

NOTE

PRESERVING A RACIAL HIERARCHY: A LEGAL ANALYSIS OF THE DISPARATE RACIAL IMPACT OF LEGACY PREFERENCES IN UNIVERSITY ADMISSIONS

*Kathryn Ladewski**

Many public and private universities around the country employ legacy admissions preferences in order to give children of alumni special consideration in the admissions process. Such preferences disproportionately benefit white applicants at the cost of their non-white counterparts, because past generations of college students were less diverse than today's applicant pool. However, universities argue that their legacy preferences are justified because they assist in alumni fundraising efforts. This Note presents a statistical analysis to argue that legacy preferences are prohibited by the Civil Rights Act of 1964 because they have a discriminatory effect on minority college applicants and have not been shown to promote (and do not promote) any legitimate university purpose.

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INTRODUCTION

“Of all the aspirations that make up the American Dream, perhaps the most important is the opportunity to go to college.”

—Sen. Hillary Rodham Clinton, Sen. Tom Carper,
and Gov. Tom Vilsack¹

Social mobility is one of the hallmarks of American society. The American Dream is one in which people of all backgrounds, with hard work and a little bit of luck, can be successful. One component of this “dream” is intergenerational social mobility and the idea that the opportunities of future generations are not limited by the past.² Access to higher education is a key component of intergenerational social mobility, and historically it has been one way for vulnerable groups, such as immigrants and minorities, to achieve greater prosperity.³ Legacy preferences, which give an admissions “boost” to university applicants whose parents or grandparents attended a particular institution,⁴ run counter to intergenerational social mobility because they allow the composition of past generations of university students to influence the composition of future generations of students.⁵ In addition, legacy preferences disproportionately benefit white university applicants, whose parents are more likely to have attended American universities.⁶

Legacy policies were first implemented in the 1920s as a mechanism for excluding Jewish students and other immigrants from university admission.⁷ Since that time, legacy policies have become widespread at public and private universities across the United States. The justification for such legacy policies has changed over time—they are now intended to promote institutional loyalty and increase alumni volunteerism and donation rates, rather than to disadvantage certain groups of applicants.⁸ Despite this changing purpose, legacy policies continue to have a negative effect on the admissions

1. Sen. Hillary Rodham Clinton, Sen. Tom Carper & Gov. Tom Vilsack, *Saving the American Dream*, BLUEPRINT MAG. (Democratic Leadership Council, Wash. D.C.), July 22, 2006, available at http://www.ndol.org/ndol_ci.cfm?kaid=137&subid=900111&contentid=253992.

2. See, e.g., Carlton F.W. Larson, *Titles of Nobility, Hereditary Privilege, and the Unconstitutionality of Legacy Preferences in Public School Admissions*, 84 WASH. U. L. REV. 1375, 1381–82 (2006).

3. Marcia G. Synnott, *The Admission and Assimilation of Minority Students at Harvard, Yale, and Princeton, 1900–1970*, 19 HIST. EDUC. Q. 285, 285 (1979).

4. Cameron Howell & Sarah E. Turner, *Legacies in Black and White: The Racial Composition of the Legacy Pool*, 45 RES. IN HIGHER EDUC. 325, 325–26 (2004).

5. See *id.* at 330–31.

6. John D. Lamb, *The Real Affirmative Action Babies: Legacy Preferences at Harvard and Yale*, 26 COLUM. J.L. & SOC. PROBS. 491, 508 (1993).

7. For a discussion of the history of legacy preferences, see *infra* Part I.

8. See *infra* notes 38–40 and accompanying text.

prospects of immigrant and minority applicants, whose parents are less likely to have attended college in the United States.⁹

This Note argues that legacy admissions policies are impermissible under the Civil Rights Act of 1964, which prohibits universities receiving federal funds from promulgating policies that have a racially disparate impact, unless those policies actually promote a legitimate purpose.¹⁰ Part I presents a brief history of legacy admissions policies in American higher education. Part II describes the negative impact that legacy preferences have on minority applicants. Part III presents a statistical analysis of university fundraising data to show that legacy preferences do not have a positive effect on university fundraising. Part IV argues that because legacy preferences have a disparate racial impact and do not further a legitimate purpose, their use at universities receiving federal funds is impermissible under the Civil Rights Act of 1964.

I. THE HISTORY OF LEGACY PREFERENCES

The first legacy preferences in the United States were put in place in the 1920s,¹¹ during an era of increasing selectivity at the university level and increasing nativism at the national level.¹² Many universities increased their selectivity at this time because they faced dramatically increasing enrollments as veterans returned from World War I.¹³ Admissions policies at these universities were not equipped to limit the number of admitted students, because until this time even the most prestigious universities had admitted all students that possessed the requisite academic qualifications.¹⁴

9. See *infra* Part II.

10. The Civil Rights Act of 1964 states, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d (2006); see also 34 C.F.R. § 100.3 (2009); *Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582, 591 (1983) (holding that disparate impact discrimination in the employment context is prohibited by the Title VII implementing regulations). *Guardians* was expressly extended beyond employment discrimination in *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403 (11th Cir. 1985).

11. See MARCIA GRAHAM SYNNOTT, *THE HALF-OPENED DOOR: DISCRIMINATION AND ADMISSIONS AT HARVARD, YALE, AND PRINCETON, 1900–1970*, at 154 (1979). This book contains an excellent discussion of the relationship between anti-Jewish sentiment and admissions restrictions at Yale and, more generally, other elite universities, as does DAN A. OREN, *JOINING THE CLUB: A HISTORY OF JEWS AND YALE* 40 (2d ed. 2000). Restrictions on Jewish enrollment may be considered racial discrimination, which is the focus of this Note, if Jews were considered a separate race at the time the policy was implemented. See *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 617 (1987) (under 42 U.S.C. § 1982 (2006)).

12. SYNNOTT, *supra* note 11, at 13–14. “Nativism” refers to hostility toward immigrants and efforts to protect Americans from foreigners residing in the United States. See, e.g., BRIAN N. FRY, *NATIVISM AND IMMIGRATION: REGULATING THE AMERICAN DREAM 2* (2007).

13. SYNNOTT, *supra* note 11, at 13–14.

14. See *id.* at 201 (“Before World War II, children of middle- and upper-class families, predominantly Anglo-Saxon Protestant, had found it relatively easy, if they possessed minimum academic qualifications, to be admitted to the elite colleges and professional schools.”); HAROLD S. WECHSLER, *THE QUALIFIED STUDENT* 4 (1977).

In response to rising enrollments, many universities decided to increase selectivity as a mechanism for limiting the size of each freshman class. This decision coincided with an increase in nativist sentiment at the national level, which was in part due to the social and political effects of World War I.¹⁵ Anti-immigrant sentiment was often directed at Jews, many of whom were recent arrivals from Russia and Eastern Europe,¹⁶ and this anti-Jewish sentiment was widespread on university campuses.¹⁷

Universities on the East Coast were particularly concerned about their increased Jewish enrollments.¹⁸ Such universities addressed the dual “problems” of general overenrollment and objectionable levels of Jewish enrollment by increasing selectivity in their admissions processes and, within those processes, implementing mechanisms designed to exclude Jewish applicants in particular.¹⁹ After an embarrassing incident at Harvard resulting from a proposal to explicitly discriminate against Jewish applicants,²⁰ administrators at Yale decided to restrict Jewish admissions in a more covert and politically acceptable manner.²¹ Yale’s plan to address both its overpopulation and its Jewish enrollment began to take shape in 1923;²²

15. SYNNOTT, *supra* note 11, at 14.

16. OREN, *supra* note 11, at 21, 40.

17. SYNNOTT, *supra* note 11, at 34–35.

18. OREN, *supra* note 11, at 42–44.

19. SYNNOTT, *supra* note 11, at 16–19.

20. Harvard’s President Lowell was determined to limit the number of Jewish students, either through an outright quota or explicitly higher academic standards for Jewish students. Despite having significant support among the faculty, Lowell’s proposal was eventually defeated by a faculty vote. The situation generated enormous negative press and made it impossible for Harvard to adopt the less overtly discriminatory policies that were becoming commonplace in other elite Eastern universities. For a detailed discussion of Harvard’s attempts to restrict the number of Jewish students, see JEROME KARABEL, *THE CHOSEN* 86–109 (2005). See also OREN, *supra* note 11, at 49–52.

