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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF ALAMEDA**

16 KAWIKA SMITH, through his guardian ad
17 litem LEILANI REED; GLORIA D, through her
guardian ad litem DIANA I; STEPHEN C.,
18 through his guardian ad litem, MARGARET F.;
ALEXANDRA VILLEGAS, an individual;
19 CHINESE FOR AFFIRMATIVE ACTION, a
nonprofit organization; COLLEGE ACCESS
20 PLAN, a nonprofit organization; COLLEGE
SEEKERS, a nonprofit organization;
21 COMMUNITY COALITION, a nonprofit
organization; DOLORES HUERTA
22 FOUNDATION, a nonprofit organization; and
LITTLE MANILA RISING, a nonprofit
23 organization,

24 Plaintiffs,

25 v.

26 REGENTS OF THE UNIVERSITY OF
CALIFORNIA; JANET NAPOLITANO, in her
official capacity as President of the University of
27 California; and DOES 1-100,

28 Defendants.

CASE NO.

UNLIMITED JURISDICTION

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1. VIOLATION OF STATE EQUAL PROTECTION GUARANTEES (Cal. Const., art. I, § 7(a) & art. IV, § 16(a));
2. DISCRIMINATION ON THE BASIS OF A PROTECTED CLASSIFICATION (Cal. Gov. Code § 11135);
3. PROHIBITED DISCRIMINATION IN EDUCATION (Cal. Educ. Code § 66270);
4. VIOLATION OF THE UNRUH ACT (Cal. Civ. Code § 51);
5. VIOLATION OF THE CALIFORNIA DISABLED PERSONS ACT (Cal. Civ. Code § 54 *et seq.*)
6. DECLARATORY RELIEF

[JURY TRIAL DEMANDED]

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1 **INTRODUCTION**

2 1. Public higher education is the gateway for all California students to build
3 successful careers, pursue their intellectual interests, and gain meaningful access to social
4 mobility. The California Constitution established the University of California (“UC” or the
5 “University”) as a public trust and envisioned the UC as the culmination of the State of California
6 (“State”)’s obligation to provide public education to its citizens.¹ As the State’s preeminent public
7 institution of higher education, the University of California has a legal obligation to provide equal
8 access to all qualified students, regardless of their backgrounds.

9 2. But the UC has failed to carry out its promise: rather than fulfilling its vision as
10 “[a]n engine of opportunity for all Californians”² and creating a level playing field in which all
11 students are evaluated based on individual merit, the UC requires all applicants to subject
12 themselves to SAT and ACT tests that are demonstrably discriminatory against the State’s least
13 privileged students, the very students who would most benefit from higher education. The
14 discriminatory effect of the use of these tests is well known to both the State and the UC.
15 Governor and ex officio Regent Gavin Newsom recently recognized that “use [of the SAT and
16 ACT] exacerbates the inequities for underrepresented students, given that performance on these
17 tests is highly correlated with race and parental income, and is not the best predictor for college
18 success.”³ UC Berkeley Chancellor Carol Christ similarly called for the UC to drop its test score
19 requirement because SAT and ACT scores “really contribute to the inequities of our system.”⁴

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21 ¹ Cal. Const. art. IX, § 9(a); *see id.* § 1. The State of California is the legal and political entity
22 responsible for ensuring that all California public school students receive their individual and
23 fundamental right to an equal education, under the Equal Protection Clause of the California
24 Constitution, Article I, section 7(a).

25 ² Univ. of Cal. Office of the Pres., *Your University of California: A Report from President Mark*
26 *Yudof for Friends of UC* (Sept. 2009), available at
27 regents.universityofcalifornia.edu/regmeet/sept09/pres.pdf.

28 ³ Governor Gavin Newsom, AB 751 Veto Message (Oct. 12, 2019), available at
<https://www.gov.ca.gov/wp-content/uploads/2019/10/AB-751-Veto-Message.pdf>.

⁴ Teresa Watanabe, *Drop the SAT and ACT as a Requirement for Admission, Top UC Officials Say*, L.A. Times (Nov. 23, 2019), <https://www.latimes.com/california/story/2019-11-23/uc-officials-recommend-dropping-sat-admission-requirement>.

1 These comments are remarkably consistent with UC’s original 1962 decision not to use the SAT
2 because the “scores add little or nothing to the precision with which existing admissions
3 requirements are predictive of success in the University.”⁵ They are also consistent with the results
4 of decades of research within the UC itself about the discriminatory effect and minimal predictive
5 value of these tests. These discriminatory tests irreparably taint UC’s ostensibly “holistic”
6 admissions process. The mere presence of the discriminatory metric of SAT and ACT scores in
7 the UC admissions process precludes admissions officers from according proper weight to
8 meaningful criteria, such as academic achievement and personal qualities, and requires them
9 instead to consider criteria that act as a proxy for wealth and race and thus concentrate privilege on
10 UC campuses.

11 3. Consequently, the UC admissions process—as deliberately operated by the
12 Regents—creates formidable barriers to access to public higher education for deserving students
13 from low-income families, students from historically underrepresented racial and ethnic groups,
14 and students with disabilities. The requirement that all applicants submit SAT or ACT scores
15 systematically and unlawfully denies talented and qualified students with less accumulated
16 advantage a fair opportunity to pursue higher education at the UC. Every UC admissions cycle
17 that evaluates applicants based on their SAT and ACT scores irreparably damages the futures of
18 tens of thousands of students who are capable of excelling at the UC campuses of their choice and
19 benefitting from the opportunities and supports a UC education provides, causing unjustifiable
20 squandering of time and resources and intense stress for them, their families, and their schools.

21 4. The UC is well aware that, rather than providing meaningful information about a
22 student’s ability to succeed in college, SAT and ACT scores are largely a proxy for a student’s
23 socioeconomic background and race. Instead of measuring students’ academic ability or mastery
24 of curriculum, SAT and ACT scores reflect demographic and socioeconomic characteristics like
25 family income, parental education, and race. With its mission of providing public higher education
26 to all Californians, the UC would never explicitly decline to admit a student because the student is

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28 ⁵ John A. Douglass, *The Conditions for Admission: Access, Equity, and the Social Contract of Public Universities* 90 (2007) (quoting BOARS Chairman Charles Jones).

1 low-income, a first-generation college applicant, or a member of an underrepresented minority
2 group. But that is precisely the result of UC’s decision to consider SAT and ACT scores: an
3 admissions process that rations access to public higher education on the bases of race, privilege,
4 and wealth.

5 5. Over the past six decades, the UC has commissioned study after study on what, if at
6 all, SAT and ACT scores contribute to the prediction of first-year grades, and repeatedly arrived at
7 the same answer: almost nothing. Taken alone, SAT and ACT scores predict less than two percent
8 of the variation in first-year grade point average (“GPA”) among UC students.⁶ First-year grades
9 are a dubious metric around which to build a student body: nowhere in any of the voluminous
10 publications and presentations about the UC system is it ever stated that maximizing first-year
11 grades is either a goal of the system or meaningful in any relevant way to the objectives of a
12 college education. Putting aside the questionable choice to structure admissions decisions around
13 the metric of first-year grades, UC’s findings have remained strikingly consistent over time: SAT
14 and ACT scores add very little incremental validity to predictions of first-year grades, and that
15 already marginal contribution dwindles even further once socioeconomic characteristics are taken
16 into account. UC researchers have demonstrated that high school grades are consistently the best
17 predictor of college success—a finding that has also been established by hundreds of studies at
18 other colleges and universities. Faced with such studies, the UC has not only admitted the
19 “considerable redundancy” of using both high school GPA and SAT or ACT scores as admissions
20 criteria, but has also recognized that high school GPA “has less adverse impact on disadvantaged
21 groups.”⁷ Moreover, as the UC has acknowledged, but validity studies ignore, “students can be
22 coached, to advantage,” on the SAT and ACT.⁸ The fact that affluent students can effectively

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24 ⁶ Univ. of Cal. Bd. of Admissions & Rel. with Schs. (BOARS), *Revised Proposal to Reform UC’s*
25 *Freshman Eligibility Policy* app. IV 95 (Feb. 20, 2008), available at
[https://senate.universityofcalifornia.edu/_files/](https://senate.universityofcalifornia.edu/_files/underreview/sw.rev.eligibility.02.08.pdf)
26 [underreview/sw.rev.eligibility.02.08.pdf](https://senate.universityofcalifornia.edu/_files/underreview/sw.rev.eligibility.02.08.pdf).

27 ⁷ BOARS, *Admissions Tests and UC Principles for Admissions Testing* 15, 24 (Dec. 2009),
28 available at [https://](https://senate.universityofcalifornia.edu/_files/reports/hp2mggy_boars-testing_010609.pdf)
senate.universityofcalifornia.edu/_files/reports/hp2mggy_boars-testing_010609.pdf.

⁸ *Id.* at 21.

1 purchase higher scores through expensive private tutoring services diminishes the already limited
2 predictive value of the tests still further.

3 6. The design of the SAT and ACT places underrepresented minority students at a
4 significant disadvantage. UC Provost Michael Brown recently objected to UC’s continued use of
5 the test on precisely these grounds, noting that rather than measuring individual merit, SAT and
6 ACT results artificially “compare students against one another in a way designed to produce high
7 and low scores.”⁹ To repeatedly produce this score distribution, the test development process tends
8 iteratively to discard items on which underrepresented minority students perform well and to
9 retain questions on which they do not do well. Over multiple administrations of the test, this
10 adverse effect reinforces and perpetuates itself, such that subsequent tests are systematically
11 biased against underrepresented minority students. UC psychometricians have found that up to 12
12 percent of items are biased against Black students, and up to 10 percent of items are biased against
13 Latinx students.¹⁰

14 7. The highly discriminatory nature of the SAT and ACT has resulted in starkly
15 disparate student outcomes. According to the College Board’s 2019 data, among students taking
16 the SAT in California, 45 percent of White students scored 1200 or above, compared to only nine
17 percent of Black students and 12 percent of Latinx students.¹¹ Only one percent of Black students
18 and two percent of Latinx students scored in the top score bracket, compared to 12 percent of
19 White students.¹² And although Asian students have the highest scores when treated
20 monolithically by the College Board, such a grouping hides the fact that certain subgroups score
21 much lower than average.

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24 ⁹ Watanabe, *supra* note 4.

25 ¹⁰ Maria Veronica Santelices & Mark Wilson, *On the Relationship Between Differential Item*
26 *Functioning and Item Difficulty: An Issue of Methods? Item Response Theory Approach to*
Differential Item Functioning, 72 Educ. & Psychol. Measurement 5, 24 (2012).

27 ¹¹ College Board, *SAT Suite of Assessments Annual Report: California* (2019), available at [https://](https://reports.collegeboard.org/pdf/2019-california-sat-suite-assessments-annual-report.pdf)
28 reports.collegeboard.org/pdf/2019-california-sat-suite-assessments-annual-report.pdf.

¹² *Id.*

1 8. Unsurprisingly, given their enormous stakes, the SAT and ACT have spawned a
2 lucrative test preparation industry which capitalizes on the desires of students and their parents to
3 maximize their odds of admission by securing even incremental score increases. Well aware of the
4 decisive effect SAT and ACT scores can have on college admission opportunities, affluent
5 students and their parents spend thousands of dollars to learn test-taking tricks and strategies from
6 private tutors. As UC’s Board of Admissions and Relations with Schools (“BOARS”) and
7 individual Regents have recognized, unequal access to high-quality test preparation gives affluent
8 students a competitive advantage over their peers with less wealth. According to UC Regents
9 Chairman John Pérez, “[t]he highest predictive value of an SAT isn’t in how well a student will do
10 in school, but how well they were able to avail themselves of prep material. And access to that
11 prep material is still disproportionately tied to family income.”¹³ Moreover, by incentivizing
12 mastery of test-taking tricks over mastery of curriculum, test preparation “distracts participants
13 from college preparatory coursework.”¹⁴ The need to prepare students for high-stakes, one-off
14 tests has forced already underresourced schools and school districts to divert their limited funds
15 away from substantive education and toward test preparation. As then-UC President Richard
16 Atkinson stated when he recommended eliminating the use of the SAT I in UC admissions:
17 “[O]veremphasis on the SAT is compromising our education system.”¹⁵

18 9. The Regents have been aware of these inequities for years. Nevertheless, the
19 Regents have determined that the minimal added value of SAT and ACT scores in predicting first-
20 year GPA outweighs their harms to underrepresented minority students, students with disabilities,
21 and students with less wealth.

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24 ¹³ Teresa Watanabe, *Q&A: Raise UC Tuition? Eliminate SAT Tests? Board of Regents Chairman*
25 *John A. Pérez Has Something to Say*, L.A. Times (Nov. 1, 2019),
26 <https://www.latimes.com/california/story/2019-11-01/q-a-uc-board-of-regents-chairman-john-a-perez>.

26 ¹⁴ BOARS, *supra* note 7, at 21.

27 ¹⁵ Richard C. Atkinson, Robert H. Atwell Distinguished Lecture at the Eighty-third Annual
28 Meeting of the American Council on Education: Standardized Tests and Access to American
Universities 139 (Feb. 18, 2001), available at <https://escholarship.org/uc/item/6182126z>.

1 Children’s Defense Fund and acts as a youth ambassador for Imagine LA, a nonprofit organization
2 that works to end family homelessness and chronic poverty. Kawika has fought discriminatory
3 policies at his high school and helped to bring about state legislation banning discrimination based
4 on natural hair, Senate Bill 188 (effective January 1, 2020). Kawika has taken multiple honors
5 courses, and has a cumulative GPA of 3.56 and an unweighted GPA of 3.32. His PSAT score is
6 1140.

7 13. Kawika aspires to a career in government, through which he can continue to engage
8 in public advocacy and activism. He plans to work in local or state government and eventually run
9 for office. Ultimately, Kawika hopes to represent his community as either a U.S. Representative or
10 a U.S. Senator.

11 14. Throughout his years in school, Kawika has experienced significant trauma. He has
12 experienced housing insecurity for much of his life, and was homeless from second grade through
13 eighth grade. Kawika is a survivor of rape and has experienced domestic violence. As a child, he
14 witnessed a murder, and he more recently experienced the death of his brother during his junior
15 year of high school. These challenges have made it extraordinarily difficult for Kawika to perform
16 well on high-stakes tests like the SAT and ACT. His food insecurity impacted his test performance
17 because he was not able to eat breakfast. He also knows that his past trauma directly impacts his
18 capacity to perform on these tests.

19 15. Kawika’s school partnered with an SAT program through which local college
20 students from California State University, Dominguez Hills helped students prepare for the SAT.
21 Only one of the tutors offered high-quality instruction, and she was unable to tutor all of the
22 students who sought her assistance. Kawika’s more affluent friends were able to afford private
23 SAT tutoring, with costs ranging from \$2,500 to \$5,000 a month. Although Kawika participated in
24 Khan Academy,¹⁷ that program did not help him improve his scores on the PSAT. On simulated
25 SAT tests, Kawika’s score dropped from his 1140 PSAT score to 980. During these tests, Kawika
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27 ¹⁷ Under a contract with the College Board, Khan Academy provides free online test preparation
28 services, although these services are limited by its affiliation with the College Board. *Infra* para.
124.

1 began questioning whether he was intelligent enough to succeed on the SAT, only to realize that
2 the test was entirely unable to measure his many accomplishments. After paying for private
3 tutoring, Kawika’s friends improved their scores on both the PSAT and SAT. Kawika decided not
4 to take the SAT at the same time as many of his peers because he felt underprepared.

5 16. Kawika’s lifelong dream has been to attend either UC Berkeley or UCLA. He takes
6 pride in the UC system and wishes to study in its leading social science departments. Attending
7 college at a UC campus would afford Kawika the opportunity to continue working with
8 California-based community organizations and to apply his college education and experiences to
9 building a more equitable California. Upon learning that he would have to take the SAT to be
10 considered at any UC campus, Kawika was forced to focus his application efforts on East Coast
11 colleges with test-optional policies. Kawika is scheduled to take the SAT in December 2019, but
12 unless his scores increase dramatically, he is unlikely to gain admission at any UC campus.
13 Kawika’s lifelong ambition to attend UC Berkeley or UCLA has been stymied by UC’s
14 requirement that he submit test scores that fail to measure his true abilities. UC’s test score
15 requirement has subjected Kawika to unlawful discrimination on the basis of race and wealth and
16 has impaired his access to public higher education.

17 17. **Plaintiff Gloria D.** is a 17-year-old Latinx student who is a senior at a private high
18 school in California. Gloria D.’s first language is Spanish. As a young child, Gloria woke up at
19 four a.m. every day to commute across the border to attend school.

20 18. Gloria D. is a strong student. She has taken a rigorous course load, and has a
21 weighted GPA of 4.0 and an unweighted GPA of 3.78. Gloria D. aspires to be a doctor and has
22 thus taken more science classes than her school requires, including an AP science class. She has
23 received multiple academic awards and is a member of the National Honor Society. Outside of
24 school, Gloria D. volunteers at a hospital and is a dancer.

25 19. Gloria D. has taken the SAT twice: once in the spring of her junior year, and once
26 in the fall of her senior year. As a student for whom English is a second language, Gloria D. has
27 experienced difficulties with the phrasing of SAT questions, including word problems in the math
28 section. She takes a long time to read and understand each word problem, and when she realizes

1 that she is running out of time, she panics and guesses the answer. She has subsequently reviewed
2 word problems she answered incorrectly, only to realize that she understood the underlying
3 mathematical concept, but did not understand the question as phrased. As a result, Gloria D. gets
4 nervous when taking college admissions tests. She has experienced headaches when taking mock
5 exams.

6 20. Due to these challenges, Gloria D. scored 1110 on her first SAT. Because Gloria
7 D.'s high school does not offer SAT or ACT test preparation, Gloria D.'s mother has had to
8 devote the family's limited funds to other test preparation resources. Family friends referred
9 Gloria D.'s mother to a private tutor—who was reputedly very effective—but at \$250 per hour,
10 the cost was prohibitive. Instead, Gloria D. and her mother relied on free and relatively low-cost
11 test preparation resources: Gloria D. used Khan Academy's test preparation programs, and her
12 mother bought her SAT and ACT test preparation books and paid \$45 per hour for Gloria D. to
13 meet with an individual who tutored her on the SAT and advised her on the college admissions
14 process. In total, Gloria D.'s mother has spent approximately \$800 on college admissions tests and
15 test preparation for Gloria D. This amount is both significant and burdensome for Gloria D.'s
16 mother, who contributes to her children's private school tuition and also spends large amounts to
17 fund their extracurricular activities. Despite the time, effort, and resources that she and her mother
18 devoted to test preparation, Gloria D. achieved only a 30-point increase at her second SAT sitting,
19 raising her score to 1140.

20 21. Encouraged by her high school to pursue any career to which she aspires, Gloria D.
21 is determined to become a doctor. Gloria D.'s lifelong ambition has been to attend UCLA. The UC
22 system appeals to Gloria D. because its campuses are known as great research schools, which
23 Gloria D. believes will benefit her when she applies to medical school. For Gloria D., obtaining a
24 degree from a UC campus would be like obtaining a "seal of approval" when applying to medical
25 school and pursuing a career as a doctor. Attending a UC campus would also be more affordable
26 for Gloria D. and her family than attending a private college. Gloria D. has applied to three UC
27 campuses, but due to her SAT scores, she is unlikely to gain admission at any of them. When
28 Gloria D. visited one UC campus, a student told her that with her SAT scores, she had no chance

1 of acceptance. UC’s requirement that Gloria D. submit test scores that fail to measure her true
2 abilities has devastated Gloria D. and her mother and shattered her dream of attending UCLA.
3 UC’s test score requirement has subjected Gloria D. to unlawful discrimination on the basis of
4 race and wealth and has impaired her access to public higher education.

5 22. **Plaintiff Stephen C.** is a 16-year-old student who is a sophomore at a public high
6 school in California. He plans to apply to several UC campuses for undergraduate education.
7 Stephen C. has a history of disabilities that have affected his testing performance. Since seventh
8 grade, Stephen C. has had an official school accommodations plan pursuant to Section 504 of the
9 Rehabilitation Act of 1973 (his “504 Plan”), which allows him academic accommodations
10 including extended time on exams, the ability to take exams in a distraction-reduced setting, and
11 preferential seating in class. Stephen C. currently has a 4.0 GPA and takes one of the most
12 rigorous course loads offered at his high school. He is also a varsity athlete.

13 23. Due to his disabilities, Stephen C. requires testing accommodations to take the SAT
14 or ACT. Recently, his high school and school district changed their SAT and ACT
15 accommodation policies. Due to the burdens that the standardized testing accommodations process
16 impose on his high school’s counseling department, Stephen C.’s high school will no longer apply
17 for SAT or ACT accommodations for any of its students or assist students or families with this
18 process. This will make the process more difficult to complete for Stephen C. and other students in
19 his school district, including the 45 percent of students who are socioeconomically disadvantaged.
20 These students will be less likely to receive the testing accommodations to which they are entitled.
21 Moreover, not all test sites permit students with disabilities to take the SAT or ACT with
22 necessary accommodations, such that—unlike examinees without disabilities—Stephen C. may
23 not be able to choose his preferred test location when he registers. Accordingly, he faces
24 significant hurdles to even take the SAT or ACT with the accommodations he needs. Without
25 these necessary accommodations, Stephen C. will be unable to perform to his full ability on the
26 SAT or ACT.

27 24. Stephen C. has also confronted the stigma associated with requesting and using the
28 testing accommodations he requires to demonstrate his abilities. Many of his peers and their

1 parents consider the use of accommodations—even by students who are legally entitled to them
2 and whose 504 Plans or Individualized Education Programs (“IEPs”) provide for them—to be
3 “cheating.” He has found that certain individuals, even those who work with children, consider
4 standardized test accommodations to be a “privilege” instead of a legal right. Following the
5 negative press surrounding the recent college admissions scandal, Stephen C. has had to weigh
6 using the accommodations he needs against the embarrassment he will experience and suspicion
7 he will face if his peers or their parents—or even college admissions officers—find out.

8 25. Stephen C. knows that his standardized test scores cannot predict his ability to
9 succeed in college, and that his scores will be an even worse predictor of his college performance
10 if he is unable to obtain the accommodations he needs. He knows that he will have to spend an
11 unreasonable amount of time and money seeking appropriate test accommodations and preparing
12 for the tests, and that this will be extremely burdensome for him and his family. UC’s reliance on
13 SAT and ACT scores to evaluate applicants thus jeopardizes Stephen C.’s ability to be fairly
14 considered in the UC admissions process. UC’s requirement that all applicants submit an SAT or
15 ACT score to be considered for admission has subjected Stephen C. to unlawful discrimination on
16 the basis of disability and has impaired his access to public higher education.

17 26. **Plaintiff Alexandra Villegas** is an 18-year-old Latinx first-year student in the
18 Honors Transfer Program at Pasadena City College. Alex was raised without a father in a family
19 of six children, and her mother died when Alex was five years old. Together with her siblings,
20 Alex had significant family responsibilities throughout her childhood, including caring for her
21 brother with Down syndrome. Despite these challenges, Alex attended and excelled at Los
22 Angeles public schools from elementary through high school. Alex has a longstanding passion for
23 animals and the environment, which she developed as a middle school student in the
24 Environmental Studies Magnet program at Thomas Starr King Middle School. Participation in the
25 program, which teaches students about environmental issues and community engagement through
26 a project-based curriculum, sparked Alex’s interest in pursuing a career working with animals.

27 27. A strong and motivated student, Alex applied for and was accepted to John
28 Marshall High School’s School for Advanced Studies (SAS). SAS sites are so designated for their

1 exemplary gifted/talented education programs, “which offer high-level academic opportunities that
2 meet the unique educational needs of K-12 gifted learners.”¹⁸ In SAS, Alex appreciated being
3 surrounded by other talented and driven students, who pushed each other to perform well in their
4 coursework. Alex’s favorite classes were English and chemistry. Outside of the classroom, Alex
5 played on her high school’s soccer team and participated in Habitat for Humanity. She graduated
6 in June 2019 with a cumulative GPA of approximately 3.4.

7 28. Alex’s standardized test scores, however, failed to capture her gifts and motivation.
8 Alex took the PSAT as a high school sophomore, and received a score of 950. She took the SAT
9 two times, receiving a score of 1040 on the first administration and 1050 on the second. Alex
10 experienced anxiety while taking the SAT, particularly during the essay section of the exam.
11 During that section, she felt “giddy” under the time pressure and struggled to begin her essay.
12 Alex found it difficult to make all of her points clearly and concisely while worrying about
13 whether she would have sufficient time to finish.

14 29. Alex could not afford expensive test preparation courses, and so did not participate
15 in any test preparation prior to her first SAT administration. After that test, Alex learned about
16 Khan Academy, which she used to practice test questions before her second SAT administration.
17 Alex also met with a family connection three or four times to work through SAT math problems.
18 Alex’s score on her second SAT administration increased by only 10 points.

19 30. Alex wanted to attend the UC so that she could study among the best students in
20 the State. Although UCLA was Alex’s ideal college, the high average SAT and ACT scores of its
21 students deterred her from applying. Alex qualified for an application fee waiver, which allows
22 students who would otherwise be unable to afford it the ability to apply to up to four UC campuses
23 for no fee. Instead of applying to UCLA, where she felt she had no chance of admission due to her
24 SAT scores, Alex chose to apply to UC Davis, UC Merced, UC Riverside, and UC Santa Cruz. Of
25 those schools, UC Davis—with its College of Agricultural and Environmental Sciences—appealed
26 most strongly to Alex, although she did not feel confident when applying, again because of her

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28 ¹⁸ L.A. Unified Sch. Dist., *SAS Home: What Are Schools for Advanced Studies?*,
<http://echoices.lausd.net/sas>.

1 SAT scores. UC Davis and UC Santa Cruz denied Alex admission. UC Riverside placed Alex on
2 its waitlist, but did not ultimately grant her admission. Although Alex was offered admission at
3 UC Merced, she had little familiarity with its campus and programs, and was concerned about
4 whether those programs would meet her educational needs and goals. Although Alex was capable
5 of succeeding academically at the other UC campuses to which she applied, and which would have
6 been a better fit, her SAT scores prevented her from gaining admission to those campuses. Alex
7 ultimately decided to attend Pasadena City College in the hope that by performing well there, she
8 would have the opportunity to transfer to a UC campus that is closer to her family or more suited
9 to her academic interests.

10 31. Alex aspires to a career in which she can work with animals. She dreams of putting
11 her passion for the environment into practice by running her own farm and caring for many
12 animals. UC’s requirement that all applicants submit SAT or ACT scores has forced Alex to defer
13 this dream. Instead, Alex is enrolled at a community college with fewer supports for low-income
14 students than the UC, and waiting until her SAT scores no longer constitute a barrier to admission
15 at the UC campuses she hopes to attend. UC’s requirement that all applicants submit an SAT or
16 ACT score to be considered for admission has subjected Alex to unlawful discrimination on the
17 basis of race and wealth and has impaired her access to public higher education at the UC.

