

**BEFORE THE UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

CHICA PROJECT, AFRICAN COMMUNITY
ECONOMIC DEVELOPMENT OF NEW ENGLAND,
and GREATER BOSTON LATINO NETWORK,

Complainants,

v.

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE (HARVARD CORPORATION),

Respondent.

**COMPLAINT UNDER
TITLE VI OF THE CIVIL
RIGHTS ACT OF 1964**

I. INTRODUCTION

Each year, Harvard College grants special preference in its admissions process to hundreds of mostly white students – not because of anything they have accomplished, but rather solely because of who their relatives are. Applicants whose relatives are wealthy donors to Harvard, or whose parents are Harvard alumni, are flagged at the outset of Harvard’s admissions process and are granted special solicitude and extra “tips” throughout. The students who receive these special preferences (“Donor and Legacy Preferences”) are significantly more likely to be accepted than other applicants, and constitute up to 15% of Harvard’s admitted students.

The students who receive this preferential treatment – based solely on familial ties – are overwhelmingly white. Nearly 70% of donor-related applicants are white, and nearly 70% of legacy applicants are also white.¹ The results of this preferential treatment are substantial. For example, over the period 2014-2019:

- Donor-related applicants were nearly 7 times more likely to be admitted compared to non-donor-related applicants; and
- Legacy applicants were nearly 6 times more likely to be admitted compared to non-legacy applicants.²

At the same time that Donor and Legacy Preferences disproportionately advantage white applicants, they systematically disadvantage students of color, including Black, Latinx, and Asian

¹ P. Arcidiacono, J. Kinsler, & T. Ransom, Legacy and Athlete Preferences at Harvard, 40 J. Lab. Econ. 133 (2021), available at <https://gwern.net/doc/sociology/2021-arcidiacono.pdf>. The authors previously published a Working Paper with the same title. See Legacy and Athlete Preferences at Harvard, National Bureau of Economic Research, NBER Working Paper Series, P. Arcidiacono, J. Kinsler, and T. Ransom (2019), available at https://www.nber.org/system/files/working_papers/w26316/w26316.pdf. Although the data underlying both articles is the same, some of the data and conclusions are presented differently. Therefore, the Complainants cite to both articles within this complaint.

² See Legacy and Athlete Preferences at Harvard, NBER Working Paper Series (2019).

Americans. As the Supreme Court has recently stated: “A benefit provided to some applicants but not to others necessarily advantages the former group at the expense of the latter.”³ For example, experts have concluded that: (1) removing legacy preferences would increase admissions for applicants of color; and (2) approximately one-quarter of the white students admitted would not have been admitted if the Donor and Legacy Preferences, among others, did not exist.⁴

Further, these Donor and Legacy Preferences are not justified by any educational necessity because Harvard cannot show that the use of these preferences is necessary to achieve any important educational goal. To the contrary, the preferential treatment is conferred without regard to the applicant’s credentials or merits – the benefit is derived simply from being born into a particular family.

This preferential treatment violates federal law. Specifically, because Harvard receives substantial federal funds, it is bound by Title VI of the Civil Rights Act of 1964 (“Title VI”) and its implementing regulations, which forbid practices that have an unjustified disparate impact on the basis of race. Because Harvard only admits a certain number of students each year, a spot given to a legacy or donor-related applicant is a spot that becomes unavailable to an applicant who meets the admissions criteria based purely on his or her own merit; “[c]ollege admissions are zero sum,” as the Supreme Court recently emphasized.⁵ In other words, Harvard admits predominantly white students using Donor and Legacy Preferences, and, as a direct result, excludes non-white applicants.

³ See *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, No. 20-1199, 600 U.S. ___, Slip Opinion p. 27 (2023) (the “SFFA Case”).

⁴ See *Legacy and Athlete Preferences at Harvard*, 40 J. Lab. Econ. 133 (2021).

⁵ *Id.*

The need for the Department of Education to put a stop to this discriminatory practice is particularly acute now that the Supreme Court has severely limited the use of race as a factor in higher education admissions processes,⁶ which is expected to have a negative impact on campus diversity. Experts have found that reducing or eliminating Donor and Legacy Preferences enhances diversity in higher education⁷ – an interest Harvard has claimed to be of the highest magnitude.⁸ The fact is that, if the Donor and Legacy Preferences did not exist, more students of color would be admitted to Harvard.

For these reasons, the Complainants respectfully request that the U.S. Department of Education’s (the “Department”) Office for Civil Rights (“OCR”) take all measures necessary to enforce Title VI and ensure Harvard’s compliance with the statute and applicable regulations. These measures include: (1) opening an investigation into Harvard’s use of Donor and Legacy Preferences and the resulting disparate impact; (2) declaring that Harvard’s use of Donor and Legacy Preferences violates Title VI and its implementing regulations; (3) declaring that, if Harvard wishes to continue receiving federal funds, it must immediately cease considering an applicant’s relationship to Harvard alumni in the admissions process; (4) declaring that, if Harvard wishes to continue receiving federal funds, it must immediately cease considering an applicant’s relationship to Harvard donors in the admissions process; (5) ensuring that applicants have no way to identify a familial relationship in the admissions process, including in the application, essays,

⁶ See *Students for Fair Admissions*, No. 20-1199, 600 U.S. __ (2023).

⁷ See *Legacy and Athlete Preferences at Harvard*, 40 J. Lab. Econ. 133 (2021).

⁸ See “Report of the Committee to Study Race-Neutral Alternatives,” Trial Exhibit P316, <https://github.com/tyleransom/SFFAvHarvard-Docs/blob/master/TrialExhibits/P316.pdf>.

and interviews; and (6) granting all other relief that the Department finds appropriate and just. Harvard's continued use of Donor and Legacy Preferences cannot be reconciled with federal law.

II. **JURISDICTIONAL FACTS**

A. **The Complainants**

Chica Project is a Massachusetts-based nonprofit whose mission is to provide education, mentorship, and personal, professional and leadership development programs for young women of color. Specifically, Chica Project is rooted in a culturally affirming, intergenerational, and asset-based framework to support chicanas⁹ on a lifelong journey of community and self-discovery to build collective power. Chica Project is working towards a world where women, girls, and all people experiencing oppression at the intersection of race, ethnicity, and gender have the opportunity to rise to their full potential.¹⁰

African Community Economic Development of New England (“ACEDONE”) is a Boston-based nonprofit whose mission is to assist African refugees and immigrants in becoming self-sufficient, such that they will thrive socially, professionally, and economically. ACEDONE uses a community-based approach to foster leadership and academic development among young adults, including utilizing relationships with colleges and universities. Through these partnerships, ACEDONE focuses on providing youth with substantial educational support.