21. OREN, *supra* note 11, at 50.

22. *Id.* at 54–55. Yale President Angell wrote to his counterpart at Williams College that “our Harvard friends have been passing through a rather unpleasant experience as a result of their discussion of methods of discouraging Hebrew patronage.” *Id.* at 54. Ensuring that their deliberations were conducted with secrecy and caution, administrators at Yale discussed limitations on Jewish enrollment through an English test, a reduced cap on scholarship aid, and the requirement of personal interviews for local applicants (because many of Yale’s Jewish students were from the New Haven area). *Id.* at 48, 52–53. Yale’s plan to address both its overpopulation and its Jewish enrollment took shape in 1923 in a policy called the “Limitation of Numbers.” *Id.* at 55. According to the Yale admissions committee, “the fixing of a maximum number of Freshmen admitted seem[ed] a necessary basis for any restrictions which have to do with character rather than with scholarship.” *Id.* at 56. The Dean of Freshmen agreed that a limitation on the number of freshmen “might give some ground for tackling the race question.” *Id.* at 55. The plan promulgated in 1923 included a cap of 850 freshmen and a reduction in scholarship aid. Race itself would only be a factor in admitting “marginal” applicants, who would be required to pass a character test. It was widely assumed that Jewish applicants would fare worse on such character tests. *Id.* at 59. However, the first class at Yale admitted under the new policy did not show a significant drop in the number of Jewish students, so between 1924 and 1926, Yale implemented a series of more creative strategies, including legacy preferences, a cap on the number of transfer students (many of whom were Jewish), and an SAT requirement. *Id.* at 59–60. After implementation of these policies, the percentage of Jewish students at Yale began to drop, and continued to decline well into the 1930s as new admissions questions were periodically added to keep Jewish enrollment in check. SYNNOTT, *supra* note 11, at 155–56.

this plan eventually included the promulgation of the nation's first legacy admissions preference in 1925.²³

Since Yale first introduced legacy preferences in 1925, such policies have become widespread in both public and private universities across the nation. In 1992, 16% of public institutions and 21% of private institutions employed some form of legacy preference.²⁴ As of 2003, legacies comprised 10–15% of the student body at Ivy League schools and up to 23% of the students at other major institutions.²⁵ Legacy applicants are said to receive a “nudge” in the admissions process, meaning that, all else equal, they are admitted over nonlegacy students.²⁶ A former Stanford dean of admissions explained that during her tenure at Stanford, applicants were placed into three categories, corresponding to deny, further consideration, and admit; legacy status effectively moved the applicant up one category.²⁷

Although not all universities provide such a concrete explanation of their legacy preferences, legacy status at many universities significantly affects an applicant's chances for admission. At Stanford, the legacy admit rate in 1990 was almost twice the 22.2% rate for applicants overall.²⁸ Similarly, at

23. OREN, *supra* note 11, at 59. The preference was explained as ensuring that the “limitation on numbers shall not operate to exclude any son of a Yale graduate who has satisfied all the requirements for admission.” *Id.*

24. HUNTER M. BRELAND ET AL., CHALLENGES IN COLLEGE ADMISSIONS 72 (1995).

25. Daniel Golden, *Family Ties: Preference for Alumni Children in College Admission Draws Fire*, WALL ST. J., Jan. 15, 2003, at A1; *see also* Cameron Howell, “Each Generation in the Track”: Admissions Preferences for Children of Alumni, at 2–3 (Aug. 2004) (unpublished Ph.D. dissertation, University of Virginia) (on file with author). Today, many elite universities utilize legacy preferences, including Stanford University, Harvard University, Yale University, Princeton University, University of Pennsylvania, Dartmouth College, Brown University, University of Notre Dame, Columbia University, Georgetown University, University of Michigan, University of Virginia, University of North Carolina at Chapel Hill, and Middlebury College. Examples of universities that do not utilize legacy preferences include the California Institute of Technology (Caltech) and Texas A&M University, and all public universities in California and Georgia. *See* Shikha Dalmia, *Free Tuition is No Substitute for Dropping Legacy Admissions*, S.F. CHRON., Mar. 18, 2008, at B7, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/03/17/EDO3VLH14.DTL> (Caltech); Michael Dannenberg, Editorial, *Opposing view: Ban legacy preferences*, USA TODAY, Aug. 20, 2008, available at <http://blogs.usatoday.com/oped/2008/08/opposing-view-b.html> (Notre Dame, Harvard, Yale); Golden, *supra* (public universities in California and Georgia); Alice Gomstyn, *Top Colleges Mum on Legacy Admissions*, ABC NEWS, Apr. 11, 2008, <http://abcnews.go.com/Business/IndustryInfo/story?id=4626882&page=1> (Harvard, Yale, Princeton, Stanford, Columbia, Georgetown, Dartmouth, Middlebury, University of Pennsylvania); Alan Gordon & Bryan Chang, *Privileging the Privileged*, COLL. HILL INDEP. (Providence, R.I.), Apr. 8, 2004, http://www.brown.edu/Students/INDY/alpha/article.php?id=21&issue_id=188 (Texas A&M, Brown); Penn Alumni: Alumni Council on Admissions, <http://www.alumni.upenn.edu/aca/legadm.html#whois> (last visited July 18, 2009) (University of Pennsylvania); Karl Stampfl, *Admissions Nepotism*, MICH. DAILY (Ann Arbor, Mich.), Feb. 6, 2008, <http://www.michigandaily.com/content/admissions-nepotism> (University of Michigan); Univ. of Va. Alumni Ass'n, *Frequently Asked Questions*, <http://www.alumni.virginia.edu/admission/liaison/faq/application.aspx> (last visited July 18, 2009) (University of Virginia); UNC General Alumni Ass'n, *Frequently Asked Questions*, <http://alumni.unc.edu/article.aspx?SID=1839> (last visited July 18, 2009) (University of North Carolina-Chapel Hill).

26. *See* Howell, *supra* note 25, at 10–11.

27. *See* JEAN H. FETTER, QUESTIONS AND ADMISSIONS: REFLECTIONS ON 100,000 ADMISSIONS DECISIONS AT STANFORD 75 (1995).

28. *Id.* at 74.

Harvard, the average legacy admit rate from 1985 to 1992 was 35.7%, over twice the 16.9% rate for applicants overall.²⁹ At Yale between 1986 and 1995, 42.5% of legacy applicants were admitted as opposed to 19.4% of total applicants.³⁰

Comparisons of admissions rates between legacy and nonlegacy applicants may be misleading, however, because legacy applicants are often more qualified than applicants overall. Even so, one study suggests that, after controlling for SAT scores, legacy status improved an applicant's chances of acceptance by 25% in 1999.³¹ In fact, disparate admissions rates led the United States Department of Education Office for Civil Rights to conduct a study of Harvard's admissions policies in the early 1990s.³² The results of this study indicated that legacy was a significant factor in the admissions process based on notes that admissions readers wrote in student application files. For example, one note read, "Without lineage, there would be little case. With it, we will keep looking."³³ Another read, "We'll need confirmation that dad is a legit, S&S [Alumni Schools and Scholarship Committee participant] because this is a 'luxury' case otherwise."³⁴ A third comment read, "Not a great profile but just strong enough #'s and grades to get the tip from lineage."³⁵ The Office for Civil Rights found that "being the son or daughter of an alumnus of Harvard/Radcliffe was the critical or decisive factor" in admitting certain applicants, and that applicants whose parents participate on the "Schools and Scholarship Committee" got a bigger "tip" in the admissions process.³⁶

Although the nation's first legacy preference was racially motivated,³⁷ universities today justify their legacy preferences based on nondiscriminatory reasons. In general, modern legacy preferences are employed as methods of encouraging alumni to donate and volunteer on behalf of the university. Harvard, for example, explained its rationale in terms of maintaining alumni ties with the university:

Harvard alumni support the college by devoting immense amounts of time in recruiting and other volunteer activities, by contributing financially, and by informing other people, be they potential students, parents, donors, or community leaders, about the College. Those alumni are naturally, [sic] very interested in the college choices of their own children. If their chil-

29. Lamb, *supra* note 6, at 503.

30. *Id.* at 505.

