

# CONGRESSIONAL TESTIMONY

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**Testimony Before  
Committee on Education and the Workforce  
Subcommittee on Higher Education and Workforce Development**

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My name is Delano Squires, and I am a Research Fellow in the Richard and Helen DeVos Center for Life, Religion, and Family at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

The Supreme Court's landmark decision in *Students for Fair Admissions v Harvard* held that the use of race-based preferences (i.e., "affirmative action") in college admissions violated the Equal Protection Clause of the Fourteenth Amendment.<sup>1</sup> As you can imagine, the loudest opponents of this decision characterized it as a step backward in higher education and race relations. But their predictions of social regression only resonate with some people because affirmative action has been debated for over 40 years but is still largely misunderstood.

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<sup>1</sup> *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. \_\_\_\_ (2023)

## Overview

A study from the Pew Research Center found that most colleges and universities admit more than 50% of their applicants.<sup>2</sup> The same study found that schools such as Harvard, Yale, Stanford, and Northwestern admit less than 10% of their applicants, while Georgetown University and the University of Southern California admitted between 10 and 20% of their applicants.

These highly selective schools were the institutions most likely to apply racial preferences in the admissions process. But it is important to note that these institutions only represented about 3% of the 2,300 universities in Pew's analysis.

Where race-based preferences were used is one issue. How they were implemented is another.

During the 2018 federal court case on this issue, Harvard's Dean of Admissions acknowledged that the university sends recruiting letters to black, Hispanic, and Native American students with top grades and combined math and verbal SAT scores of at least 1100 out of a possible 1600.<sup>3</sup> White students in states where Harvard acceptance is rare would receive letters if they scored at least 1310. Harvard held prospective Asian American students to the highest standards. Asian American women needed a combined score of 1350 to receive a recruitment letter. Their male counterparts had to score at least 1380.

The school's two-tiered recruitment efforts were reflected in its admissions decisions.<sup>4</sup> Harvard ranked applicants using an academic index comprising

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<sup>2</sup> Drew Desilver, "A majority of U.S. colleges admit most students who apply," Pew Research Center, April 9, 2019, <https://www.pewresearch.org/short-reads/2019/04/09/a-majority-of-u-s-colleges-admit-most-students-who-apply/>

<sup>3</sup> Joan Biskupic, "Harvard trial opens with challenge to recruitment practices", CNN, October 15, 2018, <https://www.cnn.com/2018/10/15/politics/harvard-affirmative-action-opening-arguments/index.html>

<sup>4</sup> Ed Whalen, "Harvard President's Dodgy Defense of Discrimination Against Asian Americans", National Review, January 25, 2022, <https://www.nationalreview.com/bench-memos/harvard-presidents-dodgy-defense-of-discrimination-against-asian-americans/>

SAT scores and grades. These scores were broken into deciles, where the first decile is lowest and the tenth is highest.

An analysis of the university's admissions data found that a black student in the fourth decile and Hispanic student in the sixth decile had a higher chance of being admitted (12.76%) than an Asian student in the *tenth* decile (12.69%). Harvard's own admissions data clearly demonstrates that the school was judging students by different standards based on race.

The average SAT score for Asian students admitted to Harvard between 2000 and 2017 was 1533.<sup>5</sup> For white students it was 1488. But the average scores for black and Hispanic students were 1407 and 1435, respectively. For context, the average SAT score in 2021 was 1060. This is important to note because it would be incorrect to claim Harvard was admitting subpar students.

Yes, the university used different standards of assessment—including highly subjective personality scores—based on race and ethnicity. But an average black applicant to Harvard would have been a very strong candidate at the University of Massachusetts, where the middle 50% of SAT scores range from 1280-1450.<sup>6</sup>

The use of racial preferences at highly selective schools creates a “mismatch” between students and schools which can affect student outcomes. The Heritage Foundation's special report on racial preferences cited prior research from Richard Sander that found black students are more likely than white students with similar academic and personal characteristics to start college but less likely than their white peers with similar characteristics to finish.<sup>7</sup>

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<sup>5</sup> Shera S. Av-Yonah and Molly C. McCafferty, “Asian-American Harvard Admits Earned Highest Average SAT Score of Any Racial Group From 1995 to 2013”, October 22, 2018,

<https://www.thecrimson.com/article/2018/10/22/asian-american-admit-sat-scores/>

<sup>6</sup> University of Massachusetts Amherst, <https://www.umass.edu/admissions/undergraduate-admissions/explore/admissions-statistics>

<sup>7</sup> Lindsey M. Burke, Jonathan Butcher, Mike Gonzalez, Adam Kissel, Hans A. von Spakovsky, Delano Squires, “Created Equal: A Road Map for an America Free of the Discrimination of Racial Preferences”, p.7, The Heritage Foundation, June 29, 2023, <https://www.heritage.org/sites/default/files/2023-07/SR274.pdf>

## Equality in Law and Practice

The Court's decision in *Students for Fair Admissions* was clear: racial preferences were struck down because they are unconstitutional. Harvard's admissions policies subjected Asian and white students to higher standards than their black and Hispanic counterparts.