18 ***Organizational Plaintiffs***

19 32. **Plaintiff Chinese for Affirmative Action (“CAA”)** is a community-based civil
20 rights organization in San Francisco, California. CAA’s constituents include individuals who
21 reside in California and pay State taxes. The mission of CAA is to defend the civil and political
22 rights of Chinese Americans and to advance multiracial democracy. Programs at CAA currently
23 encompass direct services, leadership development, and civic engagement programs that prioritize
24 the needs and aspirations of its low-income, limited-English proficient, immigrant community
25 members. For five decades, CAA efforts in education equity have featured direct work with
26 English language learners and limited-English proficient parents to ensure that all families have
27 equitable access to high-quality public K-12 education and public higher education.

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1 33. CAA has identified the SAT and ACT as a major discriminatory barrier to college
2 access for its constituents and for all students of diverse backgrounds, including those who are
3 English language learners. In addition, CAA believes that the UC's SAT and ACT requirement
4 has harmfully skewed the priorities and resources of the families it serves and the schools they
5 attend away from initiatives that would improve high quality and more equitable education
6 opportunities. CAA's interests, as well as the rights and interests of its constituents and
7 organization stakeholders, are adversely affected by Defendants' actions and inactions as alleged
8 in this complaint, and CAA has diverted significant organizational resources to counteract
9 Defendants' discriminatory testing requirements. Neither the claims asserted nor the relief
10 requested in this complaint require the participation of CAA's individual constituents.

11 34. **Plaintiff College Access Plan (CAP)** is a nonprofit organization based in
12 Pasadena, California. CAP works to address the gap in college knowledge and matriculation
13 among low-income and college-going students in Pasadena's public schools. Working closely
14 with counselors and teachers, CAP has developed a comprehensive program that works in
15 partnership with schools to add meaningful and individualized college readiness support that is
16 open to all students. CAP's opt-in programs prioritize student-driven relationships with trusted
17 adults to embolden students of all ages to envision themselves with a college degree. Because
18 access to education is a right, not a privilege, CAP never selects students based on limiting criteria
19 like grades, test scores, and legal status.

20 35. In addition to its other programs, CAP provides free SAT test preparation courses
21 to students who attend Pasadena's public high schools. Because the SAT can be stressful for
22 students, CAP's curriculum addresses not only content and question design, but also students' test-
23 related anxiety, using metacognitive tools that consider both what students know and what they
24 feel. CAP knows that these courses are a stopgap measure that cannot eliminate the inequities
25 imposed by these tests on its own students and on students across the State. CAP's interests, as
26 well as the rights and interests of its members, are adversely affected by Defendants' actions and
27 inactions as alleged in this complaint, and CAP has diverted significant organizational resources to
28 counteract Defendants' discriminatory testing requirement, including the time, effort, and

1 resources it devotes to its test preparation programs that it could have been spending on
2 substantively preparing students for higher education. Neither the claims asserted nor the relief
3 requested in this complaint require the participation of CAP's individual members.

4 36. **Plaintiff College Seekers** is a nonprofit community-based organization whose
5 mission is to improve access to higher education for underserved populations in California.
6 College Seekers serves non-traditional learners, especially those who homeschool, use public
7 independent study, or attend non-traditional schools. College Seekers students include
8 underrepresented minorities, students from lower-income families, and students from remote or
9 underserved communities. College Seekers currently has over 2,500 members, and typically adds
10 between 100 to 150 new members per month. A high percentage of College Seekers students have
11 learning differences or disabilities, or have suffered trauma or bullying in traditional high school
12 environments.

13 37. College Seekers helps create access to postsecondary options through social capital,
14 awareness of college opportunities, and access to accurate information. College Seekers has seen
15 the lack of access to standardized testing constitute a consistent barrier to higher education for its
16 students. The SAT and ACT accommodations request process and its attendant costs have caused
17 College Seekers parents to experience distress, frustration, and concern, which has led some
18 parents to urge their children to attend community college and then transfer rather than take the
19 SAT or ACT without accommodations. Even when College Seekers students are approved for
20 accommodations, they may struggle to find test sites willing to accommodate them if their own
21 schools are not approved test centers. This increased difficulty and expense reduces access to
22 postsecondary opportunities for students with disabilities, particularly those from disadvantaged
23 and underserved backgrounds and rural areas. UC's requirement that all applicants submit SAT or
24 ACT scores in order to be considered for admission harms College Seekers students, who face
25 significant barriers to accessing these tests with necessary accommodations. The interests of
26 College Seekers and the rights and interests of its members are adversely affected by Defendants'
27 actions and inactions as alleged in this complaint, and College Seekers has diverted significant
28 organizational resources to counteract Defendants' discriminatory testing requirement. Neither the

1 claims asserted nor the relief requested in this complaint require the participation of individual
2 members of College Seekers.

3 38. **Plaintiff Community Coalition** is a nonprofit social justice organization based in
4 South Los Angeles that helps students reach their full potential and become agents of change.
5 Community Coalition prepares Black and Latinx students for college and success in the twenty-
6 first century economy and in institutions where they have historically been denied opportunity.
7 Over the last 28 years, Community Coalition’s youth program—South Central Youth Empowered
8 thru Action (“SCYEA”)—has trained high school students to push for reforms that disrupt the
9 “school to prison pipeline,” including by helping young people from South Los Angeles access
10 higher education. Through this work, Community Coalition has repeatedly seen that the UC’s
11 SAT or ACT score requirement impedes that access—without providing any meaningful
12 information to the admissions process—and prevents South Los Angeles youth from achieving
13 their potential and realizing their dreams. Community Coalition has witnessed the UC’s SAT or
14 ACT score requirement impose an obstacle to the advancement of the next generation of young
15 leaders, who are already fighting to transform social and economic conditions in South Los
16 Angeles. Community Coalition’s interests, as well as the rights and interests of its members, are
17 adversely affected by Defendants’ actions and inactions as alleged in this complaint, and
18 Community Coalition has diverted significant organizational resources to counteract Defendants’
19 discriminatory testing requirement. Neither the claims asserted nor the relief requested in this
20 complaint require the participation of Community Coalition’s individual members.

21 39. **Plaintiff Dolores Huerta Foundation** is a community benefit organization based
22 in California’s Central Valley. Dolores Huerta Foundation recruits, trains, organizes, and
23 empowers grassroots leaders in low-income communities to attain social justice through systemic
24 and structural transformation. Dolores Huerta Foundation’s education program empowers parents
25 to advocate for the rights of their students by disrupting the school-to-prison pipeline and creating
26 more support for low-income students, multilingual learners, and students with disabilities.
27 Dolores Huerta Foundation’s *Vecinos Unidos* (neighborhood organizations) have also successfully

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1 pursuant to Article IX, Section 9 of the California Constitution. Pursuant to Standing Order 105.2,
2 although the Regents have delegated to the Academic Senate the determination of “the conditions
3 for admission” to the UC, the Regents retain the authority to approve those conditions.¹⁹

4 43. **Defendant Janet Napolitano**, sued here in her official capacity, is President of the
5 UC and an ex officio Regent. Pursuant to Standing Order 100.4, as the “executive head of the
6 University,” Defendant Napolitano has, with limited exclusions, “full authority and responsibility
7 over the administration of all affairs and operations of the University.”²⁰ “The Office of the
8 President is responsible for guiding policy decisions on UC enrollment growth and managing
9 UC’s online application.”²¹

10 44. **Defendants Does 1 through 100** are persons whose true names and capacities are
11 presently unknown to Plaintiffs, who therefore sue these Defendants by fictitious names. Doe
12 Defendants include current and past individual Regents of the University of California who have
13 approved and tolerated the discriminatory policy of requiring SAT and ACT test scores as an
14 admissions criterion, as well as past and current members of BOARS who developed, approved,
15 and tolerated UC’s current testing requirement for admissions. Plaintiffs will amend this
16 Complaint to show Doe Defendants’ true names and capacities when they have been ascertained.
17 Plaintiffs are informed and believe, and herein allege, that such Doe Defendants are residents of
18 California.

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24 ¹⁹ Univ. of Cal. Bd. of Regents, *Standing Order 105.2: Duties, Powers, and Privileges of the*
25 *Academic Senate*, [https://regents.universityofcalifornia.edu/governance/standing-](https://regents.universityofcalifornia.edu/governance/standing-orders/so1052.html)
26 [orders/so1052.html](https://regents.universityofcalifornia.edu/governance/standing-orders/so1052.html).
27 ²⁰ Univ. of Cal. Bd. of Regents, *Standing Order 100.4: Duties of the President of the University*,
28 <https://regents.universityofcalifornia.edu/governance/standing-orders/so1004.html>.
²¹ Univ. of Cal. Office of the Pres., *Office of the President*,
<https://www.universityofcalifornia.edu/uc-system/office-of-the-president>.

FACTUAL ALLEGATIONS

I. Meaningless Tests

A. SAT and ACT

45. The SAT is owned by the College Board, which had roughly \$1.068 billion in revenue in 2017.²² Its creator, eugenicist Carl Brigham, based the test on previous IQ tests that purported to measure “native intelligence” and aptitude, as suggested by its original name, the “Scholastic Aptitude Test.”²³ In the years following World War I, IQ tests were used to channel Black students into vocational education tracks, “justify[ing] educational systems that mainly reproduced extant socio-economic” and racial inequalities.²⁴ The SAT was first administered in 1926.²⁵

46. Use of the SAT grew over the next two decades, primarily amongst Ivy League universities and other private institutions on the East Coast.²⁶ In 1947, the Educational Testing Service (ETS) was founded to consolidate the development and administration of standardized tests, including the SAT.²⁷ As the testing industry grew, so too did ETS’s budget, burgeoning from approximately \$2 million in 1947 to nearly \$30 million in 1969.²⁸ In 1959, the ACT entered the testing market, touted as an alternative to the SAT that was purportedly more curriculum-based.²⁹

²² ProPublica, *Nonprofit Explorer: College Board*, <https://projects.propublica.org/nonprofits/organizations/131623965>.

²³ See Nicholas Lemann, *The Big Test: The Secret History of American Meritocracy* 29–31, 34 (2000).

²⁴ Wayne Au, *Hiding Behind High-Stakes Testing: Meritocracy, Objectivity and Inequality in U.S. Education*, 12 Int’l Educ. J.: Comparative Perspectives 7, 9–10 (2013).

²⁵ Douglass, *supra* note 5, at 83.

²⁶ *Id.* at 84.

²⁷ Clarence J. Karier, *Testing for Order and Control in the Corporate Liberal State*, 22 Educ. Theory 154, 174 (1972).

²⁸ *Id.* In 2017, ETS had approximately \$1.407 billion in revenue. ProPublica, *Nonprofit Explorer: Educational Testing Service*, <https://projects.propublica.org/nonprofits/organizations/210634479>.

²⁹ Douglass, *supra* note 5, at 84.

1 47. During the late 1940s and 1950s, ETS aggressively lobbied the UC to adopt the
2 SAT.³⁰ As discussed *infra* paras. 140–43, although the UC was initially reluctant to adopt the test
3 due to concerns about its lack of validity, it ultimately incorporated the test into its admissions
4 process for the sake of administrative convenience—as a tool to “cull [its] eligibility pool.”³¹ UC’s
5 adoption of the SAT was a significant financial boon for ETS: as “the largest single user of the
6 SAT,” UC “helped solidify the SAT as the most widely used national admissions test” until
7 2012.³²

8 48. Despite the test’s ubiquity, socioeconomic and racial disparities in SAT scores led
9 to public criticism of the test as a discriminatory instrument that reinforced social and economic
10 inequality.³³ These critiques led the College Board to repeatedly rebrand the test in an (ultimately
11 futile) attempt to define what it was actually measuring. In 1994, the College Board
12 redenominated the SAT as the “Scholastic Assessment Test,” seeking to demonstrate the test’s
13 shift in focus away from “aptitude” and toward curricular knowledge.³⁴ This rebranding was short-
14 lived, however: after only three years, the College Board gave up on using the test’s name to
15 describe the material tested, and now, by the College Board’s own account, SAT “doesn’t stand
16 for anything[.]”³⁵ Commentators have suggested that, in light of how SAT scores track student
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19 ³⁰ *Id.* at 84–86.

20 ³¹ Saul Geiser, *Norm-Referenced Tests and Race-Blind Admissions: The Case for Eliminating the*
21 *SAT and ACT at the University of California* 7 (Dec. 2017), available at
22 [https://cshe.berkeley.edu/sites/default/files/publications/
23 2.rops.cshe.15.2017.geiser.testsrace-blind_admissions.12.18.2017.pdf](https://cshe.berkeley.edu/sites/default/files/publications/2.rops.cshe.15.2017.geiser.testsrace-blind_admissions.12.18.2017.pdf).

24 ³² Saul Geiser, *The Growing Correlation Between Race and SAT Scores: New Findings from*
25 *California* 1 (Oct. 2015), available at
26 [https://cshe.berkeley.edu/sites/default/files/publications/rops.cshe_.10.15.geiser.racesat.
27 10.26.2015.pdf](https://cshe.berkeley.edu/sites/default/files/publications/rops.cshe_.10.15.geiser.racesat.10.26.2015.pdf).

28 ³³ Paul Tough, *The Years That Matter Most: How College Makes or Breaks Us* 73–74 (2019).

³⁴ Peter Applebome, *Insisting It’s Nothing, Creator Says SAT, Not S.A.T.*, N.Y. Times (Apr. 2,
1997),
<https://www.nytimes.com/1997/04/02/us/insisting-it-s-nothing-creator-says-sat-not-sat.html>.

³⁵ *Id.*

1 wealth and accumulated advantage, SAT in practice stands for the “Socioeconomic Advantage
2 Test.”

3 49. The College Board also adapted the format of the test in response to the ACT’s
4 gains in national market share and critiques that the SAT was insufficiently tied to high school
5 curriculum. Following a proposal by then-UC President Richard Atkinson to drop the SAT as a
6 UC admissions criterion, the College Board in 2005 repackaged the SAT into an ostensibly more
7 curriculum-based exam, adding a writing section and making marginal changes to the test’s
8 existing sections.³⁶ In 2014, to increase its competitiveness with the ACT, whose market share had
9 grown larger than that of the SAT, the College Board announced the 2016 redesigned SAT.³⁷
10 According to the College Board, the 2016 redesigned SAT is “more closely linked with rich,
11 rigorous course work” than its predecessors,³⁸ although recent studies have refuted the alignment
12 between the SAT and Common Core State Standards.³⁹ The redesigned SAT eliminated the
13 penalty for guessing incorrectly, dropped arcane vocabulary words, focused the math sections on
14 “linear equations; complex equations or functions; and ratios, percentages and proportional
15 reasoning,” and made the essay optional.⁴⁰ Despite these changes, the SAT remains of limited
16 predictive value, while continuing to adversely affect underrepresented minority students, students
17 with disabilities, and students with less wealth.

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³⁶ *Infra* para. 146.

21 ³⁷ Tamar Lewin, *A New SAT Aims to Realign With Schoolwork*, N.Y. Times (Mar. 5, 2014),
22 [https://
www.nytimes.com/2014/03/06/education/major-changes-in-sat-announced-by-college-board.html](https://www.nytimes.com/2014/03/06/education/major-changes-in-sat-announced-by-college-board.html)

23 ³⁸ College Board, *Test Specifications for the Redesigned SAT* 11 (2015), available at [https://
collegereadiness.collegeboard.org/pdf/test-specifications-redesigned-sat-1.pdf](https://collegereadiness.collegeboard.org/pdf/test-specifications-redesigned-sat-1.pdf).

24 ³⁹ Michal Kurlaender & Kramer Cohen, *Predicting College Success: How Do Different High
25 School Assessments Measure Up?* 21 n.20 (Mar. 2019), available at
26 https://edpolicyinca.org/sites/default/files/R_Kurlaender_Mar-2019.pdf.

27 ⁴⁰ Lewin, *supra* note 37. As discussed *infra* paras. 94–97, the redesigned SAT also featured an
28 increased number of lengthy word problems, placing multilingual learners and students with
certain learning disabilities at a significant disadvantage.

1 50. Notably, the College Board itself has demonstrated that the SAT treats students
2 with less accumulated advantage unfairly. In 2010, College Board researchers studied which
3 groups of students tend to have “discrepant” SAT scores, meaning SAT scores that are either
4 much higher or lower than their high school grades would predict.⁴¹ Its findings were striking:
5 whereas students with inflated scores were “disproportionately male, affluent, white or Asian, and
6 with highly educated parents,” students with scores that were markedly lower than their high
7 school grades would predict were “disproportionately female, black or Latin[x], low-income, and
8 first-generation.”⁴² Unsurprisingly, the College Board omits this study from the extensive list of
9 research publications on its website.⁴³

10 51. As discussed *infra* paras. 60–61, the College Board’s “Landscape” tool—which
11 provides college admissions officers with socioeconomic background information to supplement
12 students’ SAT scores—effectively acknowledges both that SAT scores act as a proxy for
13 socioeconomic status and that the scores taken alone cannot accurately measure the potential of
14 less advantaged students to succeed in college.

15 **B. Meaningless Test Results**

16 52. The chief purpose of the SAT and ACT is to predict student performance in
17 college.⁴⁴ According to the tests’ proponents, the SAT and ACT provide a common, standardized
18 metric that enables college admissions officers to sort among large numbers of applicants.⁴⁵ But
19 the SAT and ACT fail to deliver on this purpose. Rather than providing meaningful information
20 about a student’s ability to succeed in college, the SAT and ACT are largely a proxy for a
21 student’s socioeconomic background and race.

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⁴¹ Tough, *supra* note 33, at 173–74.

24 ⁴² *Id.* at 174–75.

25 ⁴³ *Id.*

26 ⁴⁴ Geiser, *supra* note 31, at 1.

27 ⁴⁵ Richard C. Atkinson & Saul Geiser, *Reflections on a Century of College Admissions Tests* 17
28 (Apr. 2009), available at <https://cshe.berkeley.edu/sites/default/files/publications/rops-atkinsongeiser-tests-04-15-09.pdf>.

1 53. These facts—that the SAT and ACT have extremely limited predictive value and
2 act as a stand-in for students’ wealth and race—are well known to the Regents, and have been for
3 decades.⁴⁶ On information and belief, in addition to publicly available BOARS reports, the
4 Regents, the Academic Senate, and BOARS possess studies and memoranda—discussing both the
5 SAT and ACT’s weak predictive value and the discrimination that results from their use in
6 admissions decisions—that have not been made public. On information and belief, the Regents
7 have deliberately kept these studies and memoranda concealed so as to mute criticism of their
8 continued use of meaningless and discriminatory test scores. The Regents are also well aware that
9 studies of the tests’ predictive ability fail to take into account the use by affluent students of
10 expensive test preparation services, such as private tutoring.⁴⁷ BOARS has “confirm[ed] that
11 students can be coached, to advantage, for both the old and new SAT,” and that “[c]oaching
12 among some students and not others disadvantages low-income groups.”⁴⁸ There is no defensible
13 reason for the Regents to ignore this information in continuing to use the test scores as a criterion
14 of admission.

15 ***SAT and ACT as a Proxy for Socioeconomic Status***

16 54. More than any other admissions criterion, SAT and ACT scores act as a proxy for
17 students’ wealth and accumulated advantage.⁴⁹ When compared with other metrics like high
18 school GPA and class rank, SAT and ACT scores are more highly correlated with socioeconomic
19 characteristics like family income and parents’ education.⁵⁰ In other words, the more money a
20 student’s parents earn, the higher that student’s SAT and ACT scores are likely to be. Similarly,
21 the more education a student’s parents have, the higher his or her SAT and ACT scores are likely
22 to be.

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⁴⁶ *Infra* paras. 140–49, 153.

⁴⁷ *See* Watanabe, *supra* note 13; BOARS, *supra* note 7, at 21.

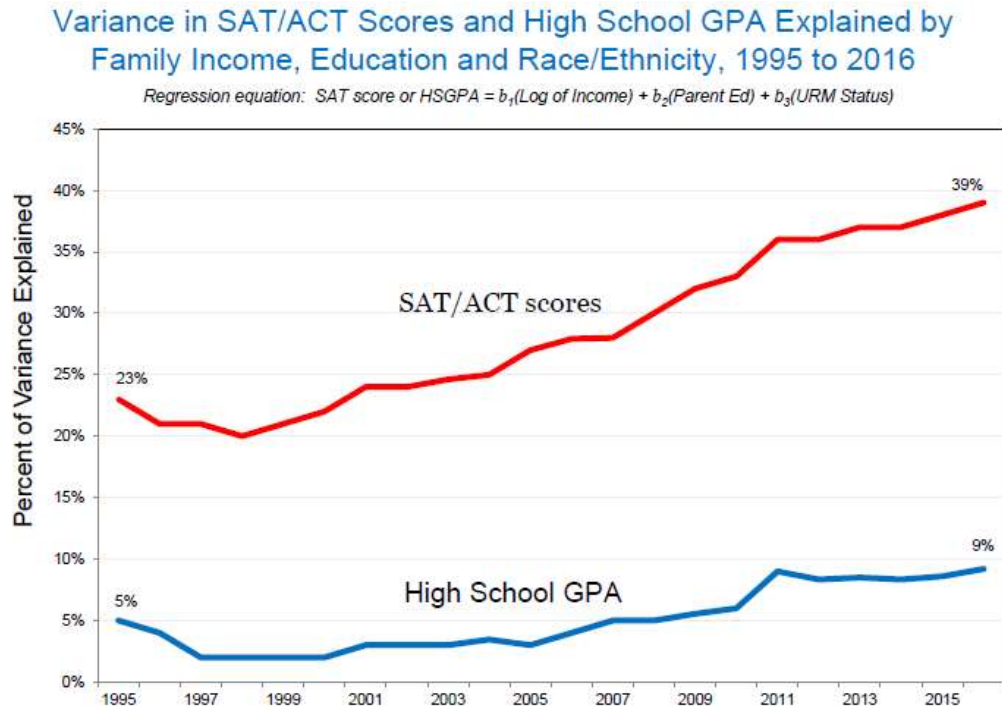
⁴⁸ BOARS, *supra* note 7, at 21.

⁴⁹ Geiser, *supra* note 31, at 1.

⁵⁰ *Id.*

1 55. Among applicants to the UC, this trend has increased dramatically since 1994.⁵¹

2 Figure 1: Variance in SAT/ACT Scores and High School GPA Explained by Family Income,
3 Parents' Education, and Race/Ethnicity⁵²



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15 56. Figure 1 illustrates the growing importance of socioeconomic background
16 characteristics—family income, parents' education, and race—in predicting UC applicants' test
17 scores. As depicted in Figure 1, the correlation between socioeconomic characteristics and test
18 scores has risen sharply over time: whereas socioeconomic characteristics accounted for 23
19 percent of the variance in UC applicants' SAT and ACT scores in 1995, they accounted for 39
20 percent of test score variance in 2016. In other words, students' socioeconomic characteristics—
21 rather than their individual merit—predict almost 40 percent of the variation in their SAT and
22 ACT scores. Figure 1.

23 57. By contrast, socioeconomic characteristics are substantially less important in
24 predicting students' high school grades. Figure 1. In 1995, socioeconomic factors accounted for

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26 ⁵¹ *Id.* at 2.

27 ⁵² Saul Geiser, Ctr. for Studies in Higher Educ., Univ. of Cal., Berkeley, UC and the SAT/ACT:
28 Research Findings 1994-2019, Presentation at Policy Analysis for California Education (PACE)
Conference: Toward a Vision of Equity in College Access: Re-evaluating College Admissions
(Nov. 22, 2019).

1 only five percent of the variance in students' high school GPAs, but accounted for 23 percent of
2 the variance in UC applicants' SAT and ACT scores. The disparity in predictive value increased
3 over time: by 2016, socioeconomic characteristics accounted for only nine percent of the variance
4 in students' high school GPAs, compared to 39 percent of the variance in applicants' SAT and
5 ACT scores. Whereas the predictive value of socioeconomic characteristics with respect to test
6 scores rose dramatically between 1995 and 2016, the predictive value of those same characteristics
7 with respect to high school GPA remained low and relatively constant over the same period.

8 Figure 1.

9 58. These differences are meaningful. The fact that socioeconomic characteristics
10 account for almost 40 percent of the variation in applicants' SAT and ACT scores—as compared
11 to just nine percent of the variation in applicants' high school grades—means that the UC is
12 knowingly using a metric that weighs in favor of more affluent students relative to students with
13 less accumulated advantage.

14 59. In May 2019, the College Board attempted to compensate for the SAT's unequal
15 treatment of applicants from different groups by introducing a planned “adversity score” that
16 purported to quantify students' socioeconomic hardship. Designed to contextualize SAT scores for
17 college admissions officers, the “adversity score” was to be calculated based on 15 factors,
18 including “the relative quality of the student's high school and the crime rate and poverty level of
19 the student's neighborhood,” with higher scores connoting greater levels of “disadvantage.”⁵³
20 According to the College Board's CEO, without such information on socioeconomic background
21 characteristics, “the SAT could be misleading.”⁵⁴ The College Board's concession, through its
22 adoption of the “adversity score,” that SAT scores alone cannot accurately measure the potential
23 of less advantaged students to succeed in college led to widespread condemnation of not only the
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25 ⁵³ Anemona Hartocollis, *SAT's New 'Adversity Score' Will Take Students' Hardships Into*
26 *Account*, N.Y. Times (May 16, 2019), <https://www.nytimes.com/2019/05/16/us/sat-score.html>.

27 ⁵⁴ Catherine Gewertz, *Counselors Blast College Board's Plan to Assign Students a 'Disadvantage'*
28 *Score*, Educ. Week (May 20, 2019), <https://www.edweek.org/ew/articles/2019/05/20/counselors-blast-college-boards-plan-to-assign.html>.

1 “adversity score,” but also the test itself. Education advocates questioned why colleges and
2 universities would continue to use a test after its own maker’s acknowledgment that the test
3 requires “a sophisticated contextual framework to make it valid.”⁵⁵ The College Board’s
4 announcement of the “adversity score” generated such a powerful backlash among educators and
5 parents that the company withdrew its plan only three months later.⁵⁶

6 60. In response to this backlash, the College Board engaged in another rebranding:
7 although it no longer sums ratings of a student’s school characteristics and neighborhood
8 characteristics into a single numerical score, it continues to provide this data to college admissions
9 officers through the same ratings system—formerly known as the “Environmental Context
10 Dashboard,” which the College Board has renamed “Landscape.”⁵⁷ Landscape provides essentially
11 the same information on a student’s school and neighborhood characteristics as the former
12 “adversity score,” albeit in a slightly disaggregated format: Landscape averages six socioeconomic
13 and demographic indicators to provide a neighborhood rating and a high school rating, which are
14 “presented on a 1—100 scale,” with higher values indicating “higher level[s] of challenge related
15 to educational opportunities and outcomes.”⁵⁸ Practically speaking, therefore, the College Board
16 has not eliminated the “adversity score” at all: it just presents the score’s component information
17 separately.