⁹ Chica Project defines “chica” as what two women call each other affectionately, in support of solidarity and sisterhood.

¹⁰ Chica Project's programs are designed to center, affirm, and empower Black, Latina, and Indigenous identities. Chica Project also welcomes Asian, Arab, Pacific Islander, and multiracial women of color, and anyone who identifies as girl/woman regardless of the gender assigned at birth. Chica Project also welcomes people who identify as femme, non-binary, or gender nonconforming who feel aligned with experiences of girlhood and womanhood; youth beginning at 11 years old, young, and adult women; and those whose sense of identity and belonging has been shaped by immigrant or diaspora experiences.

The Greater Boston Latino Network (“GBLN”) is a collective of Latinx-led community-based organizations designed to address the historical underrepresentation of the Latinx community in Boston. GBLN is comprised of eight partner organizations, including Sociedad Latina, Hyde Square Task Force, Inquilinos Boricuas en Acción, Boston Higher Education Resource Center, East Boston Community Council, Lawyers for Civil Rights, Latino STEM Alliance, and La Alianza Hispana. GBLN’s goal is to promote Latinx leadership in decision-making positions at the local and state levels, which requires a focus on educating youth to be prepared for those positions. GBLN serves over 1000 youth annually.

Chica Project, ACEDONE, and GBLN (together, the “Complainants”) bring this Title VI complaint on behalf of students of color, including, but not limited to, those who are members or otherwise affiliated with Complainants, who have been or will be systematically excluded from Harvard, based on Harvard’s Donor and Legacy Preferences and the resulting unearned and unfair advantage those Preferences provide to students who are overwhelmingly white.

B. The Respondent

The President and Fellows of Harvard College (Harvard Corporation) are the governing board of Harvard University, which is a private educational institution based in Cambridge, Massachusetts that provides for undergraduate, graduate, professional, and research programs in several fields of study, including arts, science, medicine, business, design, and public health. Harvard College is one component of Harvard University.

C. Timeliness

The Title VI violation at issue here, *i.e.*, Harvard’s use of Donor and Legacy Preferences, is continuous and ongoing. Therefore, this Complaint is timely in that it was filed within 180 days of the alleged discrimination.

D. Receipt of Federal Funds

OCR has jurisdiction over this matter because Harvard receives substantial federal funding from the Department of Education on an annual basis to provide for undergraduate, graduate, professional, and research programs in several fields of study, including arts, science, medicine, business, design, and public health.¹¹ As a recipient of these federal funds, Harvard must comply with Title VI and applicable regulations, namely, the obligation to ensure that its programs do not use criteria that disproportionately and unjustifiably exclude applicants in protected classes, such as people of color.

¹¹ See *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 980 F.3d 157, 184 (1st Cir. 2020) (*rev'd on other grounds*, No. 20-1199, 600 U.S. __ (2023)) (“Because Harvard accepts federal funds, it is subject to Title VI.”); see also, e.g., “Federal Work Study on Sponsored Awards Policy,” Harvard University, Financial Administration, Office for Sponsored Programs (Dec. 1, 2020) (“Harvard University participates in the U.S. Department of Education Federal Work Study need-based financial aid program and is required to comply with federal regulations related to hiring and funding student workers.”); Financial Administration, Harvard’s Endowment, <https://finance.harvard.edu/endowment> (“Even with endowment support, Harvard must fund nearly two-thirds of its operating expenses (\$5.4 billion in fiscal year 2022) from other sources,” including federal research grants). See also Financial Overview from the Vice President for Finance and the Treasurer, Harvard University, October 2021, https://finance.harvard.edu/files/fad/files/fy21_financial_overview.pdf?m=1634228445 (In fiscal year 2021, Harvard received approximately \$625 million in federal funding); Financial Overview from the Vice President for Finance and the Treasurer, Harvard University, October 2022, https://finance.harvard.edu/files/fad/files/fy22_financial_overview.pdf (In fiscal year 2022, Harvard received approximately \$642 million in federal funding).

III. FACTUAL BACKGROUND

A. Harvard's Admissions Process¹²

Admission to Harvard is highly competitive because the size of the applicant pool dwarfs the number of available slots. For example, for the class of 2026, Harvard admitted 1,984 of the 61,221 applicants, an admission rate of approximately 3.24%.¹³ Harvard's admissions process has six components: (1) pre-application recruitment efforts; (2) submission of applications; (3) the "first read" of applications; (4) interviews with admissions officers and alumni; (5) subcommittee meetings of admissions officers; and (6) full admissions committee meetings. Harvard also uses "tips" for certain applicants, and those tips can be considered as early as the first read of the application.¹⁴

1. Pre-Application Recruitment

Harvard purchases the names and contact information of students who excel on the ACTs and SATs, and uses that information to create a "search list" of students to whom Harvard sends communications to encourage those students to apply to Harvard.¹⁵ A student's presence on the

¹² During the District Court litigation in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, Harvard provided broad access to documents, data, and testimony surrounding its admissions process and applicant files for expert analysis. The facts set forth in this administrative complaint rely on that information and expert analysis, as well as the recitation of the admissions process by the U.S. Supreme Court and First Circuit Court of Appeals. While the Supreme Court reversed the decisions of the District Court and First Circuit, it did so largely based on the legal issues presented and did not disturb the lower courts' factual findings.

¹³ "A Brief Profile of the Admitted Class of 2026," Harvard College Admissions & Financial Aid, <https://college.harvard.edu/admissions/admissions-statistics>.

¹⁴ *Students for Fair Admissions*, 980 F.3d at 165.

¹⁵ *Id.* at 165-66.

search list has no effect during the admissions process, if the student chooses to apply.¹⁶ Harvard also recruits minority students, low-income students, and those who are the first in their family to go to college.¹⁷

2. Student Applications

Students apply to Harvard using the Common Application, which is a standardized application that students can use to apply to different colleges and universities.¹⁸ Through the Common Application, “students submit a great deal of information, including about their standardized test scores, transcripts, extracurricular activities, awards, parents’ and siblings’ educational information, parents’ occupations and marital status, teacher and guidance counselor recommendations, intended field of study, personal statement, and additional supplemental essays or academic material.”¹⁹

3. Harvard’s “First Read”

At the time of the SFFA lawsuit against Harvard in the District Court, “Harvard staff[ed] its admissions office with approximately seventy people, forty of whom [were] admissions officers.”²⁰ Newer officers are trained by more senior officers, and their instruction included training on how to consider various factors in the admissions process.²¹ These admissions officers

¹⁶ *Id.* at 166.

¹⁷ *Id.* at 165-66.

