

# Measuring Discrimination:

## Racial Preferences at Flagship Public Institutions

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### EXECUTIVE SUMMARY

Title VI of the Civil Rights Act of 1964 protects Americans from discrimination based on race, color, or national origin. It applies to any program or activity that receives Federal financial assistance, including most public and private universities. Title VI 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.

The Department of Education specifically lists both admissions and recruitment as covered activities.<sup>1</sup>

But for almost as long as Title VI has been law, universities have discriminated on the basis of race in order to achieve diversity in their student bodies. This is a trade-off that many policymakers and university administrators have been willing to make.

Federal Judge Allison Burroughs acknowledged and defended this trade-off in a recent ruling, writing, “Ensuring diversity at Harvard relies, in part, on race-conscious admissions. Race-conscious admissions will always penalize to some extent the groups that are not being advantaged by the process, but this is justified by the compelling interest in diversity and all the benefits that flow from a diverse college population.”

In this report, we quantify this trade-off at flagship public universities. How large are the harms of racial preferences in admissions? How do they affect students’ chances of admission? We find that the size and effect of racial preferences vary across institutions. At some, however, race weighs very heavily in admissions decisions.

As the Supreme Court considers race in admissions, these data provide an important insight into admissions at public institutions. They show that, at some institutions, admissions are heavily influenced by a student’s race, in defiance of both the equal protection clause and past court decisions that narrowly proscribed the use of race in admissions.

It’s time to end the discriminatory practice of racial preferences.

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1. <https://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html#:~:text=Title%20VI%20states%20that%3A,activity%20receiving%20Federal%20financial%20assistance.>

# INTRODUCTION

On March 6, 1961, President John F. Kennedy signed into law Executive Order No. 10925, which included a provision that government contractors “take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, creed, color, or national origin.” President Lyndon B. Johnson later issued Executive Order 11246, which requires government contractors “to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.”

But now, universities do far more than offer equal opportunities. Today, colleges and universities use overt admissions preferences to create student bodies that reflect the ethnic, racial, or gender demographics of the population—at the expense of academic merit and preparedness. While the original aim of the policy was to end discrimination and promote fairness, it has led to unequal treatment on the basis of race, gender, economic status, and national origin.

Since the 1970s, courts have opined on racial preferences, narrowing the scope of legally acceptable uses of race in admissions.

In 1978, the Supreme Court heard Regents of the *University of California v. Bakke*, the first case where the Court confronted the legality of racial preferences. The University of California-Davis’s medical school had a quota for black applicants and rejected Allan Bakke, who was white. The Supreme Court held that specific racial quotas were unconstitutional, but that universities could employ affirmative action in admissions decisions, using race as a “plus factor” to achieve a more diverse student body.

The issue of racial preferences in government contracting came before the Court in the 1989 case *Richmond v. J.A. Croson Co.* Here, the Court decided against the constitutionality of a city’s policy of setting aside a certain percentage of its contracts for minority-owned businesses on the grounds that it denied equal protection of the laws to some citizens. Similarly, in 1995, in *Adarand Constructors v. Peña*, the Court ruled against a state set-aside policy, holding that such policies must be evaluated under “strict scrutiny” to see if they were meant to achieve a compelling state interest and were “narrowly tailored” to do so.

Racial preferences in higher education again came before the Court in two cases involving the University of Michigan. In *Gratz*, the Court ruled against the legality of a racial quota system for undergraduate admissions. Still, in *Grutter*, the Court upheld the law school’s “holistic” admissions program that was weighted in favor of minority applicants. The Court again declared that racial preference programs must be evaluated under “strict scrutiny” but was very deferential to the university’s claims that diversity led to important educational benefits and could not be achieved without resorting to racial classifications.

Most recently, the Court grappled with racial preferences in *Fisher v. University of Texas*. A white applicant argued that the university’s racial preferences denied her equal protection of the laws. The lower courts sided with the university, following *Grutter*. But in 2013, the Supreme Court reversed and remanded the case to the Fifth Circuit, on the grounds that the court had not approached the issues with “strict scrutiny” but had been overly deferential to the university. That decision was 7-1. The Fifth Circuit heard the case again and rendered the same decision, purporting to have scrutinized more strictly. Many observers thought that the Supreme Court would rule against racial preferences on appeal, but, before it could decide the case, Justice Scalia died. Upon rehearing, the Court by 4-3 ruled in favor of the university, holding that its racial preferences passed muster under the *Grutter* standard.

