

Testimony to the  
New York City Council  
Higher Education Committee  
Resolution 858  
Friday, September 26<sup>th</sup>, 2008

I would like to thank the Higher Education Committee of the New York City Council for giving me this opportunity to testify concerning the need to increase opportunities for higher education.

The College and Community Fellowship (CCF), is an incredible group of students who illustrate the value of educational opportunity to move people toward self actualization. Our internal data confirm what other studies show: with every year of education, the risk of criminal recidivism declines. Yet higher education opportunities for people in prison and people with criminal convictions are severely limited.

Title IV of the 1965 Higher Education Act allowed incarcerated students to apply for low-income tuition assistance. As a result, by 1982, there were 350 college programs in United States prisons. However, this policy was attacked in the 1990s in the midst of tough-on-crime debates supported by the faulty assumption that educating people in prison came at a high cost. In fact, crime rates were going down and the amount of Pell money spent on higher education in prison equaled only one tenth of one percent of the Pell budget.

In the end, Congress passed the 1993 crime bill, which made prisoners ineligible for federal student financial aid, Governor Pataki fooled suit by eliminating TAP eligibility. This was reinforced by the reauthorization of the Higher Education Act in 1994, and most in-prison college programs closed their doors. In addition, in 1998 Congress limited access to Pell Grants for students outside of prison based on certain felony convictions. Thousands of students, a disparate number of them African American and Latino, were stripped of access to higher education that would have significantly increased their chances of successfully returning to the community. These are the same people whose opportunities have long been limited by failed educational policies. There is a correlation between lack of access to education and the likelihood of imprisonment. Many people in New York state prisons come from the most troubled school districts in New York City.

In New York, more African American men have entered the prison system for drug offenses since 1998 than have graduated from the State University of New York with undergraduate, master's, and doctoral degrees combined.

Prisoner reentry issues have gained the attention of national and local policy makers who are committed to investment in assisting people who are released from prison. Many programs address the basic needs of people once released from prison (food, clothes, shelter : Abraham Maslow Hierarchy) and I commend all of these great programs, but the College and Community Fellowship guides people through the stages of higher education, while promoting their leadership, self advocacy, artistic expression, civic participation and long term economic security. These are the tools that will lead to self actualization!

CCF improves chances of deep social reintegration by supporting people through completion of higher education degrees. CCF offers academic counseling, tuition assistance, access to mentors and tutors, and opportunities to develop leadership skills. These strategies play a role in reducing recidivism. Within three years of release the rate of recidivism is 51.8 percent nationally and 43.8 percent in New York State. The recidivism rate for CCF students after eight years of operation is 2 percent. It costs CCF \$4,220 per student annually to run the program. To return a person to prison cost the State of New York about \$37,000 per person each year. CCF's greatest achievement has been the ability to put the program's graduates (people like me) on a path toward self-actualization.

We all know that education transforms both individuals and communities. Higher education increases employability, reduces recidivism, and has a positive effect on health, overall quality of life, and social integration. Public benefits of educating more people include increased tax revenues, greater workplace productivity, increased workforce flexibility, and decreased reliance on public assistance.

In a country where second chances and opportunity are professed values, democratic access to higher education must include access for people in prison and people who have been convicted of crimes. We cannot bar the most vulnerable people from the very thing that has the greatest potential to change their lives.

Resolution 858 is step toward democratic access to higher education. The members and staff of the College and Community Fellowship would be happy to work with the New York City Council to find additional ways to move in the right direction.

Respectfully submitted,

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## COLLEGE AND COMMUNITY FELLOWSHIP

## CCF AT A GLANCE

Founded in 2000, CCF brings together the concerns of those who are interested in developing alternatives beyond the short-term "concrete and immediate needs" approach of current prisoner reentry and transition programs. CCF is a broad-based community offering academic support, kinship, and leadership opportunities to women negotiating the difficulties of life after prison including re-uniting with family and children, full time jobs, and college.