¹⁸ *Id.* at 166.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

review the applications and ultimately determine which applicants will be offered admission into Harvard.²²

During the “first read,” an admissions officer screens the application and assigns scores of 1-6 in six separate categories: academic, extracurricular, athletic, school support, personal, and overall.²³ Some applications receive ratings by additional readers or faculty members.²⁴ A rating of “1” is best and a rating of “6” is worst, and admissions officers “fine tune” the ratings with “+” and “-” marks.²⁵ For example, a 4+ rating is stronger than a 4 rating, which is stronger than a 4- rating.²⁶ These ratings do not definitively determine whether a student will be offered admission, and it is not uncommon for applicants with worse ratings to be offered admission over applicants with worse ratings.²⁷

The academic rating measures a student’s academic ability, relying mostly on grades and standardized test scores.²⁸ The extracurricular rating looks at a student’s commitment to pursuits outside the academic realm, such as being class president or the editor of the school newspaper.²⁹ The athletic rating measures commitment to athletic pursuits.”³⁰ School support ratings allow

²² *Id.*

²³ *See Students for Fair Admissions*, No. 20-1199, 600 U.S. ___, Slip Opinion, p. 2.

²⁴ *See Students for Fair Admissions*, 980 F.3d at 166-67.

²⁵ *Id.* at 167.

²⁶ *Id.* at 167.

²⁷ *Id.* at 167.

²⁸ *Id.* at 167.

²⁹ *Id.* at 168.

³⁰ *Id.* at 168.

admissions officers to “assess the strength of an applicant’s high school support by reading teacher and guidance counselor recommendations,” with “[e]ach recommendation receiving its own rating.”³¹ The personal rating measures an applicant’s “perceived leadership, maturity, integrity, reaction to setbacks, concern for others, self-confidence, likeability, helpfulness, courage, kindness, and whether the student is a ‘good person to be around.’”³² Starting with the class of 2023, Harvard modified its instructions to “explicitly say that ‘an applicant’s race or ethnicity should not be considered in assigning the personal rating.’”³³ The overall rating is a composite of the other five ratings, and allows admissions officers to take all information into account.³⁴

4. Admissions Officer and Alumni Interviews

Harvard’s alumni and admissions officers interview applicants concurrently with the admissions office’s application review, with guidelines provided by Harvard’s Interview Handbook.³⁵ Alumni interviewers are given some of the same applicant information as admissions officers, but they do not receive transcripts or the recommendations from teachers and guidance counselors.”³⁶ Alumni provide written comments and ratings on applications, with the exception of ratings for athletics and school support.³⁷

³¹ *Id.* at 168.

³² *Id.* at 168.

³³ *Id.* at 169.

³⁴ *See Students for Fair Admissions*, No. 20-1199, 600 U.S. ___, Slip Opinion, p. 2; *Students for Fair Admissions*, 980 F.3d at 169.

³⁵ *See Students for Fair Admissions*, 980 F.3d at 169.

³⁶ *Id.* at 169.

³⁷ *Id.* at 169.

5. Subcommittee Meetings and Recommendations to the Full Committee

Admissions subcommittees next meet for three to five days to discuss which applicants should be offered admission, with first readers acting as advocates for those who they believe should be admitted.³⁸ It is common for the subcommittees to discuss applicants who had not previously been highlighted by first readers.³⁹ The subcommittees make non-dispositive recommendations to the full admissions committee, which ultimately determines who will be offered admission.⁴⁰ “It is not uncommon for applicants who were not recommended for admission by a subcommittee to later be admitted (and vice versa).”⁴¹

6. Full Committee Meetings and Final Decisions

While any applicant may be discussed during the full committee meeting, the full committee typically focuses on the applicants recommended by the subcommittees.⁴² Every member of the full committee votes on an applicant’s admission, and an applicant must receive a majority vote to be offered admission.⁴³ The resulting pool of tentative admits is often larger than

³⁸ See *Students for Fair Admissions*, No. 20-1199, 600 U.S. ___, Slip Opinion, p. 2; *Students for Fair Admissions*, 980 F.3d at 169.

³⁹ *Students for Fair Admissions*, 980 F.3d at 169.

⁴⁰ *Id.* at 169-70.

⁴¹ *Id.* at 170.

⁴² *Id.* at 170.

⁴³ *Id.* at 170.

the number that Harvard can admit, so a second round “lop process” is conducted to narrow the pool.⁴⁴ Harvard then sends decisions to applicants who remained after the lopping process.⁴⁵

B. Harvard’s Donor and Legacy Preference Practices and Their Impact on Admissions⁴⁶

As the First Circuit explained:

Since at least 1990, Harvard has used a system of “tips” in its application review process. Tips are plus factors that might tip an applicant into Harvard's admitted class. The tip system is an overlay of Harvard's process and *tip factors can be considered at multiple points in Harvard's review.*⁴⁷

Among these “tips” are those given to children of wealthy donors and alumni.⁴⁸ Overall, the District Court found that these tips are “sizable” and “significant.”⁴⁹

As the District Court found, applicants whose parents are wealthy donors or alumni “obtain an admissions tip that is primarily or exclusively a product of family circumstances.”⁵⁰ The children of donors are put onto “the Dean’s Interest list,” and “are give[n] special attention” in the process. Within the list, each applicant is rated, based on “how important the donor is to Harvard.”

⁴⁴ *Id.* at 170.

⁴⁵ *Id.* at 170.

⁴⁶ As with Section A above, the information and data provided in this section comes from analysis of documents, data, and testimony surrounding Harvard’s admissions process, which Harvard provided as part of the District Court litigation against SFFA.

⁴⁷ *Students for Fair Admissions*, 980 F.3d at 170 (emphasis added).

⁴⁸ Other tips include those given to athletes and to children of staff. Cumulatively these four categories of tips are sometimes referred to as “ALDC” (Athletes, Legacies, Donors, and Children). Petitioners here challenge only the Donor and Legacy Preferences.

⁴⁹ *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 397 F. Supp. 3d 126, 160, 173 (D. Mass. 2019) (*rev’d on other grounds*, No. 20-1199, 600 U.S. __ (2023)).

⁵⁰ *Id.* at 142.