18 61. This superficial repackaging fails to address the hardships or challenges faced by
19 individual students, presenting instead data based solely on school and neighborhood averages.
20 Critically, Landscape also excludes information about the racial composition of a student’s school
21 and neighborhood, which significantly impacts educational outcomes. Ultimately, Landscape is a
22 post-hoc attempt to mitigate the SAT’s biases against less advantaged students rather than redress
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24 ⁵⁵ Hartocollis, *supra* note 53.

25 ⁵⁶ Anemona Hartocollis, *SAT ‘Adversity Score’ Is Abandoned in Wake of Criticism*, N.Y. Times
26 (Aug. 27, 2019), <https://www.nytimes.com/2019/08/27/us/sat-adversity-score-college-board.html>.

27 ⁵⁷ *Id.*

28 ⁵⁸ College Board, *Landscape Data and Methodology Summary* (2019), available at <https://secure-media.collegeboard.org/landscape/data-methodology-summary.pdf>.

1 the socioeconomic and racial disparities that make such mitigation necessary. As one commentator
2 opined, universities “should be trying to level the playing field by providing historically
3 disenfranchised people opportunities to build wealth rather than retrofitting test results around
4 inequality.”⁵⁹

5 *SAT and ACT as a Proxy for Race*

6 62. As compared to other socioeconomic background characteristics—parents’
7 education and family income—race has become the strongest predictor of students’ performance
8 on the SAT and ACT tests.⁶⁰ After controlling for parents’ education and family income, race “has
9 a large, independent, and growing statistical effect” on applicants’ SAT and ACT scores.⁶¹

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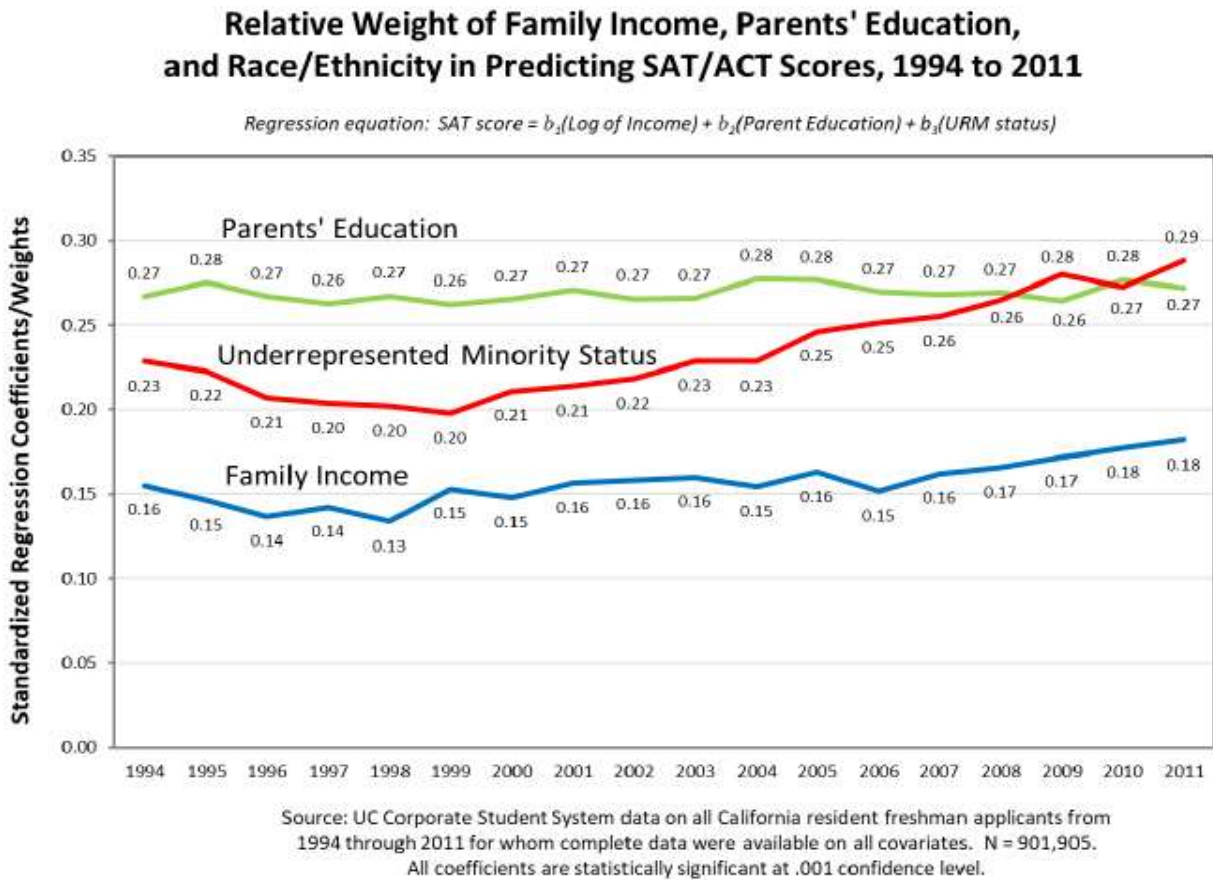
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26 ⁵⁹ Andre M. Perry, *Students need more than an SAT adversity score, they need a boost in wealth*
27 (May 17, 2019), <https://www.brookings.edu/blog/the-avenue/2019/05/17/students-need-more-than-an-sat-adversity-score-they-need-a-boost-in-wealth/>.

28 ⁶⁰ Geiser, *supra* note 31, at 4.

⁶¹ *Id.* at 3.

1 Figure 2: Relative Weight of Family Income, Parents' Education, and Race/Ethnicity in Predicting
 2 SAT/ACT Scores, 1994 to 2011⁶²



17 63. Figure 2 illustrates the relative importance of three characteristics in predicting
 18 students' SAT and ACT scores: underrepresented minority status (self-identification as Black or
 19 Latinx), parents' education, and family income.⁶³ As shown in Figure 2, the strongest predictor of
 20 UC applicants' SAT and ACT test scores has historically been their parents' level of education.
 21 But while the predictive value of parents' education has remained relatively constant over time,
 22 family income and race have become increasingly important in predicting test results. Figure 2.

23 64. Of the three characteristics, race has seen the most dramatic growth in its
 24 importance as a predictor of students' SAT and ACT scores, increasing from a standardized
 25 coefficient of "0.23 in 1994 to 0.29 in 2011 (about a 55-point test-score differential)."⁶⁴ For the

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 27 ⁶² *Id.* at 4.

28 ⁶³ *Id.*

⁶⁴ *Id.*

1 first time in 2009 and again in 2011, race outweighed parents’ education and family income as the
2 single most important predictor of students’ SAT and ACT scores. Figure 2. Race now does a
3 better job of predicting how well a student will perform on the SAT and ACT than the level of
4 education the student’s parents have or the amount of money the student’s family earns.

5 ***Limited Predictive Value of SAT and ACT***

6 65. Because SAT and ACT scores are so strongly correlated with race and wealth, it is
7 essential to control for those factors when assessing how well those scores predict college
8 performance,⁶⁵ i.e., their “validity.”⁶⁶

9 66. But validity studies conducted by the College Board and ACT fail to do just that.
10 Instead, many such studies take into account only two predictors of college success: SAT or ACT
11 scores and high school GPA.⁶⁷ Even without controlling for socioeconomic status, these studies
12 demonstrate that SAT and ACT scores add relatively little to the predictive power of high school
13 GPA. That predictive power dwindles even further once socioeconomic factors—which are
14 correlated with both SAT and ACT scores and college outcomes—are taken into account. By
15 failing to control for these factors, simplistic, two-predictor variable models like the College
16 Board’s and ACT’s exaggerate the predictive value of these tests.⁶⁸ Nor do such models account
17 for disparate access to expensive, high-quality test preparation services, which provide affluent
18 students a competitive edge over their less advantaged peers. Rather than predicting how well a
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20 ⁶⁵ Saul Geiser & Maria Veronica Santelices, *Validity of High School Grades in Predicting Student*
21 *Success Beyond the Freshman Year: High-School Record vs. Standardized Tests as Indicators of*
22 *Four-Year College Outcomes* 6–7, available at <https://cshe.berkeley.edu/publications/validity-high-school-grades-predicting-student-success-beyond-freshman-year-high-school>.

23 ⁶⁶ Validity is a statistical term that “refers to the degree to which evidence and theory support the
24 interpretations of test scores entailed by proposed uses of tests”—i.e., the degree to which a test
succeeds in measuring what it is supposed to measure. Am. Research Ass’n et al., *Standards for*
Educational and Psychological Testing 9 (2014).

25 ⁶⁷ See, e.g., Paul A. Westrick et al., College Board, *Validity of the SAT for Predicting First-Year*
26 *Grades and Retention to the Second Year* 8–9 (May 2019), available at
27 <https://collegereadiness.collegeboard.org/pdf/national-sat-validity-study.pdf>.

28 ⁶⁸ Geiser, *supra* note 31, at 8–9.

1 student is likely to perform in college, “much of the apparent predictive value of test scores
2 reflects the ‘proxy’ effect of [socioeconomic status].”⁶⁹

3 67. Relying on this flawed methodology, the College Board and ACT assert that SAT
4 and ACT scores are valid indicators of several measures of college success, including first-year
5 GPA, second-year retention (i.e., a student returning for his or her second year), cumulative GPA,
6 and college completion. But independent research demonstrates that after socioeconomic
7 background characteristics are taken into account, SAT and ACT scores add little meaningful
8 information about a student’s likelihood of college success as measured by any of these outcomes.

9 ***First-Year GPA***

10 68. The College Board defends the use of the SAT through a series of validity studies
11 focused primarily on the SAT’s purported ability to predict first-year grades.⁷⁰ First-year grades
12 are a dubious metric: no student attends college to attain first-year grades, and no university
13 should seek to design its student body around that metric. Nor are first-year grades particularly
14 reliable indicators of how students will ultimately perform in college, given the myriad
15 nonacademic factors that can impact first-year academic performance—from living away from
16 home to adjusting to a new social and educational environment.⁷¹

17 69. In May 2019, the College Board released its first national validity study of the
18 current SAT.⁷² Like its predecessors, the study considered only two predictor variables: high
19 school GPA and SAT scores.⁷³ The correlations found between first-year college GPA, high

20 _____
21 ⁶⁹ *Id.* at 8.

22 ⁷⁰ See Jonathan Beard & Jessica Marini, College Board, *Validity of the SAT for Predicting First-*
23 *Year Grades: 2013 SAT Validity Sample 2* (2018), available at
24 <https://files.eric.ed.gov/fulltext/ED582459.pdf> (citing series of College Board validity studies
measuring correlations between SAT scores, high school GPA, and first-year grades).

25 ⁷¹ Geiser & Santelices, *supra* note 65, at 17 (“[T]he first year or two in college is a difficult
26 transition period for many students who must adjust not only to the more rigorous academic
standards of college but often as well to the experience of being away from home for the first
time.”).

27 ⁷² Westrick et al., *supra* note 67, at 4.

28 ⁷³ *Id.* at 8–9.

1 school GPA, and scores on the current SAT are similar to those shown in previous College Board
2 validity studies.⁷⁴

3 70. The study found that, taken individually, high school GPA and SAT scores are
4 similarly correlated to first-year college GPA (“.53 and .51, respectively”).⁷⁵ In other words, taken
5 independently, high school GPA is slightly better at predicting a student’s first-year college GPA
6 than SAT scores are. According to College Board researchers, SAT scores are still important
7 because they purportedly add a 15 percent “boost” in the correlation above high school GPA
8 alone.⁷⁶ Even according to the College Board, any usefulness of SAT and ACT scores in
9 admissions decisions derives *entirely* from whatever incremental increase in validity (i.e., increase
10 in predictive value) they are able to provide over high school GPA alone.⁷⁷

11 71. ACT Research makes similar claims regarding correlations between first-year
12 college GPA, high school GPA, and ACT scores. An ACT Research study found correlations of
13 .58 between high school GPA and first-year college GPA and .51 between ACT scores and first-
14 year college GPA.⁷⁸ ACT Research also claims that the ACT scores add incremental accuracy
15 beyond high school GPA in predicting first-year college GPA.⁷⁹

17 ⁷⁴ For example, the correlation between SAT score and first-year GPA for the 2017 cohort (a
18 sample of students entering college in fall 2017) was .51, and the correlation for cohorts between
19 2006 and 2010 ranged from .53 to .56. *Id.* at 10; Krista D. Mattern & Brian F. Patterson, College
20 Board, *Synthesis of Recent SAT Validity Findings: Trend Data over Time and Cohorts* 76 (2014),
21 available at <https://files.eric.ed.gov/fulltext/ED556462.pdf>. Similarly, the correlation of combined
22 SAT score and high school GPA with first-year GPA for the 2017 cohort was .61, and between
23 2006 and 2010 it ranged between .62 and .64. Westrick et al., *supra* note 67, at 11; Mattern &
24 Patterson at 76.

25 ⁷⁵ Westrick et al., *supra* note 67, at 11.

26 ⁷⁶ *Id.* at 4, 11.

27 ⁷⁷ Atkinson & Geiser, *supra* note 45, at 3 n.1 (“In real-world admissions, the key question is what
28 SAT scores uniquely add to the prediction of college outcomes, beyond what is already provided
by a student’s HSGPA.”).

⁷⁸ ACT, *The ACT Technical Manual: Fall 2019 Version 3* 11.37 (2019), available at
[http://www.act.org/content/
dam/act/unsecured/documents/ACT_Technical_Manual.pdf](http://www.act.org/content/dam/act/unsecured/documents/ACT_Technical_Manual.pdf).

⁷⁹ *Id.* at 11.49 (“In most scenarios, using both high school grades and [ACT] scores jointly is
better than using either by itself.”).

1 72. As independent researchers have long noted, however, the two-predictor variable
2 model most frequently utilized by the College Board and ACT leaves out important information
3 about students' socioeconomic characteristics, and thus furnishes results that substantially
4 overstate the predictive value of the SAT and ACT.⁸⁰ According to a UC economist who analyzed
5 UC test score data, "a conservative estimate is that traditional methods and sparse models"—like
6 those typically used by the College Board—"overstate the SAT's importance to predictive validity
7 by 150 percent."⁸¹

8 73. This substantial overstatement of the SAT's predictive value results from
9 traditional models' failure to account for the proxy effect of socioeconomic status.⁸² SAT scores
10 function as a stand-in for socioeconomic status, such that when either the scores or a student's
11 demographic information is combined with high school GPA, the strength of the resulting
12 prediction about a student's first-year grades is about the same.⁸³ Due to this proxy effect, studies
13 that omit socioeconomic characteristics from their prediction models "inflate[] the SAT's apparent
14 validity."⁸⁴ This is because, rather than measuring differences in students' ability to succeed in
15 college, SAT scores simply reflect the socioeconomic differences that themselves predict first-year
16 GPA.⁸⁵

17 74. When College Board studies do take socioeconomic characteristics into account,
18 the proxy effect is clear. In July 2019, the College Board released a follow-up to its national
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21 ⁸⁰ See, e.g., Jesse Rothstein, *College Performance Predictions and the SAT*, 121 J. of
Econometrics 297, 298 (2004); Geiser & Santelices, *supra* note 65, at 6.

22 ⁸¹ Rothstein, *supra* note 80, at 315.

23 ⁸² *Id.*

24 ⁸³ *Id.* at 314 ("[T]ogether with HSGPA, school and individual demographic variables explain 45%
25 of the variance in FGPA's, about as much as do SAT and HSGPA together in models excluding
background variables.").

26 ⁸⁴ *Id.* at 315.

27 ⁸⁵ *Id.* ("[T]he SAT score appears to be a more effective measure of the demographic characteristics
28 that predict UC FGPA's than it is of variations in preparedness conditional on student
background.").

1 validity study for the current SAT, in which it examined validity results by student subgroups.⁸⁶
2 College Board researchers found that all correlations with first-year GPA—including SAT scores
3 alone and SAT scores combined with high school GPA—“tend[ed] to increase as parental
4 education level increases.”⁸⁷ ACT Research has also found that ACT scores consistently increase
5 with parental education level.⁸⁸

6 75. Independent studies that take socioeconomic background characteristics into
7 account have confirmed that SAT and ACT scores add very little incremental validity to
8 predictions of first-year GPA. One such study, prepared in 2008 at the request of BOARS,
9 demonstrated the miniscule contribution of SAT and ACT scores to the prediction of first-year
10 GPA at the UC.⁸⁹ The study considered all available information from students’ UC applications,
11 including information about students’ socioeconomic characteristics, such as their parents’
12 education and family income.⁹⁰ It found that, taken together, this information accounted for 21.7
13 percent of the variance in first-year GPA among students at UC Berkeley.⁹¹ The study then
14 determined the unique contribution of SAT scores by removing them from the prediction model.⁹²
15 Without SAT scores, the explained variance decreased to 19.8 percent.⁹³ SAT scores alone thus
16 accounted for only 1.9 percent of the variance in first-year GPA among students at UC Berkeley.⁹⁴

18 ⁸⁶ Jessica P. Marini et al., *Differential Validity and Prediction of the SAT: Examining First-Year*
19 *Grades and Retention to the Second Year 5* (July 2019), available at
20 <https://research.collegeboard.org/pdf/differential-validity-and-prediction-sat.pdf>.

21 ⁸⁷ *Id.* at 16.

22 ⁸⁸ Dina Bassiri, ACT, *ACT Composite Score by Parental Education Level, 2012–2016* (Oct.
23 2016), [https://](https://www.act.org/content/dam/act/unsecured/documents/R1608_ACT_Composite_Score_by_Parental_Education_Level_Web.pdf)
24 [www.act.org/content/dam/act/unsecured/documents/R1608_ACT_Composite_Score_by_Parental](https://www.act.org/content/dam/act/unsecured/documents/R1608_ACT_Composite_Score_by_Parental_Education_Level_Web.pdf)
25 [_Education_Level_Web.pdf](https://www.act.org/content/dam/act/unsecured/documents/R1608_ACT_Composite_Score_by_Parental_Education_Level_Web.pdf).

26 ⁸⁹ BOARS, *supra* note 6, at 90–132.

27 ⁹⁰ *Id.* at 90–92.

28 ⁹¹ *Id.* at 107.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *See id.*

1 Across the UC system’s undergraduate campuses, SAT scores increased predictive value by only
2 1.6 percent.⁹⁵ This result accords with earlier findings that, when controlled for socioeconomic
3 factors, SAT scores “add nothing to the prediction of freshman grades beyond that which [high
4 school GPA] and the SAT II already provide.”⁹⁶

5 76. A study of more recent UC data demonstrates that California’s far less
6 discriminatory Smarter Balanced Assessment has the ability to predict first-year GPA as well as
7 the SAT. Although the correlation between first-year GPA and combined SAT scores and high
8 school GPA was stronger than that between first-year GPA and high school GPA alone, the
9 difference diminished after controlling for socioeconomic disadvantage, UC campus differences,
10 and high school characteristics.⁹⁷ Once such factors were taken into account, the unique
11 contributions of the SAT and California’s statewide Smarter Balanced Assessment over high
12 school GPA alone were quite similar.⁹⁸

13 ***Longer-Term College Outcomes***

14
15 77. The College Board and ACT also assert that SAT and ACT scores are valid
16 indicators of longer-term measures of college success, including second-year retention, cumulative
17 GPA, and college completion. Like College Board and ACT validity studies predicting first-year
18 GPA, however, many of these studies fail to control for socioeconomic background factors
19 entirely. A College Board study of four-year college completion, for example, stated that it
20 “intentionally excluded” socioeconomic status as a “predictor[] in our model, knowing that
21 omitted variable bias may be present to a limited extent.”⁹⁹ Similarly, an ACT study of six-year

22 _____
23 ⁹⁵ *Id.* at 95.

24 ⁹⁶ Saul Geiser & Roger Studley, Univ. of Cal. Office of the Pres., *UC and the SAT: Predictive*
25 *Validity and Differential Impact of the SAT I and SAT II at the University of California* 9 (Oct. 29,
2001).

26 ⁹⁷ Kurlaender & Cohen, *supra* note 39, at 12–13.

27 ⁹⁸ *Id.*

28 ⁹⁹ Krista D. Mattern et al., College Board, *How Useful Are Traditional Admission Measures in*
Predicting Graduation Within Four Years? 6 (2013), available at

1 college completion expressly noted its exclusion of “sociodemographic factors,” stating that “[t]he
2 use in this paper of one or two predictors is a mathematical simplification.”¹⁰⁰ Unlike these
3 industry studies, independent studies conducted by UC researchers do take socioeconomic
4 characteristics into account, and their results are striking: across these measures, SAT and ACT
5 scores add minimal or no incremental predictive value over high school GPA, which is
6 consistently a superior predictor of long-term college outcomes. These findings have been
7 corroborated by respected researchers studying universities across the nation.¹⁰¹

8 78. With respect to second-year retention, UC researchers have found that, after
9 controlling for socioeconomic characteristics, combining SAT scores with high school GPA
10 produced only a miniscule increase in predictive value.¹⁰² In fact, even before controlling for
11 socioeconomic characteristics, SAT scores added very little additional predictive power when
12 combined with high school GPA.¹⁰³

13 79. With respect to long-term college outcomes—cumulative GPA and college
14 completion—UC researchers have found that high school GPA “is the best single predictor.”¹⁰⁴ In
15 predicting cumulative four-year GPA, SAT I scores have “considerably less predictive weight
16 [than high school GPA] after controlling for student background characteristics.”¹⁰⁵ The
17

18 _____
19 <https://files.eric.ed.gov/fulltext/ED562684.pdf>.

20 ¹⁰⁰ Justine Radunzel & Julie Noble, ACT, *Predicting Long-Term College Success Through Degree*
21 *Completion Using ACT Composite Score, ACT Benchmarks, and High School Grade Point*
22 *Average 11* (Aug. 2012), available at
23 http://www.act.org/content/dam/act/unsecured/documents/ACT_RR2012-5.pdf.

24 ¹⁰¹ See, e.g., William G. Bowen at al., *Crossing the Finish Line: Completing College at America’s*
25 *Public Universities* 113–16 (2009).

26 ¹⁰² Kurlaender & Cohen, *supra* note 39, at 13, Panel B, Column 4 (showing that, after controlling
27 for socioeconomic characteristics and other factors, the difference between the adjusted correlation
28 coefficients described *infra* n.103 drops to .02).

¹⁰³ *Id.* at 13, Panel B, Column 1 (showing that the adjusted correlation coefficient of high school
GPA and second-year retention is .18, whereas the adjusted correlation coefficient of high school
GPA and SAT scores combined and second-year retention is .22).

¹⁰⁴ Geiser & Santelices, *supra* note 65, at 9, 21.

¹⁰⁵ *Id.* at 10.

1 superiority of high school GPA over SAT I scores for predicting cumulative four-year GPA held
2 across all freshman cohorts, UC campuses, and academic fields.¹⁰⁶ As to four-year graduation,
3 SAT I scores “produce[d] no incremental improvement in prediction” over high school GPA and
4 SAT II scores combined.¹⁰⁷

5 80. Figure 3 illustrates the superiority of high school GPA over SAT scores as a
6 predictor of five-year graduation from UC.

7

8 Figure 3: Relative Weight of High School GPA and SAT Scores, Before and After Controlling for
9 SES, in Predicting 5-Year Graduation: All UC Freshmen vs. Underrepresented Minorities, 1994 to
10 2005¹⁰⁸

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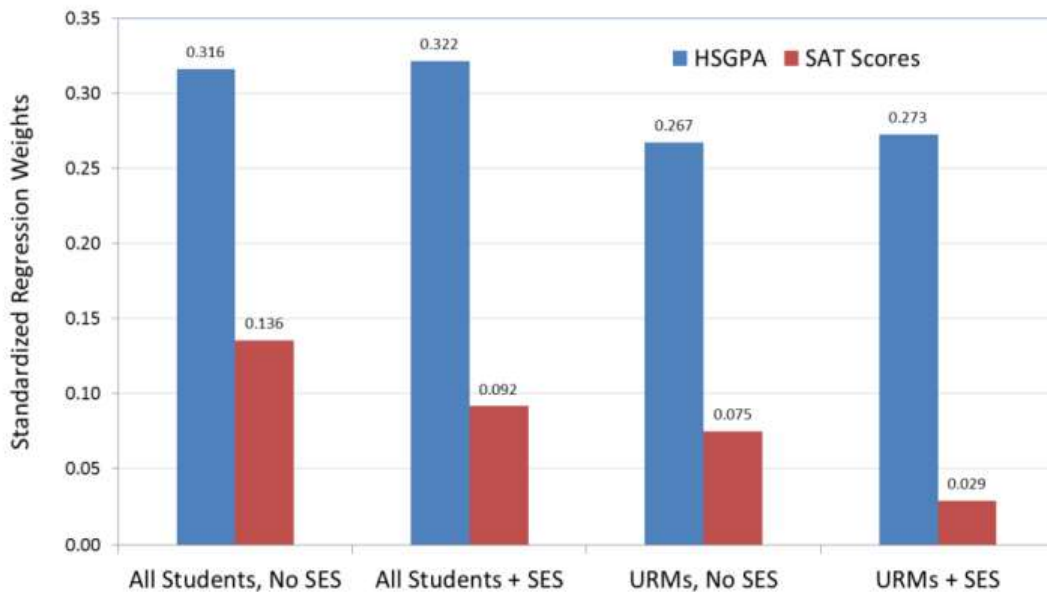
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**Relative Weight of High School GPA and SAT Scores,
Before and After Controlling for SES, in Predicting 5-Year Graduation:
All UC Freshmen vs. Underrepresented Minorities, 1994 to 2005**



Source: UC Corporate Student System data, 1994 to 2005. All estimates are statistically significant at .001 confidence level.

81. As shown in Figure 3, high school GPA is consistently a better predictor of five-year graduation than SAT scores. The predictive value of SAT scores plummets even further when

¹⁰⁶ *Id.* at 10–12.

¹⁰⁷ *Id.* at 22.

¹⁰⁸ Geiser, *supra* note 32, at 14.