*THE MISSION OF CCF IS TO ELIMINATE INDIVIDUAL AND SOCIAL BARRIERS TO EDUCATION AND CIVIC PARTICIPATION FOR FORMERLY INCARCERATED WOMEN AND THEIR FAMILIES.*

**CCF BY 2007: 14 ASSOCIATE DEGREES • 34 BACHELOR'S DEGREES • 25 MASTER'S DEGREES 1 PHD**

Participants, called **CCF** Fellows, like all college students from disadvantaged backgrounds need additional academic and financial support systems in order to improve their chances of degree completion. The **CCF** program offers many facets of support.

- ACADEMIC COUNSELING
- MENTORING
- TUTORING
- FINANCIAL ASSISTANCE

Successful reintegration upon release from prison depends on more than academic success. We rebuild a sense of community and a sense of hope. **CCF** recognizes the importance of peer support and accomplishes this through its community building goals.

- COMMUNITY MEETINGS
- SUPPORT GROUP
- SOCIAL/CULTURAL ACTIVITIES

**CCF** Fellows develop their analytic skills, articulate their individual and collective voices, and participate as leaders in **CCF** and other community-based organizations. This is accomplished through public speaking, advocacy, board participation, creativity, and research.

- SPEAKERS BUREAU
- ORGANIZATIONAL LEADERSHIP
- THE THEATER FOR SOCIAL CHANGE
- COMMUNITY, LEADERSHIP, AND EDUCATION AFTER REENTRY

**CCF** is a private 501 (c) (3) organization that is charitably housed at the Graduate Center of the City University of New York with funding from private foundations and individual donors.

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# Phoenix House

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**Testimony presented by Bessie Oster, Phoenix House Director of Prevention Services  
Before the New York City Council  
September 26, 2008**

Good afternoon Ladies and Gentlemen. My name is Bessie Oster and I'm the Director of Prevention Services at Phoenix House. I am here today to whole heartedly endorse the City Council's Resolution 858 to repeal the Higher Education Act of 1965 barring students with drug convictions from receiving federal financial aid for college.

For more than 40 years, Phoenix House has been on the front lines in the fight against substance abuse by treating men and women, strengthening families and communities, and teaching kids about the dangers of drug use. Today, Phoenix House serves nearly 2,000 New Yorkers each day.

When it comes to adolescents, Phoenix House is nationally recognized for innovative and effective programming.<sup>1</sup> In New York City, Phoenix House operates adolescent programs across the continuum of care, from school- and community-based prevention to residential treatment academies.

Last year, we began providing "continuing care" services to support youth as they make the transition back home after completing treatment at our residential centers. I am very proud to report that our continuing care program has a college counseling component and this fall for the first time, we're helping our program graduates enroll in college.

A year ago, society might not have considered these youth "college material." Many of the students enrolled at the Phoenix Academy have grown up in some of New York City's toughest neighborhoods: Brownsville, East Harlem and the South Bronx. They come to Phoenix House with a multitude of needs – dependence on drugs, mental health issues, lack of family support, gang involvement and learning disorders. Without guidance, resources and opportunities, these teens quickly become entangled in the juvenile justice system and begin a downward spiral to perpetual poverty and a life devoid of achievable opportunities.

But these kids can get better! Given the right opportunities, they can break the cycle of poverty and re-enter society stronger than ever.

Just yesterday afternoon, I spoke to a young man named John who completed high school at the Phoenix Academy and is now a freshman at Kingsborough Community College. He described how higher education has brought him to a better way of living. He believes that such opportunities give hope to his peers at Phoenix House and offers a way to re-enter society such that young men and women can no longer feel like outsiders.

Sadly, this law which targets young people with drug convictions was probably intended to demonstrate a "get serious" attitude towards drugs, but in effect only limits those who most need educational opportunities. Basically, this law keeps oppressed young people down by limiting opportunities to transcend the reality in which they grew up.

At its most fundamental level, this law is a tool of social oppression. Because young black and Hispanic males are disproportionately targeted for drug related arrests, there is a basic inequity in who the law targets.

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<sup>1</sup> Rand Corporation Report. *Psychology of Addictive Behaviors*. September 2004.

