

United States Senate

WASHINGTON, DC 20510

August 14, 2023

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Cardona,

In its June decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*,¹ the United States Supreme Court once again overturned decades of settled precedent, this time gutting the use of affirmative action in college admissions. The Court’s decision strikes a blow against diversity in higher education while keeping intact harmful practices that advantage the wealthy and well-connected. The U.S. Department of Education (“the Department”) must respond. We urge you to immediately take steps to mitigate the impact of this Supreme Court decision, including by using your advisory and enforcement authority to help effectively end preferential treatment given to children of alumni — legacy admissions — and donors and help ensure a more even playing field for students applying to college.

Following the Supreme Court’s decision, you explained that legacy admissions “have long denied well-qualified students of all backgrounds a level playing field” and that “[i]n the wake of [the *Students for Fair Admissions*] ruling, they could further tip the scales against students who already have the cards stacked against them.”² President Biden rightly recognized that “practices like legacy admissions . . . expand privilege instead of opportunity.”³ These arguments echo longstanding bipartisan concerns regarding legacy admissions. In 1990, then Minority-leader Senator Bob Dole (R-KS) requested that the Department review legacy admissions, stating “alumni perks have absolutely nothing to do with an individual’s qualification or merit.”⁴ A decade later, Senator Ted Kennedy (D-MA) introduced legislation mandating that schools report on legacy admissions,⁵ and President George W. Bush stated his opposition to legacy admissions, saying admissions should be based on “on merit.”⁶

¹ *Students for Fair Admissions v. President and Fellows of Harvard College*, 600 U.S. ____ (2023).

² Collin Binkley, *Affirmative Action for White People? Legacy College Admissions Come under Renewed Scrutiny*, AP (July 1, 2023), <https://apnews.com/article/supreme-court-affirmative-action-legacy-college-admissions-5d6f34a13045752c6a37db67c66c7d63>.

³ Remarks by President Biden on the Supreme Court’s Decision on Affirmative Action, The White House, Briefing Room (June 29, 2023), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/06/29/remarks-by-president-biden-on-the-supreme-courts-decision-on-affirmative-action/>.

⁴ Nina Pasquini, *Bob Dole, the Department of Education, and the Nebulous Fight against Legacy Admissions*, The Harvard Crimson (Oct. 18, 2018), <https://www.thecrimson.com/article/2018/10/18/legacy-admissions/>.

⁵ James Murphy, *The Future of Fair Admissions, Education Reform Now* (Fall 2022), <http://edreformnow.org/wp-content/uploads/2022/10/The-Future-of-Fair-Admissions-Legacy-Preferences.pdf>.

⁶ *Bush Opposed ‘Legacy Admissions,’* NBC News (Aug. 6, 2004), <https://www.nbcnews.com/id/wbna5625378>.

The very origin of legacy admissions in the 1920s was to limit the diversification of elite colleges and universities.⁷ Today, the evidence is clear that legacy admissions does just that; it overwhelmingly disadvantages students of color in favor of affluent White students. On July 3, 2023, Lawyers for Civil Rights — a Boston, Massachusetts-based non-profit organization that fights discrimination — filed a complaint with the Department’s Office of Civil Rights, asking it to find that Harvard University’s preferences for legacies and relatives of donors are discriminatory and in violation of Title VI of the Civil Rights Act of 1964.⁸ The complaint — filed on behalf of three Massachusetts-based nonprofit organizations⁹ — was supported with data showing the invidious nature of legacy and donor-preference discrimination:

- Applicants with family ties to Harvard alumni are nearly 6 times more likely to be admitted than applicants with no family ties.¹⁰
- Applicants with family ties to Harvard donors are nearly 7 times more likely to be admitted than applicants with no family ties.¹¹
- Nearly 70% of the applicants admitted to Harvard through legacy and donor preferences are white.¹²
- Legacies can make up nearly one-third of a class at Harvard.¹³
- Removing legacy preferences results in higher admission rates for Black, Latinx, and Asian American applicants.¹⁴

These statistics demonstrate how legacy admissions imbed inequities into higher education.