“Legacies are the largest of the ALDCs, both in terms of number of applicants as well as number of admits.”⁵¹

The sizable tips for Harvard legacy and donor-related applicants are given throughout the admission processes.⁵² Although these applicants go through a full committee review process like all other Harvard applicants, their applications, unlike others, are closely monitored in the review process by the admissions dean, admissions director, and others.⁵³ Legacy and donor applications are annotated to signal to reviewers to pay special attention as the applications go through the process.⁵⁴

Legacy and donor applicants receive special attention in the interview process as well.⁵⁵ While most applicants are interviewed by Harvard alumni, a very small number (less than 3%) are interviewed by an admissions officer or staff member.⁵⁶ Legacy and donor applicants are nearly 20 times more likely to be interviewed by a member of Harvard’s admissions office.⁵⁷

Finally, legacy and donor applicants are flagged again at the “lop” stage.⁵⁸ Before determining which applications to “lop,” the committee members are given demographic data on

⁵¹ See *Legacy and Athlete Preferences at Harvard*, NBER Working Paper Series (2019).

⁵² *See id.*

⁵³ *See id.*

⁵⁴ *See id.*

⁵⁵ *See id.*

⁵⁶ *See id.*

⁵⁷ *See id.*

⁵⁸ See *Students for Fair Admissions*, 980 F.3d at 170.

the list of tentative admits.⁵⁹ “Admissions officers then compile a ‘lop list’ of applicants who might be lopped.”⁶⁰ This list includes information about tentative admits – including legacy status – relating to some of Harvard's admissions tips.⁶¹

As a result of this preferential treatment, donor and legacy applicants have a “significantly higher chance” of being admitted when compared to applicants who do not fit those criteria.⁶² For example, for the period 2014-2019, the acceptance rate for donor-related applicants was approximately 42%, or about 7 times higher than the acceptance rate for an applicant with no donor relation.⁶³ For the same period, the acceptance rate for legacy applicants was 33.6%, which was almost six times higher than the acceptance rate for non-legacy applicants over the same period.⁶⁴ For the Class of 2019, about 16.8% were legacies by the strict definition – one or both of their parents are alumni – and about 28% were legacies by a broader definition – a parent or other relative graduated from Harvard.⁶⁵

Not only do legacy and donor-related applicants enjoy special privileges throughout the admissions process and have correspondingly much higher admission rates, but the students who

⁵⁹ *See id.*

⁶⁰ *Id.*

⁶¹ *See id.*

⁶² *Id.*

⁶³ Legacy and Athlete Preferences at Harvard, NBER Working Paper Series (2019).

⁶⁴ *Id.*

⁶⁵ *Id.*

are admitted through these preferences are also overwhelmingly white.⁶⁶ In fact, for the period 2014-2019, nearly 70% of the students admitted with Donor and Legacy Preferences were white.⁶⁷ Even when comparing white applicants with familial ties to applicants of color with familial ties, data shows that white applicants are admitted at a higher rate than applicants of color.⁶⁸ In addition, approximately 43% of the white students admitted were admitted based on their status as an athlete, legacy, donor-related, or the child of a faculty or staff, whereas only approximately 15% of Black, Latinx, and Asian American applicants were admitted through the same preferences.⁶⁹

The “tip” that donor and legacy applicants receive in the process is substantial. Experts have estimated that “roughly three-quarters of white ALDC admits would have been rejected absent their ALDC status.”⁷⁰ Each of those spots would have been given to other qualified

⁶⁶ *See* Legacy and Athlete Preferences at Harvard, 40 J. Lab. Econ. 133 (2021). The authors of this article also authored a similar Working Paper with the same title in 2019 through the National Bureau of Economic Research, and that article is also cited in this complaint.

⁶⁷ *See id.*

⁶⁸ *See* Legacy and Athlete Preferences at Harvard, NBER Working Paper Series (2019).

⁶⁹ *See* Legacy and Athlete Preferences at Harvard, 40 J. Lab. Econ. 133 (2021).

⁷⁰ *Id.*

applicants.⁷¹ The same study found that “[r]emoving legacy preferences increases the number of admits for each of the non-white groups.”⁷²

IV. LEGAL ANALYSIS

A. Title VI Prohibits Recipients of Federal Funding from Excluding Individuals on the Basis of Their Race, Color, or National Origin.

Title VI of the Civil Rights Act of 1964 states: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”⁷³ Under Title VI, “the term ‘program or activity’ and the term ‘program’ mean all of the operations of . . . a college, university, or other postsecondary institution, or a public system of higher education . . . any part of which is extended Federal financial assistance.”⁷⁴ Harvard receives federal funding from the Department of Education, and, therefore, is subject to Title VI’s mandate.⁷⁵

⁷¹ In 2019, the “Operation Varsity Blues” investigation conducted by federal prosecutors revealed the lengths to which wealthy parents will go to get their children into highly ranked universities, simultaneously exposing major inequities in higher education. Parents were accused of conspiring with California admissions consultant William “Rick” Singer to gain college admission for their children through bribery and fraud. When the children of these wealthy individuals were admitted to schools, they occupied a spot that could have been given to a qualified, deserving applicant. *See* “Actresses, Business Leaders and Other Wealthy Parents Charged in U.S. College Entry Fraud,” *New York Times* (March 12, 2019), <https://www.nytimes.com/2019/03/12/us/college-admissions-cheating-scandal.html>.

⁷² *Legacy and Athlete Preferences at Harvard*, 40 *J. Lab. Econ.* 133 (2021).

⁷³ 42 U.S.C. § 2000d.

⁷⁴ 42 U.S.C. § 2000d-4a.

⁷⁵ *See Students for Fair Admissions*, 980 F.3d at 184 (“Because Harvard accepts federal funds, it is subject to Title VI.”); *see also, e.g.*, “Federal Work Study on Sponsored Awards Policy,” Harvard University, Financial Administration, Office for Sponsored Programs (Dec. 1, 2020) (“Harvard University participates in the U.S. Department of Education Federal Work Study need-based

In light of Title VI, the Department of Education has promulgated regulations that prohibit policies that have a disparate impact on people of color, regardless of whether those policies are intentionally discriminatory.⁷⁶ In other words, the Department’s regulations prohibit a recipient of federal funds from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.”⁷⁷

To make a successful claim for disparate impact under Title VI in the education setting, the complainant must show that the challenged acts have a disproportionate, discriminatory impact on a protected class.⁷⁸ “Once a plaintiff has established a prima facie case, the burden then shifts to the defendant to demonstrate that the requirement which caused the disproportionate impact was required by educational necessity.”⁷⁹ The “educational necessity” test requires the respondent to “show that any given [practice] has a manifest relationship to the education in question, *i.e.*, that the [practice is] required by ‘educational necessity.’”⁸⁰ In other words, the respondents must “show that the challenged course of action is ‘demonstrably necessary to meeting an important

financial aid program and is required to comply with federal regulations related to hiring and funding student workers.”)

⁷⁶ See *Guardians Ass’n v. Civil Serv. Comm’n of City of New York*, 463 U.S. 582, 591-93 (1983).

⁷⁷ 34 C.F.R. § 100.3(b)(2).