The Attorney General reports that NYC's blacks and Hispanics are disproportionately detained, questioned, and searched. Whereas blacks comprised 26% of NYC's population, they accounted for 51% of all stops. Hispanics comprised 24% of the population but accounted for 33% of all stops. In strong contrast, whites comprised 43% of the population and yet accounted for only 13% of all stops.

Thus, there is an inherent racial inequity in who the law targets.

I can't help but to see the divisiveness of a law that dictates who "deserves" access to education. Currently, the Federal Application for Financial Aid asks "Have you been convicted for the possession or sale of illegal drugs for an offense that occurred while you were receiving federal student aid?" This is the only request for information about legal status. Basically, it is OK to have criminal record for a violent crime, but not for any drug convictions. This is a little bit hard to swallow, given that black and Hispanic are targeted for drugs-related arrests at a higher rate than other populations.

Furthermore, our scientific understanding of addiction has certainly advanced since this law was written, some 40 years ago. While not all individuals with criminal convictions exhibit full blown addictions, some do. And given that we now recognize addiction as a disease, we would not consider limiting financial aid to individuals with other medical conditions.

In the field of social services, there is no silver bullet, and it can be hard to pinpoint exactly which interventions work most effectively. But when it comes to education, there are high correlations with a myriad of positive outcomes, including employment status, earning potential, health, and even marital status.

Education is the ultimate opportunity. It has the capacity to equalize all members of society across gender, race and socio economic status. It is the initial stepping stone through which many other positive life outcomes fall into place.

Indeed, adults with college degrees are at least three times less likely to be unemployed than adults with a high school education or less. More education leads to more money. Individuals with at least some postsecondary education earn, on average, almost two-thirds more than high school graduates.<sup>2</sup>

Study after study shows that more educated an individual is, the lower their cost to society. Dropouts are much more likely than their peers who graduate to be unemployed, live in poverty, receive public assistance, be in prison on death row, be unhealthy, divorced, and single parents with children who drop out from high school themselves.<sup>3</sup> Our communities and nation also suffer from the dropout epidemic due to the loss of productive workers and the higher costs associated with increased incarceration, health care and social services.

Hopefully my message is clear: the cost to society is much higher if we don't provide educational opportunities through financial aid for those who need it most – including students with drug convictions.

Please consider supporting Resolution 858 so that organizations like Phoenix House can help some of the City's most disenfranchised young people become part of an educated workforce that gives back to the City.

Thank you for your time.

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<sup>2</sup> Carnevale and Desrochers, 2003

<sup>3</sup> <http://www.gatesfoundation.org/nr/downloads/ed/TheSilentEpidemic3-06FINAL.pdf>



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Testimony submitted to

New York City Council Higher Education Committee

Res 858 – By Council Members Foster, Brewer, Fidler, James, and Stewart –

Resolution calling upon the United States Congress to repeal the 1998 amendments to the Higher Education Act of 1965 that bar students with previous drug convictions from receiving federal financial aid for college.

Friday, September 26, 2008

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For the record, my name is Evelyn Malavé and I am a legal assistant, representing the Legal Action Center and its project the National H.I.R.E. Network. I want to thank you council members for inviting us to this hearing today concerning Res. 858, a resolution to repeal the 1998 amendments to the Higher Education Act of 1965 that bar students with previous drug convictions from receiving federal financial aid for college. I have submitted written testimony for the record but I just want to highlight a few points for you today.

First of all, I am delighted to be here at this hearing. The Legal Action Center is the only non-profit law and policy organization in the country whose sole mission is to fight discrimination against people with past drug and alcohol histories, criminal records, and HIV/AIDS. The National H.I.R.E. (**H**elping **I**ndividuals with criminal records **R**e-enter through **E**mployment) Network, a project of the Legal Action Center, is a national clearinghouse of information, a technical assistance provider, and an advocate for policies that increase and improve employment opportunities for people with criminal histories. One of our core issues is increasing access to higher education for people with criminal records and past drug and alcohol histories.

