been conducted over the years. Richardson and Pisani base their book on data collected through the Cultural Practices Survey, the 1994 Undocumented Workers Survey, the Perceptions of Deviance Survey, Informal and Underground Survey, Healthcare Utilization in Mexico, Colonia Ethnographic Interviews, and the Consumer Informality Survey. Data from these studies provide a quantitative portrait of informal and underground activities as well as ethnographic accounts of these activities and the life situations in which they occur.

The book focuses on the activities of Tejanos and Mejicanos rather than on (White) Texans, and considers the dimensions and important implications

of the border informal and underground economies. The authors view the informal economy as consisting of “work that is itself legal but that avoids government regulation, oversight, and/or taxation” (p. 19). I would argue that it would be more useful to use the terms “economic transactions” than “work” to denote the primary activities within an informal economy. The authors provide the example of an individual selling clothes from his home without a permit. The underground economy, on the other hand, consists of economic activities that are criminal in nature and thereby are also evasive of government oversight. The same individual selling clothes, for example, was also involved in selling stolen vehicles.

The reasons individuals engage in these economies are varied. For some it is a matter of economic survival, some are lured by large profits, and for others it is a cultural feature supported by the trust that characterizes strong family bonds. That is, there is a willingness among some to engage in survival activities even if illegal that is protected by family silence (and perhaps support). At the same time, however, structural features of the border facilitate activities in these economies. These include poverty, a cash economy, and differences in laws and enforcement mechanisms between Mexico and the U.S. The colonias along the border, for example, comprise one of the poorest regions in the country where people have few options in the formal economy and must participate in the informal economy to eke out lives in a context of persistent poverty. At the same time, life on the border adapts to the national differences in the legal and regulatory contexts and takes advantage of the economic “opportunities” that those differences engender.

The book consists of ten chapters: an introduction, a theoretical review, seven substantive chapters on different dimensions of informal and underground economies, and a conclusion. The substantive chapters focus on underground economic activities, informal economic activities, informality and undocumented workers, informal cross-border trade, informality in housing, the informal health care economy, and family and welfare informality. Throughout the book the authors examine micro and macro-level features of informal and underground economies. They argue that structural bias, rooted in a history of racism in South Texas, is the major macro-level factor that leads to informality. That is, the people of the borderlands have little say about the national initiatives that impact the border. So their relative powerlessness manifests in creating controlled mechanisms that promote everyday survival while counterbalancing the discriminatory policies of the dominant social structures

For example, they have had little to say about the implementation of the North American Free Trade Agreement, the national health initiative (despite being one of the regions with the most uninsured people), and border enforcement of the building of the border wall in South Texas. Additionally, structural bias maintains systemic inequality in which Texans are able to utilize institutional power and influence to maintain their dominant position over Tejanos.

The book is well written and provides many insights both into the persistence of inequality in South Texas and the myriad ways by which Latinos in the borderlands pursue economic survival. It also sheds light on how the borderlands have changed from the middle of the 20th

**Continued on page 23**



## Finding Critical Mass: How *Fisher v. University at Austin* Could Undermine Diversity in Higher Education

by Luis Baez

On November 18, 2013, the Young Conservatives of Texas (YCT) chapter of the University of Texas at Austin (UT-Austin) announced their plans to host an event called “Catch an Illegal Immigrant.” The chapter’s president, Lorenzo Garcia (a Latino), described the game as one where students go up to other students, present their student IDs, and tell the other students that they are there to take them to immigration services. Students who apprehended an “illegal immigrant” could win a twenty-five dollar gift card courtesy of the Young Conservatives of Texas, a rightwing student group. Garcia stated that the idea for this event came to him after listening to President Barack Obama outline his agenda for the remainder of his second term. According to Garcia, President Obama’s comments made him think about illegal immigration and how much undocumented workers put into the system and how much they take from it. After a much-publicized and heated outcry from other UT-Austin students, local organizations, the UT-Austin president, and the Hispanic Communications Director of the Republican National Committee, Garcia cancelled the event.

Garcia and the YCT are no strangers to controversial

stands, messages, or events at the UT-Austin campus. In September 2013, the YCT planned to host an “Affirmative Action Bake Sale” for students. The YCT had a sign selling baked goods at different prices depending on various immutable characteristics, such as Whites at two dollars; Asians at one dollar and fifty cents; Latinos at one dollar; Blacks at seventy-five cents, and Native Americans at twenty-five cents. Women of any race received an additional twenty-five cent discount. Purportedly, YCT’s goal for the bake sale was to bring people’s attention to the use of race and gender as factors in admissions policies at universities. While the lesson was probably lost on most observers, the pricing structure seems to reflect the racial and gender hierarchy in the minds of the YCT’s leadership.

Possibly unbeknownst to the YCT of UT-Austin, countless legal professionals, academics, and interested scholars have already been well aware of the constitutional issues and questions surrounding the use of affirmative action policies in post-secondary education since the 1970s. Affirmative action has been a constant source of criticism, praise, and debate. But despite the different approaches and positions on

the use of affirmative action in higher education advanced by competing schools of thought and interest groups, the ultimate say in the matter lies within the discretion of the United States Supreme Court (the Court). The Court's jurisprudence on the issue of affirmative action is a question of constitutional law.

Ever since the Court's ruling in *Grutter v. Bollinger* in 2003, it seemed as if affirmative action policies in undergraduate admissions were constitutionally permissible so long as its use by universities and colleges across the nation adhered by strict constitutional guidelines outlined by the Court. However, during the summer of 2013, the Court heard a more recent case, that of *Fisher v. University of Texas at Austin*, challenging the use of affirmative action in undergraduate admissions policies. Though the challenge is specific to UT-Austin, the outcome of this case could control the admissions policies of other universities and colleges. *Fisher v. University of Texas at Austin* may present the next opportunity for the Court to either uphold its precedent approving of the use of affirmative action in accordance with principles of precedence or prohibit its use outright.

This article reviews the issues raised by *Fisher* and considers the future of affirmative action in higher education. It contends that the use of affirmative action in higher education serves an important and compelling governmental and societal interest that should not be abandoned prematurely. It does this in four parts. First, it explores the constitutional background of affirmative action in post-secondary admissions and provides the necessary constitutional framework for analyzing its use. It then discusses the facts of *Fisher* and its potential impact on the use of affirmative action. It also addresses the arguments that the parties of *Fisher* are advancing. Following that, it focuses on the need for diversity in higher education and outlines the Hispanic and Latino communities' role in colleges and universities. Finally, it sets forth the arguments in favor of affirmative action while addressing concerns of its



opponents. Because *Fisher* could spell the end of affirmative action in higher education in the near future it is important that courts, legislators, and academics not let the need to promote diversity in higher education end along with it.

## CONSTITUTIONAL FRAMEWORK

Before discussing the relevant Supreme Court precedent on the issue of affirmative action in higher education, it is important to understand the framework of constitutional analysis that governs the issues of *Fisher*. The Fourteenth Amendment of U.S. Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This constitutional language is the subject of constitutional law courses in universities across the nation. Though the language above only references the "state," (meaning the individual states of the U.S.) it is a well-established rule of constitutional law that this Amendment also applies to the Federal Government through the Fifth Amendment of the Constitution. For purposes of affirmative action cases, the relevant language of the Amendment is "nor deny to any person within its jurisdiction *equal protection of the laws*."

Equal Protection Clause issues arise when individuals (including corporate entities) are separated by some government actor into two or more different classes and those classes are somehow treated differently. The teeth behind the Equal Protection Clause form by way of judicial review of government actions that treat classes of people differently. In order for the Equal Protection Clause to apply to a government action, the distinction must have more than a mere disparate or uneven impact on the classes. There must be intent to discriminate on behalf of the government actor.