31. Howell, *supra* note 25, at 11–12 (citing JAMES L. SHULMAN & WILLIAM G. BOWEN, *THE GAME OF LIFE: COLLEGE SPORTS AND EDUCATIONAL VALUES* (2001)).

32. U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, *STATEMENT OF FINDINGS, COMPLIANCE REVIEW No. 01-88-6009*, at 27–28 (1990) (on file with author) [hereinafter *OCR STATEMENT OF FINDINGS*].

33. *Id.* at 27.

34. *Id.*

35. *Id.* at 28.

36. *Id.*

37. See *supra* notes 20–23 and accompanying text.

dren are rejected by Harvard, their affection for and interest in the college may decline; if their children are admitted, their involvement with the College is renewed. Having children share the parent's college affiliation stimulates those three aspects of contribution: of service, of money, and of community relations.³⁸

A former dean of admissions at Stanford explained legacy admissions as a kind of “mutual benefit” for applicants and universities, as “alumni children benefit from the connections of their parents; and colleges and universities benefit from the continued loyalty of the associated alumni, usually through financial contributions.”³⁹ Similarly, Dartmouth explained that its legacies “are given preferential treatment because the college wants to keep alumni (read: donors) happy.”⁴⁰ Likewise, the University of Virginia's policy is based on its desire “to keep its alumni happy—and donating.”⁴¹ Universities thus rely heavily on the link between legacy preferences and fundraising in attempting to justify their use of such preferences.

II. THE RACIAL IMPACT OF LEGACY PREFERENCES

Although defenders of today's legacy preferences argue that the preferences are needed for fundraising purposes and are not intentionally discriminatory, such programs have a racially discriminatory effect analogous to that of Yale's original, intentionally discriminatory legacy policy.⁴² Because legacy policies improve admissions prospects for alumni children, the racial composition of students admitted under legacy preferences is necessarily affected by the racial composition of the previous generation of college students. College students of previous generations were less diverse than today's applicants, and legacy preferences allow those past enrollments to influence the current generation of admits. Because legacy preferences benefit children of alumni, “[t]he racial and ethnic composition of the pool of potential legacy students necessarily resembles the composition of past student generations.”⁴³

The disparity between the racial composition of legacy applicants and the overall applicant pool is apparent today at both public and private

38. OCR STATEMENT OF FINDINGS, *supra* note 32, at 40.

39. FETTER, *supra* note 27, at 77–78.

40. Howell & Turner, *supra* note 4, at 330.

41. *Id.*

42. For evidence that Yale's original legacy policy was intentionally discriminatory, see OREN, *supra* note 11, at 55–60.

43. Howell & Turner, *supra* note 4 at 346. In addition, legacy preferences continue to “work against any relative newcomers” and therefore disadvantage today's immigrant groups, just as they were intended to disadvantage Jewish immigrant applicants when they were originally implemented at Yale. See OREN, *supra* note 11, at 59 (discussing the first legacy preference's negative effect on immigrant populations). As such, legacy admissions preferences historically benefitted—and continue to benefit—white, nonimmigrant applicants, because past generations of American university students have been disproportionately white. Although discrimination based on national origin is also prohibited under the Civil Rights Act, this Note focuses on race rather than national origin. *Cf.* 34 C.F.R. § 100.3(a) (2009) (prohibiting discrimination based on national origin).

universities that employ legacy preferences. For example, the United States Department of Education Office for Civil Rights determined that although Asian Americans made up 15.7% of overall applicants at Harvard between the years 1985 and 1992, Asian Americans represented only 3.5% of legacy applicants.⁴⁴ Similarly, at the University of Virginia, where black students made up approximately 10% of entering students in 2002, only 3% of legacy applicants in that same year were black.⁴⁵

Such figures are perhaps unsurprising given that previous generations of American university students were overwhelmingly white, particularly at many universities that use legacy preferences.⁴⁶ At the University of Virginia, for example, explicit segregation continued into the 1950s and fewer than 3% of students were minorities as late as 1973.⁴⁷ At Harvard, each class year only included five or six black students until the 1960s.⁴⁸ At the University of Pennsylvania, black students represented only 5.7% of undergraduates as late as 1996.⁴⁹ Because previous generations of college students at these and other universities exhibited a relatively high degree of racial (white) homogeneity, admissions policies that benefit the children of alumni also tend to disproportionately benefit whites.⁵⁰

Because the negative impact of legacy preferences on minority applicants is based on past patterns of attendance at American universities and the underrepresentation of such racial groups over that period, the negative impact of legacy preferences on racial minorities should decrease over time if the student bodies at American universities continue to diversify. However, research suggests that it will be some time before the racial composition of legacy admits mirrors the racial composition of admitted students overall. At the University of Virginia, for example, where black students made up 10–12% of the student population in the 2003–04 academic year, a statistical simulation predicted that black students would not make up a similar proportion of legacy admits until the year 2020.⁵¹

Legacy preferences at Harvard help to explain why Asian American applicants in the early 1990s were admitted less frequently than their white peers despite having higher academic qualifications.⁵² In fact, after removing legacies and recruited athletes from the sample, the United States Depart-

44. OCR STATEMENT OF FINDINGS, *supra* note 32, at 35.

45. Howell & Turner, *supra* note 4, at 340–42.

46. See *supra* note 25 for a nonexhaustive list of universities that use legacy preferences.

47. Howell & Turner, *supra* note 4, at 341.

48. Synnott, *supra* note 3, at 295.

49. *The Progress of Admissions of Black Students at the Nation's Highest-Ranked Colleges and Universities*, J. BLACKS IN HIGHER EDUC., Autumn 1996, at 6. For information on the University of Pennsylvania's current legacy admissions policy, see Penn Alumni: Alumni Council on Admissions, *supra* note 25.

50. This assumes that alumni of different races tend to have the same number of children.

51. Howell & Turner, *supra* note 4, at 326.

52. See, e.g., OCR STATEMENT OF FINDINGS, *supra* note 32, at 2 (noting Harvard's written statement that Asian Americans have lower admission rates despite higher academic qualifications).

ment of Education Office for Civil Rights determined that Asian Americans were actually admitted at a higher rate than whites for three of the ten years in the sample.⁵³ In that study, OCR determined that Asian American applicants were admitted at a rate of approximately 4.2 percentage points less than white applicants (13.2% admit rate for Asian Americans versus 17.4% for whites).⁵⁴ This statistically significant difference in admissions rates was fully explained by the comparatively low proportion of Asian Americans who were legacy applicants and recruited athletes, two groups that were (and are) given an advantage in Harvard's admissions process.⁵⁵ The experience of Asian American applicants at Harvard demonstrates that the impact of legacy preferences is significant enough that it was readily apparent to applicants and community leaders.

III. STATISTICAL ANALYSIS OF UNIVERSITY FUNDRAISING DATA

Universities that employ legacy admissions policies generally justify them as assisting with university fundraising efforts. Despite these universities' assertions, however, statistical evidence calls into question whether legacy preferences actually benefit fundraising efforts. This Part presents the results of a statistical analysis of fundraising data from eight public universities, all of which have eliminated their legacy admissions policies.⁵⁶ After analyzing fundraising data from these universities before and after legacy preferences were eliminated, this Part concludes that discontinuing legacy preferences did not harm fundraising outcomes at these universities.