In the words of Justice John Harlan — the lone dissenter in *Plessy v. Ferguson*, “Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.”<sup>8</sup>

The Supreme Court laid out the constitutional arguments for banning race-based preferences in college admissions. But there is also a belief, held by many progressive commentators, that eliminating these policies will return America to a pre-civil rights era of segregation and discrimination.

That assertion is simply not true. The highest performing black applicants at Harvard have close to a 60% chance of being admitted.<sup>9</sup> And for black legacy students, that number rose to 99.9%.<sup>10</sup> Put simply: no selective university is turning away black students with exceptional grades and test scores. The main issue regarding race and enrollment at Harvard is that 75% of black and 57% of Hispanic applicants are clustered in the bottom three deciles, compared to 16% of their Asian American and 24% of their white peers.<sup>11</sup>

The argument for racial preferences in perpetuity is built on the idea that the legacy of American chattel slavery and racial segregation casts a shadow that continues to keep equality out of reach. This structural explanation of group disparities is treated as truth today but was rejected by the nation's foremost abolitionist.

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<sup>8</sup> *Plessy v. Ferguson*, 163 U.S. 537 (1896).

<sup>9</sup> Peter Arcidiacono, Josh Kinsler, Tyler Ransom, “Legacy and Athlete Preferences at Harvard”, page 45, National Bureau of Economic Research, September 2019, [https://www.nber.org/system/files/working\\_papers/w26316/w26316.pdf](https://www.nber.org/system/files/working_papers/w26316/w26316.pdf)

<sup>10</sup> *Ibid*

<sup>11</sup> *Ibid*

Frederick Douglass's answer to the question, "What shall be done with the Negro if emancipated?"<sup>12</sup> is a powerful insight into human nature:

Deal justly with him. He is a human being, capable of judging between good and evil, right and wrong, liberty and slavery, and is as much a subject of law as any other man; therefore, deal justly with him. He is, like other men, sensible of the motives of reward and punishment. Give him wages for his work, and let hunger pinch him if he don't [sic] work. He knows the difference between fullness and famine, plenty and scarcity. "But will he work?" Why should he not? He is used to it. His hands are already hardened by toil, and he has no dreams of ever getting a living by any other means than by hard work.

Douglass understood that pity and paternalism do not lead to equality. He knew equality cannot be enforced through mandates or quotas. It cannot be declared through fiat or executive order. Any other policies that apply different standards based on race in order to achieve demographic representation only reinforce *inequality* because it is *impossible* to lower expectations and raise performance at the same time.

The only way to achieve equality—whether legally or socially—is to ensure the same rules and standards apply to each citizen, regardless of race, ethnicity, or skin color.

## **College Admissions in a Post-preferences World**

The biggest losers in the fight over racial preferences are the universities who desired the social and political benefits of an ethnically diverse freshman class. Justice Clarence Thomas made this point in his dissenting opinion in the 2003 *Grutter v. Bollinger* case.<sup>13</sup>

No one would argue that a university could set up a lower general admissions standard and then impose heightened requirements only on black applicants. Similarly, a university may not maintain a high

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<sup>12</sup> Frederick Douglass, "What Shall Be Done with the Slaves if Emancipated?" Douglass' Monthly, January 1862, University of Rochester Frederick Douglass Project, <https://rbscp.lib.rochester.edu/4386>

<sup>13</sup> *Grutter v. Bollinger*, 539 U.S. 306 (2003)

admissions standard and grant exemptions to favored races. The Law School, of its own choosing, and for its own purposes, maintains an exclusionary admissions system that it knows produces racially disproportionate results. Racial discrimination is not a permissible solution to the self-inflicted wounds of this elitist admissions policy.

Justice Thomas rightfully understood that there would be a national uproar if black students were outperforming their peers in the classroom but were subjected to arbitrary admissions limits similar to what Asian American students face today.

In the wake of the Supreme Court's decision in *Students for Fair Admissions*, some schools will undoubtedly try to find proxies for race that can be used to achieve their desired racial makeup.

But whatever standards universities use to assess students should be done without consideration of race, ethnicity, or skin color. If socioeconomic status is factored into admissions decisions, it should apply equally to the evaluation of each student. If schools want to strictly judge on the basis of academic profile, they can apply the same cutoff across the board and use a lottery system to ensure they are pulling from a similarly qualified pool of students.

There are also several long-term strategies that should be considered to cultivate truly diverse college campuses that pass constitutional muster.

One would be to promote and advance education choice at the K-12 level. All students should have access to safe learning environments that reflect their families' values and promote high academic standards.

Unfortunately, low-income and minority students, particularly in urban districts, have been consigned to poor-performing public schools by elected officials beholden to the interests of large teachers unions. State policymakers should break the link between zip code and schooling by funding children with their share of education dollars directly.