There are varying degrees with respect to how courts scrutinize different types of unequal treatment by the government under the Equal Protection Clause. The types are considered in terms of the suspect class prong of the Equal Protection Clause. If the distinction between classes is made against a "non-suspect" group, the government actor need only satisfy the "rational basis" test. This test is seen as the easiest level of constitutional scrutiny to meet. It only requires that the party challenging the government action show that there is no permissible government purpose to which the

statute or policy is rationally related. If the distinction relates to groups that are “quasi-suspect,” then the government must demonstrate before the reviewing court that it made the distinction in order to advance an important governmental interest to which the classification is “substantially related.” Finally, if the distinction affects a “suspect class,” then the government is required to satisfy the “strict scrutiny” test. This level of scrutiny requires that the government show that it has a “compelling governmental interest” that is only advanced by a plan “narrowly tailored” (or necessary) to advance that interest. Distinctions based on race receive the strict level of scrutiny.

Over time, the Court has discussed why strict scrutiny applies to government distinctions made on the basis of race. Generally, the Court has discussed how the purpose and legislative history behind the 14th Amendment reflect the need at the time to protect African Americans in the post-Civil War period. The Court has also discussed the nation’s history of discrimination and what effect it has had on racial minorities. The Court has also expressed concern regarding the lack of political power that characterizes minority groups. Accordingly, any governmental action that treats individuals on the basis of their race must satisfy the Court’s strict scrutiny review by showing that the treatment is narrowly tailored to advance an important and compelling governmental interest in order for the action to be constitutional. Affirmative action plans must satisfy this test.

## Affirmative Action Precedents

### *Grutter and Gratz*

*Grutter v. Bollinger* is a 2003 Supreme Court case that decided whether the use of race as a factor in the admissions process at the University of Michigan Law School was constitutional under the Equal Protection Clause. The Law School used race as a factor in order to have an incoming class comprised of a mix of students from varying backgrounds and experiences who would respect and learn from each other. The Law School also hoped to attain a level of diversity in its classrooms that improved the quality and nature of every student’s education. Race was just one of many factors considered in the law school’s admission process. The Law School crafted its admission policy to also achieve inclusion of students from groups which have been historically discriminated against, including African Americans, Hispanics and Native Americans, that without this commitment from the University might not be represented in its student body in meaningful numbers. Through its policies and practices

the Law School hoped to achieve a “critical mass” of minority students.

The admissions policy of the Law School was challenged by an applicant who was denied admission. Barbara Grutter, a White Michigan resident, applied with a 3.8 GPA and an LSAT score of 161. She argued that the Law School discriminated against her on the basis of race in violation of the Equal Protection Clause of the 14th Amendment. Before analyzing the claim advanced by Grutter, the Court recognized its position taken in *Bakke* in 1978, where it held that governments do indeed have a substantial interest in promoting diversity but it must be served by an adequately devised admissions program that takes into consideration such factors as race and ethnic origin.

The Court agreed that the policy advanced a compelling government interest. It noted that diversity enlivens classroom discussions and makes them more spirited and more enlightening and interesting. It also discussed the point that that student body diversity contributes to learning outcomes, helps prepare students for an increasingly diverse workforce and society, and better prepares them as professionals. The Court also stated that diminishing the force of negative stereotypes is both a crucial part of the Law School’s mission and one that cannot be accomplished with only token numbers of minority students (Grutter, 2003).

However, as with strict scrutiny analysis, the inquiry does not end with a finding that the interest is compelling. The plan must also be narrowly tailored to serve that interest. Commenting on the use of race as a factor, the court stated that “a race-conscious admissions program cannot use a quota system . . . a university may consider race or ethnicity only as a ‘plus’” (Grutter, 2003). Finally, the Court stated that when using race as a ‘plus’ factor in university admissions, a university’s admissions program must use race in a way that does not make the applicant’s race or ethnicity the defining feature of their application.

Thus, following *Grutter*, universities and colleges had a clear and comprehensible bright-line rule for establishing their own affirmative action programs. The Court’s decision in *Grutter* found an appropriate balance between the need for diversity in higher education without running the risk of reverse discrimination. However, The Court heard another case on affirmative action the same year in *Gratz v. Bollinger* that ran afoul of that balance. In *Gratz* the University of Michigan’s undergraduate admissions program was held unconstitutional because it automatically gave every minority applicant a twenty-point boost on their admissions spectrum. This model

reflected exactly the type of quota system or defining factor warning that the Court stated in *Grutter*.

Since 2003, the use of affirmative action programs in higher education remained relatively stable. However, legal scholars and commentators wondered what the future of affirmative action would be in light of the Court's comments in *Grutter* that it expected that 25 years hence the use of racial preferences would no longer be necessary to further the interest of diversity in society. Questions arose as to whether that language gave a strict deadline or if it was just a normative expression of where the Court hoped society would be in twenty-five years with regard to racial discrimination. *Fisher* may provide the answer to those questions fourteen years too soon.

### ***Fisher***

In 2008, Abigail Fisher applied to UT-Austin in hopes of joining the upcoming freshman class. During that admissions cycle, there were 29,500 other applications for admission. Out of these applications, 12,483 were offered admission and 6,715 accepted and enrolled. Fisher's application profile was not competitive. On a 1600 SAT scale, Fisher scored 1180. Her GPA was a 3.59. Having been denied admission, Fisher brought suit against UT-Austin claiming that the university's use of race as a factor in its admission policy violated the Equal Protection Clause of the Fourteenth Amendment.

UT-Austin's current admission program utilizes race as a "plus-factor" when considering the applicant's overall profile much like the University of Michigan's Law School did in *Grutter*. This program works in conjunction with the "Top Ten Percent Law" passed by the Texas Legislature, which grants automatic admission to any high school students graduating in the top ten percent of their graduating class to any public Texas college. The Court acknowledged the role that UT-Austin's plan had in increasing diversity on campus:

The University's revised admissions process, coupled with the operation of the Top Ten Percent Law, resulted in a more racially diverse environment at the University. Before the admissions program at issue in this case, in the last year under the post-*Hopwood* AI/PAI system that did not consider race, the entering class was 4.5% African American and 16.9% Hispanic. This is in contrast with the 1996 pre-*Hopwood* and Top Ten Percent regime, when race was explicitly considered, and the University's entering freshman class was 4.1% African American and 14.5% Hispanic (Fisher, 2013).

Though the Supreme Court heard the case, it was not the landmark or watershed decision on affirmative action that legal academics thought it would be. While the Court discussed

the appropriate facts, precedents, and its views on diversity in higher education, it did not analyze whether the admissions program at UT-Austin survived the strict scrutiny test required by the Equal Protection Clause. Instead, the Court remanded the case back to the Fifth Circuit Court of Appeals for further review in accordance with the Court's opinion because *Grutter* "did not hold that good faith would forgive an impermissible consideration of race" as the Fifth Circuit believed it to do (Fisher, 2013).

On November 13, 2013 the Fifth Circuit heard oral arguments in the case. Lawyers for Fisher argued that the "critical mass" standard discussed by the Court throughout the course of its affirmative action in higher education jurisprudence was met and that UT-Austin's plan was no longer necessary (and thus, failed to satisfy the constitutional strict scrutiny test). Counsel for UT-Austin argued that the "critical mass" standard had not yet been reached. The Fifth Circuit Court has yet to issue a decision. Even after it does, the losing party is likely to appeal to the Supreme Court, which will most likely decide to hear the case (again). While *Fisher* makes its way through the courts, universities, students, and analysts are left to wonder what will become of affirmative action in higher education in the future.

In the meantime, several questions raised by *Fisher* must be addressed: (1) What is the defining point of "critical mass"?; (2) Are there other, race-neutral means that universities could adopt to increase diversity on campuses?; and (3) What is the public opinion of affirmative action in higher education and how have state and local governments responded? The rest of this article addresses these questions in an attempt to support the narrowly tailored use of affirmative action as a compelling government interest.

### **THE FUTURE OF AFFIRMATIVE ACTION**

None of the opinions on affirmative action in higher education provide a definition for the meaning of "critical mass" within the context of university plans to increase diversity on campus. Indeed, during oral arguments in the Court and the most recent oral arguments before the Fifth Circuit, a common inquiry of presiding judges has been something to the effect of: What is the number that it would take to achieve the "critical mass" affirmative action programs are designed to achieve on American campuses?