Fortunately, these policies can be changed. Some colleges and universities are already recognizing that legacy preferences are wrong and counter efforts to increase diversity and are voluntarily doing away with them. These schools include Amherst, Johns Hopkins, Carnegie Mellon, and, most recently, Wesleyan. Wesleyan’s President, Michael S. Roth, acknowledged that legacy admissions are “a sign of unfairness to the outside world.”¹⁵

⁷ Stephanie Saul, *Elite Colleges’ Quiet Fight to Favor Alumni Children*, N.Y. Times (July 13, 2022), <https://www.nytimes.com/2022/07/13/us/legacy-admissions-colleges-universities.html>.

⁸ *Chica Project et al. v. President and Fellows of Harvard College*, Compl. Under Title VI of the Civil Rights Act of 1964, U.S. Dep’t of Ed., Office of Civil Rights (July 3, 2023), <http://lawyersforcivilrights.org/wp-content/uploads/2023/07/Federal-Civil-Rights-Complaint-Against-Harvard.pdf>.

⁹ The complainants are (1) the Chica Project, (2) the African Community Economic Development of New England (ACEDONE), and (3) the Greater Boston Latino Network (GBLN). The Chica Project “is a Massachusetts-based nonprofit whose mission is to provide education, mentorship, and personal, professional and leadership development programs for young women of color.” Compl. at 5. ACEDONE “is a Boston-based nonprofit whose mission is to assist African refugees and immigrants in becoming self-sufficient, such that they will thrive socially, professionally, and economically.” *Id.* GBLN “is a collective of Latinx-led community-based organizations designed to address the historical underrepresentation of the Latinx community in Boston.” *Id.* at 6.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 15.

¹⁴ *Id.* at 2-3.

¹⁵ Vimal Patel, *Wesleyan Ends Legacy Admissions*, N.Y. Times (July 19, 2023), <https://www.nytimes.com/2023/07/19/us/wesleyan-university-ends-legacy-admissions.html#:~:text=Wesleyan%20University%2C%20a%20liberal%20arts,Court%20struck%20down%20affirmative%20action>.

Institutions of higher learning must now engage in the complicated process of adapting their admissions policies and diversity efforts to comply with *Students for Fair Admissions*. This process provides opportunity. On June 29, 2023, the Department announced that it would be providing resources to colleges and universities in the coming months addressing lawful admissions practices.¹⁶ We know that these resources will be welcome, and we hope that they are reflective of an ongoing commitment by the Department to work hand-in-hand with those institutions to develop new admissions policies that ensure equity to the fullest extent.

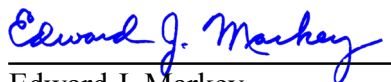
We are pleased that an investigation into Harvard's legacy admissions policy is underway. We urge you to take additional actions, including:

- Providing resources to colleges and universities to support their transitions away from legacy and donor preferences;
- Aggressively pursuing investigations of complaints regarding legacy and donor preference and other admissions policies that provide preferential treatment;
- Refusing to provide federal funding to universities that continue to preference legacy and donor admissions to disproportionately benefit affluent, White students; and
- Commissioning a report on the detrimental effects of legacy admissions and donor preference.

Colleges and universities are a path towards opportunity, but this opportunity should not be locked behind an ivory tower. We must ensure that future generations will not be weighed down by the inequities of our past. We must endeavor to give every student the opportunity to fulfill their educational dreams.

Thank you for your attention to this important matter.

Sincerely,



Edward J. Markey
United States Senator



Elizabeth Warren
United States Senator

¹⁶ FACT SHEET: President Biden Announces Actions to Promote Educational Opportunity and Diversity in Colleges and Universities, U.S. Dep't of Ed. (June 29, 2023), <https://www.ed.gov/news/press-releases/fact-sheet-president-biden-announces-actions-promote-educational-opportunity-and-diversity-colleges-and-universities>.



Bernard Sanders
United States Senator