Figures 1 and 2, below, present alumni fundraising data for the eight universities in this study, for fiscal years 1990–2008.⁵⁷ The data represent the total donations from alumni in each year (in dollars). Dashed lines represent years in which the university admissions policy included legacy preferences, and solid lines indicate years after the elimination of legacy preferences.

53. *See id.*

54. *Id.* at 36.

55. *Id.* at 36–37.

56. These universities include six in the University of California system (Berkeley, Davis, Irvine, Los Angeles, Santa Barbara, and San Diego), all of which eliminated legacy preferences in 1999, as well as the University of Georgia and Texas A&M University, both of which eliminated legacy preferences in 2003.

57. The data are presented in two separate figures because the large variation in fundraising numbers between the schools makes presentation in a single chart impractical. The additional variables investigated in this study (total alumni donations and total number of alumni donors) are presented in graphical form only for the high-fundraising schools, although data for all of the schools are presented numerically in the Appendix.

FIGURE 1
ALUMNI DONATIONS (HIGH-DONATION UNIVERSITIES)

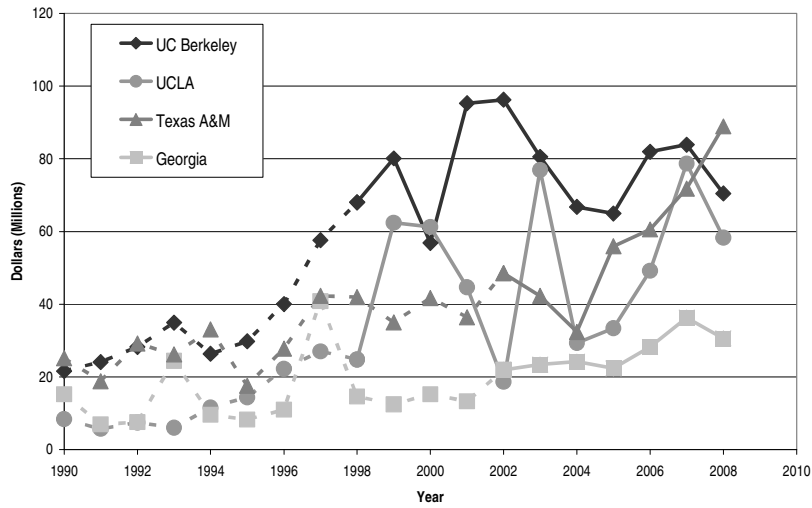
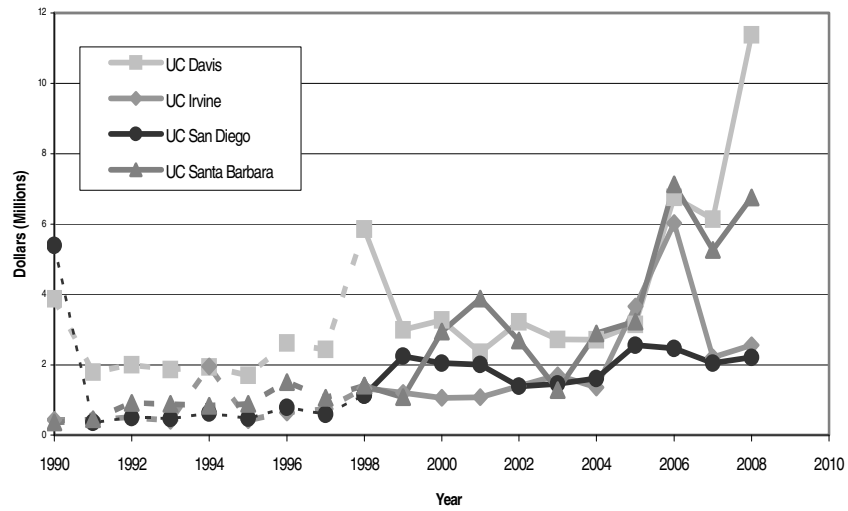
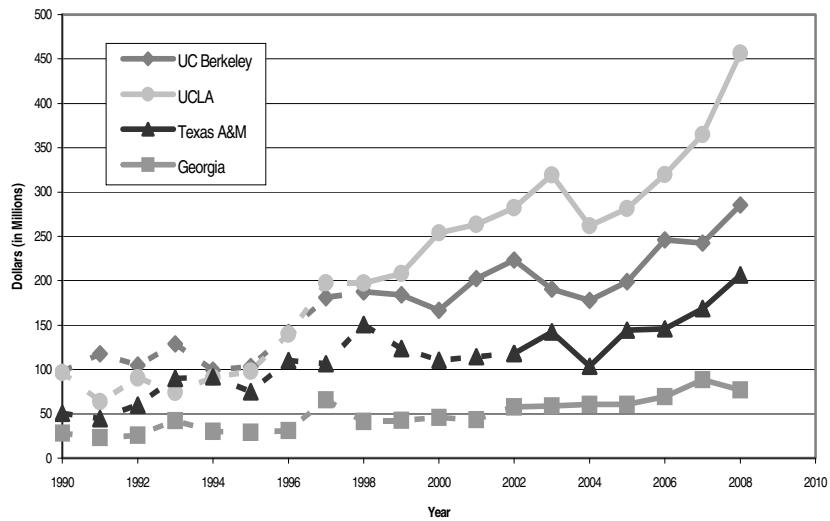


FIGURE 2
ALUMNI DONATIONS (LOW-DONATION UNIVERSITIES)



Another measure of university fundraising is total donations. Figure 3, below, shows total private donations at the four high-fundraising universities.⁵⁸

FIGURE 3
TOTAL PRIVATE DONATIONS

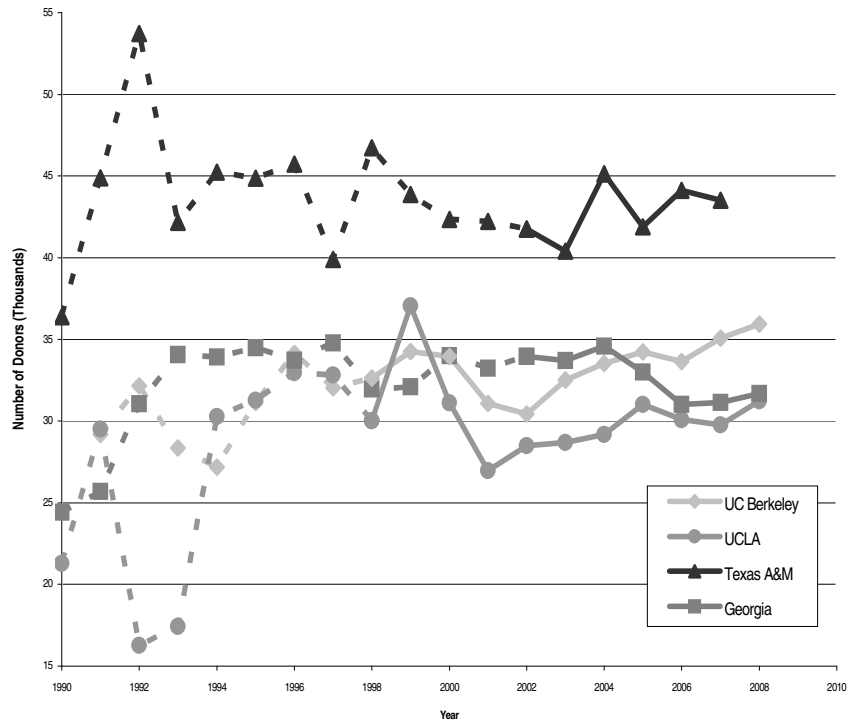


One additional measure of university fundraising is the total number of alumni donors.⁵⁹ This statistic is presented in Figure 4, below, for the four high-fundraising universities.

58. Data for all eight universities can be found in numerical form in the Appendix.

59. A closely correlated and often quoted statistic is the percentage of alumni that donate. Because of the high correlation with total number of alumni donors, the percentage of alumni that donate is not presented here.