Today, racial preferences in college admissions remain a widely-used tool to shape university student bodies. However, the Court will examine racial preferences again when it hears the cases *Students for Fair Admissions v. Harvard* and *Student for Fair Admissions v. University of North Carolina* on October 31, 2022.

State law also affects the use of racial preferences in college admissions. Since 1996, 10 states have voted to ban the use of racial preferences in college admission: California (1996), Texas (1996), Washington (1998), Florida (1999), Michigan (2006), Nebraska (2008), Arizona (2010), New Hampshire (2012), Oklahoma (2012), and Idaho (2020). However, Texas's ban was *de facto* reversed by the 2003 *Grutter v. Bollinger* decision.

Even in states with bans on overt racial preferences, universities can consider race in other ways. The University of California, although barred by state law from using racial preferences in admissions, offers alternatives in its “Guidelines for Enhancing Diversity at UC In the Context of Proposition 209.”<sup>2</sup> The guidelines tell UC schools the steps they can legally take to recruit more minority students, including:

- “As part of a comprehensive outreach program, UC may target certain efforts by race or gender if their benefits are generally available to all. UC may use outreach programs to reach particular groups as long as the program’s benefits are also available to other groups and the special efforts to reach the targeted groups are necessary.”
- “UC may choose to advance goals like diversity and equal opportunity using a broad range of admissions and hiring criteria that are not based on an individual’s race or gender...Factors in selection for scholarships or employment may include applicants’ ability to contribute to a diverse educational or working environment, and/or their potential for leadership in increasing equitable access to higher education.”
- “UC may offer programs relating to race or gender as long as those programs are open and available to all. This includes programs like ethnic studies departments, workshops about women in science, speaker series highlighting the contributions of scholars of color, research institutes focused on race or gender issues, resource guides directed to the needs of individuals from a particular race or gender, and retention efforts that address the barriers faced by women or minorities in higher education.”

One particularly pernicious implementation of “race conscious” admissions standards still allowed in states that ban racial preferences is called “holistic review.” UCLA defines it as follows:

“First implemented in fall 2007, holistic review consists of a thorough, individualized review of each applicant that results in a single score; the review considers a wide range of academic and non-academic achievements, in the context of the opportunities available to and the challenges faced by each student.”<sup>3</sup>

The process sounds innocuous, but these “holistic” admissions policies allow universities to replace objective measures of academic merit with subjective standards. These standards invite universities to socially engineer their student bodies. At Harvard, the admissions office did so to limit the number of Asian students admitted.<sup>4</sup> At other schools, the holistic admission process is used to increase the number of athletes, legacy students, underrepresented minorities, or even students that share a university’s political or social ideologies.

Universities across the country use tools similar to those used at UC, either in addition to or as alternatives to explicit racial preferences in admissions. Combined, these two uses of racial considerations may significantly alter the student bodies of the country’s state-flagship institutions, though further research on the topic is needed. This report represents a first step in that direction.

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2. <https://diversity.universityofcalifornia.edu/files/documents/prop-209-summary.pdf>

3. <https://newsroom.ucla.edu/admissions#>

4. See *Students for Fair Admissions v. Harvard* for more information

# MEASURING RACIAL PREFERENCES

In this analysis, we examine the effects of racial preferences on students' chances of admission at public flagship universities, as described in Table I.

<b>TABLE 1: The use of racial preferences at flagship universities</b>		
<b>University</b>	<b>State Law Banning Preferences?</b>	<b>Is race considered in admissions?</b>
University of Alabama	No	Not Considered
University of Alaska, Fairbanks	No	Not Considered
University of Arizona	Yes	Not Considered
University of Arkansas	No	Not Considered
University of California, Berkeley	Yes	Not Considered
University of California, Los Angeles	No	Not Considered
Clemson	No	Considered
University of Colorado, Boulder	No	Considered
University of Connecticut	No	Considered
University of Delaware	No	Considered
University of Florida	Yes	Not Considered
University of Georgia	No	Not considered
University of Hawaii, Manoa	No	Not Considered
University of Idaho	No	Not Considered
University of Illinois, Urbana-Champaign	No	Considered