1 controlling for race and socioeconomic status. Figure 3. When family income and parental
2 education are taken into account (“All Students + SES”), SAT scores lose about one-third of their
3 predictive value. Figure 3. By contrast, the predictive value of high school GPA actually increases
4 when controlling for the same socioeconomic characteristics. Figure 3.

5 82. This predictive disparity is magnified among underrepresented minority students.
6 The predictive value of SAT scores declines precipitously when underrepresented minorities are
7 considered alone (“URMs, No SES”), particularly after controlling for socioeconomic
8 characteristics (“URMs + SES”). Figure 3. Thus, “[w]hile SAT scores remain a ‘statistically
9 significant’ predictor of UC graduation for students of color, the effect size is very small
10 indeed.”¹⁰⁹

11 83. These findings about UC data accord with findings that considered data from
12 across the country’s public higher education systems. After examining graduation rates from 21
13 public flagship universities and four state higher education systems, researchers found that “[h]igh
14 school grades are a far better predictor of both four-year and six-year graduation rates than are
15 SAT/ACT test scores,” which “routinely fail to pass standard tests of statistical significance when
16 included with high school GPA in regressions predicting graduation rates.”¹¹⁰

17 ***Limited Value, Discriminatory Effects***

18 84. Empirical evidence thus demonstrates the limited value of SAT and ACT scores in
19 predicting college performance. The independent research studies discussed *supra* show that, with
20 respect to the outcomes most commonly touted by the College Board—first-year GPA and
21 second-year retention—SAT and ACT scores add very little additional predictive power over high
22 school GPA once socioeconomic characteristics are taken into account.

23 85. More importantly, the studies make plain that with respect to the college outcomes
24 that matter most—cumulative GPA and college completion—high school GPA is simply a better
25 predictor than SAT and ACT scores. As discussed *infra* paras. 123–24, the already limited
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27 ¹⁰⁹ *Id.*

28 ¹¹⁰ Bowen at al., *supra* note 101, at 113, 115.

1 predictive value of the SAT and ACT is further undermined by the fact that many affluent students
2 utilize expensive test preparation services to maximize their scores. Given SAT and ACT scores’
3 adverse impact on students with less accumulated advantage, there can be no justification for UC’s
4 continued use of a metric that is both more discriminatory and worse at predicting long-term
5 college outcomes than high school GPA.

6 **II. Bias in the Tests and Testing Conditions**

7 **A. Bias Against Underrepresented Minority Students**

8 86. The limited predictive value of the SAT and ACT tests—particularly for
9 underrepresented minority students—arises in part from biases built into the development of the
10 tests themselves.

11 ***Norm-Referenced Tests and Reliability***

12 87. The SAT and ACT are norm-referenced tests: they measure a test-taker’s
13 performance against the performance of other test-takers, instead of against a fixed standard.¹¹¹
14 Norm-referenced tests are designed to produce a bell curve, wherein most test-takers score in the
15 middle of the curve, and fewer test-takers score at the high and low tails.¹¹² By forcing student
16 scores into a bell curve, norm-referenced tests reflect the unscientific assumption that intelligence
17 in the population is distributed in that pattern.¹¹³ Biases against underrepresented minority students
18 are inherent in the design of norm-referenced tests.¹¹⁴

19 88. Designers of norm-referenced tests create items that must meet two requirements:
20 first, each item must be “reliable,” i.e., “internally consistent with the other items on the same
21 _____

22 ¹¹¹ Geiser, *supra* note 31, at 11; see College Board, *SAT Suite of Assessments Annual Report: Total Group* (2019), available at <https://reports.collegeboard.org/pdf/2019-total-group-sat-suite-assessments-annual-report.pdf>.
23

24 ¹¹² Geiser, *supra* note 31, at 11.

25 ¹¹³ See James J. Heckman, *Lessons from the Bell Curve*, 103 J. Pol. Econ. 1091, 1102 (1995)
26 (contesting the “empirically incorrect claim that a single factor—g or IQ—that explains linear
27 correlations among test scores is primarily responsible for differences in individual performance in
28 society at large”).

¹¹⁴ William C. Kidder & Jay Rosner, *How the SAT Creates Built-in-Headwinds: An Educational and Legal Analysis of Disparate Impact*, 43 Santa Clara L. Rev. 131, 156–59 (2002).

1 test.”¹¹⁵ Second, each item must conform to requirements regarding its level of difficulty, so that
2 the test as a whole can sort students into a bell curve pattern.¹¹⁶ Through a process known as “pre-
3 testing,” items are reviewed for reliability before being added to the SAT or ACT.¹¹⁷ An item’s
4 reliability is gauged “by the internal correlation between performance on that item” and
5 performance on the test overall.¹¹⁸ Put simply, an item is “reliable” if higher-scoring test-takers
6 tend to answer it correctly, and lower-scoring test-takers tend to answer it incorrectly.¹¹⁹ Its
7 reliability is not tied to any fixed standard outside of the test itself.¹²⁰

8 89. If White students have higher overall scores than underrepresented minority
9 students on a given set of pre-test items, a facially neutral reliability analysis will tend to find
10 strong positive correlations for items on which White students perform better, as opposed to
11 “weakly positive or even negative correlations” for items on which underrepresented minority
12 students perform better.¹²¹ Items that favor White students will thus be deemed reliable—resulting
13 in their inclusion on the test—whereas those that favor underrepresented minority students will be
14 deemed unreliable—resulting in their exclusion.¹²²

15 90. Over multiple administrations of the test, this adverse effect on underrepresented
16 minority test-takers compounds itself: items that are strongly correlated to items from previous
17 administrations are more likely to remain on the test, whereas more weakly correlated items may
18 be dropped or revised.¹²³ Because underrepresented minority test-takers have historically scored

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20 ¹¹⁵ *Id.* at 156.

21 ¹¹⁶ *Id.*

22 ¹¹⁷ *Id.* at 156–57.

23 ¹¹⁸ Geiser, *supra* note 31, at 10.

24 ¹¹⁹ Kidder & Rosner, *supra* note 114, at 157.

25 ¹²⁰ See Geiser, *supra* note 31, at 10–11.

26 ¹²¹ Kidder & Rosner, *supra* note 114, at 158.

27 ¹²² *Id.*

28 ¹²³ *Id.* at 158–59; Martin Shapiro, *A Psychometric Model for Preserving Discrimination*, 12 Berkeley La Raza L.J. 387, 390–91 (2001) (“Pre-test items which the higher-scoring group answers correctly and the lower-scoring group answers incorrectly are considered to be good items

1 lower on the SAT and ACT tests for reasons including structural biases in test design and
2 stereotype threat, discussed *infra*, items on which those test-takers perform well are iteratively
3 discarded in order to reproduce score distributions on subsequent tests.¹²⁴ By contrast, facially
4 neutral questions that in fact favor White test-takers tend to be retained due to their higher
5 correlations with previously administered items.¹²⁵ Reliability analyses during test development
6 thus create an “ongoing feedback loop” that systematically disadvantages underrepresented
7 minority test-takers.¹²⁶

8 ***Differential Item Functioning***

9 91. Test developers attempt to detect bias in the SAT and ACT by searching for pre-
10 test items that exhibit differential item functioning (DIF).¹²⁷ DIF is a measure of bias that “occurs
11 ‘when equally able test takers [as measured by their overall scores] differ in their probabilities of
12 answering a test item correctly as a function of group membership.’”¹²⁸

13 92. Critically, however, DIF controls for overall test scores *before* it assesses item
14 bias.¹²⁹ That is, because it compares test-takers with the same overall scores, DIF necessarily
15 begins from the assumption that the test overall is unbiased.¹³⁰ Since DIF assumes that the test as a
16 whole is unbiased, it cannot be used to detect and eliminate systemic biases that affect the test
17 overall.¹³¹ Instead, DIF identifies only major outliers—items that are “grossly unfair to one or
18 _____
19 and are likely to be included . . . on a subsequent test form. The same process is repeated on each
20 subsequent test form. . . . [T]he selection process for pre-tested items continues to discard items
21 which would reduce the test-score difference between the two groups.”).

21 ¹²⁴ Brief for Nat’l Center for Fair & Open Testing (FairTest) as Amicus Curiae Supporting
22 Respondents at 18, 539 U.S. 306 (2003) (No. 02-241) [hereinafter FairTest].

23 ¹²⁵ *See id.*

24 ¹²⁶ Kidder & Rosner, *supra* note 114, at 158–59.

25 ¹²⁷ Shapiro, *supra* note 123, at 391.

26 ¹²⁸ Geiser, *supra* note 31, at 11 (citing Am. Research Ass’n et al., *Standards for Educational and
27 Psychological Testing* 51 (2014)).

28 ¹²⁹ Kidder & Rosner, *supra* note 114, at 163.

¹³⁰ *Id.*

¹³¹ *Id.*

1 another group.”¹³²

2 93. Test developers attempt to remove items that exhibit DIF from the tests that are
3 ultimately administered.¹³³ But as UC psychometricians have demonstrated, these efforts have
4 failed to eliminate statistically significant item bias from the tests. Analyzing multiple SAT forms
5 from different years, the researchers found that up to 12 percent of items exhibited large DIF for
6 Black as compared to White test-takers, and up to 10 percent of items exhibited large DIF for
7 Latinx as compared to White test-takers.¹³⁴ Thus, even beyond the systemic biases that DIF fails to
8 detect, a substantial number of questions on the tests remains “grossly unfair” to underrepresented
9 minority test-takers.

10 *Multilingual Learners*

11 94. Multilingual learners face additional barriers to success on the SAT and ACT. The
12 UC requires all applicants to submit scores from the otherwise optional writing sections of the
13 SAT and ACT.¹³⁵ The SAT’s extensive use of word-heavy math problems also places multilingual
14 learners at a disadvantage relative to their native English-speaking peers. For test-takers whose
15 first language is not English, lengthy word problems can slow their pace (which is particularly
16 problematic on “speeded” exams like the SAT and ACT) or even limit their comprehension of the
17 underlying math questions.¹³⁶

18 95. These disparities have only worsened with the latest iteration of the SAT, which
19 focuses on assessing test-takers’ ability to apply their math skills to “real-world contexts”—
20 “problems drawn from science, social studies, and careers.”¹³⁷ In practice, this emphasis on
21

22 ¹³² FairTest, *supra* note 124, at 19.

23 ¹³³ Geiser, *supra* note 31, at 11.

24 ¹³⁴ Santelices & Wilson, *supra* note 10, at 23.

25 ¹³⁵ Univ. of Cal. Admissions, *Exam Requirement*,
26 <https://admission.universityofcalifornia.edu/admission-requirements/freshman-requirements/exam-requirement/>.

27 ¹³⁶ James S. Murphy, *New SAT, New Problems*, *The Atlantic* (Jan. 20, 2015), available at <https://www.theatlantic.com/education/archive/2015/01/new-sat-new-problems/384596/>.

28 ¹³⁷ College Board, *The Redesigned SAT: Problems Grounded in Real-World Contexts* 1 (2014),

1 contextualized math items results in test-takers having to read and understand more text—placing
2 multilingual learners at a significant disadvantage.¹³⁸

3 96. Even before the redesigned SAT became operational, the College Board was well
4 aware of these problems. In 2014, it administered a prototype of the new SAT and found that
5 approximately half of the test-takers could not complete the math sections of the test.¹³⁹ Moreover,
6 revisions to the math section disproportionately affected test-takers at lower-scoring schools (i.e.,
7 schools where students posted lower overall test scores on the old SAT): on the calculator portion
8 of the test, seventy-eight percent of students from higher-scoring schools were able to finish, as
9 compared to only 41 percent of students from lower-scoring schools.¹⁴⁰

10 97. Faced with these disparities, test developers decided to reduce the proportion of
11 “heavy” word problems (defined as problems exceeding 60 words) to only 10 percent of items on
12 the redesigned SAT.¹⁴¹ But this reduction never happened: in 2015, a College Board executive
13 reported that “heavy” word problems comprised 45 percent of the contextualized math items on
14 redesigned SAT practice tests.¹⁴² After the redesigned SAT became operational, independent
15 analysis of six practice tests—including two previously administered SAT tests—demonstrated
16 that “heavy” word problems continued to constitute at least 45 percent of the contextualized math
17 items on each test.¹⁴³

18 98. These disparities are exacerbated by the difficulties multilingual learners encounter
19

20 available at
21 https://www.collegeboard.org/sites/default/files/problems_grounded_in_real_world_contexts.pdf.

22 ¹³⁸ Murphy, *supra* note 136.

23 ¹³⁹ Renee Dudley, *Despite warnings, College Board redesigned SAT in way that may hurt neediest*
24 *students*, Reuters (Sept. 21, 2016), available at [https://www.reuters.com/investigates/special-](https://www.reuters.com/investigates/special-report/college-sat-redesign/)
25 [report/college-sat-redesign/](https://www.reuters.com/investigates/special-report/college-sat-redesign/) (“Only 47 percent of all students finished one part of the math section
26 – the 20-question portion during which calculators aren’t allowed. And just 50 percent completed
27 the longer 38-question math section, which allows the use of a calculator.”).

28 ¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

1 in trying to access English learner (“EL”) accommodations for the SAT and ACT. EL supports are
2 not available at all to students who take regular weekend SAT administrations, SAT Subject Tests,
3 or the PSAT/NMSQT.¹⁴⁴ Moreover, because EL supports on the SAT and ACT are approved by
4 testing agencies rather than school districts or high schools, students who have accommodations at
5 school may not be able to use those accommodations on the SAT or ACT. Like accommodations
6 for students with disabilities, EL supports must be requested by a high school counselor, and many
7 multilingual learners at underserved, highly segregated schools have limited access to counselors
8 who can request EL supports on their behalf. During the 2016 to 2017 academic year, the ratio of
9 students to counselors in California was 663 to one.¹⁴⁵ Monolingual parents seeking EL supports
10 for their children also lack adequate information in their native languages about the
11 accommodations process. Critically, because English language proficiency may improve over
12 time, EL supports are temporary (i.e., limited to the test date for which they were requested and
13 granted).¹⁴⁶ The temporary nature of EL supports undermines the assumption that test scores
14 obtained by students receiving these supports will accurately predict future academic performance.

15 *Stereotype Threat*

16 99. Beyond biases in the content of the SAT and ACT, underrepresented minority
17 students face the additional barrier of stereotype threat: “the pressure that [students] feel when
18 they fear that their performance could confirm a negative stereotype about their group,” which
19 “manifests itself in anxiety and distraction that interferes with intellectual functioning.”¹⁴⁷ By
20 “artificially depress[ing]” the scores of underrepresented minority students on tests like the SAT
21

22 ¹⁴⁴ See College Board, *Testing Supports for English Learners*,
23 <https://collegereadiness.collegeboard.org/educators/k-12/english-learner-supports> (EL supports are
24 available only “during SAT School Day, the PSAT 10, and the PSAT 8/9”).

25 ¹⁴⁵ Am. Sch. Counselor Ass’n, *Student-to-School-Counselor Ratio 2016-2017*,
26 [https://www.schoolcounselor.org/
asca/media/asca/home/Ratios16-17.pdf](https://www.schoolcounselor.org/asca/media/asca/home/Ratios16-17.pdf).

27 ¹⁴⁶ College Board, *supra* note 144.

28 ¹⁴⁷ Jerry Kang et al., Brief of Experimental Psychologists as Amici Curiae in Support of
Respondents at 4, *Fisher v. Univ. of Texas at Austin*, 136 S. Ct. 2198 (2016) (No. 14-981).

1 and ACT, stereotype threat results in those tests underestimating how well underrepresented
2 minority students are likely to perform in college.¹⁴⁸

3 100. Stereotype threat is a well-documented psychological phenomenon.¹⁴⁹ Multiple
4 studies have confirmed its existence in real world educational and testing environments.¹⁵⁰ One
5 meta-analysis combining data from more than 3,000 participants found that standard measures of
6 academic performance “underestimate the capacity of students targeted by negative stereotypes by
7 an average of 0.18 standard deviations”—or 63 points on the SAT.¹⁵¹

8 101. Although all students can potentially experience stereotype threat,¹⁵² the
9 phenomenon systematically disadvantages underrepresented minority students, who belong to
10 groups that historically have been stereotyped as intellectually inferior.¹⁵³ Perversely, the more a
11 student cares about his or her performance on a test, the more likely that student is to experience
12 stereotype threat-induced anxiety.¹⁵⁴ Consequently, “stereotype threat hits the most dedicated
13 students the hardest.”¹⁵⁵

14 ***Trauma and Other Adverse Life Experiences***

15 102. Research shows that students’ exposure to trauma and other adverse life
16 experiences—including poverty and discrimination—also depresses their performance on
17

18 ¹⁴⁸ Claude M. Steele, *Expert Report of Claude M. Steele*, 5 Mich. J. Race & L. 439, 440 (1999).

19 ¹⁴⁹ Toni Schmader et al., *An Integrated Process Model of Stereotype Threat Effects on*
20 *Performance*, 115 Psychol. Rev. 336, 336 (2008) (“[A] large body of work now testifies to the
21 reliability and generalizability of stereotype threat effects on performance.”).

22 ¹⁵⁰ Kang et al., *supra* note 147, at 15–18.

23 ¹⁵¹ *Id.* at 18 (citing Greg Walton & Steven Spencer, *Latent Ability: Grades and Test Scores*
24 *Systematically Underestimate the Intellectual Ability of Negatively Stereotyped Students*, 20
25 Psychol. Sci. 1132, 1135 (2009)).

26 ¹⁵² *See Tough*, *supra* note 33, at 27 (describing how an SAT tutor for wealthy high school students
27 seeks primarily to “reduce his students’ anxiety” by dispelling their beliefs that the SAT and ACT
28 are “objective, reliable measures” of their academic ability).

¹⁵³ Kang et al., *supra* note 147, at 8.

¹⁵⁴ *Id.* at 15.

¹⁵⁵ *Id.*

1 standardized tests.¹⁵⁶ Compared to their White and more affluent counterparts, underrepresented
2 minority students and students with less wealth are disproportionately exposed to (and forced to
3 cope with) trauma and adverse life experiences. Researchers’ analysis of data on 84,837 children’s
4 exposure to adversity—including “financial hardship,” “parental divorce/separation,” “parental
5 death,” “parental imprisonment,” “witness to domestic violence,” “victim or witness of
6 neighborhood violence,” “lived with mentally ill/suicidal person,” “lived with someone with
7 alcohol/drug problem,” and “treated unfairly because of race/ethnicity”—revealed striking racial
8 and socioeconomic disparities.¹⁵⁷ The researchers found that Black, Latinx, and poorer children
9 had greater rates of exposure to adverse life experiences than White children and wealthier
10 children, noting that racial disparities were “consistent with extensive evidence of racial/ethnic
11 disadvantages across all major sectors of society,” including education and employment.¹⁵⁸
12 Studies have also shown that students with lower socioeconomic status experience significantly
13 higher rates of traumatic stress than their more affluent counterparts, suggesting higher rates of
14 exposure to trauma or fewer resources to mitigate its effects.¹⁵⁹

15 103. Exposure to trauma and adverse life experiences has been shown to hinder
16 working memory—the temporary storage and manipulation of information—in children,¹⁶⁰ which
17 limits the ability of students exposed to trauma to prepare for and succeed on standardized tests.
18 Analyzing data from the Early Childhood Longitudinal Study, researchers found that students with
19 traumatic stress had significantly lower standardized test scores than students without such

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22 ¹⁵⁶ Rachael D. Goodman et al., *Traumatic Stress, Socioeconomic Status, and Academic*
23 *Achievement Among Primary School Students*, 4 *Psychol. Trauma: Theory, Res., Prac., & Pol’y*
24 252, 256 (2012).

25 ¹⁵⁷ Natalie Slopen et al., *Racial Disparities in Child Adversity in the U.S.: Interactions with*
Family Immigration History and Income, 50 *Am. J. Preventive Med.* 47, 48–49 (2016).

26 ¹⁵⁸ *Id.* at 52.

27 ¹⁵⁹ Goodman et al., *supra* note 156, at 256.

28 ¹⁶⁰ Anne P. DePrince et al., *Executive Function Performance and Trauma Exposure in a*
Community Sample of Children, 33 *Child Abuse & Neglect* 353, 359–60 (2009).

1 stress.¹⁶¹ The researchers concluded that “traumatic stress impairs student performance on
2 standardized tests,” placing students with exposure to trauma at risk of being incorrectly tracked
3 into “low-ability programs.”¹⁶² The researchers’ caution to educators—that “the
4 neuropsychological impact of trauma must be differentiated from actual cognitive ability”¹⁶³—
5 arises from the recognition that exposure to trauma distorts student performance on standardized
6 tests, reducing their predictive value still further.

7 **B. Discrimination Against Students with Disabilities**

8 ***Inaccessible Test Sites***

9 104. Neither the College Board nor the ACT mandates that test sites be accessible to all
10 students with disabilities who require accommodations to access the SAT or ACT. Disability
11 accommodations vary depending on student need, and may include format changes such as Braille
12 or large-type test books, MP3 audio, readers, extended time, and additional or extended breaks
13 (such as for a student requiring insulin). College Board and ACT test sites—typically high
14 schools—may not provide all necessary accommodations for test-takers for all test
15 administrations. Students with disabilities are thus unable to choose their preferred test location,
16 and may not be guaranteed the ability to test on their desired dates, if at all.

17 ***ACT Accessibility***

18 105. A student without disabilities who does not require accommodations to take the
19 ACT is able to choose his or her preferred test site and date, and may thus select the site that is
20 most convenient for him or her. Generally, a student testing without accommodations will choose
21 to take the ACT at his or her local high school. However, a student requesting disability
22 accommodations on the ACT cannot choose a test location during registration, because not all test
23 sites offer accommodations or have sufficient space and proctors for accommodated test-takers.
24 Students with disabilities who cannot test at their chosen location may have to travel out of the
25

26 ¹⁶¹ Goodman et al., *supra* note 156, at 253, 255.

27 ¹⁶² *Id.* at 256–57.

28 ¹⁶³ *Id.* at 257.

1 area to test, which can result in hardship—including additional stress and expenses—for test-
2 takers and their families.

3 106. ACT divides its disability accommodations into “National” and “Special”
4 categories.¹⁶⁴ “National” accommodations can be provided at standard or “national” test centers
5 with students who do not have accommodations. National accommodations are limited and
6 generally include 50 percent extended time, preferential seating, and EL supports. ACT’s policies
7 state that the “test location will be provided on the examinee’s admission ticket” for students who
8 are approved for national accommodations. These examinees may not learn their test location
9 under shortly before their scheduled test administration.

10 107. ACT “special” accommodations are for documented disabilities requiring
11 accommodations that “cannot be provided in a National test center.”¹⁶⁵ Test-takers requiring
12 special accommodations must have the ACT administered by their schools. Despite mandating
13 that students with special accommodations take the ACT at their schools, ACT does not require
14 those schools to administer the test with special accommodations.¹⁶⁶ Students with disabilities may
15 thus be left without a location at which to test on their desired date. Students with sufficient
16 resources may drive long distances to test locations willing to accept their necessary
17 accommodations.¹⁶⁷ For example, a student whose parent is a member of College Seekers received
18 notice from ACT informing the student that “you have been approved for Special Testing with
19 Accommodations, but . . . your home school is unable to administer the test during your scheduled
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21 ¹⁶⁴ ACT, *Accommodations and English Learner Supports for the ACT test*,
22 [https://www.act.org/content/act/en/
23 products-and-services/the-act/registration/accommodations.html](https://www.act.org/content/act/en/products-and-services/the-act/registration/accommodations.html) (stating that “[b]ased on your
approved accommodations ACT will place you in either National Testing” or “Special Testing”).

24 ¹⁶⁵ *Id.*

25 ¹⁶⁶ ACT, *Accommodations and English Learners Supports for Educators*,
26 [https://www.act.org/content/
27 act/en/products-and-services/the-act-educator/accommodations.html](https://www.act.org/content/act/en/products-and-services/the-act-educator/accommodations.html) (“If the school is not able to
test the examinee, . . . [t]he school should notify the examinee that Special testing cannot be
administered and the examinee will need to work with ACT for an alternate location.”).

28 ¹⁶⁷ ACT, *supra* note 164 (“If the examinee’s school is unable to administer Special testing
examinees may find a willing school and work with ACT to request testing at this location.”).

1 testing window.” He was told that “[o]nce we receive your information, we will attempt to arrange
2 testing at a school within 75 miles of your home. We will notify you via email as soon as we’ve
3 found a location.” However, ACT made clear that there was no guarantee that the student would
4 be able to test at all, providing that “[w]e cannot guarantee we will be able to arrange a location or
5 that the location we arrange will be able to test at the time of your choice.” These practices deter
6 students with disabilities from exercising their rights to request necessary accommodations, from
7 testing with their approved accommodations, and from retesting (which is already cost-prohibitive
8 for many test-takers).

9 108. ACT offers students the opportunity to test online to “better align with
10 how today’s students learn and the comfort many of them feel taking tests.”¹⁶⁸ According to ACT,
11 the benefits for students of online testing include students’ ability to choose their “most
12 comfortable” test format, to test “without distraction,” and to receive their scores more quickly (as
13 soon as two business days after taking the test).¹⁶⁹ However, ACT’s online testing is not
14 accessible to all test-takers with disabilities, because it does not offer the same accommodations as
15 are available for paper testing. Students whose accommodations are unavailable via online testing
16 must take the ACT in paper format. ACT states that eligible students whose accommodations are
17 not available via online testing may take the ACT via paper testing.¹⁷⁰ Certain members of College
18 Seekers cannot access ACT’s online testing due to their disabilities and required accommodations.

19 *SAT Accessibility*

20 109. Whereas all test-takers without disabilities can register to take the SAT at National
21 test centers, students who require certain testing accommodations due to their disabilities (such as
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23 ¹⁶⁸ ACT, *NEW FIRSTS FOR STUDENTS TAKING THE ACT TEST: FAQs*,
24 [https://www.act.org/content/act/en/
25 products-and-services/more-choices-for-the-act-sept-2020/faqs.html](https://www.act.org/content/act/en/products-and-services/more-choices-for-the-act-sept-2020/faqs.html).

26 ¹⁶⁹ *Id.*

27 ¹⁷⁰ *Id.* (“Eligible students who require any amount of extended time, including 50% extended time
28 in a single session or other accommodations not available via online testing, may take the ACT via
paper testing.”).

1 more than 50 percent extended time, breaks as needed, the use of a computer for the SAT essay, or
2 certain nonstandard materials such as Braille or assistive technology) cannot. These students must
3 instead participate in “school-based” testing to access the SAT.

4 110. Only College Board-approved test centers can administer school-based SAT testing
5 to students with disabilities who require accommodations. However, many California high school
6 students attend schools—such as public charter schools, independent study schools, and small
7 private schools—that are not College Board-approved test centers. Many students with disabilities
8 thus cannot take the SAT with accommodations at their own schools. These students may register
9 and pay for the SAT and obtain approval for necessary accommodations, only to subsequently
10 receive notice that they do not have a test date or location.