We are supportive of the Council's recognition of this important issue and we hope to serve as a resource to the Council as it continues to look at what it can do to increase access to higher education for every person in our society. Higher education is the key to success in today's society and for people with criminal histories.

To provide a little bit of background for you about the current state of affairs, I would like to inform you that a piece of legislation which was signed into law on February 8<sup>th</sup>, 2006, has already repealed the part of the 1998 amendments to the Higher Education Act of 1965 that denied and delayed aid to students with previous drug convictions. However, this is only a partial repeal because people who are convicted of drug offenses while receiving aid may still legally have their aid denied or delayed. Additionally, an estimated tens of thousands of students who are now eligible may not know it.

And so, while we applaud this partial victory for people with criminal histories, we believe that this issue still requires our attention and efforts. First of all, for access to federal financial aid to be truly equal, the 1998 amendments must be fully repealed. Secondly, we must take steps to ensure that positive changes to the law work in action as well as on paper.

As of the 2006 changes, the Higher Education Act states that students who are convicted of possession of drugs while receiving federal financial aid will be ineligible for aid for one year for the first offense, two years for the second offense, and indefinitely for the third offense while students who are convicted of sale of drugs while receiving federal financial aid will be ineligible for two years for the first offense, and indefinitely for the second offense.

The law also states that students who have lost their federal financial aid because of their convictions for drug offenses may regain aid by satisfactorily completing a drug rehabilitation program that meets certain requirements prescribed by regulation.

People who are convicted of drug offenses while receiving federal financial aid do not deserve to be left subject to such a flat policy of denial and delay of their aid. Thus, as it stands, the current law continues to unfairly reduce access to higher education at a time when higher education is an ever increasing factor in employment and inflict immeasurable damage by deterring tens of thousands of people from applying for financial aid because they incorrectly believe they are not eligible for aid.

To be more specific, I would like to present you with several reasons the Higher Education Act should be amended so that it no longer denies and delays federal financial aid to people on the basis of their conviction history.

First of all, the law manufactures a disparate impact on African-Americans, Latinos, and other racial minorities: it thrusts unresolved racial disparities in the criminal justice system, such as racial profiling, onto the higher education financing system, hence disproportionately denying educational opportunities to people of color. African-Americans and Latinos are more likely to be convicted of possession of drugs although studies have consistently shown that their rates of substance abuse or dependence are equal to the rates of substance abuse or dependence of Caucasians. For example, the Substance Abuse and Mental Health Services Administration's 2007 National Survey on

Drug Use & Health showed that among persons age 12 or over, Caucasians had a 9.4% rate of substance abuse, African-Americans had an 8.5% rate of substance abuse, and Latinos had an 8.3% rate of substance abuse.<sup>1</sup> But according to the Bureau of Justice Statistics, 45.1% of the state prison inmates serving time for a drug offense are African-American, while only 26.4% were Caucasian and 20.8% were Latino.<sup>2</sup>

The law also effectively adds on a punishment for poor and middle class people with drug convictions while people who can afford to pay for college without financial aid are not affected at all. People who receive welfare may be doubly punished with this policy because their access to benefits may also be blocked if they were convicted of a felony. Finally, in addition these direct class disparities, the criminal justice system itself adds another layer of disparity: poor and middle class people are more likely to be convicted of drug offenses once they are arrested because they are less likely to be effectively represented by counsel.

Advocates of the current policy may argue that it merely delays a student's access to financial aid because students may regain access by satisfactorily completing a drug rehabilitation program that meets the regulations' requirements. However, that is easier said than done. Accessing treatment services in our country can be extremely difficult, if not impossible. The federal Substance Abuse and Mental Health Services Administration and the Institute of Medicine have estimated that only 10% of the individuals who need

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<sup>1</sup> SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN. (SAMHSA), NAT'L SURVEY ON DRUG USE & HEALTH 75 (2007), available at <http://www.oas.samhsa.gov/nsduh/2k7nsduh/2k7Results.pdf>.