Indiana State University	No	Not Considered
Indiana University, Bloomington	No	Considered
University of Iowa	No	Not Considered
University of Kansas	No	Considered
University of Kentucky	No	Not Considered
Louisiana State University	No	Not Considered
University of Maine	No	Not Considered
University of Maryland, College Park	No	Considered
University of Massachusetts, Amherst	No	Considered
University of Michigan	Yes	Not Considered
University of Minnesota	No	Considered
University of Mississippi	No	Not Considered
University of Missouri	No	Not Considered
University of Montana	No	Not Considered
University of Nebraska, Lincoln	Yes	Not Considered
University of Nevada, Reno	No	Not Considered
University of New Hampshire	Yes	Not Considered
New Mexico State University	No	Not Considered
University of New Mexico	No	Not Considered
SUNY Buffalo	No	Considered
University of North Carolina at Chapel Hill	No	Considered
University of North Dakota	No	Not Considered
Ohio State University	No	Considered
University of Oklahoma	Yes	Not Considered

University of Oregon	No	Considered
Purdue University	No	Considered
University of Rhode Island	No	Considered
Rutgers University	No	Considered
University of South Carolina	No	Considered
University of South Dakota	No	Not Considered
Stony Brook University	No	Not Considered
University of Tennessee	No	Considered
University of Texas, Austin	No	Very Important
Texas A&M University	No	Not Considered
University of Utah	No	Considered
University of Vermont	No	Considered
University of Virginia	No	Considered
University of Washington	Yes	Not Considered
West Virginia University	No	Not Considered
University of Wisconsin, Madison	No	Considered
University of Wyoming	No	Not Considered

Source: The College Board, "Big Future." Accessed April 2021.

The Martin Center combined data from three sources for this report: previous reports conducted by the Center for Equal Opportunity, data collected by UCLA Professor Rick Sander, and data received via public records requests directly to public flagship institutions. Many universities did not respond or responded insufficiently to public records requests. However, using data from all three sources, the Martin Center was able to include analysis from 22 universities, including several that do not appear in Table I. Universities were included in the analysis regardless of whether race is an official consideration in admissions.

The following information was requested from each university, although it wasn't always made available. Therefore, not all data points were included in every analysis:

- SAT I (or Reasoning Test), including Math, Critical Reading, and Writing scores;
- SAT II subject tests, reporting score and subject;
- ACT scores;
- Advanced Placement Scores, reporting score by subject;
- High school GPA (as reported by the applicant's high school);
- Adjusted high school GPA (if your college uses an adjusted measure);
- Race;
- Ethnicity or Hispanic origin;
- Gender;
- High school class rank;
- Parents' income (in any reported categories);
- Highest level of education achieved by a parent, or father's educational attainment and mother's educational attainment;
- Whether the student lives in a single-parent household;
- State residency status;
- College program for which applicant is considered, if applicable;
- Whether the student was offered an athletic scholarship or admitted through an athletic preference;
- Whether the student has parents who are alumni/ae of your school;
- Any numerical admissions index used in making admissions decisions;
- Was the applicant accepted?
- Did the applicant enroll?

Summary statistics reveal disparities in the standardized test scores of admitted students.

**TABLE 2: Median SAT and ACT scores of admitted students, by race**

University	Test	Year	Asian	Black	Hispanic	White
Clemson	ACT	2006-07	28	23	28	28
Clemson	SAT	2006-07	1280	1090	1250	1260
University of Colorado, Boulder	SAT	2017	1190	1120	1090	1180
University of Hawaii	SAT	2019	1180	1120	1105	1200
University of Hawaii	SAT	2018	1150	1080	1060	1160
Indiana State University	SAT	2006	980	840	905	970
Indiana University, Bloomington	SAT	2005	1210	1010	1120	1140
University of Iowa	ACT	2006	25	22	24	25
University of Kansas	ACT	2005-06	25	21	24	25
University of Kansas	SAT	2005-06	1200	1030	1120	1170
University of Kentucky	SAT	2018-19	1260	1060	1160	1190
University of Kentucky	ACT	2018-19	27	21	24	26
University of Massachusetts	SAT	2018	1390	1210	1240	1310
University of Massachusetts	ACT	2018	32	26	28	30
University of Michigan	ACT	2005	30	24	27	29
University of Minnesota, Morris	ACT	2005-06	20	19	24	25
University of Minnesota, Morris	SAT	2005-06	1090	935	1020	1280
University of Minnesota, Twin Cities	ACT	2005	23	21	23	26
University of Minnesota, Twin Cities	SAT	2005-06	1230	1185	1165	1260
University of Montana	ACT	2018	23	20	20	22
University of Montana	SAT	2019	1140	1050	1020	1140
University of Montana	ACT	2019	22.5	20	19.5	22