11 111. If a student cannot take the SAT with accommodations at his or her home school,
12 the College Board provides the student with a list of schools that may be willing to test outside
13 students. But the College Board does not require these schools to accept outside students, and if no
14 school is willing to administer the test with accommodations, the student will miss that test
15 administration. One College Seeker member with disabilities was approved for school-based SAT
16 testing. However, because his high school was not a College Board-approved test center, the
17 student could not take the SAT with accommodations there. The student was unable to locate a
18 test center willing to provide school-based testing for two separate exam administrations.
19 Realizing that he would miss early college application deadlines, the student decided not to take
20 the SAT with school-based accommodations at all.

21 ***Failure to Approve Necessary Accommodations***

22 112. The challenge of finding an accessible test site is only the final hurdle in the testing
23 accommodations process, and it is a step that many students with disabilities never even reach.
24 Students and their families face both administrative and structural (socioeconomic, racial, and
25 language) barriers to obtaining the accommodations they need to access the SAT and ACT exams.
26 As a result of these barriers, even though approximately 14 percent of California students qualify
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1 for special education supports,¹⁷¹ only approximately four to five percent of students take the SAT
2 or ACT with accommodations.¹⁷²

3 113. Unlike the California State assessment tests, for which schools provide disability
4 accommodations and EL supports without requiring outside agency approval, the SAT and ACT
5 may be taken with accommodations only with approval from the College Board or ACT. For a
6 student's scores to be reported to colleges, his or her accommodations must be approved by one of
7 the testing agencies, even if the student takes the test during the school day. ACT and the College
8 Board do not guarantee students the same accommodations and supports they receive in their
9 school or district plans. This leaves some students without needed accommodations that they are
10 accustomed to receiving in school.

11 114. The SAT and ACT accommodations processes place high demands on schools'
12 resources. Because the testing agencies advise students to work with their schools in requesting
13 testing accommodations, high school counselors must prepare and submit time-consuming
14 accommodations applications. As discussed *supra* para. 96, students at underresourced and highly
15 segregated schools have more limited access to their high school counselors, and are thus less
16 likely than their more privileged peers to receive the accommodations they need to access the SAT
17 and ACT. A California public high school attended by a College Seekers member recently
18 informed its students that due to the extreme burdens imposed by the SAT and ACT

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21 ¹⁷¹ Cal. Dep't of Educ. DataQuest, *2018-19 Enrollment by Ethnicity*,
22 [https://dq.cde.ca.gov/dataquest/dqcensus/
23 EnrEthLevels.aspx?cds=00&agglevel=State&year=2018-19](https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthLevels.aspx?cds=00&agglevel=State&year=2018-19) (reporting 6,186,278 total students
24 and 725,412 students who receive services under the Individuals with Disabilities Education Act
25 (IDEA) (found by filtering by "Students with Disabilities") enrolled in California K-12 public
26 schools). Based on these numbers, approximately 12 percent of California students receive
27 services through IEPs under IDEA. Because this percentage excludes students who receive
28 accommodations pursuant to 504 Plans, disability experts estimate that the percentage of
California students who qualify for special education supports is closer to 14 percent.

26 ¹⁷² Nick Anderson, *Abuse of 'Extended Time' on SAT and ACT Outrages Learning Disability*
27 *Community*, Wash. Post (Mar. 29, 2019), [https://www.washingtonpost.com/local/education/abuse-
28 of-extended-time-on-sat-and-act-outrages-learning-disability-community/2019/03/29/d58de3c6-
4c1f-11e9-9663-00ac73f49662_story.html](https://www.washingtonpost.com/local/education/abuse-of-extended-time-on-sat-and-act-outrages-learning-disability-community/2019/03/29/d58de3c6-4c1f-11e9-9663-00ac73f49662_story.html).

1 accommodations processes, “school counselors will no longer submit accommodations requests on
2 behalf of students. It is cumbersome and we can no longer handle the volume.” Parents of students
3 at underresourced public high schools may receive no information at all on the SAT and ACT
4 accommodations process: one mother of a student with A.D.H.D. and a reading disability only
5 learned of the opportunity to request ACT accommodations after transferring her son to a private
6 school, where staff informed her about the process.¹⁷³ Her son was granted an accommodation to
7 take the ACT over multiple days, earning a score of 33.¹⁷⁴

8 115. Even those students who submit accommodations requests with the support of their
9 schools must meet strict deadlines and documentation requirements. The College Board requires
10 requests to be submitted seven weeks prior to the test date, and it requires an additional seven
11 weeks for an appeal. ACT also has strict application deadlines. Accommodations and EL supports
12 are not available for ACT standby testing.

13 116. ACT and SAT accommodations require frequent and often expensive evaluations,
14 as well as early diagnosis. Whereas schools with fewer resources may not be able to complete
15 evaluations as often as the testing agencies require, students with more resources can use private
16 testing to obtain early diagnosis and to update their evaluations to meet the strict review standards.
17 For many disabilities, ACT requires testing to have been updated within three years, and the
18 College Board requires testing to have been updated within five years. For psychiatric conditions,
19 both ACT and the College Board require documentation updated within the past year.¹⁷⁵ High

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21 ¹⁷³ Dana Goldstein & Jugal K. Patel, *Need Extra Time on Tests? It Helps to Have Cash*, N.Y.
Times (July 30, 2019)

22 <https://www.nytimes.com/2019/07/30/us/extra-time-504-sat-act.html>.

23 ¹⁷⁴ *Id.* Among the graduating class of 2018, an ACT composite score of 33 would place the student
24 in the 98th percentile. ACT, *ACT Profile Report – National: Graduating Class 2018* 13 (2018),
available at

25 https://www.act.org/content/dam/act/unsecured/documents/cccr2018/P_99_999999_N_S_N00_ACT-GCPR_National.pdf.

26 ¹⁷⁵ ACT, *Requesting Accommodations*, [https://www.act.org/content/act/en/products-and-](https://www.act.org/content/act/en/products-and-services/the-act/registration/accommodations/policy-for-accommodations-documentation.html#types)
27 [services/the-act/registration/accommodations/policy-for-accommodations-](https://www.act.org/content/act/en/products-and-services/the-act/registration/accommodations/policy-for-accommodations-documentation.html#types)
documentation.html#types (“[D]ocumentation of a psychiatric disorder must be within the past
28 year.”); College Board, *Psychiatric Disorders*, <https://>

1 school mental health resources are already strained, and mental health professionals cannot always
2 reassess students as frequently as the College Board and ACT require. Unlike their less
3 advantaged peers, affluent students can pay for private testing to meet College Board and ACT
4 requirements for accommodations applications. A private psychologist in New York, for example,
5 charges \$6,000 per evaluation and reports that “70 percent of the patients he sees leave with a
6 diagnosis, . . . and testing agencies usually approve accommodations for them.”¹⁷⁶ Relatedly,
7 although the College Board and ACT consider a student’s history of school accommodations and
8 school-provided information in determining whether to grant SAT or ACT accommodations,
9 underserved students may not be diagnosed soon enough or evaluated frequently enough by their
10 public schools to show a lengthy history of school accommodations. One student whose parent
11 could not afford a new evaluation had her request for accommodations on the SAT denied after
12 she submitted a seven-year-old A.D.H.D. evaluation.¹⁷⁷ Students in underresourced and highly
13 segregated schools may be undiagnosed, diagnosed late, or misdiagnosed.

14 117. Students with temporary conditions may also be ineligible for accommodations.
15 The College Board does not consider temporary medical or physical conditions to be disabilities
16 for purposes of the SAT.¹⁷⁸ In most cases, students with temporary conditions must “reregister to
17 take the test at a date when they have healed.”¹⁷⁹

18 118. The “speeded” nature of the ACT and SAT further discriminates against disabled
19 students, because there is no evidence that the time limits are essential to the test, and because
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22 _____
23 accommodations.collegeboard.org/documentation-guidelines/psychiatric-disorders
24 (“documentation must . . . include . . . [a] current psychiatric update, completed within the past
25 year” (emphasis omitted)).

26 ¹⁷⁶ Goldstein & Patel, *supra* note 173.

27 ¹⁷⁷ *Id.*

28 ¹⁷⁸ College Board, *Temporary Medical Conditions*,
<https://accommodations.collegeboard.org/temporary-conditions> (“[T]emporary medical or
physical conditions . . . are not disabilities.”).

¹⁷⁹ *Id.*

1 students with disabilities struggle to complete the tests.¹⁸⁰ Studies do not consistently show that
2 the time accommodations granted are sufficient for all test-takers, and, as discussed *supra*, the
3 accommodations process for obtaining extended time is onerous and not equally accessible.

4 119. Even when the College Board and ACT do approve accommodations, many
5 students with disabilities are not properly served by those accommodations. Studies have
6 demonstrated that students with certain disabilities, such as hearing loss and dyslexia, are not
7 effectively accommodated in testing,¹⁸¹ and that their test scores do not predict their likelihood of
8 success in the same way as for their peers without disabilities. For example, researchers have
9 noted the lack of information about the “effects of accommodations for deaf and hard of hearing
10 students who have additional disabilities” and “the range of quality in the implementation of
11 [American Sign Language] accommodations.”¹⁸² Moreover, “despite the importance of matching
12 accommodations to individual student characteristics and needs, few studies disaggregated
13 findings beyond broad categories” such as deaf, hard of hearing, or hearing.¹⁸³

14 120. Finally, students with disabilities who *do* receive and use the accommodations they
15 need are experiencing unprecedented levels of suspicion and discrimination. Problematically, test
16 scores are sometimes reported in ways that identify students as having disabilities or as having
17 tested with accommodations. Although students with disabilities have historically feared
18 discrimination based upon self-identification, students who use testing accommodations have been
19 increasingly stigmatized following the recent college admissions scandal, in which wealthy
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21 ¹⁸⁰ See generally Ruth Colker, *Test Validity: Faster Is Not Necessarily Better*, 49 Seton Hall L.
22 Rev. 679 (2019).

23 ¹⁸¹ See, e.g., Juliana M. Taymans et al., *Learning to Achieve: A Review of the Research Literature*
24 *on Serving Adults With Learning Disabilities* 134 (2009), available at
25 <https://lincs.ed.gov/publications/pdf/L2ALiteratureReview09.pdf> (noting “evidence that, despite
receiving extended time on standardized test administrations, the population with LD [learning
disabilities] continues to perform significantly below their peers academically”).

26 ¹⁸² Stephanie Cawthorn & Rachel Leppo, *Assessment Accommodations on Tests of Academic*
27 *Achievement for Students Who Are Deaf or Hard of Hearing: A Qualitative Meta-analysis of the*
Research Literature, 158 Am. Annals of the Deaf 363, 373 (2013).

28 ¹⁸³ *Id.* at 367.

1 parents of students without disabilities abused the testing accommodations process to give their
2 children a competitive advantage.¹⁸⁴

3 *Non-College Reportable Scores*

4 121. Rather than honoring all special education supports provided by schools to students
5 with disabilities, the College Board and ACT have devised a system of “non-college reportable”
6 scores for students who take their tests during the school day with their ordinary school
7 accommodations, but who have not been approved for SAT or ACT accommodations. These
8 students—who have IEPs, 504 Plans, or access to language supports in school, but who do not
9 receive permission to use these accommodations on the ACT or SAT—receive “non-college
10 reportable scores,” which cannot be sent to colleges, scholarship agencies, or any other outside
11 agencies.¹⁸⁵ This system of non-college reportable scores exists solely because testing providers
12 are unwilling to honor the necessary and legal accommodations and supports provided by schools
13 to their students during school-day testing.

14 *Exclusion from Validity Studies*

15 122. Students with disabilities who test with necessary accommodations are excluded
16 from the College Board’s current validity studies. A concordance study comparing the 2016
17 redesigned SAT to its predecessor omitted “SSD answer sheets”—those from test-takers with
18 accommodations approved by the College Board’s Services for Students with Disabilities (“SSD”)
19 office—from its analysis.¹⁸⁶ Thus, although the College Board claims that its Technical Manual

21 ¹⁸⁴ Anderson, *supra* note 172.

22 ¹⁸⁵ ACT, *The ACT Test Administration Manual: State Testing District Testing Non-College*
23 *Reportable Accommodations and English Learner Supports* 6 (2019), available at
24 [https://www.act.org/content/dam/](https://www.act.org/content/dam/act/secured/documents/pdfs/ACT-Admin-Manual-SD-NCR-Accoms-Paper-Fall-Secured.pdf)
25 [act/secured/documents/pdfs/ACT-Admin-Manual-SD-NCR-Accoms-Paper-Fall-Secured.pdf](https://www.act.org/content/dam/act/secured/documents/pdfs/ACT-Admin-Manual-SD-NCR-Accoms-Paper-Fall-Secured.pdf)
26 (“ACT will not report scores earned with non-college reportable accommodations and/or supports
27 to colleges, scholarship agencies, or any other entities.”); see College Board, *SAT School Day*
28 *Accommodated Testing Manual* 14 (2019), available at
[https://collegereadiness.collegeboard.org/pdf/sat-school-day-accommodated-testing-manual-](https://collegereadiness.collegeboard.org/pdf/sat-school-day-accommodated-testing-manual-fall.pdf)
fall.pdf (“College Board requires preapproval for all accommodations” in order for accommodated
students to “receive reportable scores”).

¹⁸⁶ College Board, *SAT Suite of Assessments Technical Manual* 115–16 (Dec. 2017), available at

1 demonstrates that “validity considerations permeate every aspect of the SAT,”¹⁸⁷ this is plainly not
2 the case for students with disabilities who take the SAT with necessary accommodations. ACT
3 similarly excludes special-tested students from its National and State Annual Reports of College
4 and Career Readiness, which consequently furnish no support for the validity of the ACT with
5 respect to these students.

6 III. Unequal Access to Test Preparation

7 123. The enormous stakes of the SAT and ACT tests have spawned a lucrative test
8 preparation industry which capitalizes on the desires of students and their parents to secure even
9 incremental score increases.¹⁸⁸ Unequal access to test preparation services exacerbates the
10 discriminatory nature of the SAT and ACT.

11 124. Affluent students have superior access to high-quality test preparation programs,
12 which can cost “upwards of \$10,000” over the course of multiple sessions.¹⁸⁹ One \$400-per-hour
13 SAT and ACT tutor teaches his students “clever test-taking tricks,” like “plugging a simple
14 number” into algebra equations rather than spending time working through the math.¹⁹⁰ Learning
15 these strategies not only boosts his tutees’ scores, but also reduces their anxiety about the test,
16 which becomes less daunting once they realize that simple “tricks actually work.”¹⁹¹

17 125. The College Board has historically insisted that the only way for students to
18 increase their SAT scores is by learning content.¹⁹² However, the College Board publishes and
19 sells its own test preparation book, the “Official SAT Study Guide,” which it touts as “[t]he best

20 _____
21 <https://collegereadiness.collegeboard.org/pdf/sat-suite-assessments-technical-manual.pdf>.

22 ¹⁸⁷ *Id.* at vi.

23 ¹⁸⁸ See James Wellemeyer, *Wealthy parents spend up to \$10,000 on SAT prep for their kids*,
24 MarketWatch (July 7, 2019), <https://www.marketwatch.com/story/some-wealthy-parents-are-dropping-up-to-10000-on-sat-test-prep-for-their-kids-2019-06-21> (“A March 2019 report from
25 IBISWorld valued the tutoring and test preparation industry at \$1.1 billion, with exam prep
services making up 25% of the industry.”).

26 ¹⁸⁹ *Id.*

27 ¹⁹⁰ Tough, *supra* note 33, at 28.

28 ¹⁹¹ *Id.* at 28–29.

¹⁹² *Id.* at 74.

1 source of information about the SAT.”¹⁹³ The Official SAT Study Guide promises students that its
2 “information, advice, and sample questions will help you prepare to take the test with
3 confidence.”¹⁹⁴ According to the College Board, “[l]earning about the SAT through this guide
4 . . . will help you be well prepared when your test date arrives.”¹⁹⁵

5 126. In 2015, in the wake of criticisms regarding the SAT’s lack of predictive value, the
6 College Board dramatically shifted its stance on test preparation by contracting with Khan
7 Academy, a provider of online test preparation services.¹⁹⁶ Although Khan Academy test
8 preparation is free, its content—particularly the test-taking “strategies” it teaches students—is
9 limited by its affiliation with the College Board. Because the College Board continues to assert
10 that learning content is the best way to succeed on the SAT, Khan Academy does not teach
11 students strategies for “gaming” the test. For example, whereas private tutors instruct students on
12 how to quickly and correctly solve math items without working through every step of the problem,
13 *supra* para. 122,¹⁹⁷ Khan Academy’s math strategies section advises students that their best
14 strategy is to “stop rushing and stop cutting corners.”¹⁹⁸ Similarly, Khan Academy cautions
15 against “mental math,” advising students to “[g]et out of your head” and “do your work on paper”
16 by, for example, “[w]rit[ing] down every step of algebra problems.”¹⁹⁹ Even with these
17

18 ¹⁹³ College Board, *The Official SAT Study Guide* (2018).

19 ¹⁹⁴ *Id.* at 3.

20 ¹⁹⁵ *Id.*

21 ¹⁹⁶ Jacqueline Thomsen, *New Website for a New Test*, Inside Higher Ed (June 2, 2015), <https://www.insidehighered.com/news/2015/06/02/college-board-and-khan-academy-team-ease-access-new-sat> (“The announcements are designed to help the College Board try to rebrand a test that some have criticized for not providing an accurate prediction of success in higher education.”).

22
23 ¹⁹⁷ Tough, *supra* note 33, at 28 (describing how a \$400-per-hour private tutor instructs students to
24 “see if you can figure out the answer” to geometry questions “by just eyeballing the diagram,
rather than doing the math”).

25 ¹⁹⁸ Khan Academy, *SAT Math Test Strategies: Controlling Careless Errors on the SAT Math Test*,
26 <https://www.khanacademy.org/test-prep/sat/new-sat-tips-planning/sat-math-test-strategies/a/controlling-careless-errors-on-the-sat-math-test?modal=1>.

27
28 ¹⁹⁹ *Id.*

1 limitations, Khan Academy is yet another tool for test preparation that is leveraged only with
2 access and assistance. It is thus used more by affluent students and students whose parents have
3 advanced degrees, furnishing those students with yet one more tool for preparation.²⁰⁰

4 127. Given these disparities in student access to test preparation, underresourced schools
5 and school districts divert valuable instruction time and large amounts from their limited funds
6 toward test preparation, at the expense of providing students with substantive, college preparatory
7 education.

8 **IV. Use of SAT and ACT in UC Admissions**

9 **A. Mission and Mandate of the UC**

10 128. The “distinctive mission” of the UC “is to serve society as a center of higher
11 learning, providing long-term societal benefits” through the transmission and discovery of
12 advanced knowledge.²⁰¹ The UC thus has an obligation to students and to the people of the State
13 of California to educate students and to prepare them to contribute to the civic and economic life
14 of the State. By continuing to consider SAT and ACT scores in admissions, however, the UC
15 deprives the people of California of the contributions of talented young people who could bring
16 their intelligence, diverse backgrounds, and industry to serve the needs of the State. UC’s
17 continued use of the SAT and ACT thus harms both well-qualified students excluded from public
18 higher education and the people of the State by stymieing these students’ immense potential to
19 contribute to the State’s political and economic vitality.

20 129. UC’s mission is constitutionally mandated: the California Constitution provides
21 that the UC shall be a “public trust” administered by the Regents, and envisions the UC as the
22 culmination of the State’s responsibility to provide public education to its citizens.²⁰² Within the

23 _____

24 ²⁰⁰ Tough, *supra* note 33, at 91 (describing Khan Academy and College Board findings that
25 “[s]tudents in the top income quartile used the site for more time than students in the bottom
26 income quartile” and students whose parents attended graduate school used the site for more time
than students whose parents had only a high school degree).

27 ²⁰¹ Univ. of Cal. Office of the Pres., *UC’s Mission*, <https://www.ucop.edu/uc-mission/> (citing
Univ. of Cal. Academic Plan, 1974-1978) [hereinafter UC Mission].

28 ²⁰² Cal. Const. art. IX, § 9(a); *see id.* § 1.

1 framework of the California Constitution, the UC exists to further the “general diffusion of
2 knowledge and intelligence,” which is “essential to the preservation of the rights and liberties of
3 the people,” and to promote California citizens’ “intellectual, scientific, [and] moral . . .
4 improvement.”²⁰³ This mission—providing higher education to California citizens—is so critical
5 to the population’s wellbeing that the California Constitution explicitly articulates that no person
6 shall be excluded from higher education at the UC on the basis of race or ethnicity.²⁰⁴ Nor is the
7 constitutional vision of UC’s inclusivity and diversity limited to UC’s student population: the
8 California Constitution expressly provides that UC’s leadership shall be “broadly reflective of the
9 economic, cultural, and social diversity of the State, including ethnic minorities.”²⁰⁵

10 130. The UC frames this constitutional mandate as three “fundamental missions”:
11 “teaching, research[,] and public service.”²⁰⁶ Undergraduate education is central to UC’s teaching
12 mission. According to the UC, “[u]ndergraduate programs are available to all eligible California
13 high-school graduates.”²⁰⁷ These programs furnish students with the knowledge and skills they
14 need not only to have successful careers, but also to continue growing intellectually and “to
15 contribute to the needs of a changing society.”²⁰⁸ Taken in the aggregate, UC’s education of
16 talented California students “create[s] an educated workforce that keeps the California economy
17 competitive.”²⁰⁹

18 131. UC’s Policy on Undergraduate Admissions unequivocally confirms UC’s
19 commitment to provide higher education to all talented California students, regardless of
20 background:

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22 _____
23 ²⁰³ *Id.* § 1.

24 ²⁰⁴ *Id.* § 9(f).

25 ²⁰⁵ *Id.* § 9(d).

26 ²⁰⁶ UC Mission, *supra* note 201.

27 ²⁰⁷ *Id.*

28 ²⁰⁸ *Id.*

²⁰⁹ *Id.*

1 Mindful of its mission as a public institution, the University of California has an
2 historic commitment to provide places within the University for all eligible
3 applicants who are residents of California. The University seeks to enroll, on each
4 of its campuses, a student body that, beyond meeting the University’s eligibility
5 requirements, demonstrates high academic achievement or exceptional personal
6 talent, and that encompasses the broad diversity of cultural, racial, geographic, and
7 socioeconomic backgrounds characteristic of California.²¹⁰

8
9 Thus, although the UC permits individual campuses to establish their own admissions procedures,
10 it mandates that those procedures align with UC’s commitment to building a student body that
11 reflects the “cultural, racial, geographic, and socioeconomic” diversity of the State.²¹¹

12 132. The UC has repeatedly reaffirmed this commitment to diversity, recognizing that
13 building a diverse and representative student population is integral to fulfilling its “core mission . .
14 . to serve the interests of the State of California.”²¹² Noting that “[t]he diversity of the people of
15 California has been the source of innovative ideas and creative accomplishments throughout the
16 state’s history into the present,” the UC has recognized the myriad ways in which a diverse
17 educational community fosters its “achievement of excellence”: by “broaden[ing] and deepen[ing]
18 both the educational experience and the scholarly environment”; by “promot[ing] mutual respect”
19 and “preparing [students] to participate in an increasingly complex and pluralistic society”; by
20 giving rise to, nurturing, and enriching ideas and practices; and, most critically, by enabling “the

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23 _____
24 ²¹⁰ Univ. of Cal. Bd. of Regents, *Regents Policy 2102: Policy on Undergraduate Admissions*,
25 [https://
regents.universityofcalifornia.edu/governance/policies/2102.html](https://regents.universityofcalifornia.edu/governance/policies/2102.html).

26 ²¹¹ *Id.* (“[E]ach campus shall establish procedures for the selection of applicants to be admitted
27 from its pool of eligible candidates. Such procedures shall be consistent with the principles stated
28 above and with other applicable University policies.”).

²¹² Univ. of Cal. Bd. of Regents, *Regents Policy 4400: Policy on University of California Diversity
Statement*, <https://regents.universityofcalifornia.edu/governance/policies/4400.html>.

1 full, effective use of the talents and abilities of all to foster innovation and train future
2 leadership.”²¹³

3 133. Beyond contributing to UC’s academic mission, UC’s assembling of a diverse
4 student population fulfills an even more fundamental purpose: it “sustain[s] the social fabric of the
5 State” with the “knowledge that the University of California is open to qualified students from all
6 groups, and thus serves all parts of the community equitably.”²¹⁴ Because the UC exists to serve
7 the people of the California, the “State of California has a compelling interest in making sure that
8 people from all backgrounds perceive that access to the University is possible for talented students
9 . . . from all groups.”²¹⁵ These sentiments are simply irreconcilable with UC’s continued use of the
10 SAT and ACT in admissions. By basing admissions decisions on tests that discriminate against
11 underrepresented minority students, students with less wealth, and students with disabilities, the
12 UC has failed to provide a level playing field in which all applicants are assessed based on
13 individual merit, drive, and character. Admission to the UC, therefore, is plainly not “open to
14 qualified students from all groups,” rendering the UC utterly unable to “serve[] all parts of the
15 community equitably.”²¹⁶ Unsurprisingly, UC’s persistent use of these tests has also undermined
16 public confidence in the fairness of UC admissions, as Californians correctly “perceive that access
17 to the University” is premised on access to wealth and other advantages.²¹⁷

18 **B. UC’s Mandate and Fundamental Rights**

19 134. Education is a fundamental right under the California Constitution, and UC’s
20 constitutional mandate—to prepare all qualified students to contribute meaningfully to the State’s
21 economy and society—is premised on that right.²¹⁸ California courts have long recognized that K-

23 ²¹³ *Id.*

24 ²¹⁴ *Id.*

25 ²¹⁵ *Id.*

26 ²¹⁶ *Id.*

27 ²¹⁷ *Id.*

28 ²¹⁸ *Butt v. State*, 4 Cal. 4th 668, 692 (1992) (“[E]ducation is a fundamental interest in California.”).