Several states have already implemented education savings account (ESA)-style options for all families, including Arizona, Arkansas, Florida, Iowa, North Carolina, Utah, and West Virginia.

Giving parents viable education options for their children is critically important to building a diverse pipeline of students who can compete at the most selective universities. But what happens inside of schools is equally important.

This is why current efforts across the country to eliminate homework, standardized tests, gifted programs<sup>14</sup>, and graduation requirements<sup>15</sup> in the name of “equity” have the effect of punishing merit and hard work.

Therefore, schools should end all policies and programs that penalize high achievement or link praiseworthy behaviors, such as attention to detail, to specific ethnic groups.<sup>16</sup> Instead, education policymakers should create pathways for gifted students to receive progressively challenging work in school as well as specialized education programs outside the classroom.

Parents should understand the role they play in creating a home environment that is conducive to learning and high achievement, which schools can help to convey. These efforts can take the form of online resources, in-person orientation programs, and periodic parent-teacher check-ins that explain the link, for example, between studying and academic outcomes.

The percentage of Harvard’s highest performing *applicants* tracks the average SAT scores for Asian (1229), white (1098), Hispanic (964), and black (926) students.<sup>17</sup> This pattern—Asian, white, Hispanic, black—also matches both the average number of hours students spend doing homework and the percentage who do it five days per week or more.<sup>18</sup> The same pattern appears in an analysis of non-marital birth rates—from lowest

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<sup>14</sup> Michelle L. Price, Bobby Caina Calvan, “New York public schools to end gifted and talented program”, AP News, October 8, 2021, <https://apnews.com/article/new-york-new-york-city-race-and-ethnicity-education-d027be86b7d202f1d4ef62e5c3255802>

<sup>15</sup> “New Oregon law suspends graduation testing requirement”, AP News, August 13, 2021, <https://apnews.com/article/health-oregon-education-coronavirus-pandemic-graduation-1ac30980c9e2d26b288a5341464efde8>

<sup>16</sup> Bob McManus, “New York’s Toxic Schools Chancellor”, City Journal, June 3, 2019, <https://www.city-journal.org/article/new-yorks-toxic-schools-chancellor>

<sup>17</sup> “SAT scores”, National Center for Education Statistics, <https://nces.ed.gov/fastfacts/display.asp?id=171>

<sup>18</sup> Table 35, “Average hours spent on homework per week and percentage of 9th- through 12th-grade students who did homework outside of school and whose parents checked that homework was done, by frequency of doing homework and race/ethnicity: 2007”, National Center for Education Statistics, [https://nces.ed.gov/pubs2012/2012026/tables/table\\_35.asp](https://nces.ed.gov/pubs2012/2012026/tables/table_35.asp)

to highest—that reflect one of the most important drivers of education outcomes.<sup>19</sup>

Family structure and home environment play a significant role in student achievement. This connection is not new. The Equality of Educational Opportunity report, also known as the “Coleman Report,” was released in 1966 to fulfill Section 402 of the Civil Rights Act of 1964. The report analyzed data from more than 600,000 students across the country. The author, James Coleman, found that the most important factors that determined student success had to do with a child’s home environment.<sup>20</sup>

Six decades of subsequent research have strengthened the conclusion that children raised in homes with their married parents have better academic and behavioral outcomes than children raised in any other familial arrangement.<sup>21</sup>

This is why some schools are looking for ways to incorporate the “success sequence” into classroom instruction.<sup>22</sup> Students need to know that people who finish high school, secure stable employment, and marry before having children have a single-digit poverty rate by their mid-30s. This is particularly useful knowledge for students who have not grown up in an environment where married, two-parent homes are the norm.

The takeaway for politicians, policymakers and pundits should be clear: a student’s family, home environment, study habits, and school quality play a much larger role in determining their academic outcomes than does their skin color. Policy solutions should reflect these facts, rather than attempt to engineer outcomes in ways that violate basic constitutional principles.

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<sup>19</sup> Mark J. Perry, “Charts of the Day, All Viral Edition”, American Enterprise Institute, March 30, 2021, <https://www.aei.org/carpe-diem/charts-of-the-day-all-viral-edition/>

<sup>20</sup> Anna Egalite, “The Link Between Family Background and Academic Success”, Institute for Family Studies, September 13, 2016, <https://ifstudies.org/blog/the-link-between-family-background-and-academic-success>

<sup>21</sup> Nicholas Zill, “Family Still Matters for Key Indicators of Student Performance,” Institute for Family Studies, April 6, 2020, <https://ifstudies.org/blog/family-still-matters-for-key-indicators-of-student-performance>

<sup>22</sup> Wendy Wang and W. Bradford Wilcox, “The Millennial Success Sequence: Marriage, Kids, and the ‘Success Sequence’ Among Young Adults,” American Enterprise Institute and the Institute for Family Studies, June 2017, p. 22, <https://www.aei.org/wp-content/uploads/2017/06/IFS-MillennialSuccessSequence-Final.pdf?x91208>



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