Historically, the term "critical mass" originated in the field of physics. The term usually refers to the amount of fissile material required to start and maintain a nuclear fission reaction. In the scientific context, "critical mass" may refer to a specific set of numbers or formulas to achieve an identified

## Latinos and the Affordable Care Act

by Pilar Horner



The Affordable Health Care for America Act (ACA) or HR 3962 passed by the 111th Congress was signed into law in 2010 by President Barak Obama. This historical policy prompted virulent oppositional reactions prior to the initial implementation stages in the months leading up to January 2014. Although the differing voices mainly fall

along partisan lines, the political quagmire often disguises the importance of this new legislation and how it will impact individuals living in the United States.

Latinos specifically have had little or confusing information on how to manage their new health care choices. Nearly 46 million Americans did not have health care prior to the ACA, including over 15 million Latinos. According to the National Council of La Raza, Latinos disproportionately represent the uninsured nationally. This disproportionate access to health care raises serious issues of life outcomes for Latinos and their families.

According to the Centers for Disease Control, the leading causes of Latino death (in order of most to least) are cancer, heart disease, unintentional injuries, stroke, diabetes, chronic liver disease (cirrhosis), chronic lower respiratory disease, influenza and pneumonia, homicide and nephritis (kidney disease). These health concerns have drastically different outcomes when patients have access to affordable and beneficial health care. For example, for Latino immigrants who lack health care insurance, they may be able to access emergency care, but not the long-term follow up care and treatment required when battling kidney failure. Dialysis, possible kidney transplantation, disease management, and addressing co-morbidity all tend to be ignored and thus claim disproportionate numbers of Latinos. Lack of understanding of diseases, their treatments, and care options impact Latino populations in drastic ways.

Differing Latino racial and ethnic groups provoke various challenges and questions about best practices for health care prevention and treatment strategies. Various groups have widely differing political and social histories prior to their

migration to or birth in the United States.

This is especially true when considering citizenship status. One example can be seen with Cubans who, unlike other Latino ethnic minorities, are eligible for Medicaid enrollment despite level of citizenship status. In addition, Latino business owners, health care professionals, service workers, and other workforce members often encounter both challenges and opportunities with the implementation of the health care law. Educating the public on the importance of health care coverage and its impact on them and their family's lives could shift health care outcomes for Latinos. For a population that is often disenfranchised from the health care system, new possibilities arise with the implementation of the ACA. However, in order to fully garner support for the new law, barriers and opportunities for the Latino population deserve attention.

### Citizenship Status

Much confusion has arisen over how the ACA will impact health care delivery for individuals with various citizenship levels. For Latinos who are U.S. citizens, there are no legal differences from other U.S. citizens. Still, immigrant rights activists have criticized the ACA for failing to truly address the structural discriminatory practices facing immigrant populations.

The estimated 11 million undocumented persons perhaps have the clearest and simplest relationship in that they are ineligible for any services provided through the ACA. Even if they use their own money (without federal subsidies), they are ineligible for signing up. However there are a few aspects that do affect the undocumented. First, under federal law undocumented individuals will still be able to receive emergency health care services, however the ACA provides for significantly less federal monies to cover these services which may result in longer wait times for treatment. Hospitals may receive federal funds compensating service charges for the undocumented, however hospitals must prove that they are caring for undocumented status individuals and the undocumented individuals tend to not disclose their status for fear of deportation.

For youth who are granted deferred action, no access to ACA will be available. This ruling has ignited controversy among political rights activists, politicians, and health care practitioners. However, currently there are no plans to offer insurance coverage to these youth. Undocumented persons are exempt from penalties for signing up for insurance, but they must file exemption papers accordingly. As most

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## Telamon Michigan Migrant Head Start Nutrition-Needs Assessment

by Won O. Song

Migrant and Seasonal Farm Worker (MSFW) families face unique health challenges and nutritional risks due to many hardships, such as low wages, long working hours, exposure to occupational-related hazards, and poor living conditions. Telamon Michigan Migrant Head Start (MMHS) Corporation, a support network for MSFW families, strives to improve the educational and overall health and nutritional status of children of MSFW families in Michigan. In the summer of 2013, Telamon MMHS collaborated with the Department of Food Science and Human Nutrition (FSHN) at Michigan State University (MSU) to conduct a pilot nutritional needs assessment of MMHS families and children. This preliminary needs assessment was necessary in order to recognize and identify the gap of knowledge about the health and nutritional status of MMHS families and children and help expand current efforts.



### Goal and Objectives

The ultimate goal of this needs assessment was to help MMHS children and their families bridge the nutritional disparity gap. The purpose was to identify existing nutritional risks in MMHS children and their families, and associated determinants. Specific aims were to measure children's growth indicators, weight status and dietary intake; to assess parents' perception of health, nutrition knowledge, food access and security, and dietary intake; and to obtain data from Telamon MMHS employees who interacted with the MMHS children during the summer.

### Partners

The Telamon MMHS Nutrition Needs Assessment team consisted of a Principal Investigator, three graduate students,

two undergraduate research assistants, and over 20 Spanish-speaking student volunteers from the MSU College Assistance Migrant Program (CAMP). Collaborating partners included the MSU Julian Samora Research Institute (JSRI), the MSU Migrant Student Services office, and the MSU Extension office.

### Approaches

In collecting the data from MMHS families, five MMHS centers (Hart, Sodus, Keeler, Watervliet, and Conklin) were selected based on the center size, opening dates, director's interest of collaboration, driving distance from MSU, and representativeness of MMHS in Michigan.

Parent participants were from one of the five pre-selected MMHS centers, had at least one child (ages 0-5) enrolled in MMHS in the summer of 2013, were willing to complete all survey instruments and participate in a face-to-face interview held in Spanish in the MMHS centers where their children participated. MMHS staff members were from all 19 registered Telamon MMHS centers. The staff consisted of teachers, directors, a family specialist, bus drivers and any other personnel working directly with MMHS children.

During the visit to each selected MMHS center that occurred between July and August 2013, each child and a parent of selected family were measured for height and weight with a portable height and weight scale by trained student volunteers. Parents were assisted by Spanish-speaking trained interviewers to complete an on-line survey. The on-line survey consisted of two parts: 1) demographics, anthropometrics, nutrition knowledge, perception and attitude on personal health, and a food security questionnaire completed using a survey software tool called Survey Gizmo; and 2) dietary intake of the selected child's (i.e., oldest child who attend MMHS) dietary intake information using the Automated Self-Administered 24-hour dietary recall analysis program. MMHS staff members completed questions in both parts of the on-line survey that did not have questions about a child or a child's diet.

### Preliminary Findings

A total of 76 parents completed the appropriate sections of both parts of the on-line survey instrument. Staff members completed the remaining questions in part 1 (n=309) and part 2 (n=53). We are in the process of cleaning and organizing the data for further statistical analyses. Preliminary evidence indicates that all the Telamon MMHS families were from a low socio-economic status and experience a high prevalence

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## Webinar Recap: NCERA 216 Sponsors Latino-Focused Webinars

By Pilar Horner

This is the second year that NCERA 216, a consortium of mid-western land grant institution faculty and staff focused on Latinos and immigrants in Midwestern communities, sponsored webinars to improve services, research, and advocacy for Latino and immigrant populations in the Midwest. The 2013-2014 academic year program featured four scholars presenting their research on factors affecting the lives of Latinos and immigrants.



Ricardo Diaz

On November 12, 2013, Ricardo Diaz, University of Illinois Extension, presented “Implications of Immigration Policy (DACA) for the Workforce, Research, and Extension Workers”. Diaz explored Obama’s decision to defer deportation for immigrant childhood arrival (DACA) and what these changes mean for the future of how we understand hiring practices, youth incorporation, research initiatives, and extension services. He discussed challenges and benefits and examined how we can make best use of integrating youth to better inform researchers, policy makers, and practitioners.