⁷⁸ See *Georgia State Conf. of Branches of NAACP v. State of Ga.*, 775 F.2d 1403, 1417 (11th Cir. 1985); *Larry P. By Lucille P. v. Riles*, 793 F.2d 969, 982 (9th Cir. 1984).

⁷⁹ See *Larry P. By Lucille P. v. Riles*, 793 F.2d 969, 982 & n.9 (9th Cir. 1984).

⁸⁰ *Id.*

educational goal.”⁸¹ If the respondent can show that its practice is an education necessity, the complainant may still prevail by presenting an alternative that would achieve the same legitimate objective with less of a discriminatory effect.⁸²

The U.S. Department of Justice’s Title VI Legal Manual emphasizes that agencies that provide federal funds play a “critical role” in enforcing the prohibition on disparate impact discrimination because such discrimination often results “from policies and practices that are neutral on their face but have the *effect* of discriminating,” and “[t]hose policies and practices must be eliminated unless they are shown to be necessary to the program’s operation and there is no less discriminatory alternative.”⁸³ This “critical role” has only increased since the Supreme Court’s decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001), which eliminated the prospect of seeking remedies for disparate impact claims in federal courts.⁸⁴ Accordingly, “[f]ederal funding agencies should prioritize vigorous enforcement of their Title VI disparate impact provisions both through investigation complaints and through compliance reviews.”⁸⁵

⁸¹ *GI Forum v. Texas Educ. Agency*, 1999 WL 33290624, at *11 (W.D. Tex. July 27, 1999) (quoting *Elston v. Talladega Cty. Bd. Of Educ.*, 997 F.2d 1394, 1412 (11th Cir. 1993)); see *Lucero v. Detroit Pub. Schools*, 160 F. Supp. 2d 767, 796 (E.D. Mich. 2001) (“An educational necessity is an action that is necessary to meet an important educational goal.”).

⁸² See *Georgia State Conf. of Branches of NAACP*, 775 F.2d at 1417 (“The plaintiff then may ultimately prevail by proffering an equally effective alternative practice which results in less racial disproportionality or proof that the legitimate practices are a pretext for discrimination.”). See generally, U.S. Department of Justice (“DOJ”) Title VI Legal Manual (“DOJ Manual”), <https://www.justice.gov/crt/fcs/T6manual> (updated April 22, 2021).

⁸³ DOJ Manual, § VII, pp. 4-5.

⁸⁴ See DOJ Manual, § VII, p 5.

⁸⁵ DOJ Manual, § VII, p. 5.

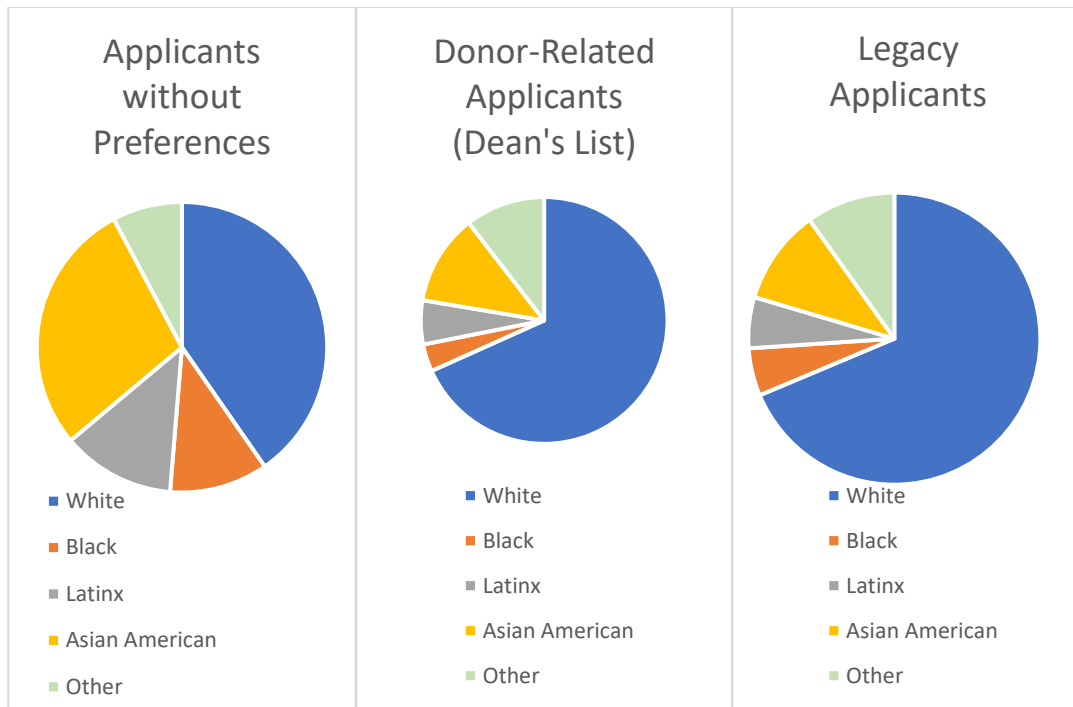
B. Harvard’s Use of Donor and Legacy Preferences Violates Title VI Due to the Unjustified Disparate Impact on Applicants of Color.

The admissions data provided above, which is the result of expert analysis of information taken from thousands of applicant files produced by Harvard during the case against SFFA, demonstrates that the Donor and Legacy Preferences have a disproportionately negative impact on applicants of color.⁸⁶ Several configurations of the admissions data show the magnitude of the disparate impact. For example, nearly 70% of all donor-related and legacy applicants are white, even though white applicants represent only 40% of applicants who receive no preferences.⁸⁷ By contrast, Black, Latinx, and Asian American applicants are all dramatically under-represented among those who receive Donor or Legacy Preferences.⁸⁸

⁸⁶ See *Georgia State Conf. of Branches of NAACP v. State of Ga.*, 775 F.2d 1403, 1417 (11th Cir. 1985) (“The plaintiff first must show by a preponderance of the evidence that a facially neutral practice has a racially disproportionate effect. . .”).

⁸⁷ See *Legacy and Athlete Preferences at Harvard*, 40 J. Lab. Econ. 133 (2021).