1 12 education constitutes a fundamental right precisely because it enables students to access higher
2 education and its attendant opportunities. Permitting equal access to higher education—including
3 “entrance into . . . the University of California”—is the ultimate purpose of public elementary and
4 secondary schooling, which opens “doorways . . . into chambers of science, art and the learned
5 professions, as well as into fields of industrial and commercial activities.”²¹⁹

6 135. As the California Supreme Court has recognized, “the ‘fundamental’ nature of the
7 right to an equal education derives in large part from the crucial role that education plays in
8 ‘preserving an individual’s opportunity to compete successfully in the economic marketplace,
9 despite a disadvantaged background.’”²²⁰ The “public schools of this state”—and none more so
10 than the UC—facilitate the “entry” of students from underrepresented groups into the economic
11 and political spheres from which those groups have historically been excluded.²²¹ Thus, not only
12 does education “prepare[] individuals to participate in the institutional structures . . . that distribute
13 economic opportunities,”²²² it also empowers students to engage meaningfully in civic life:
14 education “provide[s] the understanding of, and the interest in, public issues which are the spur to
15 involvement in other civic and political activities.”²²³ The right to education is therefore
16 fundamental because it enables students of all backgrounds to access social mobility and become
17 successful participants in California’s economy and democracy.

18 136. Because the principal value of education is as a vehicle of economic and social
19 mobility, the fundamental right to education mandates “more than access to a classroom.”²²⁴ In
20 *Butt v. State*, the California Supreme Court made clear that the right requires public institutions
21 not just to provide instruction, but to do so in a way that facilitates students’ “high school
22

23 ²¹⁹ *Piper v. Big Pine Sch. Dist. of Inyo Cty.*, 193 Cal. 664, 673 (1924).

24 ²²⁰ *Crawford v. Bd. of Educ.*, 17 Cal. 3d 280, 295 (1976) (quoting *Serrano v. Priest*, 5 Cal. 3d 584,
25 609 (1971)).

26 ²²¹ *Id.*

27 ²²² *Hartzell v. Connell*, 35 Cal. 3d 899, 908 (1984).

28 ²²³ *Serrano*, 5 Cal. 3d at 607.

²²⁴ *Id.* at 607.

1 graduation[] and college entrance.”²²⁵ According to the Court, the constitutional harm arising from
2 the early closure of a district’s schools was not the loss of instruction itself, but rather the
3 “extensive educational disruption” that could “seriously compromise[]” “the ability of departing
4 seniors to qualify for college admission.”²²⁶ By jeopardizing students’ ability to access higher
5 education, the Court concluded, “the proposed closure would have a real and appreciable impact
6 on the affected students’ fundamental California right to basic educational equality.”²²⁷

7 137. The fundamental right to K-12 education thus means nothing if it does not also
8 encompass the right to access public higher education. A college degree has become a virtual
9 prerequisite for securing steady, gainful employment in today’s economy. Disparities in
10 employment rates and wages between individuals with bachelor’s degrees and those without are
11 persistent and well-documented. According to 2018 data from the Bureau of Labor Statistics,
12 those with bachelor’s degrees had median weekly earnings of \$1,198, as compared to \$862 for
13 those with associate degrees and \$730 for those with only high school diplomas.²²⁸ Those with
14 bachelor’s degrees also had lower rates of unemployment than those without.²²⁹ A college degree
15 has become a common prerequisite even for jobs that have traditionally been available to high
16 school graduates: a 2017 Harvard Business School study reviewed more than 26 million job
17 postings and found that postings for many jobs that previously did not require a college degree
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23 ²²⁵ 4 Cal. 4th at 687.

24 ²²⁶ *Id.* & n.16.

25 ²²⁷ *Id.* at 688.

26 ²²⁸ U.S. Dep’t of Labor, Bureau of Labor Statistics, *Education pays* (Feb. 2019),
27 [https://www.bls.gov/careeroutlook/
2019/data-on-display/education_pays.htm](https://www.bls.gov/careeroutlook/2019/data-on-display/education_pays.htm).

28 ²²⁹ *Id.*

1 “now stipulate a college degree as a minimum education requirement.”²³⁰ Employer demand for
2 workers with college degrees is on the rise “in the vast majority of occupations.”²³¹

3 138. These trends are particularly pronounced in California, where a dynamic State
4 economy fuels a “[s]trong and growing demand for highly educated workers.”²³² According to
5 researchers at the Public Policy Institute of California, “[i]f current trends continue, about 40
6 percent of jobs in California will require at least a bachelor’s degree by 2030.”²³³ In California,
7 individuals with college degrees have manifold advantages over individuals with only high school
8 diplomas: whereas a typical full-time worker with a college diploma earns \$81,000, a typical full-
9 time worker with a high school diploma earns only \$36,000.²³⁴ A college degree produces striking
10 long-term dividends: Georgetown University researchers have found, for example, that economic
11 value of a UC Berkeley degree 40 years after enrollment is \$1,383,000, and that of a UCLA
12 degree is \$1,300,000.²³⁵ The “wage premium” associated with a college degree has grown steadily
13 over the last two decades.²³⁶ Beyond higher wages, California workers with college degrees have
14 more job security and non-wage benefits, lower rates of poverty and unemployment, and higher
15 rates of homeownership.²³⁷ College graduates “are more likely to have long-lasting marriages and
16 to be civically engaged,” and even “have lower mortality rates.”²³⁸ These disparities make plain

17
18 ²³⁰ Joseph B. Fuller & Manjari Raman, *Dismissed by Degrees: How Degree Inflation Is*
19 *Undermining U.S. Competitiveness and Hurting America’s Middle Class 2* (Oct. 2017), available
20 at <https://www.hbs.edu/managing-the-future-of-work/Documents/dismissed-by-degrees.pdf>.

21 ²³¹ Pub. Policy Inst. of Cal., *Higher Education in California: Meeting California’s Workforce*
22 *Needs* (Oct. 2019), available at [https://www.ppic.org/wp-content/uploads/higher-education-in-](https://www.ppic.org/wp-content/uploads/higher-education-in-california-october-2019.pdf)
23 [california-october-2019.pdf](https://www.ppic.org/wp-content/uploads/higher-education-in-california-october-2019.pdf).

24 ²³² *Id.*

25 ²³³ *Id.*

26 ²³⁴ *Id.*

27 ²³⁵ Anthony P. Carnevale et al., *A First Try at ROI: Ranking 4,500 Colleges 43* (2019), available
28 at [https://1gyhoq479ufd3yna29x7ubjn-wpengine.netdna-ssl.com/wp-](https://1gyhoq479ufd3yna29x7ubjn-wpengine.netdna-ssl.com/wp-content/uploads/College_ROI.pdf)
content/uploads/College_ROI.pdf.

²³⁶ Pub. Policy Inst. of Cal., *supra* note 231.

²³⁷ *Id.*

²³⁸ *Id.*

1 that in the State of California, the fundamental right to education cannot end at grade 12. Rather,
2 the ability to access public higher education has become the “major determinant of an individual’s
3 chances for economic and social success in our competitive society.”²³⁹ In today’s labor market,
4 the constitutional right to “equal access to a public education system that will teach [students] the
5 skills they need to succeed as productive members of modern society” necessarily means equal
6 access to public higher education.²⁴⁰

7 139. Closely related to the fundamental right of access to public higher education is the
8 fundamental right to pursue an occupation, which California courts have repeatedly recognized.²⁴¹
9 It has long been established in California that “[a]ny unreasonable limitation that deprives
10 qualified persons of the equal opportunity to qualify for work is unconstitutional.”²⁴² UC’s
11 requirement that applicants submit SAT and ACT scores in order to be considered for admission is
12 one such “unreasonable limitation”: by hindering the ability of well-qualified, less advantaged
13 students to access high-quality public higher education at the UC, the requirement ultimately
14 deprives those students of the opportunity to pursue a wide range of occupations that is granted to
15 their more privileged peers.

16 **C. UC’s Historical Use of the SAT and ACT**

17 140. UC’s concerns about the validity of the SAT and ACT are longstanding and well-
18 founded. Concerns about the tests’ weak ability to predict student success prevented UC from
19 adopting standardized testing requirements “until later than most other selective US
20 universities.”²⁴³ As early as 1956, BOARS—the Academic Senate committee that formulates and
21 regulates UC’s undergraduate admissions policies, subject to ultimate approval by the Regents—
22 rejected a proposal that would have required SAT scores from entering students, based on

23 _____
24 ²³⁹ *Serrano*, 5 Cal. 3d at 605.

25 ²⁴⁰ *O’Connell v. Superior Court*, 141 Cal. App. 4th 1452, 1482 (2006).

26 ²⁴¹ *See, e.g., Hughes v. Bd. of Architectural Examiners*, 17 Cal. 4th 763, 788 (1998); *Terry v. Civil
27 Serv. Comm’n*, 108 Cal. App. 2d 861, 870 (1952).

28 ²⁴² *Terry*, 108 Cal. App. at 870.

²⁴³ *Geiser*, *supra* note 31, at 6.

1 members’ “grave concerns regarding the validity of standardized tests in predicting the academic
2 performance of university students.”²⁴⁴

3 141. Following this initial rejection, the UC embarked on an experimental study to
4 assess the SAT’s effectiveness.²⁴⁵ For a period of two years, beginning with the class of 1960, the
5 UC required applicants to take the SAT or similar tests.²⁴⁶ During this experimental period, SAT
6 scores were not used to evaluate applicants for admission to the UC, but were instead collected to
7 analyze the capacity of the SAT, as a potential admissions criterion, to predict students’ academic
8 performance.²⁴⁷ The results were unequivocal: BOARS’s chair reported that after “[e]xtensive
9 analysis of the data,” BOARS was “wholly convinced that [SAT] scores add little or nothing to the
10 precision with which existing admissions requirements are predictive of success in the
11 University.”²⁴⁸ BOARS thus rejected an SAT requirement by unanimous vote.²⁴⁹ The 1960–62
12 study was the first of several commissioned by BOARS over the past six decades, all of which
13 have demonstrated the limited predictive value of standardized tests like the SAT and ACT in
14 predicting college performance. Despite these results, UC has persisted in using SAT and ACT
15 scores as an admissions criterion.

16 142. In 1963, “[l]obbied by the Educational Testing Service,”²⁵⁰ BOARS agreed to
17 undertake another study of standardized testing, which would examine the ability of achievement
18 tests (like SAT II subject tests) to predict student performance at the UC.²⁵¹ The study “echoed the
19 findings of [UC’s] previous analysis of the validity of the SAT,” determining that achievement
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21 _____
22 ²⁴⁴ Douglass, *supra* note 5, at 85 & n.16.

23 ²⁴⁵ *Id.* at 86.

24 ²⁴⁶ *Id.*

25 ²⁴⁷ *Id.*

26 ²⁴⁸ *Id.* at 90 (quoting BOARS Chairman Charles Jones).

27 ²⁴⁹ *Id.*

28 ²⁵⁰ Geiser, *supra* note 31, at 7.

²⁵¹ Douglass, *supra* note 5, at 91.

1 tests were only “of marginal value in predicting academic success.”²⁵² Notably, even this
2 “marginal value” outweighed the predictive value of the SAT.²⁵³ The study found that high school
3 GPA remained the best predictor of college performance, explaining 22 percent of the variance in
4 first-year grades (as compared to the achievement tests, which explained only eight percent).²⁵⁴
5 Although the study also determined that combining achievement test scores with high school GPA
6 “appeared to offer a marginal improvement” in predicting first-year grades, this “admittedly
7 slight” gain was not enough to persuade BOARS to adopt an achievement test requirement.²⁵⁵
8 Without a stronger demonstration of the predictive value of the SAT and achievement tests,
9 BOARS refused to impose a testing requirement on applicants to UC.²⁵⁶

10 143. Despite these dismal results, the UC gradually expanded its use of the SAT and
11 ACT tests. In 1968, the UC required SAT and ACT scores from all applicants, but deployed the
12 scores only for the narrow purposes of assessing out-of-state applicants and “in-state students with
13 very low GPAs.”²⁵⁷ By 1979, in an attempt to “cull [its] eligibility pool,” the UC incorporated
14 SAT and ACT scores into an “eligibility index” that combined grades and test scores, effectively
15 “extend[ing] a minimum test-score requirement to most UC applicants.”²⁵⁸ UC faculty expressed
16 multiple concerns about the index, questioning the SAT’s predictive value and its efficacy as a
17 “device[] for encouraging increased preparation” and warning of “disproportionate adverse
18 effects” on low-income and underrepresented minority students.²⁵⁹ Despite these concerns, the
19 Regents approved the eligibility index by a close 15-to-12 vote.²⁶⁰

21 ²⁵² *Id.*

22 ²⁵³ *Id.*

23 ²⁵⁴ *Id.*

24 ²⁵⁵ *Id.* at 91–92.

25 ²⁵⁶ *Id.* at 92.

26 ²⁵⁷ Geiser, *supra* note 31, at 7.

27 ²⁵⁸ *Id.*

28 ²⁵⁹ Douglass, *supra* note 5, at 115 (quoting then-Santa Barbara division Chair Robert Michaelson).

²⁶⁰ *Id.* at 117.

1 144. In 1988, following UC’s adoption of a centralized application system and
2 subsequent increases in application volume, the UC adopted a new admissions policy at “heavily
3 impacted campuses.”²⁶¹ The policy provided for the admission of “[t]he top 40% to 60% of the
4 freshman class . . . based solely on high-school grades and SAT/ACT scores.”²⁶²

5 145. The increasing weight placed on SAT and ACT scores in UC admissions during
6 this period did not reflect corresponding increases in the tests’ validity, as BOARS’s own studies
7 demonstrated.²⁶³ In 1997, BOARS commissioned a study that found that the combination of SAT
8 II math and writing scores outperformed SAT I scores in predicting first-year grades at the UC,
9 likely due to the fact that, unlike the SAT I, SAT II tests were “curriculum driven.”²⁶⁴ Based on
10 this study, the UC revised its eligibility index, including SAT II scores and giving them twice as
11 much weight as SAT I or ACT scores.²⁶⁵

12 146. In 2001, BOARS commissioned a study that again found that SAT I scores
13 contributed “very little, if any, incremental power in predicting UC freshman grades” after taking
14 into account high school GPA and SAT II scores.²⁶⁶ Moreover, the study found that much of the
15 correlation between SAT I scores and first-year grades was “conditioned by socioeconomic
16 factors,” such that after controlling for those factors, “SAT I scores add[ed] nothing to the
17 prediction of freshman grades beyond that which HSGPA and the SAT II already provide[d].”²⁶⁷
18 Relying on this analysis, then-UC President Richard Atkinson called for the elimination of the
19

20 _____
21 ²⁶¹ Geiser, *supra* note 31, at 7.

22 ²⁶² *Id.*

23 ²⁶³ *Id.*

24 ²⁶⁴ BOARS, *The Use of Admissions Tests by the University of California* 7–8 (Jan. 2002),
25 available at https://senate.universityofcalifornia.edu/_files/committees/boars/admissionstests.pdf
(quoting Judy Kowarsky et al., *Predicting University Grade-Point Average in a Class of*
University of California Freshmen: An Assessment of the Validity of A-F GPA and Test Scores as
Indicators of Future Academic Performance 6 (1998)).

26 ²⁶⁵ *Id.* at 6–8.

27 ²⁶⁶ Geiser & Studley, *supra* note 96, at 4.

28 ²⁶⁷ *Id.* at 9.

1 SAT I requirement in UC admissions, and the use instead of curriculum-based achievement tests
2 that measure “what [students] have accomplished during four years of high school, taking into
3 account their opportunities.”²⁶⁸ Ceasing to consider scores on tests like the SAT I and ACT,
4 Atkinson recognized, would redress adverse impacts on students with less wealth and
5 underrepresented minority students and foster “greater public confidence in the fairness of [UC]’s
6 admissions process.”²⁶⁹

7 147. In 2002, BOARS cited its 2001 study in a paper proposing a “new testing array”
8 that expressly excluded the SAT I.²⁷⁰ Instead, BOARS recommended a battery of tests consisting
9 of a yet to be developed “core achievement examination,” testing students’ mastery of language
10 arts and math, and two other subject examinations.²⁷¹

11 148. Recognizing the threat posed by Atkinson’s and BOARS’s proposals, the College
12 Board soon announced that it would modify the SAT, starting in 2005, to include a writing
13 section, evaluate “reading for understanding,” and emphasize “mathematical problem solving”
14 through questions modeled on “real-life situations.”²⁷² The College Board implied that the revised
15 SAT would be less coachable, stating that rigorous coursework was the best preparation for the
16 test.²⁷³ Through this “repackaging,” the College Board “appeared to respond to criticism, modified
17 the existing test at the margin,” and ultimately “preserved the market for the SAT I.”²⁷⁴

18 149. These changes—including the much-touted writing section—did not substantially
19 enhance the predictive power of the test. BOARS has continued to study the utility of the SAT and
20 ACT in UC admissions, and has continued to find SAT I scores largely redundant in evaluating
21 applicants. For example, a 2008 study commissioned by BOARS determined that SAT scores

22 _____
23 ²⁶⁸ Atkinson, *supra* note 15, at 144.

24 ²⁶⁹ *Id.* at 139.

25 ²⁷⁰ BOARS, *supra* note 264, at 16, 18.

26 ²⁷¹ *Id.* at 16–17.

27 ²⁷² Douglass, *supra* note 5, at 228.

28 ²⁷³ *Id.*

²⁷⁴ *Id.* at 230.

1 accounted for only 1.9 percent of the variance in first-year GPA among UC Berkeley students, and
2 only 1.6 percent of the variance across the UC system’s undergraduate campuses.²⁷⁵

3 **D. UC’s Justification for Continued Use of SAT and ACT**

4 150. Despite BOARS’s own studies demonstrating the large redundancy of SAT and
5 ACT scores in predicting college performance, the UC has continued to use those scores in
6 admissions decisions. In 2002, BOARS established a set of principles governing UC’s use of
7 “admissions tests.”²⁷⁶ The principles provide that UC will use admissions tests for four purposes:
8 “to assess academic preparation and achievement of UC applicants”; “to predict success at UC
9 beyond that predicted by high school GPA”; “to aid in establishing UC eligibility”; and “to aid in
10 selecting students for admission at individual UC campuses.”²⁷⁷ The principles further enumerate
11 four “desired properties” of admissions tests.²⁷⁸ According to BOARS, an admissions test should:
12 “be a reliable measurement that provides uniform assessment and should be fair across
13 demographic groups”; “measure levels of mastery of content in UC-approved high school
14 preparatory coursework and . . . provide information to students, parents, and educators enabling
15 them to identify academic strengths and weaknesses”; “be demonstrably useful in predicting
16 student success at UC and provide information beyond that which is contained in other parts of the
17 application”; and “be useful in a way that justifies its social and monetary costs.”²⁷⁹ BOARS
18 specifically “recognized that predictors of success [were] currently limited” to first-year GPA and
19 graduation rate, and called for the identification and use of “better predictors” to validate
20 admissions tests.²⁸⁰ Having established these principles, BOARS recommended that “the faculty

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23 _____
24 ²⁷⁵ BOARS, *supra* note 6, at 95, 107.

25 ²⁷⁶ BOARS, *supra* note 264.

26 ²⁷⁷ *Id.* at 15.

27 ²⁷⁸ *Id.*

28 ²⁷⁹ *Id.* at 15–16.

²⁸⁰ *Id.* at 16.

1 regularly review UC’s admissions testing policy and practices to ensure that tests are being used in
2 a way that is consistent with these principles and desired properties of admissions tests.”²⁸¹

3 151. BOARS’s testing principles have continued to govern UC’s use of the SAT and
4 ACT in admissions decisions. In 2002, BOARS applied these principles to UC testing
5 requirements, and ultimately recommended a testing array that did not include the SAT I.²⁸²
6 Following the College Board’s announcement of revisions to the test, however, BOARS and UC
7 decided to wait to study the predictive validity of the 2005 SAT—a wait of more than two
8 years.²⁸³

9 152. BOARS provided its most comprehensive justification for UC’s continued use of
10 the SAT and ACT in 2009. BOARS found that, compared to their predecessors, the revised SAT
11 and ACT-with-Writing were better aligned with college preparatory curricula and, when combined
12 with high school GPA, “add[ed] a small but notable increment of predictive power” to the
13 prediction of first-year GPA.²⁸⁴ According to BOARS, without SAT and ACT scores’ admittedly
14 “small” contribution to predicting first-year GPA, “UC would lose much of its predictive
15 modeling capability.”²⁸⁵ BOARS emphasized that the scores could be used to address “anomalies”
16 in the application process, by facilitating the evaluation of “non-traditional applicants without high
17 school GPAs” and identifying applicants “whose high school GPAs are at odds with their test
18 scores.”²⁸⁶ Without test scores to provide a “uniform reference point,” BOARS asserted, high
19 schools might “engage in more grade inflation” and public confidence in the fairness of UC’s
20 admissions process could dwindle.²⁸⁷ Finally, BOARS expressed concern about UC losing its
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22

23 ²⁸¹ *Id.* (emphasis omitted).

24 ²⁸² *Id.* at 18.

25 ²⁸³ Douglass, *supra* note 5, at 231.

26 ²⁸⁴ BOARS, *supra* note 7, at 25.

27 ²⁸⁵ *Id.* at 4.

28 ²⁸⁶ *Id.*

²⁸⁷ *Id.*

1 “capacity to compare itself to other national institutions”—that is, its ability to maintain its
2 reputation through national rankings.²⁸⁸

3 153. BOARS weighed these justifications against the SAT and ACT’s numerous
4 deficiencies. First, BOARS noted the “considerable redundancy” of using both high school GPA
5 and SAT or ACT scores to predict first-year GPA.²⁸⁹ BOARS also recognized that, because the
6 tests could be coached, disparate access to test preparation “disadvantages low-income groups and
7 distracts participants from college preparatory coursework.”²⁹⁰ Most importantly, BOARS
8 acknowledged the tests’ adverse effects on underrepresented minority students and students with
9 less wealth: BOARS stated that despite revisions to both the ACT and SAT, neither test had
10 “escaped the persistent differences between racial/ethnic groups” that had characterized their
11 predecessors.²⁹¹ By contrast, BOARS observed that “[h]igh school GPA has less adverse impact
12 on disadvantaged groups and is the better predictor of student retention over time.”²⁹²
13 Nevertheless, BOARS ultimately decided that the justifications discussed *supra* outweighed not
14 only the limited predictive value of the tests, but also the inequalities they reinforced, and
15 recommended continued use of both tests.²⁹³

16 154. BOARS most recently justified its continued use of the SAT in a statement
17 announcing its adoption of the 2016 redesigned SAT as an acceptable admissions exam.²⁹⁴
18 Relying entirely on information provided by the College Board, BOARS stated that it “expects the
19 revised SAT to be a fairer test that is more closely aligned with BOARS’ testing principles than
20 the existing SAT, in that the new test will be more aligned with college-level expectations and

21 _____
22 ²⁸⁸ *Id.*

23 ²⁸⁹ *Id.* at 15.

24 ²⁹⁰ *Id.* at 21.

25 ²⁹¹ *Id.* at 24.

26 ²⁹² *Id.*

27 ²⁹³ *Id.* at 4–5.

28 ²⁹⁴ BOARS, *Statement on the Redesigned SAT* (July 8, 2014), available at
[https://senate.universityofcalifornia.edu/
_files/committees/boars/SAT_Redesign.pdf](https://senate.universityofcalifornia.edu/_files/committees/boars/SAT_Redesign.pdf).

1 high school curriculum.”²⁹⁵ Without having studied the redesigned SAT’s predictive validity,
2 BOARS nevertheless asserted that “the new SAT meets BOARS general objectives and principles
3 for admissions tests and should be an improvement over the current exam.”²⁹⁶

4 155. In fact, as explained *infra* paras. 184–92, none of these reasons is necessary to UC
5 admissions processes and none outweighs the significant discriminatory impact of the use of such
6 exams.

7 **E. Current Use of SAT and ACT in UC Admissions**

8 156. The UC requires all prospective first-year students applying to a UC campus to
9 “submit scores from either the ACT with Writing or SAT with Essay.”²⁹⁷ In addition to submitting
10 SAT or ACT scores, prospective first-year students must complete a minimum of 15 academic or
11 college preparatory courses in certain subjects (“A-G courses”) and submit scores from two
12 supplementary subject tests.²⁹⁸ Students who meet these minimum criteria are “entitled to review
13 (ETR)” at any UC campus to which they apply, but are not guaranteed admission to any UC
14 campus.²⁹⁹

15 ***Statewide and Local Admissions Guarantees***

16 157. There are two paths to guaranteed admission to a UC campus: a statewide path and
17 a local path known as Eligibility in the Local Context.³⁰⁰ The statewide path identifies the top nine
18 percent of California graduates using an admissions index of high school GPA and test scores.³⁰¹
19 The local path identifies the top nine percent of students at participating California high schools

21 ²⁹⁵ *Id.*

22 ²⁹⁶ *Id.*

23 ²⁹⁷ Univ. of Cal. Admissions, *supra* note 135.

24 ²⁹⁸ Univ. of Cal. Bd. of Regents, *Regents Policy 2103: Policy on Undergraduate Admissions Requirements*, <https://regents.universityofcalifornia.edu/governance/policies/2103.html>.

25 ²⁹⁹ *Id.*

26 ³⁰⁰ Univ. of Cal. Admissions, *California Residents*,
27 <https://admission.universityofcalifornia.edu/admission-requirements/freshman-requirements/california-residents/>.

28 ³⁰¹ Univ. of Cal. Bd. of Regents, *supra* note 298.

1 based solely on grades in A-G coursework.³⁰² Prospective first-year students who qualify for
2 either the statewide path or the local path and are not admitted to any campus to which they apply
3 “will be offered admission at a UC campus with available space.”³⁰³ Taken together, the statewide
4 and local guarantees are known as the “9-by-9 policy.”³⁰⁴

5 158. The statewide admissions index places considerable weight on SAT and ACT
6 scores, essentially granting a wealth and race bonus to affluent and White students. A student’s
7 score on the index is calculated by: (1) converting the student’s high school GPA to a standardized
8 “UC GPA”; (2) converting the student’s SAT or ACT score to a “UC Score” using UC conversion
9 tables; and (3) using a UC index table to determine whether the student’s UC Score meets the
10 minimum requirement for the student’s UC GPA range.³⁰⁵ A student falls within the top nine
11 percent of students statewide—and is thus guaranteed admission to a UC campus—if his or her
12 UC Score “meets or exceeds” the minimum score for his or her UC GPA range.³⁰⁶ Thus, a
13 student’s SAT or ACT score is a deciding factor in determining whether the student will be
14 guaranteed admission through the statewide path.

15 159. Although the Eligibility in the Local Context formula relies solely on high school
16 grades to determine which students are guaranteed admission to a UC campus, students are
17 required to submit either SAT or ACT scores with their applications, and those scores are
18 considered by the individual campuses to which they apply. To determine Eligibility in the Local

19 _____
20 ³⁰² *Id.*

21 ³⁰³ *Id.*

22 ³⁰⁴ BOARS, *Impact of the New Freshman Eligibility Policy at the University of California* 3 (Nov.
23 2013), available at
https://senate.universityofcalifornia.edu/_files/committees/boars/Nov52013BOARSReporttoRegents-Final.pdf.