On December 4, 2013, Dr. Sarah Hendricks, Assistant Professor, Drake University, presented “Transportation Limitations, Mobility Strategies, and Social Consequences: The Experience of Latino Immigrants”. Hendricks focused on the implications of transportation limitations faced by the Latino immigrants, with an emphasis on the new Latino destination of Atlanta, Georgia. Hendricks currently teaches at Drake University in Des Moines, Iowa. Lack of access to transportation - which in the United States, typically means lack of access to a personal vehicle - blocks individuals from job locations and educational options, prevents upward economic mobility, and perpetuates poverty.



Dr. Sarah Hendricks

Kicking off 2014 on February 14, Dr. Lisa Dorner, University of Missouri-Columbia, presented on “The Making of Multilin-

gual Elementary Schools in a Monolingual City”. Dr. Dorner presented data from an 18-month ethnography study documenting the development of an elementary (K-5) language immersion school in a predominantly monolingual city. Findings demonstrate that the majority of leaders and diverse parents valued multilingualism as a right and resource for all students; however, parents’ discourses also stressed the importance of language as a marker of identity, as well as the importance of having quality academics and safe, secure schooling.



Dr. Lisa Dorner

The next webinar is scheduled for May 7, 2014, and will feature Dr. Onésimo Sandoval speaking on “A Demographic Portrait of Pueblos and Hyper-Pueblos in the U.S.” More information can be found online by visiting [www.jsri.msu.edu](http://www.jsri.msu.edu).

*These webinars are co-sponsored by NCERA-216, Latino and Immigrants in Midwestern Communities, the North Central Region Center for Rural Development (NCRCRD), the Cambio de Colores Center at University of Missouri – Extension, and the Julian Samora Research Institute at Michigan State University. Anyone interested in presenting a webinar in academic year 2014-2015 should contact Pilar Horner at Michigan State University, [phorner@msu.edu](mailto:phorner@msu.edu) for more details. To be added to our list please send an email request to [jsamorai@msu.edu](mailto:jsamorai@msu.edu).*

## 2013 Faculty Member of the Year

The Eta chapter of Delta Tau Lambda Sorority, Inc., has named Dr. Pilar Horner as Outstanding Faculty Member of the Year for 2013. Dr. Horner was honored at the “Annual Salute to Latinas: Fuerza de la Mujer Latina” on the evening of Friday, November 1, 2013 the MSU Union Ballroom.

The Outstanding Faculty Award is presented annually to a Latina Faculty Member who goes above and beyond while demonstrating strength, unity, wisdom, and promise in the areas of community service and academic excellence. Congratulations to Dr. Horner!



Dr. Pilar Horner

## Celebrating 25 Years



The Julian Samora Research Institute (JSRI) will celebrate its 25th anniversary as a Latino-focused research institute by hosting a nationwide conference on Latino communities on October 30 - November 1, 2014. The 25th Anniversary Conference theme is **“Latinos in 2050: Restoring the Public Good”**

Nationally-known and emerging scholars and researchers will be presenting and participating in panel discussions on health disparities, business ownership and entrepreneurship, service delivery gaps, and other critical topics and issues. Other celebration events include a concert by *Sones de Mexico* and participating faculty and students from the College of Music, and an exhibit on *Latino Auto Workers: From the Margins to the Core* at the MSU Museum.

To learn more visit the JSRI's webpage at [www.jsri.msu.edu](http://www.jsri.msu.edu).

## New JSRI Staff Member

Kristopher Wilson is a senior in James Madison College at Michigan State University. Originally from Ortonville, Michigan, Kris is majoring in International Relations and Comparative Cultures & Politics with a minor in Portuguese. His undergraduate studies have focused on economic, social, political, and cultural themes in the countries of Latin America, especially Brazil and Argentina.



## JSRI Hosts Community Author

by Rubén Martínez



The Samora Institute hosted its first discussion with a community author on October 10, 2013. The event included Nic Mihailoff, whose *nom de plume* is Nik EnVon, author of *The Sportsman: Bayou Justice*, a novel with a Latino as the hero. The story follows the hero, Garth, through an action-packed and often deadly journey in the bayou, all the way up to Detroit and back again. As Garth and friends struggle to break up a human trafficking ring, readers will discover the strength of love, the power of redemption and the ability ordinary people have to make a difference in the lives of others.

The session began with opening comments by Dr. Rubén Martínez, who welcomed Nik and two panelists who spoke to issues of human trafficking. Martínez pointed out that novels bring out dimensions of the human experience that allow us to relate to characters in meaningful ways that are different from those allowed by statistical, sociological and legal frameworks. Following a reading from the novel by Nik comments were made by Jeremy Norwood, Spring Arbor University, and Ron DeHass, Founder and President of Covenant Eyes, a company that sells software that promotes online integrity, monitors dangers on the Internet, and filters out pornographic and other unwelcome sites when connected to the Internet.

Jeremy spoke about the importance of novels in addressing critical issues such as human trafficking. Novels, he pointed out, allow us to understand the lives of the characters, how complicated situations of human trafficking can become, and how individuals can take action. Importantly, the novel humanizes the victims of human trafficking and reaches a wider audience than occurs by other means. He pointed out that human trafficking usually involves child, labor and sex trafficking.

Ron spoke to the connection between pornography on the Internet and human trafficking—that is, sex trafficking of female children and women. The exploitation of women, he pointed out, is perpetuated by pornography, with the viewing of pornography on the Internet tending to desensitize viewers to the abuse of women and the less likely they are to support women's rights. The story told in the novel, he said, is a “true story,” only the names have been changed.

Discussion with audience participants followed the reading and the presentations. Nik spoke to the origin of the idea for

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## Finding Critical Mass

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reaction. However, the term has been used in many different contexts from politics, law, sociology, to business. In these contexts, it can certainly be said that there is no set number or reactions referenced. In these contexts, the term is much more amorphous and vague. Addis (2007) has thoroughly examined “critical mass” discourse in the legal field. He generally concluded that:

[I]n whatever field of social endeavor the notion of critical mass is invoked, there are certain common elements that define it. First, critical mass is used to understand the processes of relatively sudden social changes and the point of criticality that will bring about those changes. Second, the notion of criticality or threshold is based on the assumption that decisions of individuals or other entities are influenced by the choices that others make or are expected to make. So, critical mass is both about the threshold that triggers a transformation as well as about the nature of collective action or the production of a public good.

Nonetheless, the scientific equation for achieving the critical mass needed to cause a reaction is quite analogous to the use of the term in higher education affirmative action cases. The goal of achieving critical mass in higher education is clear: to achieve a sufficient level of diversity in higher education that substantially contributes to and advances classroom discourse (much like the reactions sought by nuclear scientists are identified) and learning experiences on campus. The only difference is that the elements of the formula are unclear. However, Addis’ two-point elements of critical mass represent a good starting point for identifying that formula.

### A Legal Critical Mass Formula

Addis’ first element of critical mass states that “critical mass is used to understand the processes of relatively sudden social changes and the point of criticality that will bring about those changes” (2007:106). For purposes of analysis, this element can be analyzed in two component parts: (1) the social change desired, and (2) the point of criticality that will start that change. Though it may seem ambitious, the view held here is that while achieving diversity in higher education is the constitutionally permissible goal of affirmative action plans, the larger goal and “social change desired” is an end to all forms of institutional racial discrimination in society.

Accordingly, when courts today and in the future ask

whether or not a “critical mass” has been attained, the answer is a resounding “No!”. One need only conduct a brief examination of current news headlines to find that the “social change desired” through affirmative action in higher education still requires a lot of work. For example, a group of high school students in Kansas painted a mural on the wall of a school building that contained images of the Statute of Liberty, the U.S., and two people cloaked in a Mexican and American flag with the caption “Immigration is Beautiful.” It only took a few days for local onlookers to spray the words “wetback,” “welfare,” and “KKK” onto the mural. While we may never be able to eliminate racial discrimination at the individual level, it is possible to do so at the institutional level.