University of Nebraska	ACT	2005-07	24	21	25	25
University of Nebraska	SAT	2005-07	1170	980	1280	1190
New Mexico State University	SAT	2018	1140	950	1000	1060
SUNY Buffalo	SAT	2016	1310	1180	1210	1260
UNC-Chapel Hill	SAT	2005-06	1400	1200	1310	1350
UNC-Chapel Hill	ACT	2005-06	30	25	29	30
Ohio State University	SAT	2005-06	1280	1110	1170	1210
Ohio State University	ACT	2005-06	27	23	25	26
University of South Carolina	SAT	2018	1330	1190	1280	1290
University of South Carolina	SAT	2019	1340	1170	1270	1290
University of South Carolina	ACT	2018	28	23	27	28
University of South Carolina	ACT	2019	29	23	27	28
University of Texas, Austin	SAT	2005-06	1340	1110	1140	1300
University of Texas, Austin	ACT	2005-06	28	23	23	28
Texas A&M University	SAT	2004-06	1270	1080	1110	1210
Texas A&M University	ACT	2004-06	26	22	23	26
University of Washington, Seattle	SAT	2017-18	1300	1090	1130	1320
University of Washington, Seattle	ACT	2017-18	30	22	24	30
University of Wyoming	SAT	2018-20	1170	1060	1120	1170
University of Wyoming	ACT	2018-20	24	21	22	25

On average, among schools that provided SAT scores of admitted students:

- The SAT score of white students was 133 points higher than the score of black students.
- The SAT score of white students was 20 points lower than the score of Asian students.
- The SAT score of white students was 69 points higher than the score of Hispanic students.

Next, we used odds ratios to estimate the effects of race on student admission. An odds ratio is an expression of the odds of an event happening to Group A compared to the same event happening to Group B, where group B is the reference group. In our analyses, white students are the reference group since white students made up the largest racial category at each university we examined.

An odds ratio equal to or greater than 3.0 to 1 indicates a strong association. An odds ratio equal to or greater than 1.5 to 1 but less than 3.0 to 1 indicates a moderate association, while an odds ratio of less than 1.5 to 1 indicates a weak association. An odds ratio of 1.0 to 1 indicates no relationship. An odds ratio of less than 1.0 to 1 (e.g., 0.8 to 1) favors white applicants.<sup>5</sup>

**TABLE 3: Odds ratios of admission using SAT or ACT scores, high school GPA, residency, gender, application term, and ethnicity as predictors**

University	Asian-White	Black-White	Hispanic-White
Clemson, SAT	ns	28.035 to 1	ns
Clemson, ACT	ns	32.764 to 1	ns
University of Colorado, Boulder, SAT	ns	ns	ns
University of Hawaii (2018), SAT	0.709 to 1	ns	ns
Indiana State University, SAT	0.367 to 1	ns	ns
Indiana State University, ACT	ns	ns	ns
Indiana University, SAT	1.116 to 1	0.744 to 1	ns
Indiana University, ACT	ns	0.811 to 1	ns
University of Iowa, SAT	ns	ns	ns
University of Iowa, ACT	ns	ns	ns
University of Kansas, SAT	ns	ns	ns
University of Kansas, ACT	ns	ns	ns

5. <http://gator4245.temp.domains/~ceousa40/wp-content/uploads/2021/02/Pervasive-Preferences-2.0.Feb-11-2021.pdf>