FIGURE 4
NUMBER OF ALUMNI DONORS



As evidenced by the preceding Figures, these eight universities have experienced increased alumni and private donations over time (Figures 1–3), although those patterns are less apparent in the number of alumni donors (Figure 4). This increase in donations appears to be present irrespective of the universities' use or elimination of legacy preferences. Similarly, the total number of alumni donors does not appear to be strongly affected by the presence or absence of legacy preferences.

A more rigorous analysis is required, however, because it is possible that alumni donations were influenced by some other factor, such as the economy, that obscures the impact of legacy admissions policies on university fundraising. In order to investigate this possibility, this Note predicts what fundraising levels would have been if legacy policies had been retained, and then compares those predictions with actual fundraising outcomes. First, looking solely at the years when legacy policies were present, the model calculates the effect of an economic indicator, as well as university-specific fixed effects, on each fundraising variable. Specifically, fundraising outcome is regressed on the S&P 500 average and dummy variables for each university. The coefficients from this regression are then used to predict

fundraising statistics for the post-legacy years. Finally, these predictions are compared with the observed fundraising outcomes in each year, calculating a residual (actual value minus observed value) for each observation.

The following box plots present the residuals obtained through the preceding analyses. The average residual for the legacy years is, by definition, zero. A post-legacy residual of zero would indicate that eliminating legacy preferences had no effect on university fundraising outcomes. A negative post-legacy residual would indicate that legacy preferences had a positive impact on fundraising; a positive residual would indicate that legacy preferences did not have a positive impact on fundraising (and could, potentially, have had a negative impact on fundraising). It is impossible to do a statistical analysis to determine whether the post-legacy residuals are significantly different from the legacy-period residuals because of dependency problems; the following box plots instead provide a graphical depiction of the results without introducing the bias that would be inherent in a more formal test. The shaded box represents the 25th and 75th percentiles of the data, and the solid line within the box represents the median residual value. The closer the post-legacy median value is to zero, and the more that the shaded boxes span similar ranges, the less likely that legacy preferences had an impact on a particular fundraising outcome.

FIGURE 5
TOTAL ALUMNI DONATIONS

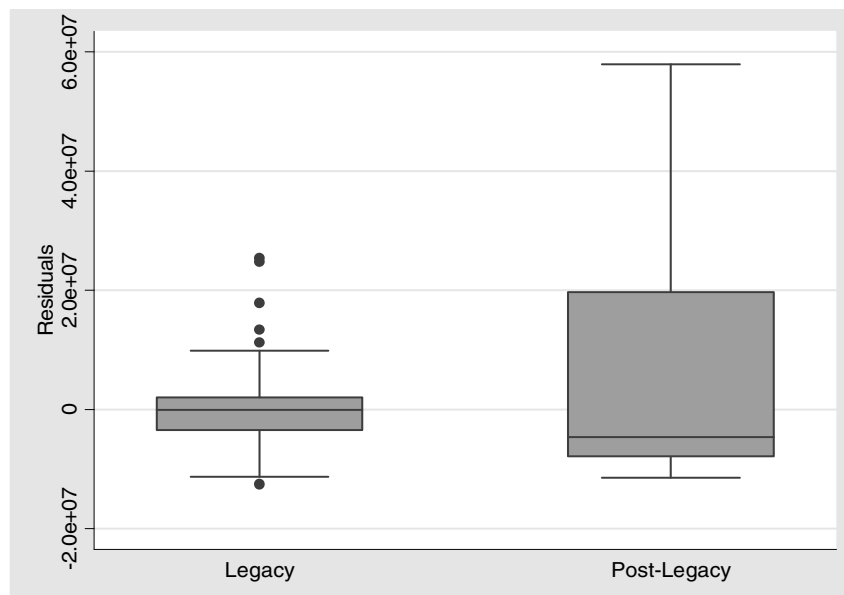


FIGURE 6
TOTAL PRIVATE DONATIONS

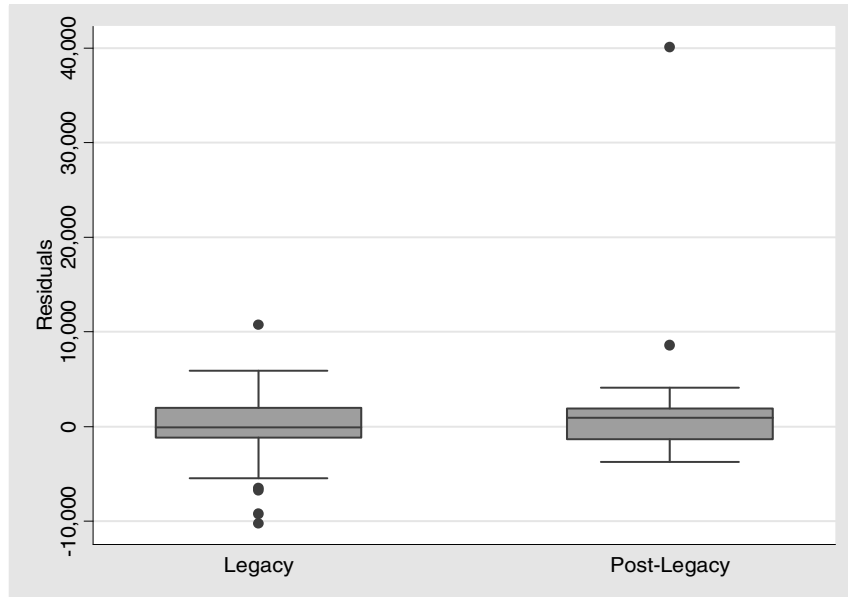
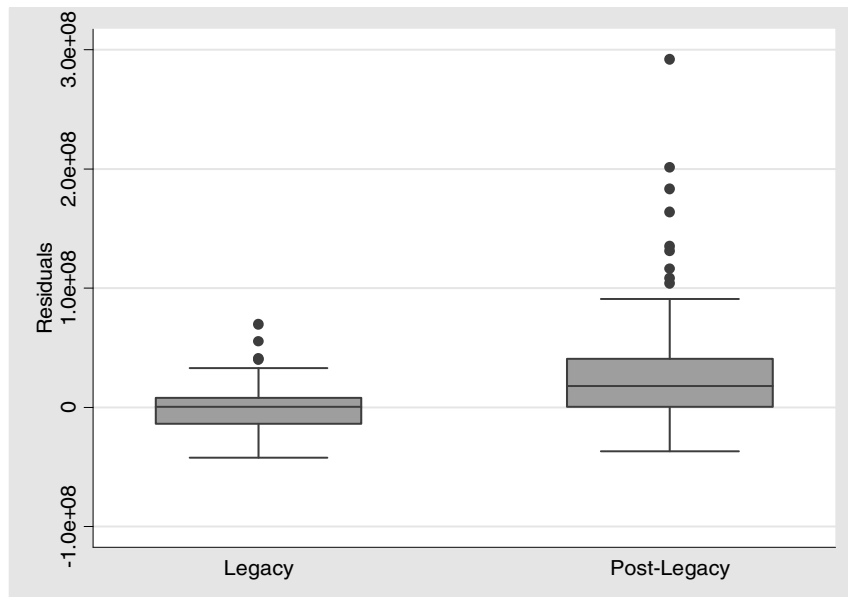


FIGURE 7
TOTAL ALUMNI DONORS



The results presented in Figures 5–7 suggest that legacy preferences do not have a systematic positive effect on university fundraising outcomes because the post-legacy median residuals are near zero and the shaded boxes representing the legacy and post-legacy periods span similar ranges. While post-legacy total alumni donations, shown in Figure 5, are slightly below their predicted value, Figures 6 and 7 show that the other measures of fundraising (post-legacy total private donations and the total number of alumni donors, respectively) are slightly higher than their predicted values. Because post-legacy fundraising outcomes are higher than predicted for two of the three fundraising outcomes, and close to the predicted value in the third, the data suggest that legacy preferences do not have a positive effect on fundraising outcomes.