<sup>2</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PRISONERS IN 2006, at 24, app. tbl. 9 (2007), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p06.pdf>.

drug and alcohol treatment in any given year receive care.<sup>3</sup> These are not odds that we can rely on when we create legislation that requires people to seek treatment in order to access education.

Even if a person does successfully enroll in an approved drug rehabilitation program, there should not be a flat ban on their continuance of their education while in such a program. Many individuals may be clinically evaluated by their treatment program as able to attend school while in the program; in fact, some professionals may argue that attending school is a barometer of success in treatment. Thus, the current policy's requirement of successful completion before resumed eligibility places some students in Catch-22 situations and unnecessarily delays the education of others.

Additionally, if the point of the current federal financial aid ban is to protect public safety, the ban is unnecessary because judges already have the power to strip an individual of eligibility for federal benefits if they find that the individual's case warrants such an action. Thus, the federal financial aid ban makes a sweeping flat ban out of a decision better left to judicial discretion.

Instead of inflicting needless harm on people that are trying to get an education and better their lives, we should be making the path easier for them. Society as a whole stands to benefit. Indeed, as the United States struggles to maintain a competitive edge in the

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<sup>3</sup> SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN. (SAMHSA), NAT'L SURVEY ON DRUG USE & HEALTH 80 (2007), available at <http://www.oas.samhsa.gov/nsduh/2k7nsduh/2k7Results.pdf>

global economy, every stakeholder must have a vested interest in increasing access to higher education for every member of society.

Three years ago, during the reauthorization of the Higher Education Act, the Congress-created Advisory Committee on Student Financial Assistance submitted a report to Congress entitled *The Student Aid Gauntlet: Making Access to College Simple and Certain*.<sup>4</sup> Drawing on a one year study of student aid from middle school to adulthood, the Committee criticized the federal financial aid system as being so difficult and complicated that it deterred countless potential college students from applying for aid. To make financial aid available to those who need it, the Committee recommended simplifying the FAFSA, by among other suggestions, removing the question about drug convictions. The Committee also recommended a large scale public awareness campaign.

We at Legal Action Center and H.I.R.E. would like to second those recommendations. This excessively punitive and counterproductive law is affecting thousands of would-be students with drug convictions and deterring many others who are actually now legally eligible for aid. So, not only do we need to advocate for legislation that will not compromise in opening the door for higher education for people with drug histories, but we also need to make it clear to the public exactly what the current law says. Too many people who were made eligible for financial aid in 2006 do not know that they are eligible. It is critical that we initiate a public awareness campaign that will inform people

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<sup>4</sup> see ADVISORY COMM. STUDENT FIN. ASSISTANCE, *THE STUDENT AID GAUNTLET: MAKING ACCESS TO COLLEGE SIMPLE AND CERTAIN* (2005)

of their eligibility for financial aid and direct them to resources where they can receive help with their applications.

In conclusion, to remedy the unnecessary denial or delay of federal financial aid to people with drug convictions, we would like to put forth the following recommendations to the Council.

- 1) **Fully repeal the 1998 amendment:** The provision of the Higher Education Act that prevents students with drug convictions from accessing federal financial aid should be repealed.
- 2) **Make the FAFSA clear on the issue:** Online and paper FAFSA forms should contain a detailed but user-friendly worksheet that helps people calculate how their drug convictions affect their eligibility for financial aid. FAFSA forms should explain what the law says about financial aid eligibility for persons with drug convictions, encourage people with drug convictions to apply for financial aid, and refer people to non-federal sources of aid, if the law restricts them from receiving federal aid and they cannot access a treatment program. FAFSA should also create a customer service hotline for people who are confused about their eligibility for federal financial aid.
- 3) **Initiate a public education campaign:** We need a large-scale public education campaign to educate people about their eligibility for federal financial aid. Many people are not aware even of the 2006 changes in the law, which allow students with previous drug convictions to receive federal financial aid without any



restrictions. We recommend a bus campaign like the current bus campaign on voting rights for people with criminal records that was launched by the Fortune Society's David Rothenberg Center for Public Policy, the New York Civil Liberties Union, Citizens Against Recidivism, and the Brennan Center for Justice.

