

2023 – 2024 Legislative Memorandum

Subject: Fair College Admissions Act - A.1423-A (Walker) / S.4170-A (Gounardes)

Position: SUPPORT

The New York Civil Liberties Union (NYCLU) strongly supports the Fair College Admissions Act, which would ensure a fairer college admissions process by prohibiting legacy admissions policies at colleges and universities in New York.

Access to quality post-secondary education is a key component to reducing the racial wealth gap¹ and a way to help address centuries of systematic and institutional racism. Young people of color in New York are more likely to be impacted by policies like redlining and school segregation; more likely to go to less well-resourced primary and secondary schools. One mechanism to make sure that those students have the opportunity and upward mobility that a college degree can help provide has been affirmative action in college admissions.

However, in June 2023, the U.S. Supreme Court (SCOTUS) effectively gutted the practice of affirmative action in college admissions in *Students for Fair Admissions, Inc. v. Harvard*. With this ruling, SCOTUS struck down an important mechanism for ensuring greater diversity in post-secondary schools—a mechanism for ensuring that inequalities baked into our nation’s foundation do not act as a bar to college campuses for Black, Indigenous, and other underrepresented students of color.

SCOTUS’s decision, however, did not touch admissions practices that greatly benefit white and wealthy students, such as legacy preference, which provides preferential treatment in the admissions process to college applicants who are related to an alumnus. Eliminating college admissions mechanisms designed to address racial biases and discrimination, and increase campus diversity, while maintaining ones that will exacerbate racial disparities on campuses represents significant backsliding. New York can resist this backsliding by eliminating legacy preference.

¹ Liz Mineo, *Racial Wealth Gap May Be a Key to Other Inequities*, THE HARVARD GAZETTE, June 3, 2021, <https://news.harvard.edu/gazette/story/2021/06/racial-wealth-gap-may-be-a-key-to-other-inequities/>.

Legacy preference undermines the goal of equal access to higher education, by giving a boost primarily to the applications of white students and those from higher income brackets.

Legacy preference in college admissions has racist and antisemitic origins.² Post-World War I, private, elite higher education institutions started employing legacy preference in the admissions process to quell the influx of Jewish people attending their institutions³ and maintain a primarily white, male, and Protestant student body.

Despite its explicitly racist origins, many private colleges and universities continue to consider legacy preference as a factor in admissions decisions today.⁴ In New York, this includes Fordham, Syracuse, Sarah Lawrence, Bard, Columbia, and Cornell.⁵ Some prominent schools, including NYU, have abandoned the practice voluntarily in light of the affirmative action decision.⁶ While SCOTUS's 1954 decision in *Brown v. Board of Education*⁷ was associated with a spike in Black students pursuing higher education,⁸ the use of legacy preference has not meaningfully impacted access to higher education for Black students or other students of color. As noted, nationwide legacy preference is applied disproportionately at private colleges and universities and our nation's top universities. However, generations of racial segregation in U.S. higher education means that students of color are far less likely to have a family member who is an alumnus of an elite school. Rather, the legacy preference system acts to preserve traditions rooted in whiteness, elitism, and access to opportunity, leading some to call legacy preference "affirmative action for the rich" and white.⁹

It is estimated that between 10 to 25 percent of available spots in the nation's top universities are given to legacy admits.¹⁰ Though data is scarce, a 2020 study found that 70 percent of Harvard legacy applicants were white.¹¹ That statistic was highlighted in a complaint recently filed against Harvard University challenging legacy admissions as unfair discrimination

² Deborah L Coe & James D Davidson, *The Origins of Legacy Admissions: A Sociological Examination*, 52 *Review of Religious Research* 233-247 (2011).

³ Jeffrey Kittay, *The Ivy Curtain*, WASH. POST, October 30, 2005, <https://www.washingtonpost.com/wp-dyn/content/article/2005/10/27/AR2005102701733.html>.

⁴ Robby Soave, *Legacy Admissions Should Follow Affirmative Action to the Grave*, REASON, June 29, 2023, <https://reason.com/2023/06/29/supreme-court-affirmative-action-race-based-legacy-admissions>.

⁵ *Which Colleges Consider Legacy Status?*, SPARK ADMISSIONS, <https://www.sparkadmissions.com/blog/which-colleges-consider-legacy-status/>.

⁶ Bruna Horvath, *NYU to Remove Legacy Status Question from Common App*, WASHINGTON SQUARE NEWS, September 7, 2023, <https://nyunews.com/news/2023/09/07/nyu-changes-common-application/>.