Similarly, in all three figures, the shaded boxes (representing the 25th and 75th percentiles of the data) overlap significantly between the legacy period and the post-legacy period, suggesting that much of the observed difference between legacy and post-legacy residuals is due to chance. These results, therefore, indicate that legacy policies do not have a systematic positive impact on university fundraising outcomes.

IV. LEGACY PREFERENCES AND THE CIVIL RIGHTS ACT OF 1964

The Civil Rights Act of 1964 prohibits educational institutions that receive federal funds from engaging in practices with disparate racial effects unless those practices actually further a legitimate purpose.⁶⁰ The courts employ a burden-shifting standard to determine whether a federally funded university has violated this prohibition.⁶¹ Under this standard, the plaintiff first bears the burden of showing that a facially neutral policy has a racially discriminatory effect. If the plaintiff meets this burden, the defendant then has the burden to prove a legitimate justification. If the defendant succeeds, the burden returns to the plaintiff to show either (1) that the defendant's stated reason is actually pretext for discrimination, or (2) that an equally effective alternative practice exists that would result in less racial disproportionality.⁶² This Part argues that legacy preferences at federally funded educational institutions support a claim of disparate impact discrimination and, thus, violate the Civil Rights Act of 1964, because they do not actually promote a legitimate purpose.⁶³

60. *See supra* note 10. Legacy policies implemented with a discriminatory purpose, such as the original legacy policy at Yale, would also be impermissible under the Civil Rights Act's prohibition on intentional discrimination. *See, e.g.*, *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001). However, such policies could presumably be cleansed of their discriminatory purpose by repealing and reinstating them; therefore, this section focuses on the discriminatory effects of legacy preferences because those effects are not so easily eliminated.

61. *Campaign for Fiscal Equity, Inc. v. New York*, 655 N.E.2d 661, 669 (N.Y. 1995).

62. *See id.*

63. Title VI disparate impact cases do not support a private cause of action. Instead, such a claim would be brought by the United States Department of Education Office for Civil Rights. *See Alexander*, 532 U.S. 275.

In determining whether a policy supports a prima facie case of disparate impact discrimination, “[s]tatistics comparing benefit distribution or access patterns among members of the protected class and the overall population play a key role in demonstrating an adverse racial impact.”⁶⁴ In *Campaign for Fiscal Equity, Inc. v. New York*, for example, a prima facie case of disparate impact discrimination was established by showing that the percentage of educational funding allocated to a group of minority students was lower than the analogous percentage of educational funding allocated to the student population overall.⁶⁵

Legacy preferences support a prima facie case of disparate impact discrimination because they disproportionately assist white applicants at the expense of their nonwhite counterparts—an effect that is reflected in statistical analysis of university admissions data.⁶⁶ Under the standard articulated in *Campaign for Fiscal Equity*, such statistical discrepancies state a prima facie case of discrimination.⁶⁷ Indeed, in one of the few investigations of the racial impact of legacy preferences, the United States Department of Education Office for Civil Rights concluded that the statistical discrepancy in Asian American legacy applicants at Harvard did support a prima facie case of discrimination.⁶⁸

Universities employing legacy admissions policies argue that they would be able to meet their burden under the second prong of the burden-shifting standard on the theory that such policies are beneficial fundraising tools.⁶⁹ Indeed, courts are generally deferential to universities in allowing them to structure admissions practices according to their educational mission. In an affirmative action case, for example, the court in *Farmer v. Ramsay* stated that “courts are ill-advised to serve as super-admissions committees, replacing schools’ professional judgments with their own.”⁷⁰ Similarly, the U.S. Supreme Court has said that judges “may not override [a genuinely aca-

64. *Campaign for Fiscal Equity*, 655 N.E.2d at 670. Note that, in determining whether an admissions policy creates a disparate racial impact, that policy is evaluated on its own rather than in conjunction with other policies that arguably counterbalance the disparate racial impact. Therefore, the disparate racial impact of legacy preferences would be evaluated independently. See, e.g., *Knight v. Alabama*, 787 F. Supp. 1030, 1163–65 (N.D. Ala. 1991) (evaluating the use of the ACT in university admissions in the context of a Title VI disparate impact suit), *aff’d in part*, 14 F.3d 1534 (11th Cir. 1994).

65. 655 N.E.2d at 670–71.

66. See *supra* Part II.

67. 655 N.E.2d at 670–71.

68. OCR STATEMENT OF FINDINGS, *supra* note 32, at 40 (“Because of the disparate impact that these preferences have on Asian Americans, however, OCR proceeded to analyze the legitimacy of their use in the admissions process.”). The Harvard investigation was triggered by complaints from the Asian American community that Asian American applicants were being admitted at lower rates than Caucasian applicants. The OCR eventually cleared Harvard of wrongdoing and closed its investigation. For further discussion of this investigation, see *id.*; and *infra* text accompanying notes 74, 79–80.

69. OCR STATEMENT OF FINDINGS, *supra* note 32.

70. 159 F. Supp. 2d 873, 886 (D. Md. 2001) (rejecting a white medical school applicant’s claim of racial discrimination in the affirmative action context).

demical decision] unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.”⁷¹ In the legacy admissions context, one district court gave a one-paragraph analysis of the issue, taking a highly deferential attitude toward the university:

Plaintiff also attacks the policy of the University whereby children of out-of-state alumni are exempted from the stiffer academic requirements necessary for out-of-state admission. Again, since no suspect criteria or fundamental interests are involved, the State need only show a rational basis for the distinction. In un rebutted affidavits, defendants showed that the alumni provide monetary support for the University and that out-of-state alumni contribute close to one-half of the total given. To grant children of this latter group a preference then is a reasonable basis and is not constitutionally defective. Plaintiff’s attack on this policy is, therefore, rejected.⁷²

In general, therefore, courts tend to defer to universities’ policies and educational decisions.

The United States Department of Education Office for Civil Rights, the administrative agency responsible for handling complaints in this area, also took a deferential approach when it investigated Harvard’s legacy admissions policies. After a superficial analysis, the Office for Civil Rights stated that “[i]nformation submitted [by Harvard] indicated that alumni provide the bulk of the scholarship funds provided to all students” and “serve on the Schools and Scholarship Committee and other alumni organizations.”⁷³ Without analyzing the link between such contributions and legacy preferences, OCR concluded that “Harvard asserted, and OCR accepts, that there are no alternatives to these preferences that could effectively accomplish the same legitimate goals.”⁷⁴

Although courts are generally deferential to universities in setting their own policies, such deference is inappropriate in the context of a Title VI claim where a prima facie case of disparate racial impact has been shown. Universities that receive federal funds are subject to Title VI’s burden-shifting framework; the university’s burden in the second stage requires it to present evidence showing the relationship between legacy preference and a legitimate goal. Indeed, the defendant’s burden in Title VI discriminatory impact cases is heavy. According to *Larry P. v. Riles*, “Once a plaintiff has established a prima facie case, the burden then shifts to the defendant to demonstrate that the requirement which caused the disproportionate impact was required by educational necessity.”⁷⁵ In order to meet their burden,

71. *Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 (1985) (concerning the context of a student contesting expulsion from a university).

72. *Rosenstock v. Bd. of Governors of the Univ. of N.C.*, 423 F. Supp. 1321, 1327 (M.D.N.C. 1976). In *Rosenstock*, the plaintiff did not assert that legacy preferences had a disparate racial impact. *Id.* at 1326.

73. OCR STATEMENT OF FINDINGS, *supra* note 32, at 41.

74. *Id.* at 43.

75. 793 F.2d 969, 982 (9th Cir. 1984).

universities must produce evidence demonstrating a relationship between legacy policies and fundraising (or another legitimate goal).