- 4) **Partner with organizations that assist people with criminal records in achieving their higher education goals:** Organizations such as The College Initiative, the College and Community Fellowship, and the CUNY CATCH program assist people with criminal records in pursuing a higher education. These organizations recognize that, in addition to employment, education is a key factor in rehabilitation for people with criminal records. For its 2007-2008 academic year, the College Initiative reported only a 3.2% recidivism rate for its students (1.8% of the 3.2% being accounted for by parole violations).<sup>5</sup>

To conclude, we are happy to serve as a resource and a partner in the Council's efforts to improve access to higher education for people with drug and alcohol histories and people with criminal histories, people who form a large part of our client base. And we are glad that the Council does not underestimate how important a role a higher education can have in a person's access to employment, and their successful re-entry into society. Thank you for inviting us today.

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<sup>5</sup> available at <http://www.collegeinitiative.org/ci/statistics/glance/>

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**Testimony of  
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NAACP Legal Defense and Educational Fund, Inc.  
to the  
New York City Council  
Committee on Higher Education  
Proposed Resolution No. 858 Concerning a Provision of the Higher Education Opportunity  
Act of 2008**

**September 26, 2008**

Thank you for providing me with the opportunity to testify before you today. My name is Vincent Southerland, and I am Assistant Counsel at the NAACP Legal Defense and Educational Fund, Inc. The Legal Defense Fund, since its founding by Thurgood Marshall in 1940, has engaged in a multilayered strategy of litigation, advocacy, public education and outreach in an effort to transform the United States' Constitutional promise of equality under the law into a concrete reality for African-Americans and ultimately all individuals. LDF works to secure the full social and economic integration of all Americans into our society, to ensure social justice and to break down the barriers that prevent the most vulnerable among us from realizing full civil and human rights. Education, and equal access to primary, secondary and higher education, is at the cornerstone of these efforts. Fifty-four years ago, the United States Supreme Court spoke to the critical value of education, declaring that

[E]ducation is perhaps the most important function of state and local governments. . . . It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.<sup>1</sup>

Speaking for a unanimous court in *Brown v Board of Education*, Chief Justice Earl Warren forever changed the course of our democracy with the stroke of a pen. The trajectory of our nation was shaped by the opening of doors to education.

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<sup>1</sup>*Brown v. Board of Ed.*, 347 U.S. 483, 493 (1954).

Now we find ourselves engaged in a continuing struggle. Though that struggle has evolved in some ways, it is still characterized by our collective efforts to once again open the doors to education. Today, my focus is higher education. Indeed, higher education is a key to success in an increasingly complex and globally interconnected world. As the United States Supreme Court explicitly recognized “[i]n order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity” and “[e]ffective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized.”<sup>2</sup>

The Aid Elimination Penalty provision of the Higher Education Act, which bars students with previous drug convictions from receiving financial aid, will impede access to higher education for thousands of students. At a time when our nation is asking how we can help young people to get on a positive and constructive path, the Aid Elimination Penalty slams a door in the face of those who find themselves enmeshed in the criminal justice system, with a drug conviction while having once been the recipients of federal financial aid. Who are these students? If the current statistics on crime, arrest and incarceration rates reveal anything, they are overwhelmingly and disproportionately people of color. A look at the raw numbers makes both the over-incarceration trend and the racial disparities clear.

Since the early 1970's, America's prison and jail population has risen at an alarming rate.<sup>3</sup> A nearly 500% increase in the number of individuals incarcerated has left more than 2.2 million people behind bars—of which 900,000 are African-American.<sup>4</sup> Data from a 2007 study produced by the Sentencing Project tells us that African-Americans are incarcerated at a rate nearly six (5.6) times that of their white counterparts.<sup>5</sup> Hispanics are incarcerated at a rate nearly double (1.8) that of whites.<sup>6</sup>

The War on Drugs accounts for the dramatic increase in involvement with the criminal justice system. America's War on Drugs has ravaged communities, undermined trust in our government and law enforcement officials and created a permanent and persistent class of undereducated and unprepared citizens. There has been an 1100% increase in the number of

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<sup>2</sup> *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003).