For example, the New York Police Department (NYPD) is notorious for its unfair and demeaning use of racial profiling of Latino and African American men. The NYPD (and other police departments) have the constitutional ability to perform what are called “stop and frisks.” Though there are many Fourth Amendment constitutional issues that govern the use of a stop and frisk, a police officer must still have “reasonable suspicion” that illegal activity is afoot in order to conduct a stop and frisk. The NYPD was recently sued for unfair and discriminatory practices in enforcing stop and frisks.

Without having to read the arguments of attorneys in the case, one fact paints an appropriate description of NYPD’s discriminatory practices: in the first quarter of 2012 alone, police stopped mostly African American and Latino men on approximately 200,000 occasions. On most of these stop and frisks, there was nothing done wrong by those suspected of wrongdoing. Recently, the Honorable Judge Shira A. Scheindlin of Federal District Court in Manhattan held that the practices adopted by the NYPD are unconstitutional. The suit and settlement talks are ongoing.

Finally, consider the reaction to undocumented workers. On February 12, 2014, Nebraskans in the City of Fremont voted to pass a city ordinance that would require anyone renting within city limits to swear that they have “legal permission” to live in the U.S. Since 1990 the number of Hispanics living in Fremont has increased from 165 to 3,149 in 2010. Local citizens of Fremont believe that the ordinance was necessary because they believe that the country should take harsh stands against people living in this country illegally.

Each of the issues raised above deserve their own law review or other academic journal note. Each example is illustrative of why “critical mass” has yet to be achieved. Diversity in higher education can help prevent these problems from occurring. Each year approximately four million

students enter freshman classes at colleges and universities throughout the country. Having a diverse population in this freshman class helps peers learn to see each other and their respective cultures as equal and important. Upon graduation these students, having been exposed to diversity in higher education, should be less likely to hold racial biases toward those different from them in the workplace, community and other societal arenas. The social change desired is not yet fully in effect, and diversity in higher education classrooms is an important, but only one, step in effecting that change. The second part of the Addis argument calls for the “point of criticality” that would help achieve the social change desired.

Admittedly, this is a much more difficult standard to identify. It depends upon on a significant number of factors. However, at least two clear guidelines for defining this standard have emerged. First, the Court made it clear in *Grutter* that a quota system is inherently unconstitutional and thus cannot be part of a “critical mass” definition. This rule, also expressed in the Court’s recent *Fisher* opinion, seems to conflict with the Justices’ need to have an answer to the question of “how many students will it take to attain critical mass?”

It would be a clear contradiction for the Court to strike down affirmative action in higher education because it believes that the *number* of minority students enrolled at universities and colleges is sufficient to achieve the interest of diversity—especially when it has already ruled that quotas are unconstitutional. In other words, if a majority of the Court wants to do away with affirmative action in higher education, it will have to also overturn its prior precedent holding that a numerical analysis of minority students in higher education is constitutionally impermissible.

Second, a simple comparison of the student-body makeup of UT-Austin shows that diversity is increasing, but it is occurring slowly. For example, the Court in *Fisher* cited statistics that in that period before *Grutter* (2006), UT-Austin had a makeup of 4.1% African American and 14.5% Hispanic students. As of 2013, UT-Austin reports it has a makeup of 4.3% African American students and 21.7% of Hispanic students. Though this seems like a successful increase on its face, the growth in the number of Hispanic students at UT-Austin has not been enough to overcome the still increasing lack of diversity in the university’s classrooms. This has been the case despite the growing Hispanic population in the State of Texas and nationwide. If anything, the amount of diversity, proportionally, has remained the same since UT-Austin put into effect its current admissions policy. Thus, it can hardly be said that critical mass has not been attained today.

## External Benefits of Affirmative Action Plans

Lee C. Bollinger, former president of the University of Michigan and current president of Columbia University, spoke about his experience with affirmative action at the University of Michigan and the Supreme Court’s rulings in *Grutter* and *Gratz* during a symposium held at Willamette University in 2002 (Bollinger, 2002). Bollinger discussed several myths and sentiments surrounding race issues and the use of affirmation action on campus. These myths—even to this day—best summarize and illustrate the value of affirmative action in higher education.

The first issue discussed by Bollinger is the notion that discussions or considerations of race no longer have a place in American society. Arguably, since 2002, there have been several important advancements and achievements for minority communities in this country. In 2005 Condoleezza Rice became the first African American woman to serve as the Secretary of State. President Barack Obama was elected President in 2008, becoming the first African American to be President, and Sonia Sotomayor was appointed by him to the U.S. Supreme Court in 2009, making her the Court’s first Hispanic (and third woman) Justice in its entire history. These milestones in racial equality undoubtedly represent shifting attitudes toward race in America. Still, these achievements do not mean we live in a post-racial society.

The shift is neither as grand nor swift as it could be. Aside from more recent events that shed light on racial inequality discussed above, the country still faces immigration issues, constant state level voter ID attempts at “reform,” and an ever-increasing income gap between White, Black and Hispanic households. Opponents of affirmative action claim that race is no longer an issue, but one need not look far to find overwhelming evidence indicating otherwise.

Another issue discussed by Bollinger is that critics of affirmative action often claim that race gives minorities an unfair advantage in the admissions process while qualified White students are left out. Ironically, it is institutional racism that gives and has historically given Whites an unfair advantage across all societal institutions. Affirmative action is a policy in which race is only one part of a much larger means of evaluating student applications for admission. Generally, universities consider the quality and difficulty of classes that a student took in high school, the quality of essays submitted with an application, a student’s demonstrated leadership in the community, athletic ability, and other relevant personal achievements along with membership in an underrepresented racial or ethnic minority group.

As previously discussed, the Court's mandates for the use of race as a factor in college admissions requires that race only be one factor among many in the application review process. Race cannot be the sole outcome determinative factor for one's application, nor can it be the defining characteristic. It is only one part of a holistic admissions process.

Most importantly, and most relevant to the decision that the Court must address in *Fisher* is whether universities and colleges have a race-neutral or colorblind way to increase diversity on its campuses instead of using affirmative action policies. On its face, this idea seems like a fair one. If society is to become colorblind in the future why not find the way that best promotes diversity without having to actually consider the race of applicants? However, there are several reasons—as discussed by Bollinger—why the answer is no.

In 1996, the State of California passed proposition 209. It was a ballot proposition that amended the state constitution to prevent state colleges and universities from allowing the consideration of race in their admissions procedures. At the University of California, Berkeley and Los Angeles Hispanic enrollment fell by 44 and 36 percent, respectively. At Berkeley, African American enrollment dropped by nearly 60 percent when the admissions office implemented a colorblind admissions program. It is clear that race must be part of the admissions process for the compelling interest of promoting diversity on campus to have any import in today collegiate life.

Currently, some universities and colleges have adopted “top percent” plans as a way of promoting diversity on their campuses. If a student graduates in a certain top percentile of their class, they can gain automatic admission to certain colleges and universities in their respective states. The majority of UT-Austin's freshman class is filled through this model (the top ten percent). Though it may seem to be an effective means of promoting diversity on college campuses, this approach leaves several systematic problems in secondary education unaddressed. For example, in California, African American high school students have a dropout rate of 30 percent and Hispanic students have one of 23 percent. While the different causes and potential solutions to the inequality of high school education across the country could serve as the focus of its own paper, contending that a top percent plan from these schools solves diversity issues at the post-secondary level is shortsighted.

## Public Opinion and Reaction to the Use of Affirmative Action

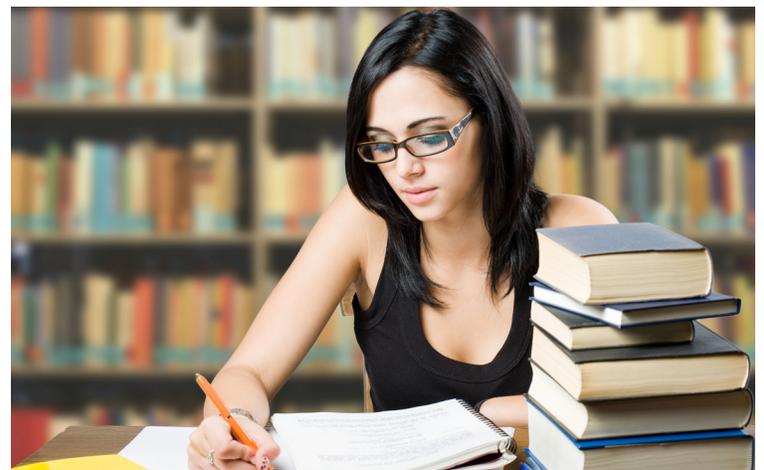
In spite of the current constitutionality of the consideration of race in higher education admissions, several states have

limited or attempted to limit the use of race in admissions, including passing laws that ban its use outright. Because of this it is important that the Court not overturn its precedent on the issue so that states and universities attempting to promote diversity on their campuses are able to do so without interference.