The *Riles* court emphasized the weight of the defendant's burden by distinguishing disparate impact claims from disparate treatment claims.⁷⁶ In contrast to disparate treatment claims, where the burden of proof remains with the plaintiff although the burden of production shifts to the defendant, in disparate impact claims the burden of proof itself shifts. The burden is then "on the defendant to prove that the challenged action was required by employment or educational necessity."⁷⁷

Under this standard, the Department of Education Office for Civil Rights was unduly deferential to Harvard in its investigation of Harvard's legacy admissions policy. In that investigation, the Office for Civil Rights allowed the university to meet its burden without providing evidence of any actual link between fundraising (or another legitimate university goal) and legacy preferences.⁷⁸ Indeed, the Office for Civil Rights originally asked Harvard to justify its legacy admissions policy and provide evidence linking that justification to actual fundraising data. Rather than providing that analysis, Harvard stated that it "had never studied the effect of admitting or rejecting alumni children and that such a question was 'not something that would lend itself to statistical analysis.'"⁷⁹ Despite originally requesting evidence substantiating that link, the Office for Civil Rights eventually accepted Harvard's unsubstantiated assertion.⁸⁰

The statistical evidence presented above indicates that the relationship between university fundraising and legacy admissions policies does lend itself to statistical analysis and suggests that no positive link exists between legacy preferences and alumni fundraising. This statistical evidence suggests that, under the Title VI disparate impact framework, universities employing legacy policies would be unable to meet their burden of proof that legacy policies actually promote fundraising goals.⁸¹ Therefore, because legacy

76. *Id.* at 982 n.10.

77. *Id.*; see also *Young v. Montgomery County Bd. of Educ.*, 922 F. Supp. 544, 549 (M.D. Ala. 1996) (citing *Ga. State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417-18 (11th Cir. 1985)) (noting that the burden of proof in Title VI cases mirrors the burden-shifting framework of Title VII, and stating that the burden of proof shifts to the defendant after the plaintiff has stated a prima facie case).

78. Scott Jaschik, *Doubts are Raised About U.S. Inquiry on Harvard Policies*, CHRON. HIGHER EDUC., Feb. 6, 1991, at A19 (discussing the OCR investigation into Harvard's admissions policies). It seems that no court has considered this question directly because no private right of action exists under Title VI. In *Rosenstock v. Board of Governors of the University of North Carolina*, the plaintiff alleged that legacy preferences violated due process and equal protection. 423 F. Supp. 1321, 1322-23 (M.D.N.C. 1976). The court found no suspect class or fundamental interest and concluded that the university's un rebutted affidavit stating that alumni donate to the university satisfied the rational basis test. *Id.* at 1325-27.

79. Jaschik, *supra* note 78.

80. *Id.*

81. Even deferring to the university at the second stage, legacy policies could be shown to be impermissible at the third stage, in which a plaintiff must propose an equally effective alternative policy. Here, because legacy preferences have no demonstrable impact on alumni donations, remov-

preferences have a disparate racial impact and they have not been shown to further any legitimate university objective, such preferences are impermissible under the Civil Rights Act of 1964.

CONCLUSION

Legacy preferences are a common component of university admissions programs that give a boost to applicants whose parents or grandparents attended a particular institution. Such preferences have a negative impact on minority and immigrant applicants, whose parents often did not attend college in the United States. This effect motivated the nation's first legacy preferences, which were implemented at Yale in the 1920s to limit the number of Jewish students.

Universities that employ legacy preferences often justify those preferences by arguing that they improve fundraising outcomes. But the statistical analysis presented in this Note suggests that legacy preferences do not positively impact university fundraising. Because legacy preferences generate a disparate racial impact without any demonstrated benefit for a legitimate university goal, legacy preferences at federally funded universities represent impermissible disparate impact discrimination under the Civil Rights Act of 1964.

ing the legacy preferences altogether could be considered an "equally effective alternative proposal" under this third stage.

APPENDIX

TABLE A1: TOTAL ANNUAL ENROLLMENT, BY UNIVERSITY (1991–2009)⁸²

UNIVERSITY	1991	1992	1993	1994	1995	1996
Texas A&M University	41,171	42,210	42,953	43,862	43,031	43,031
Univ of California, Berkeley	30,638	30,372	30,622	30,341	29,634	29,630
Univ of California, Davis	23,898	23,302	22,889	22,486	22,442	23,092
Univ of California, Irvine	16,817	16,950	17,187	16,815	17,073	17,261
Univ of California, Los Angeles	36,427	36,366	35,407	34,447	35,110	34,713
Univ of California, San Diego	17,797	17,956	18,238	17,851	17,774	18,315
Univ of California, Santa Barbara	18,391	18,519	18,655	18,581	17,834	18,224
University of Georgia	28,395	28,691	28,493	28,753	29,469	30,149
UNIVERSITY	1997	1998	1999	2000	2001	2002
Texas A&M University	43,995	41,461	43,389	44,963	45,389	46,449
Univ of California, Berkeley	29,797	30,290	31,011	31,347	31,277	32,128
Univ of California, Davis	23,931	24,551	24,866	25,092	26,094	27,292
Univ of California, Irvine	17,802	17,269	17,776	18,723	20,211	21,885
Univ of California, Los Angeles	35,594	35,558	35,796	36,351	36,890	37,494
Univ of California, San Diego	18,110	18,657	19,347	19,894	20,197	21,558
Univ of California, Santa Barbara	18,531	18,940	19,363	20,056	19,962	20,373
University of Georgia	29,404	29,693	30,009	30,912	31,288	32,317
UNIVERSITY	2003	2004	2005	2006	2007	2008
Texas A&M University	46,369	46,055	46,587	46,933	48,095	49,690
Univ of California, Berkeley	33,145	33,076	32,814	33,558	33,933	34,953
Univ of California, Davis	29,087	30,229	30,065	29,637	30,475	30,685
Univ of California, Irvine	24,874	24,874	24,956	25,024	25,871	27,126
Univ of California, Los Angeles	37,599	38,598	37,563	37,221	38,218	38,130
Univ of California, San Diego	23,528	24,668	25,257	25,938	26,868	27,688
Univ of California, Santa Barbara	20,559	20,847	21,026	21,016	21,082	21,410
University of Georgia	32,941	33,878	33,408	33,660	33,959	33,831

82. Fiscal year 1990 has been omitted due to incomplete data availability. Data on university enrollment and all fundraising statistics were provided by the Council for Aid to Education, Voluntary Support of Education Survey. These data are available by subscription from the Council for Aid to Education, http://www.cae.org/content/pro_data_trends.htm (last visited Aug. 19, 2008). Data for the years 1990–1998 are not available online and were obtained through direct communication with the organization. Stock market data used in this analysis were obtained from Yahoo! Finance, <http://finance.yahoo.com> (last visited Aug. 19, 2008).

TABLES A2—A9: FUNDRAISING DATA BY SCHOOL⁸³

TABLE A2: UNIVERSITY OF CALIFORNIA, BERKELEY

YEAR	TOTAL ALUMNI DONATIONS	TOTAL PRIVATE DONATIONS	NUMBER OF ALUMNI DONORS	LEGACY PREFERENCE
1990	21609595	97397641		Yes
1991	24094879	117700000	29178	Yes
1992	28273248	105000000	32159	Yes
1993	34957146	128600000	28353	Yes
1994	26376025	99214128	27183	Yes
1995	29774337	103100000	31150	Yes
1996	40048689	141800000	34119	Yes
1997	57586111	181100000	32036	Yes
1998	68052976	187600000	32624	Yes
1999	80132456	184200000	34266	No
2000	56860465	166800000	33955	No
2001	95309834	202600000	31079	No
2002	96226830	223300000	30424	No
2003	80523404	190700000	32528	No
2004	66759297	178000000	33535	No
2005	64976293	198900000	34228	No
2006	81950054	246000000	33625	No
2007	83893361	242600000	35073	No
2008	70450327	285300000	35927	No

TABLE A3:
UNIVERSITY OF CALIFORNIA, DAVIS

YEAR	TOTAL ALUMNI DONATIONS	TOTAL PRIVATE DONATIONS	NUMBER OF ALUMNI DONORS	LEGACY PREFERENCE
1990	3866301	28171603	6861	Yes
1991	1795582	25427443	8761	Yes
1992	1997377	23698768	12322	Yes
1993	1864326	27475641	9281	Yes
1994	1930337	29002479	8948	Yes
1995	1697813	33689933	9029	Yes
1996	2613878	55624149	7127	Yes
1997	2433428	40955566	8835	Yes
1998	5848536	46509696	15054	Yes
1999	2989560	53228940	13398	No
2000	3265614	76768110	10417	No
2001	2354825	73286096	11880	No
2002	3215803	81868505	13275	No

83. Legacy preference data are borrowed from Steve D. Shadowen et al., *No Distinctions Except Those Which Merit Originates: The Unlawfulness of Legacy Preferences in Public and Private Universities*, 49 SANTA CLARA L. REV. 51 (2009). These data are available at <http://law.scu.edu/lawreview/legacynationalcolleges.cfm> (last visited Sept. 28, 2009). All fundraising statistics were provided by the Council for Aid to Education, Voluntary Support of Education Survey. See *supra* note 82.