24 ³⁰⁵ Univ. of Cal. Admissions, *Statewide Guarantee*,
25 <https://admission.universityofcalifornia.edu/admission-requirements/freshman-requirements/california-residents/statewide-guarantee/>; Univ. of Cal. Admissions, *Admissions Index Instructions*, <https://admission.universityofcalifornia.edu/admission-requirements/freshman-requirements/california-residents/statewide-guarantee/admissions-index-instructions.html>
26 [hereinafter Admissions Index].
27

28 ³⁰⁶ Admissions Index, *supra* note 305.

1 Context, UC identifies the top nine percent of students at participating California high schools
2 based on “GPA in UC-approved coursework completed in the 10th and 11th grades.”³⁰⁷ To be
3 considered, a student must have at least a 3.0 GPA and complete required A-G coursework prior to
4 his or her senior year.³⁰⁸ UC then compares the student’s GPA “to the historic top GPA” from the
5 student’s school to determine whether the student falls within the top nine percent of his or her
6 class, and is thus guaranteed admission to a UC campus.³⁰⁹

7 160. Taking these two policies together, the wealth and race bonus provided by SAT and
8 ACT scores is clear: a student whose GPA does not place him or her in the top nine percent of his
9 or her high school class will not be Eligible in the Local Context, but that student may
10 nevertheless be guaranteed admission through the statewide path if, once his or her GPA is
11 supplemented by his or her SAT or ACT score, he or she falls in the top nine percent of students
12 statewide. By contrast, a student who falls just outside of the top nine percent of his or her high
13 school class, but whose SAT or ACT score is not high enough to place the student in the top nine
14 percent of students statewide, may not be able to attend a UC at all.

15 **“Holistic” Admissions**

16 161. Although UC professes to employ a “holistic” review process to evaluate
17 applicants, that process is irretrievably tainted by its requirement that applicants submit SAT and
18 ACT scores. UC ostensibly follows a “comprehensive review” policy in undergraduate
19 admissions, which it defines as evaluating students “using multiple measures of achievement and
20 promise, while considering the context in which each student has demonstrated academic
21 accomplishment.”³¹⁰ UC’s guidelines for implementing its comprehensive review policy

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23 ³⁰⁷ Univ. of Cal. Admissions, *Local Guarantee (ELC)*,
24 <https://admission.universityofcalifornia.edu/admission-requirements/freshman-requirements/california-residents/local-guarantee-elc.html>.

25 ³⁰⁸ *Id.*

26 ³⁰⁹ *Id.*

27 ³¹⁰ BOARS, *Annual Report on Undergraduate Admissions Requirements and Comprehensive*
28 *Review* 8 (Apr. 2019), available at
https://senate.universityofcalifornia.edu/_files/committees/boars/boars-2019-cr-report.pdf (quoting

1 enumerate 14 criteria that individual campuses use to select applicants for admission, including
2 SAT or ACT scores.³¹¹ In 2011, the Regents endorsed a resolution stating that a single-score
3 holistic evaluation is “the expected implementation” of comprehensive review.³¹² Single-score
4 holistic review assigns one score to an applicant based on the totality of the information in his or
5 her application.³¹³ All but three UC undergraduate campuses use a single-score review system.³¹⁴

6
7 _____
8 Univ. of Cal. Bd. of Regents, *Regents Policy 2104: Policy on Comprehensive Review in*

9 ³¹¹ *Id.* The 14 criteria are (1) academic GPA; (2) SAT or ACT scores; (3) “number, content of, and
10 performance in courses completed in academic subjects beyond the minimum specified by the
11 University’s eligibility requirements”; (4) “number of and performance in University approved
12 honors courses, College Board Advanced Placement courses, International Baccalaureate courses,
13 and transferable college courses completed”; (5) Eligibility in the Local Context; (6) “quality of
14 the senior year program”; (7) “quality of academic performance relative to” available educational
15 opportunities; (8) “[o]utstanding performance in one or more specific academic subject areas”; (9)
16 “[o]utstanding work in one or more special [academic] projects”; (10) “[r]ecent, marked
17 improvement in academic performance”; (11) “special talents, achievements, and awards in a
18 particular field . . . ; special skills . . . ; special interests . . . ; . . . experiences that demonstrate
19 unusual promise for leadership . . . ; or other significant experiences or achievements that
20 demonstrate the applicant’s promise for contributing to” a campus’s “intellectual vitality”; (12)
21 “[c]ompletion of special projects”; (13) “[a]cademic accomplishments in light of the applicant’s
22 life experiences and special circumstances”; and (14) “[l]ocation of the applicant’s secondary
23 school and residence.” Univ. of Cal., *Guidelines for Implementation of University Policy on*
24 *Undergraduate Admissions*, available at [http://www.ucop.edu/student-affairs/_files/guidelines-for-
25 implementation-of-undergraduate-admissions--rev-7-2019.pdf](http://www.ucop.edu/student-affairs/_files/guidelines-for-implementation-of-undergraduate-admissions--rev-7-2019.pdf) [hereinafter Comprehensive
26 Review Guidelines].

19 ³¹² Univ. of Cal. Bd. of Regents, *Regents Policy 2108: Resolution Regarding Individualized*
20 *Review and Holistic Evaluation in Undergraduate Admissions*, available at
21 [https://regents.universityofcalifornia.edu/governance/
22 policies/2108.html](https://regents.universityofcalifornia.edu/governance/policies/2108.html). The resolution nevertheless permitted campuses to use other approaches to
23 “achiev[e] campus and University goals.” *Id.*

22 ³¹³ See BOARS, *supra* note 310, at 8.

23 ³¹⁴ *Id.* at 32. At the three campuses that do not use a single-score review system—UC Merced, UC
24 Riverside, and UC Santa Barbara—the adverse effect of consideration of SAT and ACT scores is
25 particularly severe. At UC Merced, although all applicants receive a “point-driven comprehensive
26 review on academic factors,” only a “subset of the applicant pool receiv[es] a human read score.”
27 *Id.* at 37. Although UC Riverside intends to transition to single-score holistic review, it currently
28 uses a “fixed-weight calculation” to admit applicants that weights and “sums a subset of the
fourteen BOARS criteria” into an “Academic Index Score.” *Id.* at 38–39. At UC Santa Barbara,
only 50 percent of an applicant’s score is determined by individualized review; the other 50
percent is based solely on high school GPA and test scores. *Id.* at 41.

1 162. The UC assures applicants that its admissions officers “look beyond . . . test scores”
2 and that their “academic achievements” will be evaluated “in light of the opportunities available to
3 [them].”³¹⁵ UC’s first-year admissions information website downplays the significance of SAT
4 and ACT scores by listing them among 13 other admissions criteria, and explains that different
5 campuses “often apply these factors differently.”³¹⁶ This lack of transparency as to how each UC
6 campus weighs SAT and ACT scores against other admissions criteria harms students even before
7 they submit applications. Because prospective applicants have no way of knowing to what degree
8 their SAT or ACT scores will be utilized at most UC campuses, they cannot make informed
9 decisions about where to apply and, more importantly, whether to expend precious time and
10 resources in preparing for the SAT or ACT.

11 163. In its Comprehensive Review Guidelines, UC instructs admissions officers to
12 consider academic indicators “in the context of other factors that impact performance, including
13 personal and academic circumstances (e.g. low-income status, access to honors courses, and
14 college-going culture of the school).”³¹⁷ Like the College Board’s failed “adversity score,”
15 however, UC’s guidance to admissions officers cannot cure the unlawful discrimination injected
16 into the admissions process by UC’s requirement that all applicants submit SAT and ACT scores,
17 which act as a proxy for socioeconomic status and race. UC’s attempt to mitigate the adverse
18 effects of its consideration of SAT and ACT scores by assessing those scores “in the context of
19 other factors” does not and cannot compensate for its refusal to eliminate the discriminatory
20 requirement itself.

21 164. The adverse effects of UC’s consideration of SAT and ACT scores are particularly
22 pronounced with respect to underrepresented minority students. Whereas the UC at least attempts
23 to redress SAT and ACT scores’ wealth-based discrimination by considering applicants’
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25 ³¹⁵ Univ. of Cal. Admissions, *How Applications Are Reviewed*,
26 <https://admission.universityofcalifornia.edu/how-to-apply/applying-as-a-freshman/how-applications-are-reviewed.html>.

27 ³¹⁶ *Id.*

28 ³¹⁷ Comprehensive Review Guidelines, *supra* note 311.

1 socioeconomic status, UC ceased considering applicants' race in admissions decisions following
2 the approval of Proposition 209.³¹⁸ Thus, despite UC's own research demonstrating that race "has
3 a large, independent, and growing statistical effect" on applicants' SAT and ACT scores, UC
4 admissions officers are effectively prohibited from taking into account how those scores are
5 "conditioned by race."³¹⁹ The use of SAT and ACT scores therefore incorporates systematic racial
6 discrimination into the structure of UC's decision-making.

7 165. An admissions process that knowingly requires all applicants to submit a criterion
8 that is biased against underrepresented minority students, students with disabilities, and students
9 with less wealth is, by definition, not "merits-based." Indeed, UC's intentional discrimination
10 against the less advantaged and in favor of the wealthy in the admissions process is not limited to
11 the consideration of SAT and ACT scores: despite its representations to the contrary, the UC gives
12 preferential access to "legacy" applicants who are related to alumni and to children of wealthy and
13 prospective donors. In the wake of the 2019 college admissions scandal, the UC published on its
14 website a list of frequently asked questions regarding its admissions policies.³²⁰ The UC denied
15 "grant[ing] preferential admission to the children of alumni or donors," citing "long-established
16 UC admissions policy."³²¹ But as UC's own internal audit noted, the referenced policy fails to
17 expressly prohibit legacy admissions, providing only that "admissions motivated by concern for
18 financial, political, or other such benefit to the University do not have a place in the admissions
19 process."³²² This failure led UC's internal audit service to conclude that the policy's language

20 _____
21 ³¹⁸ Geiser, *supra* note 31, at 6.

22 ³¹⁹ *Id.*

23 ³²⁰ Univ. of Cal., *Current Issues: Frequently Asked Questions on UC Admissions Policies* (June
20, 2019), <https://www.universityofcalifornia.edu/current-issues/admissions/faqs>.

24 ³²¹ *Id.*

25 ³²² Univ. of Cal. Ethics, Compliance & Audit Servs., *Systemwide Audit of Undergraduate*
26 *Admissions* 18 (June 2019), available at
<https://www.universityofcalifornia.edu/sites/default/files/audit-report.pdf> (quoting Univ. of Cal.
27 Bd. of Regents, *Regents Policy 2202: Policy Barring Development Considerations from*
Influencing Admissions Decisions, available at
28 <https://regents.universityofcalifornia.edu/governance/policies/2202.html>).

1 could be “strengthen[ed] . . . to more explicitly prohibit development and legacy considerations
2 from influencing admissions decisions.”³²³

3 166. UC’s internal audit also determined that additional protocols were needed to ensure
4 “that admissions decisions are not motivated by concern for financial benefit to the University.”³²⁴
5 Specifically, the audit report instructed each UC campus to “limit[] communication between
6 development personnel and the admissions office regarding admissions matters,” and to prohibit
7 “communication regarding the admission status of specific applicants.”³²⁵ The audit report also
8 called for “retrospective review[s] of donations . . . to identify admissions decisions that could
9 have been influenced by these donations.”³²⁶

10 **V. Disparate Outcomes**

11 **A. Disparate Outcomes for Underrepresented Minority Students**

12 167. For the reasons discussed *supra*, the SAT and ACT tests are highly discriminatory.
13 They have also resulted in starkly disparate student outcomes.

14 168. According to College Board’s 2019 data for students taking the SAT in California,
15 45 percent of White students scored 1200 or above, compared to only nine percent of Black
16 students and 12 percent of Latinx students.³²⁷ Only one percent of Black students and two percent
17 of Latinx students scored in the top score bracket, compared to 12 percent of White students.³²⁸ By
18 contrast, 63 percent of Black students and 57 percent of Latinx students scored in the three lowest
19 score brackets, compared to 17 percent of White students.³²⁹

20 169. These disparities are replicated on the national scale, where only one percent of
21 Black students and two percent of Latinx students were in the top-scoring bracket, as compared to

22 _____
23 ³²³ *Id.*

24 ³²⁴ *Id.*

25 ³²⁵ *Id.*

26 ³²⁶ *Id.*

27 ³²⁷ College Board, *supra* note 11.

28 ³²⁸ *Id.*

³²⁹ *Id.*

1 eight percent of White students.³³⁰ Sixty-seven percent of Black students and 56 percent of Latinx
2 students were in the three lowest score brackets, compared to 27 percent of White students.³³¹

3 170. These disparities are longstanding. A Brookings Institute report analyzing College
4 Board data found that between 1996 and 2015, the wide racial gap in SAT math scores “remained
5 virtually unchanged.”³³²

6 171. The ACT exhibits similar disparities. Among the national graduating class of 2018,
7 the average scores were 16.9 for Black students and 18.8 for Latinx students, as compared to 22.2
8 for White students.³³³ In California, racial disparities in 2018 graduates’ ACT scores were even
9 greater: Black and Latinx students had average scores of 19.0 and 19.7, respectively, as compared
10 to 25.5 for White students.³³⁴

11 172. Although Asian students have the highest scores when grouped together by the
12 College Board and ACT,³³⁵ such groupings mask the demographic diversity of Asian American
13 and Pacific Islander (AAPI) populations.³³⁶ The College Board and ACT’s monolithic treatment of
14
15

16 ³³⁰ College Board, *supra* note 111.

17 ³³¹ *Id.*

18 ³³² Richard V. Reeves & Dimitrios Halikias, *Race gaps in SAT scores highlight inequality and
19 hinder*

20 *upward mobility* (Feb. 1, 2017), [https://www.brookings.edu/research/race-gaps-in-sat-scores-highlight-](https://www.brookings.edu/research/race-gaps-in-sat-scores-highlight-inequality-and-hinder-upward-mobility/)

21 [inequality-and-hinder-upward-mobility/](https://www.brookings.edu/research/race-gaps-in-sat-scores-highlight-inequality-and-hinder-upward-mobility/).

22 ³³³ ACT, *supra* note 174, at 15.

23 ³³⁴ ACT, *ACT Profile Report – California: Graduating Class 2018* 15 (2018), available at
24 [https://www.act.org/
content/dam/act/unsecured/documents/cccr2018/P_05_059999_S_S_N00_ACT-
GCPR_California.pdf](https://www.act.org/content/dam/act/unsecured/documents/cccr2018/P_05_059999_S_S_N00_ACT-GCPR_California.pdf).

25 ³³⁵ College Board, *supra* note 11; College Board, *supra* note 111; ACT, *supra* note 334, at 15.

26 ³³⁶ See, e.g., Robert Teranishi et al., *iCount: A Data Quality Movement for Asian Americans and
27 Pacific Islanders in Higher Education* 9–10 (2013), available at
28 <https://files.eric.ed.gov/fulltext/ED573772.pdf> (describing differences in educational attainment,
median household income, and patterns of immigration among Asian American and Pacific
Islander subgroups).

1 AAPI students obscures the fact that certain subgroups score much lower than average.³³⁷ For
2 example, one study found that 48.3 percent of California test-takers received a total SAT score
3 greater than 1500, whereas only 7.6 percent of test-takers at a predominantly Hmong high school
4 and 12.8 percent at a predominantly Filipinx high school received a score in the same range.³³⁸

5 **B. Adverse Effect on Underrepresented Minority Students**

6 173. The disparate outcomes described above systematically harm underrepresented
7 minority students in the UC admissions process. Because the disparities between underrepresented
8 minority students and others are much greater for SAT and ACT scores than for high school
9 grades, consideration of SAT and ACT scores places underrepresented minority students at a
10 pronounced disadvantage relative to consideration of high school GPA alone.³³⁹

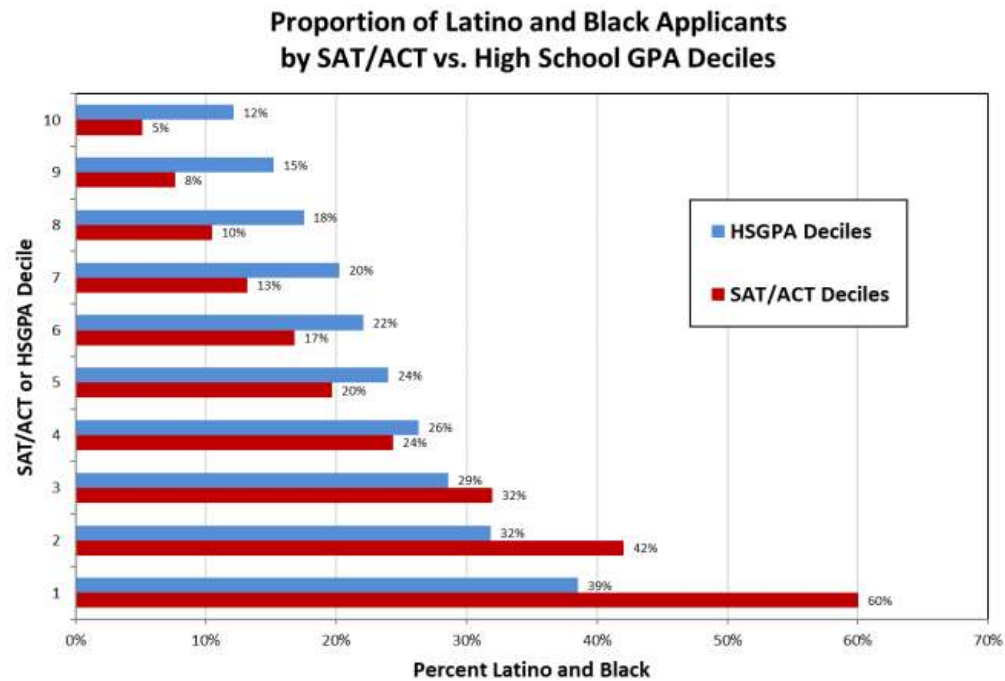
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24 ³³⁷ See, e.g., *id.* at 18; Univ. of Cal. San Diego, *SAT Reasoning Test Scores by Gender, Ethnicity,*
25 *Major Field of Study, Home Location, 1st Generation College Status, Income & Athletic Status*
26 (2016), available at https://ir.ucsd.edu/_files/stats-data/admissions/freshmen/hssat.pdf (showing
27 that from 2011 to 2016, Filipinx students scored lower than both White and Asian Students on the
SAT).

28 ³³⁸ Teranishi et al., *supra* note 336, at 18.

³³⁹ Geiser, *supra* note 31, at 10.

Figure 4: Distribution of Underrepresented Minority Applicants by SAT/ACT vs. HSGPA Deciles, 1994 to 2011³⁴⁰



Source: UC Corporate Student System data on all CA resident freshman applicants from 1994 through 2011 for whom complete data were available on SAT/ACT scores, high school GPA, and race/ethnicity. N = 1,127,267.

174. Figure 4 illustrates how consideration of SAT and ACT scores displaces high-performing (as measured by high school GPA) underrepresented minority applicants from the top tiers of the UC applicant pool—and thus reduces their likelihood of admission. When ranked by high school grades, underrepresented minority students comprised 12 percent of applicants in the top decile. When ranked by SAT and ACT scores, however, the representation of underrepresented minority students fell to only five percent. Conversely, ranking applicants by SAT and ACT scores resulted in underrepresented minority students comprising 60 percent of the bottom decile, as opposed to only 39 percent when ranked by high school grades. Consideration of SAT and ACT scores thus creates severe “racial stratification” among UC applicants, making it more difficult for high-performing underrepresented minority students to reach the highest levels

³⁴⁰ *Id.*

1 of the applicant pool.³⁴¹ When ranked by SAT and ACT scores, rather than by high school GPA,
 2 “[u]nderrepresented minority applicants are less than half as likely to rise to the top of the pool”—
 3 a major roadblock to admission.³⁴²

4 175. Relative to all students and to White students alone, Black and Latino students are
 5 admitted at substantially lower rates across the UC system. Figure 5.

6 Figure 5: Acceptance Rates for Freshman Applicants to UC Campuses by Race/Ethnicity, Fall
 7 2018³⁴³

CAMPUS	Overall (%)	White (%)	Asian (%)	Black (%)	Latino (%)
All UC	58.9	57.07	66.69	43.17	51.73
Los Angeles	14.03	16.35	17.28	11.13	9.25
Berkeley	14.84	16.47	18.44	11.03	12.78
San Diego	30.06	33.22	33.6	18.12	24.93
Santa Barbara	32.2	34.72	36.28	23.92	24.65
Irvine	28.76	28.51	32.49	23.56	18.46
Davis	41.07	42.81	39.24	27.47	31.66
Santa Cruz	47.33	55.65	52.43	35.93	26.87
Riverside	50.57	63.71	68	36.27	36.87
Merced	66.17	75.7	75.86	54.46	63.29

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 14 176. Among Asian American and Pacific Islander populations, racial stratification in
 15 SAT and ACT scores is also reflected in disparate rates of acceptance to the UC. Duplicated data
 16 from UC Berkeley, for example, show that the acceptance rate for Fall 2018 first-years was 16.06
 17 percent for White applicants and 15.06 percent for aggregated Asian applicants.³⁴⁴ Disaggregating

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 19 ³⁴¹ *Id.*

20 ³⁴² *Id.*

21 ³⁴³ See Univ. of Cal. Infocenter, *Undergraduate admissions summary*,
<https://www.universityofcalifornia.edu/infocenter/admissions-residency-and-ethnicity>. Acceptance rates were calculated by dividing the
 22 raw number of admitted students by the raw number of applicants from the applicable racial
 23 category and year.

24 ³⁴⁴ See Univ. of Cal. Infocenter, *Disaggregated data*,
<https://www.universityofcalifornia.edu/infocenter/disaggregated-data> (“[C]ounts are duplicated if a student selects multiple categories.”).
 25 Acceptance rates were calculated by dividing the raw number of admitted students by the raw
 26 number of applicants from the applicable racial category, campus, and year. These percentages
 27 differ from those represented in Figure 5 because they are based on duplicated data, which is the
 28 format in which the UC provides disaggregated data. By contrast, the percentages in Figure 5 are
 based on apparently unduplicated data. Univ. of Cal. Infocenter, *supra* note 343.

1 the data on Asian applicants, however, demonstrates large disparities in admissions rates: Korean
2 and Taiwanese applicants had acceptance rates of 19.18 percent and 18.40 percent, respectively, as
3 compared to acceptance rates of 12.35 percent for Filipinx applicants and 9.55 percent for Hmong
4 applicants.³⁴⁵

5 **C. Disparate Outcomes for Students with Disabilities**

6 177. For the reasons discussed *supra*, test scores of students with disabilities (even with
7 accommodations) underpredict their chances of college success and are lower than the scores of
8 students without disabilities. Although the College Board and the ACT currently obscure these
9 disparities by excluding accommodated test-takers from their annual reports and most of their
10 validity studies, historical data confirms the disparate outcomes experienced by students with
11 disabilities. According to ACT’s 2019 Technical Manual, among test-takers in 2013 and 2014,
12 “[o]n average, students with disabilities testing with accommodations earn[ed] lower scores than
13 those of students from the overall ACT-tested population. The few exceptions are students with
14 motor impairments and psychiatric disorders (e.g., mood or anxiety).”³⁴⁶

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³⁴⁵ *Id.*

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³⁴⁶ ACT, *supra* note 78, at 11.59.

Figure 6: Average ACT Scores for Students Tested with Accommodations in 2013-2014³⁴⁷

Reference group	Number of students	Average ACT score				
		English	Mathematics	Reading	Science	Composite
Learning Disability						
Mathematics Disorder	3,585	14.3	15.4	16.4	15.5	15.5
Reading Disorder	31,753	13.7	16.5	16.3	16.9	16.0
Writing Disorder/Written Expression	938	16.7	19.2	18.7	19.4	18.6
Speech/Language Disorder	251	15.6	17.7	17.5	18.3	17.4
Physical/Sensory disabilities						
Hearing Impairment	1,132	13.2	16.7	16.3	17.3	16.0
Motor Impairment ¹	719	21.1	20.5	23.4	21.9	21.8
Visual Impairment ²	869	19.0	19.2	21.5	19.7	20.0
Other Physical/Sensory Disability	218	18.5	19.0	19.0	19.8	19.2
Psychological Disability						
ADD/ADHD	14,449	18.2	18.8	19.9	19.4	19.2
Psychiatric Disorder ³	937	23.9	22.4	25.6	23.7	24.0
Emotional/Behavioral Disorder	2,294	15.3	16.5	17.3	16.8	16.6
Autism Spectrum Asperger's Disorder	1,314	18.6	18.8	19.6	19.8	19.4
Traumatic Brain Injury	81	18.1	19.1	19.3	19.5	19.0
Other ⁴	8,779	12.2	15.2	14.6	15.2	14.4
All ACT-tested graduates, 2014	1,845,787	20.3	20.9	21.3	20.8	21.0

Notes: ¹- e.g., Cerebral Palsy, Muscular Dystrophy; ²- e.g., 20/100 corrected Visual Acuity; ³- e.g., Mood or Anxiety; ⁴- Including Mental or Intellectual Disability.
Source: Ndim, Radunzel, & Westrick (2016)

Although students with disabilities have lower overall scores, ACT nevertheless maintains that those students must achieve *higher* scores on the ACT to meet college readiness benchmarks.³⁴⁸ The College Board's 2014 College-Bound Seniors: Total Group Profile Report demonstrated similar disparities in SAT performance: students testing with accommodations had a mean critical reading score of 477 and a mean math score of 479, as compared to a mean critical reading score of 497 and a mean math score of 513 for the overall group.³⁴⁹

Higher Education and Employment

178. For many people with disabilities, finding and sustaining employment is a challenge. In the United States, only approximately one in three individuals with disabilities is

³⁴⁷ *Id.* at 11.60.

³⁴⁸ *See id.* at 11.70–11.71.

³⁴⁹ College Board, *2014 College-Bound Seniors: Total Group Profile Report 1–2* (2014), available at <https://secure-media.collegeboard.org/digitalServices/pdf/sat/TotalGroup-2014.pdf>.

1 employed, as compared to three quarters of their counterparts without disabilities. This gap does
2 not appear to be closing. Even when employed, workers with disabilities are more likely than their
3 counterparts without disabilities to report underemployment, involuntary part-time or contingent
4 employment, and lower than average salaries.

5 179. The limited academic opportunities for students with disabilities based on their
6 standardized test scores has produced a persistent gap between students with and without
7 disabilities who enroll in college. Individuals who graduate from college are two to three times
8 more likely to maintain employment than those who do not obtain a postsecondary degree.
9 Limited access to public higher education thus contributes to the ongoing unemployment and
10 underemployment of persons with disabilities in California and the United States.