<sup>3</sup>The Sentencing Project, *Uneven Justice: State Rates of Incarceration by Race and Ethnicity*, 1 (2007), available at [http://www.sentencingproject.org/admin/documents/publications/rd\\_stateratesofincbyraceandethnicity.pdf](http://www.sentencingproject.org/admin/documents/publications/rd_stateratesofincbyraceandethnicity.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 3

<sup>6</sup> *Id.*

drug offenders behind bars since 1980.<sup>7</sup> Against this backdrop, we are faced with drug arrests that have more than tripled in the last 25 years, accounting for 1.8 million arrests in 2005.<sup>8</sup> And despite comprising 14% of regular drug users, African-Americans are 37% of those arrested for drug offenses and are 56% of those in state prison for drug offenses.<sup>9</sup> As of 2006, African-Americans were 3.5 times more likely to be arrested for drug offenses than whites.<sup>10</sup>

When juxtaposed with the tremendous disparities in access to opportunities for higher education among people of color, what remains is a system designed to exacerbate an already harsh reality. Only 55% of African-American high school graduates enroll in college immediately following high school in comparison to 64% of white students.<sup>11</sup> According to the National Center for Education Statistics, in the fall of 2006 African-Americans comprised 5.5% of the total students enrolled at four year Title IV institutions, while white students comprised 30.1% of those enrolled.<sup>12</sup>

The financial burden of attending school serves as a persistent obstacle to enrollment and graduation for all students, and for students of color in particular. A vast majority—75.3%—of all students at public, four-year Title IV institutions, were recipients of financial aid.<sup>13</sup> Of those, nearly half—37.1%—received federal grants.<sup>14</sup> Studies show that financial barriers serve as one of the greatest obstacles to students of color attending postsecondary institutions.<sup>15</sup> For example,

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<sup>7</sup> The Sentencing Project, *A 25-Year Quagmire: The War on Drugs and Its Impact on American Society*, 2 (2007), available at [http://www.sentencingproject.org/Admin/documents/publications/dp\\_25yearquagmire.pdf](http://www.sentencingproject.org/Admin/documents/publications/dp_25yearquagmire.pdf).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> National Council on Crime and Delinquency, *Racial and Ethnic Disparities in the US Criminal Justice System*, 16 (2008).

<sup>11</sup> NAACP Legal Defense and Educational Fund, *Closing the Gap: Moving from Rhetoric to Reality in Opening Doors to Higher Education for African-American Student*, 5 (2005).

<sup>12</sup> Institute of Education Sciences, *Enrollment in Postsecondary Institutions, Fall 2006*, 4 (2008) available at <http://nces.ed.gov/pubs2008/008173.pdf>.

<sup>13</sup> *Id.* at 12.

<sup>14</sup> *Id.*

<sup>15</sup> Laura Perna & Michelle A. Cooper, *Transforming the First Year of College for Students of Color* (review), 76 *J. Higher Educ.* 4, 479-482 (Jul/Aug 2005); see also Jacqueline King, *Money Matters: the Impact of Race/Ethnicity and Gender on How Students Pay for College* (1999).

low income students are more likely to be African American, Hispanic, or Asian.<sup>16</sup> For African-American students and other student of color in particular, as the cost of college education rises, the financial strain creates a greater dependence upon financial aid.<sup>17</sup> Even after African-American students are able to overcome the financial stressors of initial enrollment, the challenges of obtaining a degree remain tremendous. A mere 36.4% of all African-American students who enrolled in four-year colleges in 1995-1996 attained a bachelor's degree within five years, as compared to 58% of white students.<sup>18</sup> During the 2002-2003 school year, approximately 67% of all degrees conferred went to white students, when approximately 22% went to students of color.<sup>19</sup> Clearly, a statutory provision that aims to eliminate aid for those students caught in the criminal justice system is nothing short of disastrous, particularly for African-Americans and other students of color.