⁸⁸ *Id.* Black students represent approximately 11% of the applicant pool that receives no preferences; by contrast, they represent less than 4% of those afforded Donor Preferences, and approximately 5% of those receiving Legacy Preferences. *Id.* Similar disparities exist for Latinx and Asian American applicants. *Id.* (Latinx students represent over 12% of applicant pool receiving no preferences but only approximately 5% of donor-related or legacy applicants; Asian American students represent approximately 28% of the applicant pool receiving no preferences but only 12% of donor-related applicants and 10% of legacy applicants). Similar disparities exist for admit rates as well. *Id.*



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Similarly, of all white students admitted, only about half received no preference; 13% received a Donor Preference and 20% received a Legacy Preference.⁹⁰ By contrast, only approximately 2% of Black applicants received a Donor Preference and under 5% received a Legacy Preference.⁹¹ Disparities are similar for Latinx applicants (only 4% receive Donor Preference and only approximately 7% receive Legacy Preference) and for Asian American applicants (only 5% and 6% receive Donor and Legacy Preferences, respectively).⁹²

Moreover, the boost that the predominately white applicants receive from Donor and Legacy Preferences is substantial. Applicants with no Legacy Preference had an admit rate of

⁸⁹ These pie charts were created by Lawyers for Civil Rights based on the data contained in Legacy and Athlete Preferences at Harvard, 40 J. Lab. Econ. 133 (2021).

⁹⁰ See *id.* Other preferences include those for athletics and those for children of faculty and staff.

⁹¹ See *id.*

⁹² See *id.*

approximately 6%, whereas legacy applicants had an admit rate of over 33%.⁹³ Applicants not on the “Dean’s Interest List” where children of wealthy donors are flagged, had an admit rate of just over 6%, whereas those who were on the List were admitted at a rate of over 42%.⁹⁴

Given the size of these preferences coupled with the disproportionate number of white students who receive them, it is not surprising that in a hypothetical model removing Donor and Legacy Preferences from Harvard’s admissions process, greater numbers of non-white applicants are admitted.⁹⁵ For example, removing Legacy Preferences boosts Black, Latinx, and Asian American admit rates by between 4-5% for each group, meaning that substantially more of these students would be admitted each year.⁹⁶ Meanwhile, when white applicants are no longer afforded this preferential treatment, their admission rate declines by approximately 4%.⁹⁷

In other words, Harvard’s use of the Donor and Legacy Preferences disproportionately benefits white candidates, to the detriment of applicants of color.⁹⁸ Harvard’s Donor and Legacy Preferences provide a competitive advantage to predominantly white, wealthy applicants, which significantly diminishes opportunities for qualified applicants of color.⁹⁹ The disparate impact on

⁹³ See Legacy and Athlete Preferences at Harvard, NBER Working Paper Series (2019).

⁹⁴ See *id.*

⁹⁵ See Legacy and Athlete Preferences at Harvard, 40 J. Lab. Econ. 133 (2021).

⁹⁶ See *id.*

⁹⁷ See *id.*

⁹⁸ See “Achieving Racial and Economic Diversity with Race-Blind Admissions Policy,” The Future of Affirmative Action, A. Carnevale, S. Rose, and J. Strohl (2014) (Eliminating legacy preferences, in combination with other race-neutral criteria, could more than double the enrollment of Black and Hispanic applicants.).

⁹⁹ See “Admitting the Truth: The Effect of Affirmative Action, Legacy Preferences, and the Meritocratic Ideal on Students of Color in College Admissions,” Affirmative Action for the Rich,

applicants of color is both clear and stark.¹⁰⁰ As the Supreme Court has put it, how else but “negative” can a preference be described “if, in its absence, members of some racial groups would be admitted in greater numbers than they otherwise would have been?”¹⁰¹

Moreover, Harvard’s Donor and Legacy Preferences are not justified by educational necessity. During the trial court case against Harvard, a report drafted by a committee of Harvard deans was admitted into evidence (the “Deans Report”).¹⁰² The Deans Report contained several rationales for utilizing Donor and Legacy Preferences.¹⁰³ In the Deans Report, Harvard claimed that its Donor and Legacy Preferences “help[] to cement strong bonds between the university and

J. Brittain and E. Bloom (2010). *See also* “Just to Be Clear: We Don’t Do Legacy,” Chris Peterson, June 25, 2012, <https://mitadmissions.org/blogs/entry/just-to-be-clear-we-dont-do-legacy/> (“Selective college admissions is a zero sum game: every applicant admitted takes a space which could have gone to another student. Preferring a student whose parents attended a college not only takes away a spot from an equal or better student, but it also specifically takes away a spot from an equal or better student *who overcame more by not having the advantages accrued by prior generations.*”) (emphasis in original).

¹⁰⁰ As Justice Gorsuch recently noted in the SFFA Case: “[Harvard’s] preferences for the children of donors, alumni, and faculty are of no help to applicants who cannot boast of their parents’ good fortune or trips to the alumni tent all their lives. While race-neutral on their face, too, **these preferences undoubtedly benefit white and wealthy applicants the most.** Still, Harvard stands by them. As a result, athletes and the children of donors, alumni, and faculty—groups that together ‘make up less than 5% of applicants to Harvard’—constitute ‘around 30% of the applicants admitted each year.’” *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, No. 20-1199, 600 U.S. __ (2023) (Gorsuch, J., *concurring*) (emphasis added) (quoting *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 980 F.3d 157, 171 (1st Cir. 2020)).

¹⁰¹ *Students for Fair Admissions*, No. 20-1199, 600 U.S. __, Slip Opinion p. 28.

¹⁰² *See* “Report of the Committee to Study Race-Neutral Alternatives,” Trial Exhibit P316, <https://github.com/tyleransom/SFFAvHarvard-Docs/blob/master/TrialExhibits/P316.pdf>.

¹⁰³ *See* “Report of the Committee to Study Race-Neutral Alternatives,” Trial Exhibit P316, <https://github.com/tyleransom/SFFAvHarvard-Docs/blob/master/TrialExhibits/P316.pdf>.

its alumni,” encourage alumni to “offer generous financial support,” foster a “vital sense of engagement and support,” and serve “a community-building function.”¹⁰⁴

It is questionable whether these rationales even constitute legitimate, important educational goals, for purposes of demonstrating educational necessity. While these goals may serve Harvard as an institution, they are far afield from more traditional educational interests that focus on *students* – for example, the goals of “better educating its students through diversity” and “promoting the robust exchange of ideas” that Harvard and the University of North Carolina asserted in the SFFA Case.¹⁰⁵ And notably, even for those interests that were directly tied to students’ learning, the Supreme Court found them to be “not sufficiently coherent” for judicial analysis and “inescapably imponderable.”¹⁰⁶ In light of this most recent pronouncement from the Supreme Court, it is difficult to see how fostering “a vital sense of engagement and support” – one of Harvard’s stated goals for Donor and Legacy Preferences – could qualify as an educational necessity sufficient to justify disproportionate impact under Title VI.¹⁰⁷

But even assuming these goals were considered to be an educational necessity, Harvard has not shown any evidence that the Donor and Legacy Preferences are necessary to advance them, or that these ideals would be materially diminished if Harvard eliminated Donor and Legacy Preferences. Harvard is one of the top universities in the world and has consistently been ranked

¹⁰⁴ “Report of the Committee to Study Race-Neutral Alternatives,” Trial Exhibit P316, pp. 16-17, <https://github.com/tyleransom/SFFAvHarvard-Docs/blob/master/TrialExhibits/P316.pdf>.