YEAR	TOTAL ALUMNI DONATIONS	TOTAL PRIVATE DONATIONS	NUMBER OF ALUMNI DONORS	LEGACY PREFERENCE
2003	2713940	64663862	12748	No
2004	2707038	82343776	12658	No
2005	3144367	99717733	13020	No
2006	6758144	77670221	15367	No
2007	6137086	94730493	14726	No
2008	11383585	99952007	13968	No

TABLE A4:
UNIVERSITY OF CALIFORNIA, IRVINE

YEAR	TOTAL ALUMNI DONATIONS	TOTAL PRIVATE DONATIONS	NUMBER OF ALUMNI DONORS	LEGACY PREFERENCE
1990	442151	26544063	4455	Yes
1991	432986	20621768	5993	Yes
1992	506107	20756203	6118	Yes
1993	405150	22325432	5620	Yes
1994	1956858	21114001	5391	Yes
1995	430627	21654227	4723	Yes
1996	637452	24071882	2731	Yes
1997	738724	26726016	3098	Yes
1998	1336703	30968012	2805	Yes
1999	1196778	48545446	3369	No
2000	1056533	67254156	3303	No
2001	1076805	48490306	3724	No
2002	1392797	38900817	3887	No
2003	1696464	53225684	3915	No
2004	1352131	51807867	3481	No
2005	3651176	54568565	4860	No
2006	6029348	84075243	8142	No
2007	2211302	74237001	9594	No
2008	2556436	92279894	5862	No

TABLE A5:
UNIVERSITY OF CALIFORNIA, LOS ANGELES

YEAR	TOTAL ALUMNI DONATIONS	TOTAL PRIVATE DONATIONS	NUMBER OF ALUMNI DONORS	LEGACY PREFERENCE
1990	8394596	96454560	21282	Yes
1991	5693087	63973287	29515	Yes
1992	7437553	90372535	16266	Yes
1993	6023969	74040984	17420	Yes
1994	11557708	90895459	30290	Yes
1995	14386537	98163606	31279	Yes
1996	22227530	139800000	32967	Yes
1997	27033257	197800000	32816	Yes

YEAR	TOTAL ALUMNI DONATIONS	TOTAL PRIVATE DONATIONS	NUMBER OF ALUMNI DONORS	LEGACY PREFERENCE
1998	24782191	197200000	30014	Yes
1999	62397182	208200000	37056	No
2000	61300609	253800000	31116	No
2001	44675003	263700000	26966	No
2002	18674896	282300000	28489	No
2003	76950159	319500000	28686	No
2004	29348834	262100000	29196	No
2005	33370148	281600000	31013	No
2006	49206899	319600000	30093	No
2007	78668367	364800000	29760	No
2008	58324665	456700000	31220	No

TABLE A6:
UNIVERSITY OF CALIFORNIA, SAN DIEGO

YEAR	TOTAL ALUMNI DONATIONS	TOTAL PRIVATE DONATIONS	NUMBER OF ALUMNI DONORS	LEGACY PREFERENCE
1990	5397771	49319254	4237	Yes
1991	358375	45628500	5632	Yes
1992	502329	29858096	5817	Yes
1993	464150	77333862	5077	Yes
1994	617420	49712935	4044	Yes
1995	482080	41119623	4121	Yes
1996	783750	64683330	7236	Yes
1997	592058	88113717	4949	Yes
1998	1127961	69494401	5305	Yes
1999	2239502	114700000	4488	No
2000	2041335	112800000	4966	No
2001	2004006	93631920	5724	No
2002	1380571	101200000	5520	No
2003	1458976	138600000	6459	No
2004	1603386	100900000	7187	No
2005	2554088	126000000	7749	No
2006	2467780	184900000	8152	No
2007	2044630	134100000	7585	No
2008	2210830	121800000	5342	No

TABLE A7:
UNIVERSITY OF CALIFORNIA, SANTA BARBARA

YEAR	TOTAL ALUMNI DONATIONS	TOTAL PRIVATE DONATIONS	NUMBER OF ALUMNI DONORS	LEGACY PREFERENCE
1990	353392	7959021	4673	Yes
1991	449696	17500867	4366	Yes
1992	920842	12842011	5462	Yes

YEAR	TOTAL ALUMNI DONATIONS	TOTAL PRIVATE DONATIONS	NUMBER OF ALUMNI DONORS	LEGACY PREFERENCE
1993	887178	12547299	6462	Yes
1994	832127	21293576	7077	Yes
1995	890103	6824937	5574	Yes
1996	1506135	17385456	5733	Yes
1997	1058532	18235667	5733	Yes
1998	1400844	14826747	9155	Yes
1999	1080137	19435133	8819	No
2000	2944637	24110792	8434	No
2001	3881697	29994032	8915	No
2002	2690420	26679988	8553	No
2003	1285489	62017178	7938	No
2004	2892963	73966187	8956	No
2005	3224530	48882168	9493	No
2006	7123713	55566230	8845	No
2007	5263055	51259343	8134	No
2008	6760137	90212348	7915	No

TABLE A8:
UNIVERSITY OF GEORGIA

YEAR	TOTAL ALUMNI DONATIONS	TOTAL PRIVATE DONATIONS	NUMBER OF ALUMNI DONORS	LEGACY PREFERENCE
1990	15205590	28151097	24416	Yes
1991	6955903	23271353	25678	Yes
1992	7555536	25849160	31053	Yes
1993	24426447	42140162	34072	Yes
1994	9580772	30247646	33910	Yes
1995	8276900	29201109	34499	Yes
1996	11003220	31013391	33728	Yes
1997	40809975	65886778	34772	Yes
1998	14568836	41272130	31963	Yes
1999	12434181	42534143	32087	Yes
2000	15224281	45738870	34009	Yes
2001	13305549	43602733	33231	Yes
2002	21927338	57831973	33952	Yes
2003	23400153	59073376	33709	No
2004	24227010	60560316	34574	No
2005	22358445	60529358	32981	No
2006	28250192	69482991	31023	No
2007	36336333	88433680	31150	No
2008	30590687	77131049	31689	No

TABLE A9:
TEXAS A&M UNIVERSITY

YEAR	TOTAL ALUMNI DONATIONS	TOTAL PRIVATE DONATIONS	NUMBER OF ALUMNI DONORS	LEGACY PREFERENCE
1990	25181088	50817143	36377	Yes
1991	18830130	44713243	44890	Yes
1992	29162142	59893384	53731	Yes
1993	26202379	90185178	42165	Yes
1994	33059868	91725560	45251	Yes
1995	17615014	74816474	44867	Yes
1996	27771998	110100000	45741	Yes
1997	42300774	106600000	39896	Yes
1998	41979507	150700000	46732	Yes
1999	35010360	123600000	43870	Yes
2000	41748147	110400000	42337	Yes
2001	36421934	114500000	42231	Yes
2002	48537768	118200000	41750	Yes
2003	42279610	142300000	40413	No
2004	32402950	103500000	45129	No
2005	55939037	144500000	41885	No
2006	60561375	145800000	44128	No
2007	71838212	168500000	43526	No
2008	88915850	206700000	85509	No