The Higher Education Act's Aid Elimination Penalty turns back the clock on the promise of higher educational opportunity for all. And it does so by allowing an individual's one-time status as a drug offender to define—in the most absolute terms—a life that may otherwise be filled with promise and potential. Even beyond the statistics, which highlight the overwhelming impact of this nation's War on Drugs among African-Americans and other people of color, the force and consequences of the law betray both basic common sense and this nation's Constitutional promise.

First, and perhaps most startling, is the message conveyed to those who have had interactions with the criminal justice system through drug convictions: education shall be foreclosed as a means for self improvement. While punishment and deterrence are functions of the criminal justice system, rehabilitation is also an important—and often overriding goal. The prevalence of drug courts, first-time offender programs and other alternatives to incarceration are clear indicators of the emphasis placed on the rehabilitative function of involvement with the criminal justice system. Yet, rather than providing individuals with the necessary tools to end their addiction to illegal substances and their entanglement with the criminal justice system or to learn from past mistakes and improve their lives, the government's current policy compounds the problem. It works to entrench an under-educated class while reinforcing the very same inadequate social conditions and lack of opportunities that may have pulled a drug offender into the criminal justice system in the first place. It eliminates a path to rehabilitation, employment prospects, economic opportunities and social networks which not only foster individual growth

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<sup>16</sup> The Pell Institute, *Indicators of Opportunity in Higher Education*, 5 (2005) *available at* [http://www.pellinstitute.org/files/6\\_indicators.pdf](http://www.pellinstitute.org/files/6_indicators.pdf).

<sup>17</sup> *Closing the Gap* at 5.

<sup>18</sup> *Id.*

<sup>19</sup> Institute of Education Sciences, *Postsecondary Institutions in the United States: Fall 2003 and Degrees and Other Awards Conferred: 2002-03*, 13 (2005), *available at*: <http://nces.ed.gov/pubs2005/2005154.pdf>.

but allow for a more full and active participation in our democracy. In the end, this message will be most heavily received by the African-American community, a community in which rates of arrest, conviction and incarceration for drug offenses are disproportionately the highest and among whose members the need for federal financial aid for higher education remains the greatest.

Proponents of the provision are sure to highlight that those deemed ineligible for financial aid can regain eligibility by completing an acceptable drug program. Such arguments fail to address the very serious economic burdens imposed by such programs, particularly when individuals have already demonstrated a need for federal financial assistance to attend an institution of higher learning. A student who cannot afford to go to college is now burdened with the prospect of paying for a rehabilitation program which he or she also is unlikely to be able to afford.

Second, the provision does not fully differentiate between classes of drug offenses or even the nature of the controlled substances involved. Though there is a distinction between the sale and possession of drugs and the number of drug convictions one may have, the same cannot be said for the nature of drugs involved. Thus, a student who is convicted of a misdemeanor for possessing a marijuana cigarette will be treated the same as a student convicted of a felony for possession of a kilogram of crack/cocaine. A student who sells marijuana to a neighbor and one who sells heroin to a teenager are treated the same. While the criminal law makes a distinction based on the severity, nature and characteristics of a drug offense, for some inexplicable reason, the federal government fails to do so in determining basic eligibility for financial aid.

Finally, under the Aid Elimination Penalty, nonviolent drug offenders who have already suffered criminal consequences are singled out for the additional punitive measure of financial aid ineligibility, as compared to those who are convicted of more serious crimes and face no such barriers to aid. Such treatment fails to recognize the nexus between the severity of a crime and the appropriate punishment and underscores the shortsightedness and illogical thinking inherent in the Aid Elimination Penalty.

In the end, we must continue to call upon the United States Congress to repeal the HEA's Aid Elimination Penalty. The continued practice of stripping individuals of financial aid for drug convictions not only runs counter to common sense, but it also offends the very promise embodied by the spirit of our Constitution—the notion that educational opportunities should truly be open to all. Its disproportionate impact on African-Americans and other students of color, its failure to recognize the redemptive quality of education and the lack of foresight and common sense tied to the Aid Elimination Penalty require nothing less than our full attention and continued commitment to the struggle for equal access to higher education.