University of Kentucky, SAT	0.073 to 1	0.351 to 1	0.425 to 1
University of Kentucky, ACT	0.397 to 1	0.605 to 1	0.727 to 1
University of Massachusetts, SAT	0.621 to 1	3.471 to 1	3.083 to 1
University of Massachusetts, ACT	0.691 to 1	3.300 to 1	3.068 to 1
University of Michigan (2005), ACT	0.8 to 1	62.8 to 1	47.8 to 1
University of Minnesota, Morris, SAT	ns	ns	ns
University of Minnesota, Morris, ACT	0.493 to 1	0.440 to 1	ns
University of Minnesota, Twin Cities, SAT	1.214 to 1	1.476 to 1	ns
University of Minnesota, Twin Cities, ACT	1.488 to 1	1.561 to 1	ns
University of Montana (2019)	ns	ns	ns
University of Montana (2018), SAT	ns	ns	4.624 to 1
University of Montana (2018), ACT	ns	ns	ns
University of Nebraska, SAT	ns	ns	ns
University of Nebraska, ACT	2.788 to 1	1.376 to 1	1.520 to 1
New Mexico State University, SAT	ns	ns	ns
New Mexico State University, ACT Math	ns	0.808 to 1	ns
New Mexico State University, ACT English	ns	0.812 to 1	ns
SUNY Buffalo, SAT	0.585 to 1	0.551 to 1	0.635 to 1
SUNY Buffalo, ACT	ns	0.559 to 1	0.614 to 1
UNC-Chapel Hill, SAT	0.825 to 1	7.183 to 1	5.310 to 1
UNC-Chapel Hill, ACT	1.444 to 1	7.096 to 1	6.976 to 1
Ohio State University, SAT	1.184 to 1	2.419 to 1	2.792 to 1
Ohio State University, ACT	1.876 to 1	4.912 to 1	3.834 to 1

University of South Carolina (2018), SAT	ns	ns	ns
University of South Carolina (2018), ACT	ns	ns	ns
University of South Carolina (2019), SAT	ns	ns	ns
University of South Carolina (2019), ACT	ns	0.645 to 1	ns
University of Texas, Austin, SAT	1.094 to 1	2.199 to 1	2.034 to 1
University of Texas, Austin, ACT	1.392 to 1	2.473 to 1	2.419 to 1
Texas A&M University, SAT	0.663 to 1	1.427 to 1	1.527 to 1
Texas A&M University, ACT	ns	1.453 to 1	1.683 to 1
University of Wyoming, SAT	ns	ns	ns
University of Wyoming, ACT	ns	ns	ns

\* ns = not significant

As these results show, most schools do not use race in their admissions decisions or do so to a very small extent. However, several schools do discriminate on the basis of race in significant ways. Some schools (such as Clemson) appear to discriminate only against white students. Some (such as UNC-Chapel Hill) appear to discriminate against both white students and certain minority students. Others (such as SUNY Buffalo and the University of Kentucky) appear to discriminate in favor of white students.

Controlling for multiple factors, statistical analyses found:

- 16 cases where black applicants were given precedence over whites and 9 cases where white applicants were favored over black applicants;
- 13 cases where Hispanic applicants were given precedence over whites and 4 cases where white applicants were favored over Hispanic applicants;
- 9 cases where Asian applicants were given precedence over whites and 11 cases where white applicants were favored over Asian applicants.

These findings represent a significant amount of artificial manipulation of the racial make-up of undergraduate student bodies.

# POLICY RECOMMENDATIONS

Should the Supreme Court rule in favor of the continued use of racial preferences, state legislatures and Congress can act to end the discriminatory practice. The Martin Center recommends the following policy reforms.

Congress should<sup>6</sup>:

- Eliminate accreditation standards that force colleges and universities to adopt race-preferential admissions policies<sup>7</sup>
- Eliminate earmarked government subsidies for Minority-Serving Institutions, which encourage the use of racial double standards

State legislatures should:

- Prohibit discrimination and preferential treatment based on race, sex, color, ethnicity, national origin, or other identity categories in all hiring, contracting, and admissions at all public educational institutions
- Prohibit the special treatment of “legacy” admissions at public educational institutions

Universities should:

- End test-optional policies
- Set and enforce minimum academic standards for all students
- End discrimination and preferential treatment based on race, sex, color, ethnicity, national origin, or other identity categories in all hiring, contracting, and admissions at all public educational institutions
- End the special treatment of “legacy” students and athletes

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6. As suggested by Gail Heriot in the *New Criterion*: <https://newcriterion.com/issues/2022/10/an-agenda-for-congress>

7. Heriot, Gail. “Accreditation Overreach Part 2.” The Federalist Society, October 23, 2015. <https://fedsoc.org/commentary/fedsoc-blog/accreditation-overreach-part-2>.

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ISSN 1935-3510

*This report was made possible by a generous grant from Joel Margolis.*

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The James G. Martin Center for Academic Renewal is a private nonprofit institute dedicated to improving higher education policy. Our mission is to renew and fulfill the promise of higher education in North Carolina and across the country.

We advocate responsible governance, viewpoint diversity, academic quality, cost-effective education solutions, and innovative market-based reform. We do that by studying and reporting on critical issues in higher education and recommending policies that can create change—especially at the state and local level.

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