For example, in 1996 California voted passed Proposition 209, which prohibits the state from granting preferential treatment on the basis of race in many different contexts, including education. Similar measures have since been passed in other states either by voters or legislators; in Florida (1999) by executive order by Jeb Bush. These include Washington (1996), Michigan (2006), Nebraska (2008), Arizona (2010), New Hampshire (2011), and Oklahoma (2012).

Proposal 2 in Michigan was modeled after Proposition 209 in California. Among other things, it prohibits consideration of race at all of its public, state-operated universities. Since then, however, enforcement of the law has been challenged in the courts, and it is currently at the U.S. Supreme Court, where a decision is pending. It is expected that the decision will be released alongside the *Fisher* decision. Though the arguments in support and in opposition of affirmative action in higher education are applicable to the Proposal 2 case *Schuetz v. Coalition to Defend Affirmative Action*, the case raises different constitutional issues in that the 6th Circuit Court of Appeals held that the ban “unconstitutionally alters Michigan's political structure by impermissibly burdening racial minorities” (Schuetz, 2013).

The question in this case is not whether the state has a compelling interest in promoting diversity that is achieved through a narrowly tailored plan like that in *Fisher*, but is instead whether Proposal 2 itself violates the Equal Protection Clause of the 14th Amendment. In the alternative, the Court must also decide whether Proposal 2 violates what is known



as the political-restructuring doctrine. That is, if Proposal 2 denies opportunities to minority students, then Proposal 2 will be held unconstitutional, as it was by the 6th Circuit Court. In other words, if Proposal 2 includes a racial classification intended to treat a group of people different than another then it is unconstitutional. The Court will decide whether or not that is the case. Regardless, Michigan's Proposal 2 is one of many state initiatives to prohibit the use of race as a factor in public college and university admissions. The Court has the opportunity to quell plans, reforms, or referenda that would have a negative impact on efforts using affirmative action to promote diversity at colleges and universities.

## CONCLUSION

Fisher represents either the constitutional approval or death knell for affirmation action in higher education in the United States. Many of the arguments discussed above are arguments that the Court entertained during oral arguments in the case. Indeed, they are very similar arguments advanced before the Court's decisions in *Bakke*, *Grutter*, and *Gratz*. The support and contentions in favor of affirmative action have remained constant because the goal has remained compelling: promoting diversity in higher education as a compelling state interest.

They have also remained constant because the need for the promotion of diversity at colleges and universities across the nation has become increasingly apparent and necessary over time. While opposition to affirmative action policies has grown along with the support, the differences boil down to perspective and ideology. Our society has made some advances in racial inequality over time, but the country is not at a point where it can give up on the cause. The Court should recognize this reality and take the opportunity presented to it in *Fisher* and *Schuetz* to allow colleges and universities the ability to promote diversity in higher education. 🌱

*Luis Baez is a graduating student at the MSU College of Law.*

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## Allen Market Place is Open for Business and Creating "A Big Fuss About Food!"

by Joan Nelson



Over the past 18 months, with generous support from every layer of community, the Allen Neighborhood Center in Lansing has created Allen Market Place (AMP) - a facility located at 1619 E. Kalamazoo St, that is custom-designed to serve as a community-based,

multi-functional food resource center and food hub. Even while building out the 5000 square foot warehouse that houses the AMP, Center staff researched and planned programs so that the moment that this community-crafted facility was approved for occupancy in August 2013, the Exchange (Food Hub), the Commercial Kitchen, and the Allen Street Winter Farmers Market could be launched.

**The Exchange.** The very first AMP program to be introduced was the "Exchange," which links mid-Michigan small farmers and food producers with institutional and commercial procurers interested in buying 'local.' A web-based system is used for posting and ordering products; distribution occurs on-site at the Allen Market Place. The Exchange is off to a promising start: registration on [www.allenmarketplace.org](http://www.allenmarketplace.org) has grown to include 47 growers and 37 buyers! AMP staff provide participating farmers one-on-one assistance with registration, posting/pricing products, and uploading photos. Local restaurateurs, caterers and institutional food service managers from hospitals and schools have been invited to bi-monthly 'Meet the Growers' events. Even neighbors are utilizing The Exchange by forming buyers clubs to take advantage of higher volumes and lower prices. As we scale up the scope and reach of The Exchange, we are committed to maintaining this unique combination of high-tech capacity and personalized, hands-on involvement.

In fact, AMP staff are already planning a comprehensive schedule of classes, workshops, and coaching opportunities to be offered to growers and taught by educators and mentors from partnering organizations throughout the region. These training topics (e.g., business and financial planning, recordkeeping, marketing, and safe growing practices) are intended to increase small farmers' capacity to farm safely,

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## Influence of Mental Health Messages in Telenovelas Among Latino Seniors

by Daniel Velez Ortiz and Isabel Zepeda

### INTRODUCTION

This pilot study examined the effects of mental health messages portrayed in telenovelas (Spanish language and culturally congruent soap operas). There is a large disparity in unmet needs for mental health services within the older Latino population living in the United States. Census Bureau projections show that between 2008 and 2030 the Latino population aged 65 years and older will increase by 224 percent compared to a 65 percent increase for the White population aged 65 and older. Further, Chicanos or Mexican Americans are the largest Latino group in the United States. Given this projected growth, it is alarming that research has found that Latinos, including Mexican Americans, are among the groups with the highest likelihood of psychiatric disorders within all ethnic groups (Alegria et al., 2007). That disparity, especially in utilization and outcomes, has been studied primarily within language and cultural barriers at the client level. However, less has been studied about their perceptions of mental illness and its treatment based on images portrayed in mass media popular television, such as, *telenovelas*.

Mass communication has a wide reach and can

greatly influence the perceptions and knowledge that Mexican American older adults can have about mental health issues. Researchers such as Elder, Ayala, Parra-Medina and Talavera (2009) present the Communication Persuasion Model (CPM) as a theoretical foundation of mass media campaigns, which takes into account how public communication changes attitudes and behaviors of the viewers. CPM's successful outcomes depend on the different channels that communication messages are sent through, the messages portrayed (positive or negative), and the targeted audience. Within the CPM theory there are four main factors to consider when examining the impact of mass communication messages (McGuire, (1989). First is the *channel of communication*, which refers to the medium through which the message is delivered. The channel must be maximized to reach the largest number of the target audience, plus it must capture their attention during the delivery of the message. Second, the *source of communication* is also important to consider because it must reflect a deep understanding of cultural and social characteristics that the receivers will value and accept. Third is the *message* itself, which must be sensitive to literacy

issues as well as language preference and social norms of the audience, such as, household composition, individual vs. collectivist views, and family dynamics. Lastly, the *audience* must retain the messages and internalize them to the degree that affects their perceptions and behaviors.

The CPM model has been used to help educate the Latino community concerning health issues (Elder et al., 2009). *Telenovelas* can bring a new way of displaying mental health information to the Latino community because they provide an appropriate *channel* that is already structured and reaches millions of viewers internationally. Further, *telenovelas* make a very fitting *source* because they are produced and casted by Latino professionals that are very aware of the cultural values of their audience. The mental health *messages* brought forth by *telenovelas* are tied to the plot and characters that the actors portray, thus they are sensitive to family dynamics and societal norms as well as literacy level of the audience. Because *telenovelas* have a very wide appeal and have even become a part of cultural traditions within families, the *audience* members are much more likely to accept and replicate health behaviors. CPM theory has only been used within the context of physical health. Yet, it could hold potential for influencing perceptions and behaviors about mental health, even with great stigma attached to this area.