⁷ *Brown v. Board of Ed.*, 347 U.S. 483 (1954).

⁸ William B Harvey et al., *The Impact of the Brown v. Board of Education Decision on Postsecondary Participation of African Americans*, 73 *The Journal of Negro Education* 328-340 (2004).

⁹ Grace Han, *End Legacy College Admissions*, THE NEW YORK TIMES, September 7, 2019, <https://www.nytimes.com/2019/09/07/opinion/sunday/end-legacy-college-admissions.html>.

¹⁰ Richard D. Kahlenberg, *The Legacy Racket: The Problem with College Admissions Preferences for Children of Alumni*, THE CENTURY FOUNDATION, September 17, 2010, https://production-tcf.imgix.net/app/uploads/2010/09/17185402/tcf-Legacy_brief-2.pdf.

¹¹ Peter Arcidiacono et al., *Legacy and Athlete Preferences at Harvard*, 40 *Journal of Labor Economics* (2020).

against students of color.¹² In particular, the complaint alleges that without the counterbalance of affirmative action policies, legacy preference unfairly and without merit privileges white applicants. It is estimated that legacy applicants are five times more likely to be admitted to Harvard than other applicants.¹³ Thus, with SCOTUS's decision in *Students for Fair Admissions, Inc. v. Harvard*, which has essentially eviscerated affirmative action, it is incumbent that we end the practice of legacy admissions.

New York must act to end the usage of legacy preference in admissions.

Neither CUNY nor SUNY, the public universities in New York, confer legacy preference, but many other schools do. Understanding the impact that this practice has on diminishing diversity in schools and benefiting those with the greatest resources, students, advocates, and lawmakers in New York have been fighting for a statewide ban on legacy preference.¹⁴ In August 2023, the New York City Council passed a resolution calling on the state legislature to prohibit legacy admissions at New York colleges and universities.¹⁵

The Fair College Admissions Act, A.1423-A (Walker) / S.4170-A (Gounardes), would prohibit legacy admissions policies at colleges and universities in New York. This legislation would declare such practices and policies as inequitable and discriminatory. This means that any higher education institution in New York that is granted authority to confer degrees by the Board of Regents would not consider an applicant's relations to an alumnus as a factor in admissions decisions. Higher education institutions will still be able to ask applicants about their relation to an alumnus as a means of data collection and reporting but would only be able to do so after an offer of admission and financial aid has been accepted.

The Fair College Admissions Act would also invoke a penalty for institutions that violate this prohibition. The penalty would then be deposited into a general fund of the state and used as part of a disbursement for tuition assistance awards to eligible undergraduate students. This penalty would be calculated by using a formula that multiplies the college's tuition and fees by 10% of the number of full-time first-year students enrolled the year before the violation took place.

¹² Collin Binkley, *Activists Spurred by Affirmative Action Ruling Challenge Legacy Admissions at Harvard*, AP, July 3, 2023, <https://apnews.com/article/legacy-admissions-affirmative-action-colleges-4a4e1191274e91e695e0631ff5156875>.

¹³ Stephanie Saul, *Elite Colleges' Quiet Fight to Favor Alumni Children*, THE NEW YORK TIMES, October 31, 2022, <https://www.nytimes.com/2022/07/13/us/legacy-admissions-colleges-universities.html>.

¹⁴ Claire Tempelman, *It's Time to End Legacy Admissions in New York's Colleges*, TIMES UNION, April 19, 2022, <https://www.timesunion.com/opinion/article/Commentary-It-s-time-to-end-legacy-admissions-17089306.php>.

¹⁵ Sarah Belle Lin, *City Council Passes Resolution That Calls on State to Prohibit Legacy Admissions at New York Colleges and Universities*, AMNY, August 4, 2023, <https://www.amny.com/news/city-council-passes-resolution-that-calls-on-state-to-prohibit-legacy-admissions-at-new-york-colleges-and-universities/>.

A.1423-A (Walker) / S.4170-A (Gounardes) is an important step towards leveling the playing field for New York students, regardless of who their family members are or how much money they have.

Ending legacy preference for New York's students makes the admissions process fairer and makes student bodies more diverse—goals that every school should want to achieve. For these reasons, the NYCLU strongly supports A.1423-A (Walker) / S.4170-A (Gounardes) and urges for the immediate passage of the Fair College Admissions Act.