¹⁰⁵ *Students for Fair Admissions*, No. 20-1199, 600 U.S. ___, Slip Opinion p. 23.

¹⁰⁶ *Id.* at 23-24.

¹⁰⁷ *See also id.* at 26 (rejecting universities’ argument for deference in defining its own interests).

as such by ranking agencies.¹⁰⁸ It has scores of Nobel laureates on its faculty, in the categories of physics, chemistry, medicine, literature, peace, and economic sciences.¹⁰⁹ It has the largest endowment of any university in the United States, controlling in excess of \$50 billion¹¹⁰ – an amount that is larger than the gross national product of half of the world’s countries.¹¹¹ To suggest that people will not apply to, affiliate themselves with, or donate to Harvard simply because it eliminated Donor and Legacy Preferences strains logic.¹¹² Harvard cannot rely on these unsupported assertions, and, thus, cannot “show that the challenged course of action is ‘demonstrably necessary to meeting an important educational goal.’”¹¹³

This is especially true where there is substantial evidence demonstrating that eliminating donor and legacy preferences has no effect on community and fundraising efforts. Recognizing

¹⁰⁸ See, e.g., U.S. News & World Report, Harvard University, <https://www.usnews.com/education/best-global-universities/harvard-university-166027>.

¹⁰⁹ See Harvard University, Meet Our Nobel Laureates, <https://www.harvard.edu/about/history/nobel-laureates/>.

¹¹⁰ See U.S. News & World Report, 10 National Universities With the Biggest Endowments, <https://www.usnews.com/education/best-colleges/the-short-list-college/articles/10-universities-with-the-biggest-endowments>.

¹¹¹ See “Harvard’s Endowment is Bigger Than Half The World’s Economies,” Adam Vaccaro, Boston.com, <https://www.boston.com/news/business/2014/09/25/harvards-endowment-is-bigger-than-half-the-worlds-economies/>.

¹¹² See “A Better Affirmative Action: State Universities that Created Alternatives to Racial Preferences,” A Century Foundation Report, https://production-tcf.imgix.net/app/uploads/2012/10/03175956/tcf_abaa-8.pdf (“Eliminating legacy preferences . . . takes away an unfair advantage held by privileged applicants, and appears to do no harm to university fundraising.”).

¹¹³ *GI Forum v. Texas Educ. Agency*, 1999 WL 33290624, at *11 (W.D. Tex. July 27, 1999) (quoting *Elston v. Talladega Cty. Bd. Of Educ.*, 997 F.2d 1394, 1412 (11th Cir. 1993)); see *Lucero v. Detroit Pub. Schools*, 160 F. Supp. 2d 767, 796 (E.D. Mich. 2001) (“An educational necessity is an action that is necessary to meet an important educational goal.”).

that donor and legacy admissions are inherently unfair – in that they reward applicants for nothing other than familial ties – and that the preferences disproportionately benefit white applicants to the exclusion of non-white applicants, there have been major efforts to eliminate, or at least limit, the impact of those factors. These efforts have been made at the federal and state levels, and by individual schools and school systems, further supporting the fact that donor and legacy preferences are not an educational necessity.

Colorado became the first state to ban legacy admissions for all schools in the state, as they constitute “inequitable admissions practices.”¹¹⁴ Specifically, the Colorado law states that “[p]roviding preferential treatment to students with familial relationship to alumni of the institution is discriminatory in nature and hurts students who are undocumented, first-generation, immigrants, or underrepresented minorities and who do not have the same relationships to Colorado higher education institutions.”¹¹⁵ With respect to individual schools and school systems, more than 100 colleges and universities have stopped considering legacy in the admissions process since 2015.¹¹⁶ “The University of California system, the University of Georgia and Texas A&M all ended legacy preferences,”¹¹⁷ along with several other prominent universities and colleges that no longer

¹¹⁴ See House Bill 21-1173, Concerning Prohibiting Higher Education Institutions from Considering Legacy Preferences in the Admissions Process, May 25, 2021, https://leg.colorado.gov/sites/default/files/2021a_1173_signed.pdf.

¹¹⁵ See House Bill 21-1173, “Concerning Prohibiting Higher Education Institutions from Considering Legacy Preferences in the Admissions Process,” May 25, 2021, https://leg.colorado.gov/sites/default/files/2021a_1173_signed.pdf.

¹¹⁶ See “The Future of Fair Admissions, *Issue Brief 2: Legacy Preferences*,” Education Reform Now, James Murphy, Fall 2022, p. 5, <http://edreformnow.org/wp-content/uploads/2022/10/The-Future-of-Fair-Admissions-Legacy-Preferences.pdf>.

¹¹⁷ See “Elite Colleges’ Quite Fight to Favor Alumni Children,” New York Times, October 31, 2022, <https://www.nytimes.com/2022/07/13/us/legacy-admissions-colleges-universities.html>.

consider such criteria, including Johns Hopkins University,¹¹⁸ Amherst College,¹¹⁹ the Massachusetts Institute of Technology,¹²⁰ CalTech,¹²¹ Auburn University,¹²² University of Michigan at Ann Arbor,¹²³ University of Virginia,¹²⁴ Ohio State University,¹²⁵ and the University of Washington.¹²⁶

Far from being harmed by the elimination of legacy preferences, many of these schools have seen financial growth. For example, Johns Hopkins saw steady growth in alumni donations since 2014, when the school banned legacy preferences, and Amherst has said that it anticipates

¹¹⁸ See “Why We Ended Legacy Admissions at Johns Hopkins,” Ronald J. Daniels, January 18, 2020, <https://www.theatlantic.com/ideas/archive/2020/01/why-we-ended-legacy-admissions-johns-hopkins/605131/>.

¹¹⁹ See “Amherst College to End Legacy Preference and Expand Financial Aid Investment to \$71 Million,” https://www.amherst.edu/news/news_releases/2021/10-2021/amherst-college-to-end-legacy-preference-and-expand-financial-aid-investment-to-71-million.

¹²⁰ See “Does MIT consider legacy?,” MIT Admissions, <https://mitadmissions.org/help/faq/legacy/#:~:text=MIT%20doesn't%20consider%20legacy,relations%20in%20our%20admissions%20process>. See also “Just to Be Clear: We Don’t Do Legacy,” Chris Peterson, June 25, 2012, <https://mitadmissions.org/blogs/entry/just-to-be-clear-we-dont-do-legacy/>.