## TARGETED MEDIA HEALTH COMMUNICATION

There are various forms of targeted media communication that have been used by other researchers. *Fotonovelas*, which are comic-book-type booklets that convey culturally appropriate messages through the use of pictures and dialogues. *Fotonovelas* are used to communicate positive education, which are mostly targeting the ethnic minorities who show lower literacy rates. Unger et al. (2007) conducted a study about the usefulness of *fotonovelas* in increasing the awareness and knowledge of depression in the Latino population. Latino participants were randomly selected from a community adult school. In their study there were 157 participants with a median age of 36, roughly 48 percent female and 52 percent male. Participants were given pre and post-surveys about the material on the pamphlets and then another survey a month later. The study showed very good results and increased knowledge about depression, especially in antidepressant stigma and mental health stigma.

In order to reach the Latino community we have to use methods that are more likely to spark their interest. Popular

forms of mass media for the Latino community are *telenovelas*, which are Spanish language soap operas. Elder, et al., (2009) conducted a study using *telenovelas* as a form of educating the Latino community about breast cancer. Health professionals collaborated with Telemundo (a Latino television network) to create a storyline about breast cancer in a *telenovela* and evaluated the viewers' knowledge and behavioral intentions. They conducted the studies using three methods of examination. First, a 1-800-4-CANCER hotline (N=2500), which showed a substantial increase in calls when the number was aired during the soap opera. Secondly, a national wide telephone survey (N=500), showing that viewers gained positive knowledge about breast cancer from the *telenovela* and men were more likely to persuade women to have a mammogram. As these previous studies show, there has been research conducted on depression as well as breast cancer through mass media. However, there is not much research on mental illness media portrayals in the Latino community. This study examined the influence of *telenovelas* on mental health perceptions and attitudes about seeking mental health services among Latino older adults. A long term goal would be to incorporate positive messages into *telenovelas* that prompt accurate health perceptions and behavioral change toward issues of mental health.

## METHODS

This study used focus groups. The site was a community center senior program in the Michigan. Participants (n = 8) were all older Latinas. Participants were presented episodes of a *telenovela*. There were three points of measurement (pre, intermediate, and post). Both pre and post measurements assessed knowledge and perceptions of mental illness. The intermediate explored impressions of older adults related to mental illness and services as shown in the *telenovela*. At the end, there was an educational session with invited guests from the local community mental health agency.

Participants were invited to attend six sessions with three of those sessions being focus groups. We chose the senior program setting because they provide nutritious meals to all participants, transportation to the center, information and referral services, health care and physical health programs for older adults. Because the *telenovelas* are in Spanish, we only recruited Spanish-speaking participants.

### Focus Group Participants

The participants consisted of 8 Spanish-speaking women who identified as Mexican in origin. Participants ranged in age

from 55 to 92 years of age with an education level ranging from 3rd to 10th grade.

### **Telenovela Plot**

The *telenovela* shown to the participants depicted a young girl who was confined to a mental hospital because she was wrongfully accused of doing drugs. She was interned at the clinic for 15 years and given sedative drugs by the doctor to make her seem crazy to her family. The doctor drugged her by orders of the young girl's stepmother; he was being paid to keep her at the mental hospital and to make her "lose her mind."

### **Data Analysis**

Tape recordings for each focus group were transcribed and translated. The focus group transcriptions were then analyzed using a thematic approach.

## **RESULTS**

At pre-measurement, participants had little experience with the topic of mental illness or related services. When shown *telenovela* scenes depicting stigmatized characters with mental illness, all participants were in agreement the *telenovelas* resembled what happens in real life around mental illness and provision mental health services. After the informational session, participants were much more critical of the portrayal of mental health issues and stated they felt less afraid of it after having more accurate information. When the participants were asked in the pre-focus group what first came to mind to them when they heard the term mental illness they mentioned things like "crazy" and "that their mind is gone". In the post-focus group when asked the same question the participants said, "One should not trust in that person because they don't have the mentality that we have." They no longer labeled individuals with mental illness as people who were "crazy" but they still thought that trusting in a person with a mental illness was not a good idea because to them, those individuals are not to be trusted.

In the pre-test focus group, participants were asked what kind of mental illnesses they knew about and from some of the participants personal experiences they identified schizophrenia as being a mental illness. The participants could not identify any other mental illness because, to their knowledge and personal experiences, the only thing they had seen, or thought they had seen, was people with schizophrenia. We also asked participants whether they thought men or women were most prone to suffering from a mental illness as well as older or younger people.

In the first focus group, when asked these questions, participants agreed that younger people were more affected by mental illnesses. They believed this because they said younger people "experiment with too many things", "there are drugs out there...they themselves are looking for evil." They believe that getting involved in drug activities is a major cause for mental illness. It starts with the youth because that age is when youth want to get out and sometimes run into the wrong people and do things that they should not be doing. However, they were not sure about gender and propensity to become mentally ill. During the post-test focus groups participants said that both men and women are equally prone to getting a mental illness because they both can use drugs and abuse of their bodies. After watching the *telenovela* scenes where both genders were shown as patients at the psychiatric institution, participants identified both men and women as being affected the same way.

In the intermediate focus group the participants were asked if they believed that clinics in the United States were like the one shown on the *telenovela*, where you can pay a doctor to drug you and make you look crazy. The participants answered "yes", they believed that with money you could buy a doctor into doing whatever you wanted. By watching the negative message portrayed in the *telenovela* they expressed some concern/fear of being placed in a mental hospital by their children. They said that when you get older things change, people do not remember things the same way, and if the children are bad and do not want their parents they can pay to have them put into a mental hospital.

## **CONCLUSION**

As the CPM model would predict, the *telenovelas* were very influential in transmitting a message about mental illness and its treatment, although a negative one. Further, participants were able to relate the experience of the fictional characters into their own lives and their views of mental illness and mental health systems. Mental health is a much stigmatized issue among the Latino population, especially older adults. The participants in this study felt vulnerable and at times threatened by the prospect of getting labeled mentally ill by relatives or others who may wish to do them harm. This stereotyped view of mental illness also permeated into a distrust of mental health systems and professionals. By watching the negative messages in the *telenovela*, the participants felt that doctors would do anything for money, even wrongfully medicate a person. Further research is needed in a much larger scale to understand the specific mechanisms by which mental illness and treatment stereotypes are transmitted via mass media

outlets. Further research should also focus on how to utilize mass media communication to improve literacy about mental health and related services.

## LIMITATIONS

This study was limited by the small sample size and the lack of male participation. The small group of participants was not necessarily representative of the older Latino population. Larger studies are needed to confirm and expand upon the results found. Further, this study relied upon self-report of perceptions of mental illness; thus there may have been some bias in the responses given by the participants. To minimize these limitations, the researchers tried to create an open conversation and comfortable atmosphere with food and seating arrangements conducive to conversation. 

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## JSRI Hosts Community Author

Continued from Page 10

the novel, and stated that trafficking of children was central to the novel from the very beginning. He wanted to show how these types of crimes occur here in this country and are not solely occurring in other countries.

According to Martinez, the Samora Institute will continue to host readings by community authors whose works shed light on issues affecting Latino communities. He closed the session by thanking the panels for their preparation, passion, and excellent presentations. 

## Allen Market Place

Continued from Page 17

effectively and successfully. Though open to all mid-Michigan growers, the farmers and food producers most likely to benefit from these offerings are beginning and historically underserved farmers - minorities, women, urban and refugee farmers. AMP staff are working closely with Lansing Roots (A Refugee Farmers Program sponsored by the Garden Project of the Greater Lansing Food Bank) and Capital Village Co-op (a collection of small urban farmers and food producers) to ensure that these trainings are especially pertinent to those growers who need them most.