11 180. Until testing accommodations can be proven effective and equally accessible to all
12 students who need them, and until students with legitimate disabilities are no longer treated with
13 suspicion and skepticism, the only unbiased way for the UC to evaluate students with disabilities
14 in its admissions process is to eliminate its test score requirement.

15 **VI. Alternatives to UC's Discriminatory Use of SAT and ACT Scores**

16 181. The UC expresses a commitment to a holistic review process, but its current
17 requirement that all applicants submit test scores that act as a proxy for race and wealth renders
18 that process unlawful and invalid. As a threshold matter, UC's statewide admissions index—
19 which identifies the top nine percent of California graduates by a calculation that takes into
20 account only their high school GPAs and SAT or ACT scores—incorporates no holistic review at
21 all into the determination of which students are guaranteed admission through the statewide path.
22 As discussed *supra* paras. 158–60, the statewide admissions index thus provides a wealth and race
23 bonus to White and affluent students, who—even if they fall outside the top nine percent of their
24 high school classes as ranked by GPA—may nevertheless secure guaranteed admission to the UC
25 if their SAT or ACT scores, coupled with their high school GPA, place them within the top nine
26 percent of students statewide.

27 182. By contrast, eliminating SAT and ACT scores (and their corresponding race and
28 wealth bonus) and basing guaranteed admission on high school grades alone results in substantial

1 equity gains. For example, the University of Texas at Austin—a prestigious university that, like
2 many UC campuses, receives a high volume of applications—automatically admits Texas students
3 whose grades place them within a specified percentile of their high school graduating class.³⁵⁰
4 Researchers have found that this process immensely benefits the students it “pulls in” to UT
5 Austin (i.e., high-performing students at schools that have traditionally sent few or no students to
6 UT Austin), without resulting in significant harm to the students it crowds out.³⁵¹

7 183. Although UC’s discriminatory use of SAT and ACT scores is most egregious as
8 applied in its statewide admissions index, the inclusion of SAT and ACT scores in admissions
9 officers’ decision-making also compromises its “holistic” review process. As currently used by the
10 UC, SAT and ACT scores create severe socioeconomic and racial stratification in the UC
11 applicant pool, preventing talented underrepresented minority students, students with less wealth,
12 and students with disabilities from rising to the top. Requiring SAT and ACT scores from all
13 applicants concentrates privilege on UC campuses not only by systematically placing White and
14 affluent students at a significant competitive advantage relative to their equally talented peers, but
15 also by preventing admissions officers from according appropriate weight to more meaningful,
16 less biased metrics. Rather than redressing these harms, the Regents have chosen to continue
17 requiring applicants to submit scores with known racial and socioeconomic disadvantages for
18 students from historically underrepresented groups and benefits for students with race and wealth
19 privilege.

20 184. There are many alternative metrics to SAT and ACT scores that provide
21 comparable or superior information about a student’s ability to succeed in college without creating

23 ³⁵⁰ UT Austin is required to automatically admit enough students to fill 75 percent of available
24 resident spaces, and annually adjusts the percentile rank required for automatic admission
25 accordingly. Univ. of Tex. at Austin Office of Admissions, *Admission Decisions*,
26 <https://admissions.utexas.edu/apply/decisions#fndtn-freshman-admission>. In the Fall 2017 and
Fall 2018 admissions cycles, for example, applicants who ranked in the top seven percent of their
high school graduating class were automatically admitted to UT Austin. *Id.*

27 ³⁵¹ Those students—who fall outside of the top 10 percent of graduating classes at “feeder” high
28 schools that have traditionally sent many students to UT Austin—do not experience declines in
overall college enrollment, graduation, or earnings.

1 such extreme socioeconomic and racial disparities. Most of these metrics are already in applicant
2 files, which contain a wealth of data on the student’s academic achievements, personal qualities,
3 extracurricular activities, community involvement, and special talents. Placing more weight on
4 quantitative metrics such as high school GPA and qualitative evaluations by teachers and
5 counselors is not only more equitable, it also results in a more meaningful assessment of each
6 student’s capacity to thrive in college and contribute to the UC community.³⁵²

7 185. A student’s high school GPA is both less discriminatory and more predictive than
8 his or her SAT and ACT scores. As UC researchers have demonstrated, high school GPA “is
9 consistently the strongest predictor of four-year college outcomes for all academic disciplines,
10 campuses and freshman cohorts in the UC sample,” and it has “less adverse impact than [the SAT
11 and ACT] on disadvantaged and underrepresented minority students.”³⁵³ Recent analyses have
12 confirmed that using “[h]igh school GPA as a predictor of college success results in a much higher
13 representation of low income and underrepresented minority students in the top of the UC
14 applicant pool.”³⁵⁴

15 186. UC officials are well aware of both the superiority of high school GPA as a
16 predictor of college performance and the adverse impact of consideration of SAT and ACT scores
17 on underrepresented minority students and students with less wealth. BOARS itself has recognized
18 not only that “[m]ost studies point to high school GPA as the best single predictor of college
19 success,” but also that standardized tests like the SAT and ACT have a “negative impact on
20 underrepresented groups” that is “less readily mitigated” than those of other criteria.³⁵⁵
21 Furthermore, BOARS has conceded that using both high school GPA and SAT and ACT scores to
22 predict college outcomes is “highly redundant in California.”³⁵⁶ The miniscule contribution of

23 _____
24 ³⁵² Tough, *supra* note 33, at 176 (describing how SAT and ACT scores act as a “false signal” for
25 less advantaged students that distracts admissions officers from more meaningful criteria).

26 ³⁵³ Geiser & Santelices, *supra* note 65, at 1.

27 ³⁵⁴ Kurlaender & Cohen, *supra* note 39.

28 ³⁵⁵ BOARS, *supra* note 7, at 4.

³⁵⁶ *Id.*

1 SAT and ACT scores to predicting first-year GPA is thus unnecessary for making admissions
2 decisions.

3 187. According to BOARS, SAT and ACT scores are needed in addition to high school
4 GPA to “provide students and schools with a uniform reference point that is independent of a
5 particular school’s grading system or associated biases.”³⁵⁷ Yet despite variations in grading
6 systems and “associated biases,” high school GPA has consistently outperformed SAT and ACT
7 scores as a predictor of long-term student success at the UC.³⁵⁸ That is, even across high schools
8 with different grading standards, a student’s GPA is a better predictor of his or her long-term
9 performance at the UC than his or her SAT or ACT scores. As UC researchers have demonstrated,
10 “[i]n highly competitive applicant pools like UC’s, . . . [u]sing SAT/ACT scores to rank applicants
11 introduces a substantial amount of error in admissions decision-making” due to the scores’ small
12 effect size and the wide error bands around predicted outcomes.³⁵⁹ BOARS’s related worry—that
13 placing more emphasis on high school GPA could “encourage high schools to engage in more
14 grade inflation”³⁶⁰—can also be addressed by considering information already in applicants’ files:
15 class rank. Class rank counterbalances potential grade inflation by contextualizing high school
16 GPAs for admissions officers.

17 188. Critically, BOARS’s emphasis on biases in high school grading systems ignores
18 well-documented biases in the SAT and ACT themselves.³⁶¹ As a tool for comparing students of
19 different racial backgrounds, students with different abilities, and students with different levels of
20 wealth, SAT and ACT scores are a “uniform reference point” only insofar as they uniformly
21 correlate with students’ access to advantage.

22 189. With respect to California applicants and students in the six other states whose high
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24 ³⁵⁷ *Id.*

25 ³⁵⁸ Geiser & Santelices, *supra* note 65, at 1.

26 ³⁵⁹ Geiser, *supra* note 31, at 9–10.

27 ³⁶⁰ BOARS, *supra* note 7, at 4.

28 ³⁶¹ *Supra* paras. 54–64.

1 schools use the same exam,³⁶² the statewide Smarter Balanced Assessment also provides a
2 “uniform reference point” whose unique contribution to predicting college outcomes is
3 comparable to that of the SAT, but with less adverse impact on underrepresented minority students
4 and students with less wealth.³⁶³ Moreover, unlike the SAT and ACT, which are norm-referenced
5 tests, the Smarter Balanced Assessment is an achievement test that measures students against fixed
6 curricular standards, rather than forcing their scores into an artificial bell curve pattern. Because it
7 is tied to curricular standards, the Smarter Balanced Assessment has the advantage of reinforcing
8 the importance of a rigorous college preparatory curriculum in high schools. Use of the Smarter
9 Balanced Assessment may also limit harms arising from unequal access to test preparation by
10 rewarding mastery of curriculum instead of test-taking strategy.

11 190. The UC maintains that—unlike comparable, less discriminatory metrics—SAT and
12 ACT scores provide the UC with the “capacity to compare itself to other national institutions.”³⁶⁴
13 To the extent that this statement reflects BOARS’s concern with maintaining UC’s national
14 rankings, such “capacity” is a dubious metric for assessing the utility of SAT and ACT scores in
15 individual admissions decisions. Requiring SAT and ACT scores in order to bolster UC’s national
16 reputation is fundamentally at odds with UC’s pedagogical obligation to provide undergraduate
17 education to all eligible California high school graduates on a nondiscriminatory basis.³⁶⁵ UC’s
18 capacity to be ranked against other universities has become less salient, moreover, as colleges and
19 universities across the country increasingly stop requiring students to submit SAT and ACT

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22 ³⁶² Catherine Gewertz, *Which States Are Using PARCC or Smarter Balanced*, Educ. Week
23 (updated Apr. 9, 2019), <https://www.edweek.org/ew/section/multimedia/states-using-parcc-or-smarter-balanced.html>.

24 ³⁶³ Kurlaender & Cohen, *supra* note 39, at 21 (describing the “difference in magnitude” between
25 the predictive power of the SAT and SBAC as “trivial”); *id.* at 18 (describing how consideration
26 of high school GPA with the Smarter Balanced Assessment results in more low-income students
and more underrepresented minority students in the top decile of the UC applicant pool than
consideration of high school GPA with the SAT).

27 ³⁶⁴ BOARS, *supra* note 7, at 4.

28 ³⁶⁵ *Supra* paras. 128–33.

1 scores.³⁶⁶

2 191. In recent years, a significant wave of colleges and universities—including large
3 research universities like the University of Chicago and George Washington University—have
4 either ceased requiring applicants to submit SAT and ACT scores (adopting a “test-optional”
5 policy) or otherwise deemphasized those scores in their admissions processes.³⁶⁷ As of December
6 2019, more than 1,050 colleges and universities—about 40 percent of all accredited higher
7 education institutions—no longer use SAT or ACT scores to evaluate many or all of their
8 applicants.³⁶⁸ The experience of these institutions illustrates that SAT and ACT requirements may
9 be eliminated without disrupting admissions processes.

10 192. At the University of Chicago, for example, admissions officers continue to consider
11 traditionally required information such as a student’s secondary school report, high school
12 transcript, and teacher recommendations.³⁶⁹ Rather than requiring students to submit SAT and
13 ACT scores, however, U. Chicago allows all applicants to submit a range of supplemental
14 materials, including “creative writing projects, highlights from music/dance/visual art/theater
15 performance, school capstone projects such as AP Capstone or the equivalent, research projects,
16 business plans, or other work of note.”³⁷⁰ Following its adoption of a test-optional policy, U.
17 Chicago realized a 20 percent increase in “[t]he number of first-generation and low-income
18

19 _____
20 ³⁶⁶ See FairTest, *More Than 1050 Accredited Colleges and Universities That Do Not Use*
21 *ACT/SAT Scores to Admit Substantial Numbers of Students Into Bachelor-Degree Programs*
(2019), <https://www.fairtest.org/university/>

22 optional.

23 ³⁶⁷ *Id.*

24 ³⁶⁸ *Id.*; Valerie Strauss, *A Record Number of Colleges Drop SAT/ACT Admissions Requirement*
25 *Amid Growing Disenchantment with Standardized Tests*, Wash. Post (Oct. 18, 2019),
[https://www.washingtonpost.com/education/
26 2019/10/18/record-number-colleges-drop-satact-admissions-requirement-amid-growing-
disenchantment-with-standardized-tests/](https://www.washingtonpost.com/education/2019/10/18/record-number-colleges-drop-satact-admissions-requirement-amid-growing-disenchantment-with-standardized-tests/).

27 ³⁶⁹ Univ. of Chicago, *First-Year Applicants*, [https://collegeadmissions.uchicago.edu/apply/first-
year-applicants](https://collegeadmissions.uchicago.edu/apply/first-year-applicants).

28 ³⁷⁰ *Id.*

1 students who committed to attend.”³⁷¹ The experience of U. Chicago and other institutions
2 demonstrates not only that—notwithstanding BOARS’s claims to the contrary—it is feasible to
3 evaluate applicants without considering meaningless and discriminatory SAT and ACT scores, but
4 also that ceasing to require those scores enables universities to expand access to higher education
5 for traditionally underrepresented students while maintaining the strength and quality of their
6 academic programs.³⁷²

7 193. However, simply ceasing to require SAT and ACT scores—without taking into
8 appropriate consideration their failure to contribute meaningfully to the admissions process, their
9 disproportionate impact, and the stigmatizing consequences for students who choose not to
10 submit—does not render an admissions process lawful under California law. Test-optional policies
11 can potentially preserve the structural advantage conferred by SAT and ACT scores on applicants
12 who choose to submit (i.e., higher-scoring applicants who are, as research demonstrates,
13 disproportionately White and affluent), and may also result in the stigmatization of
14 underrepresented students, whose peers may assume that they were only able to secure admission
15 by not submitting scores. Moreover, adoption of a test-optional policy does not transform SAT or
16 ACT scores into meaningful predictors of students’ ability to succeed in college. Thus, for a test-
17 optional admissions policy to be lawful, a university must demonstrate that the policy: (1) uses
18 SAT and ACT scores in a way that contributes meaningfully to the assessment of applicants who

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20 ³⁷¹ Univ. of Chicago, *UChicago Empower Meeting Goal of Removing Barriers to College Access*,
21 [https://
news.uchicago.edu/story/uchicago-empower-meeting-goal-removing-barriers-college-access](https://news.uchicago.edu/story/uchicago-empower-meeting-goal-removing-barriers-college-access).

22 ³⁷² At Wake Forest University, for example, adoption of a test-optional policy increased diversity
23 among undergraduates by 90 percent, without affecting the academic quality of the student body:
24 Wake Forest has found “no difference in academic achievement” between applicants who
25 submitted scores and those who did not. Wake Forest Univ., *Test Optional*,
26 <https://admissions.wfu.edu/apply/test-optional/>. This experience is not unique to Wake Forest: one
27 recent study found both that ceasing to require SAT and ACT scores “can lead to . . . an increase
28 in the representation of URM students (both numeric and proportionate) in [a university’s]
applicant pool and . . . freshman class,” and also that students who did not submit test scores
“graduated at rates equivalent to or slightly above” students who did. Steven T. Syverson et al.,
Defining Access: How Test-Optional Works 3, 44 (2018), available at
[https://www.nacacnet.org/globalassets/documents/publications/
research/defining-access-report-2018.pdf](https://www.nacacnet.org/globalassets/documents/publications/research/defining-access-report-2018.pdf) (emphasis omitted).

1 submit those scores; (2) is transparent in application; (3) does not produce disparate results based
2 on socioeconomic status or race; and (4) does not stigmatize those students who do not submit test
3 scores. Unless and until the Regents demonstrate that a proposed test-optional policy will satisfy
4 these criteria, the UC must cease its consideration of SAT and ACT scores in admissions decisions
5 entirely.

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **Violation of State Equal Protection Guarantees**

9 (California Constitution, Article I, Section 7(a) & Article IV, Section 16(a);

10 Cal. Civ. Proc. Code §§ 526, 526 (a))

11 Against All Defendants

12 194. Plaintiffs reallege and incorporate herein by this reference each of the allegations in
13 Paragraphs 1 through 193, inclusive.

14 195. Under Article I, Section 7(a) and Article IV, Section 16(a) of the California
15 Constitution, Defendants are required to ensure that Plaintiffs receive the equal protection of the
16 laws.

17 196. Defendants have knowingly violated, and continue to violate, Plaintiffs' equal
18 protection rights by maintaining a discriminatory policy of requiring either SAT or ACT scores for
19 students applying for admission to the UC and further considering those scores as part of the
20 criteria for admission. For the reasons explained above, this policy illegally discriminates against
21 applicants on the basis of race and wealth, and thereby denies them equal protection under the
22 California Constitution.

23 197. The equal protection clause of the California Constitution also requires that
24 Defendants do not diminish Plaintiffs' fundamental right to education, which includes the right of
25 access to public higher education, or Plaintiffs' fundamental right to pursue an occupation.

26 198. Defendants have knowingly violated, and continue to violate, Plaintiffs'
27 fundamental rights by maintaining a discriminatory policy of requiring either SAT or ACT scores
28 for students applying for admission to the UC and further considering those scores as part of the

1 criteria for admission, and thereby denying them their right of access to public higher education as
2 well as hindering their right to pursue an occupation.

3 199. Defendants’ discriminatory policy denies Plaintiffs equal access to public higher
4 education within California—and all its attendant benefits and opportunities—both by deterring
5 students from underrepresented minority groups, students from disadvantaged socioeconomic
6 backgrounds, and students with disabilities from applying to the UC, and by adversely impacting
7 the evaluation of those students’ applications and their likelihood of being granted admission.

8 200. Plaintiffs are harmed by Defendants’ failure to comply with all applicable
9 provisions of law and their legal duties, as set forth herein.

10 201. Plaintiffs have no plain, speedy, and adequate remedy for Defendants’
11 constitutional violations in the ordinary course of law.

12 202. Unless enjoined, Defendants will continue to violate the right to receive equal
13 protection of the laws under the California Constitution, and Plaintiffs will suffer irreparable harm.

14 203. Wherefore, Plaintiffs pray for relief, as set forth below.

15 **SECOND CAUSE OF ACTION**

16 **Discrimination on the Basis of a Protected Classification**

17 (Government Code § 11135; Cal. Civ. Proc. Code §§ 526, 526(a))

18 Against All Defendants

19 204. Plaintiffs reallege and incorporate herein by this reference each of the allegations in
20 Paragraphs 1 through 193, inclusive.

21 205. California Government Code section 11135 provides:

22 (a) No person in the State of California shall, on the basis of . . . race, color,
23 . . . ancestry, national origin, ethnic group identification, . . . mental
24 disability, physical disability, [or] medical condition, . . . be unlawfully
25 denied full and equal access to the benefits of, or be unlawfully subjected to
26 discrimination under, any program or activity that is conducted, operated, or
administered by the state or by any state agency, is funded directly by the
state, or receives any financial assistance from the state.

27 206. Section 11135 further provides that, with respect to discrimination on the basis of
28 disability, covered programs and activities “shall meet the protections and prohibitions contained

1 in Section 202 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132)” and
2 its implementing regulations, except that if the laws of California prescribe stronger protections
3 and prohibitions, covered programs and activities shall be subject to the stronger protections and
4 prohibitions. Cal. Gov’t Code § 11135(b).

5 207. Through the UC, Defendants operate programs or activities that are conducted,
6 operated, or administered by the State or by any State agency, are funded directly by the State, or
7 receive any financial assistance from the State.

8 208. Plaintiffs include qualified individuals with a disability within the meaning of
9 California law, Cal. Gov’t Code § 12926.

10 209. Defendants’ policy of requiring SAT and ACT scores in the UC admissions
11 process, despite knowing for years of the discriminatory impacts of those tests, amounts to
12 intentional discrimination by Defendants against Plaintiffs on the basis of race, color, ancestry,
13 national origin, ethnic group identification, mental disability, physical disability, and/or medical
14 condition.

15 210. Defendants’ policy of requiring SAT and ACT scores in the UC admissions process
16 constitutes an ongoing violation of the right of Plaintiffs to be free from discrimination, through its
17 well documented disparate impact in disadvantaging underrepresented minority students and
18 students with disabilities.

19 211. Defendants knew or should have known that their conduct was directed toward
20 underrepresented minority students and students with disabilities.

21 212. Defendants cannot justify their policy of requiring SAT and ACT scores in the UC
22 admissions process, in light of the existence of more effective and less discriminatory methods to
23 evaluate applicants, as explained above.

24 213. Defendants’ acts and omissions as alleged herein also violate Section 11135 by
25 violating the Americans with Disabilities Act.

26 214. Plaintiffs are harmed by Defendants’ failure to comply with all applicable
27 provisions of law and their legal duties, as set forth herein.

28

1 medical condition, and/or primary language. This policy does so either directly—through the SAT
2 and/or ACT’s discriminatory bias against students from historically underrepresented racial and
3 ethnic groups and students with disabilities—or indirectly, as the mere presence of the testing
4 requirement deters otherwise-qualified applicants from these groups from applying to the UC at
5 all.

6 232. Nevertheless, Defendants intentionally continue to rely on SAT and ACT scores as
7 admissions criteria, despite Defendants’ own copious data revealing that consideration of SAT and
8 ACT scores skews admissions decisions in favor of White students to the detriment of their
9 underrepresented, but equally talented, peers.

10 233. As a result, Plaintiffs have been denied the myriad benefits of public higher
11 education, including, without limitation, higher wages and non-wage benefits, greater job security,
12 greater opportunities for homeownership, greater overall personal and family stability, and even a
13 decreased mortality rate.

14 234. Defendants’ own data, as well as the documented experience of other colleges and
15 universities who have dropped the requirement, shows the continued reliance on the SAT and
16 ACT tests to be a substantial factor in excluding these deserving Plaintiffs from their rightful
17 college opportunities and all the benefits that flow therefrom.

18 235. By enacting unlawful admissions barriers for underrepresented minority students
19 and students with disabilities and by failing to operate their programs on a nondiscriminatory
20 basis, Defendants denied, aided, or incited a denial, or made a discrimination or distinction
21 contrary to Section 51.

22 236. Plaintiffs are harmed by Defendants’ failure to comply with all applicable
23 provisions of law and their legal duties, as set forth herein.

24 237. Plaintiffs have no plain, speedy, and adequate remedy for Defendants’ legal
25 violations in the ordinary course of law.

26 238. Unless enjoined, Defendants will continue to deny Plaintiffs full and equal
27 accommodations, advantages, facilities, privileges, and/or services, and Plaintiffs will suffer
28 irreparable harm.

1 239. Wherefore, Plaintiffs pray for relief, as set forth below.

2 **FIFTH CAUSE OF ACTION**

3 **Violation of the California Disabled Persons Act**

4 (Civil Code §§ 54 *et seq.*; Cal. Civ. Proc. Code §§ 526, 526(a))

5 240. Plaintiffs reallege and incorporate herein by this reference each of the allegations in
6 Paragraphs 1 through 193, inclusive.

7 241. The California Disabled Persons Act, Cal. Civ. Code §§ 54 *et seq.* (“CDPA”),
8 guarantees individuals with disabilities equal access to all public places. Any violation of the right
9 of an individual under the Americans with Disabilities Act also constitutes a violation of the
10 CDPA.

11 242. Plaintiffs include persons with disabilities within the meaning of California Civil
12 Code section 54(b)(1).

13 243. The University of California constitutes a public place within the meaning of the
14 CDPA, Cal. Civ. Code § 54.1.

15 244. Defendants have violated the CDPA by failing to operate their programs on a
16 nondiscriminatory basis and by failing to ensure that their programs are in compliance with civil
17 rights and access laws, including the Americans with Disabilities Act.

18 245. By enacting unlawful admissions barriers for persons with disabilities and by
19 failing to operate their programs on a nondiscriminatory basis, Defendants were and are in
20 violation of the CDPA.

21 246. Defendants knew or should have known that their conduct was directed toward
22 persons with disabilities.

23 247. The CDPA, Cal. Civ. Code § 54.3, provides that:

24 (a) [a]ny person or persons, firm or corporation who denies or interferes
25 with admittance to or enjoyment of the public facilities . . . or otherwise
26 interferes with the rights of an individual with a disability under [the
27 CDPA] is liable for each offense for the actual damages and any amount as
28 may be determined by a jury, or the court sitting without a jury, up to a
maximum of three times the amount of actual damages but in no case less
than one thousand dollars (\$1,000).

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- d. That Defendants’ discriminatory policy of requiring SAT and ACT test scores for admission to the UC results in a disproportionate adverse impact on protected classes and therefore constitutes illegal discrimination under Section 11135 of the California Government Code;
- e. That Defendants knowingly deprived Plaintiffs of the right of equal access to educational benefits and opportunities, in violation of Section 66270 of the California Education Code;
- f. That Defendants’ discriminatory policy of requiring SAT and ACT test scores for admission to the UC constitutes intentional discrimination against students from underrepresented ethnic and racial backgrounds and students with disabilities in violation of the Unruh Act, California Civil Code section 51;
- g. That Defendant’s discriminatory policy of requiring SAT and ACT test scores for admission to the UC violates the California Disabled Persons Act, California Civil Code sections 54 *et seq.*, by creating unlawful admissions barriers for persons with disabilities, failing to evaluate applicants on a nondiscriminatory basis, and failing to comply with civil rights and access laws; and
- h. That Defendants are required to prepare a plan, with Court approval and consideration of any objections by Plaintiffs, designed to cure Defendants’ violations of law, and bring them into compliance with the law.

REQUEST FOR RELIEF

Wherefore, Plaintiffs request the following relief:

- a. Injunctive relief requiring Defendants and their officers, agents, and employees to:
 - i. Cease requiring applicants to submit SAT or ACT scores to be considered for admission at the UC;

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- ii. Cease using SAT or ACT scores in UC’s statewide admissions index and any other pathway to guaranteed admission; and
- iii. Cease considering SAT or ACT scores in UC admissions decisions, unless Defendants are able to demonstrate UC’s ability to assess those scores in a rigorous and meaningful, transparent, nondiscriminatory, and non-stigmatizing manner;

b. A declaration that Defendants, through their actions and omissions and the policies and procedures complained of, violate:

- i. The right to equal protection under the California Constitution, art. I, § 7(a) and art. IV, § 16(a);
- ii. Section 11135 of the California Government Code;
- iii. Section 66270 of the California Education Code;
- iv. The Unruh Act, California Civil Code §§ 51, 52; and
- v. The California Disabled Persons Act, California Civil Code §§ 54 *et seq.*;

c. The issuance of an order requiring the preparation of a plan, with Court approval and consideration of any objections by Plaintiffs, designed to cure Defendants’ violations of law, and bring them into compliance with the law;

- d. An award of costs, disbursements, and reasonable attorneys’ fees and expenses; and
- e. Such other relief as this Court deems just and proper.

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DATED: December 10, 2019

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