¹²¹ See First-Year Application Requirements, CalTech, <https://www.admissions.caltech.edu/apply/first-year-applicants/application-requirements#:~:text=We%20do%20not%20use%20this,to%20prospective%20or%20current%20donors>.

¹²² See “Legacy Admissions,” Saving for College, Mikhail Zinshteyn, March 19, 2019, <https://www.savingforcollege.com/article/legacy-admissions>.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

increasing annual financial aid offerings after announcing the end of the legacy program.¹²⁷ Further, a research study of the top 100 colleges and universities, as ranked by U.S. News & World Report, concluded that maintaining legacy admissions has little to no effect on alumni fundraising efforts.¹²⁸ Specifically, the report concluded that, “after inclusion of appropriate controls, including wealth, there is no statistically significant evidence of a causal relationship between legacy preference policies and total alumni giving among top universities.”¹²⁹

Even assuming that Harvard’s rationales for the Donor and Legacy Preferences constituted important educational goals, Harvard cannot show that the Preferences are *necessary* to meet those educational goals. As noted directly above, numerous top colleges and universities have either discontinued the use of donor and legacy preferences, or have never used them, and there is mounting evidence to show that those institutions are better off, or at least have not suffered any ill effects, in terms of creating strong bonds between the university and alumni, fundraising through alumni, fostering a sense of engagement and support, or building a sense of community on campus. The fact that more and more colleges and universities have chosen to eliminate donor and legacy preferences supports the conclusion that such preferences are not necessary to any important educational goal of Harvard’s.

¹²⁷ See “By Ending Legacy Admissions, Amherst Aims to Remake Its Student Body,” Time, K. Reilly, (Oct. 22, 2021), <https://time.com/6109673/amherst-legacy-admissions/>.

¹²⁸ See “An Empirical Analysis of the Impact of Legacy Preferences on Alumni Giving at Top Universities,” Affirmative Action for the Rich, C. Coffman, https://production-tcf.imgix.net/app/uploads/2016/03/08201915/2010-09-15-chapter_5.pdf.

¹²⁹ “An Empirical Analysis of the Impact of Legacy Preferences on Alumni Giving at Top Universities,” Affirmative Action for the Rich, C. Coffman, https://production-tcf.imgix.net/app/uploads/2016/03/08201915/2010-09-15-chapter_5.pdf.

C. The Recent Supreme Court Decisions in the SFFA Case Increase the Importance of Rooting Out Preferences That Unjustifiably Disadvantage Applicants of Color.

By severely limiting the use and consideration of race in admissions processes, the Supreme Court removed a tool that in certain circumstances provided a small boost to applicants of color when considered as one of many factors in admissions. To improve, or at least preserve, diversity and equity in the admissions process going forward, Harvard should be barred from using a system that provides significant preferences to white applicants, *i.e.*, Donor and Legacy Preferences, to the detriment of applicants of color.

While Harvard’s asserted justifications for using the Donor and Legacy Preferences do not constitute important educational goals, *diversity*, on the other hand, remains a compelling educational goal, and Harvard has consistently argued as such.¹³⁰ The data from Harvard’s own admissions processes shows, and experts have concluded, that eliminating the Donor and Legacy Preferences that disadvantage applicants of color would increase diversity. Those experts found that “only one quarter of white ALDC admits would have been admitted had they been treated as white non-ALDC applicants”; and that “[r]emoving legacy preferences increases the number of admits for each of the non-white groups.”¹³¹ Moreover, other universities have reported that eliminating donor and legacy preferences has a positive effect on diversity, including Texas A&M,

¹³⁰ See *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, No. 20-1199, 600 U.S. ___, Slip Opinion p. 23 (2023) (noting Harvard’s assertions of the compelling interest it has in diversity); “Report of the Committee to Study Race-Neutral Alternatives,” Trial Exhibit P316, p. 1, <https://github.com/tyleransom/SFFAvHarvard-Docs/blob/master/TrialExhibits/P316.pdf> (“For decades, Harvard University has recognized the critical importance of diversity and a diverse student body to achieving success in its principal activities.”).

¹³¹ Legacy and Athlete Preferences at Harvard, NBER Working Paper Series (2019).

University of Georgia, and University of California.¹³² Discontinuing use of the Donor and Legacy Preferences at Harvard would similarly help to rectify the unjustifiable uphill battle that minorities face – while predominantly white applicants get an unfair and unearned leg up – in Harvard’s current admissions process.¹³³

V. **CONCLUSION AND REQUESTED RELIEF**

“Eliminating racial discrimination means eliminating all of it.”¹³⁴ Because Harvard’s continued use of the Donor and Legacy Preferences creates a significant, disparate impact on non-white applicants that is not justified by any educational necessity, in violation of Title VI, the Complainants respectfully request that the Department:

- 1) open an investigation into Harvard’s use of Donor and Legacy Preferences and the resulting unjustified disparate impact;
- 2) declare that Harvard’s ongoing use of Donor and Legacy Preferences is discriminatory and violates Title VI of the Civil Rights Act of 1964 and its implementing regulations;

¹³² See “A Better Affirmative Action: State Universities that Created Alternatives to Racial Preferences,” A Century Foundation Report, https://production-tcf.imgix.net/app/uploads/2012/10/03175956/tcf_abaa-8.pdf.

¹³³ In striking down Harvard's modest consideration of race as one of many factors in admissions, the Supreme Court repeatedly emphasized that applicants must be considered on their individual merits. See, e.g., *Students for Fair Admissions*, No. 20-1199, 600 U.S. ___, Slip Opinion p. 40 (“[T]he student must be treated based on his or her experiences as an individual.”). Yet, at the same time, Harvard grants Donor and Legacy Preferences to predominantly white students based solely on a status that is conferred upon them simply by birth. Federal law does not tolerate this type of manifest inequity.

¹³⁴ See *Students for Fair Admissions*, No. 20-1199, 600 U.S. ___, Slip Opinion p. 23.

- 3) declare that, if Harvard wishes to continue receiving federal funds, it must immediately cease considering an applicant's relationship to Harvard alumni in the admissions process;
- 4) declare that, if Harvard wishes to continue receiving federal funds, it must immediately cease considering an applicant's relationship to Harvard donors in the admissions process;
- 5) ensure that applicants have no way to identify a familial relationship in the admissions process, including in the application, essays, and interviews; and
- 6) grant all other relief that the Department finds appropriate and just.

Respectfully submitted,

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COMMUNITY ECONOMIC
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Dated: July 3, 2023