**The AMP Kitchen and Allen Street Winter Farmers Market.** The Exchange works in an integrated fashion with the AMP's licensed commercial kitchen and with the Allen Street Winter Farmers' Market. The ten-year-old seasonal Farmers Market moved indoors in November, 2013 and will continue in the AMP every Wednesday until May 2014, when it will return to its outdoor location. As anticipated, numerous growers are already utilizing more than one AMP program. One long-time vendor from the outdoor Market now vends at our Winter Market, posts product on The Exchange, and began in January to rent our AMP Kitchen to create value-added product -- which will then be sold through the Exchange and at our Market.

In addition to our farmers, food entrepreneurs interested in creating value-added product, caterers and community groups will be able to rent the AMP Kitchen. And, since January, we have been offering convivial and fun culinary classes and cooking demonstrations to interested residents, including youth!

## Dual Mission: Neighborhood and Region

The Allen Neighborhood Center serves a richly diverse, low-moderate income urban neighborhood. The expansion and success of our Allen Market Place programs allows us to simultaneously address the food access/quality/security needs of our immediate community and to strengthen the regional food system.

We are proud of the community-based creation of the Allen Market Place. A colorful, welcoming facility and social gathering space, it will support the neighborhood and the region in the years to come. We look forward, with the continuing involvement of our neighbors near and far, to bringing the AMP to full life and full potential. 

## Latinos and the Affordable Care Act

### Continued from Page 10

undocumented persons will most likely forgo this option due to fear of being reported, fines will be assessed for failing to do so. It is unlikely that the undocumented will feel the pecuniary impact of the mandatory penalty as fines are assessed by deducted tax refunds.

Non-citizen immigrants (documented) are more likely to be uninsured than U.S. born residents. Those who are in the United States have two options. First, they may use their own funds to purchase health insurance on the marketplace exchange. Second, if they have been in the United States for 5 years and meet eligibility requirements they may apply for Medicaid. In addition, for this group, after the 5 year mandatory period subsidies may be available to go on the exchange for expanded coverage. Individuals can apply for Medicaid without the five year waiting period if they qualify for refugee status. A full list of immigration status and marketplace eligibility can be found here: <https://www.healthcare.gov/immigration-status-and-the-marketplace/>.

Families with mixed status household members may struggle the most with understanding and accessing health care through the ACA. Developing trust so that individuals can sign up without fearing that their family members will be reported and deported is an important barrier that must be addressed.

### Reaching the Latino Community

Models on how to reach out to the Latino community and help individuals manage their care options have been limited. Because the implementation of the ACA was slow and at times impossible to access, service to the Latino community has suffered. Long wait times for bilingual staff, slow processing of paper applications, and incorrect Spanish-language used on the website delayed sign up times and increased confusion. Even in states such as California where large numbers of Latinos reside and where the state has spent millions on advertising and outreach to Latinos, few have signed up. In response, state political leaders have begun new outreach efforts.

California with its progressive reputation and attention to Latino populations has not adequately managed the implementation stages of the ACA. How then are other states faring? Outreach and enrollment efforts face many barriers including hard-to-reach populations disadvantaged by urban/rural divides, access to interpreters (language),

few community response efforts, and culturally competent information. In addition, the rush to “get people signed up” has resulted in a vacuum in terms of the steps that follow sign up, in particular with renewal and access to care.

Finally, the lack of support at the community level of trained culturally competent health care advisors stunts the implementation and sign-up process. Advocates struggle to keep up with and learn the basics of the enrollment process. According to La Raza, lack of funding for community-based organizations and lack of capacity among staff translate into poor implementation.

### Effects of ACA - How will this impact our Communities?

*Expanded coverage.* For many Latinos, some basics of the ACA positively impact health care coverage in the form of expanded care. Young adults are now able to stay on their parents’ health care plans for longer times (approximately 913,000 Latino youth), seniors pay less for prescriptions drugs, and individuals can no longer be denied coverage based on pre-existing conditions. According to [healthcare.gov](http://healthcare.gov), 8.2 million Latinos who already have private health care insurance will receive expanded preventative services (no cost sharing) for many services. Latina women will have guaranteed access to preventive services; Medicare will expand to serve 3.9 million Latino elderly and disabled.

*Expansion of Medicaid.* Generous federal matching funds can be utilized by states in order to expand Medicaid coverage for many needy Americans. According to the Kaiser Family Foundation, 58% of uninsured Latinos may be eligible for care coverage through the expansion of Medicaid, and 38% for subsidized coverage. The new expansion affects individuals who are at 138% or below the poverty line (for a single person that is about \$15K a year), are not incarcerated, and do not qualify for Medicare. This includes individuals from ages 19 through 65, and will include simplified applications for the Children’s Health Insurance Program (CHIP) and for joining the Health Benefit Exchange. Still, not all states plan to take advantage of the Medicaid expansion for reasons that fall along mostly ideological lines (in opposition to the ACA). This impacts low-income Latinos as nearly 40% of currently uninsured Latinos reside in states that do not currently opt to expand Medicaid programs.

Interestingly, states wanting to access the generous federal matching funds have proposed new pathways for receiving federal support. Rather than expand Medicaid programs, several states seek to cover the newly eligible Medicaid

population through private insurance receiving government subsidies. In other words, using Federal funds to purchase private health care. We have yet to understand how this will affect Latinos and if such private exchanges will serve or exploit.

*Expansion of a diverse health care workforce.* In order to address the needs of minority populations, funding allocated through ACA will support the National Health Care Service Corps. According to [healthcare.gov](http://healthcare.gov), 16% of the corps are Latino physicians. The aim is to provide services that can be accessed and ensure long-term health care treatment. In addition funds have been available to community health centers, of which one in every three patients is Latino.

*Research.* One aspect that limits culturally competent care is lack of evidence based health care interventions and treatment options for Latinos. To this end, part of the ACA provides funding for the Office of Minority Health under the Department of Human Services. This agency, housed under the National Institute for Health, plans to improve health outcomes for minorities by increasing funded research, conducting research, and translating quality health care studies into meaningful interventions for communities.

## Conclusion

The implementation and tweaking of the Affordable Health Care for America Act will continue to be an ideological struggle. Each new implementation issue that arises promises to be a new possibility for political partisanship and system wrangling. Free market pundits who tout privatization models and deregulation cannot remain content with the impact of the national health care model. To this end, implementation of the ACA law may continue to be hindered by active opposition and by passive neglect.

While political ideologists create hyperbolic battles of territoriality, the most disadvantaged populations suffer. Latinos and those who work with Latino communities can lead the way in this new arena with strong representation and active participation. Suggestions would be to target Latino populations on a multi-front campaign that includes media, social media, home visits, phone outreach, participation in community events (health fairs), and proactive participation by local political leaders.

Although there is no way to truly know or understand the ultimate impact of the ACA on Latino populations; it necessary to keep close watch on how political maneuvering and ideological grandstanding impact implementation and the health outcomes of Latinos and other minority groups. 

## Telamon Michigan Migrant Head Start Nutrition-Needs Assessment

Continued from Page 11

of food insecurity. The rate of overweight and obesity among children is very high. Erroneous parents' perception of their children's weight status, poor nutrition knowledge, and high food insecurity seem to be among the most significant barriers to good nutritional health in the MMHS families. This preliminary needs assessment was necessary in order to recognize and identify the gap of knowledge about the health and nutritional status of MMHS families and help expand current efforts to improve the wellbeing of MMHS families. 



## Book Review: *The Informal and Underground Economy of the South Texas Border*

Continued from Page 5

century, when Americans would cross the border to enjoy a few days in Mexico, to a site of increased criminal activity (drug smuggling and human trafficking) and violence, with Americans today fearing to cross the border into Mexico. The border wall is symbolic of the fear Americans have of the people from south of the border. Missing from the book, however, is an overview of how economic structural changes are rooted in the neoliberal policies of the past four decades. Had that been provided, readers would have a better understanding of the historical dimensions of how the economic policies of the capitalist ruling classes in both the U.S. and Mexico have promoted the growth of both informal and underground economies on the South Texas border. 

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