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

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

22 Plaintiffs,

23 v.

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

27 Defendants.

28 AND RELATED CONSOLIDATED CASES

CASE NO. RG19046222
(Consolidated with RG19046343)

UNLIMITED JURISDICTION

**AMENDED 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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INTRODUCTION

1. On May 21, 2020, the Regents of the University of California (“UC” or the “University”) and other University leaders made explicit what the University has known for decades: the SAT and ACT are discriminatory tests. As Regent Cecilia Estolano recognized, echoing the consensus among the Regents: “We all know it’s a racist test. . . . It is a proxy of opportunity. It has an excellent correlation to privilege.”¹

2. The Regents’ blunt acknowledgment that the SAT and ACT discriminate against the State’s least privileged students followed a direct condemnation of the tests by UC President Janet Napolitano, who affirmed that “[t]he ACT and SAT tests are not clearly linked” “to the curriculum that shapes student readiness.”² Rejecting the Standardized Testing Task Force’s recommendation that UC continue to require SAT and/or ACT scores for nine years,³ President Napolitano instead called upon the University to act swiftly to develop “[a] properly designed and administered test” that—unlike the SAT and ACT—is actually “aligned to [UC’s Board of Admissions and Relations with Schools (“BOARS”)]’s admission testing principles and UC college readiness standards.”⁴ President Napolitano thus recognized that the SAT and ACT not only fail to fulfill their central purpose—measuring prospective students’ college preparedness—but also do not satisfy UC’s own requirements for its use of standardized tests.

3. In light of these concerns, the Regents voted unanimously to eliminate UC’s use of the SAT and ACT for in-state admissions decisions beginning with the Fall 2023 admissions

¹ Univ. of Cal. Bd. of Regents, *Board Afternoon* at 1:37–41, YouTube (May 21, 2020), <https://www.youtube.com/watch?v=gqjtgXr-niw> [hereinafter Regents Meeting (Afternoon Session)]; *id.* at 1:52 (statement of Regent Jonathan Sures) (“I believe this test is a racist test. There’s no two ways about it.”).

² Univ. of Cal. Office of the President, *Action Item: College Entrance Exam Use in University of California Undergraduate Admissions* 8 (May 2020), <https://regents.universityofcalifornia.edu/regmeet/may20/b4.pdf> [hereinafter Napolitano Proposal].

³ Univ. of Cal. Standardized Testing Task Force, *Report of the UC Academic Council Standardized Testing Task Force (STTF)* 7 (Jan. 27, 2020), https://senate.universityofcalifornia.edu/_files/underreview/sttf-report.pdf [hereinafter STTF Report].

⁴ Napolitano Proposal, *supra* note 2, at 6.

1 cycle.⁵ Although they recognized that the SAT and ACT are both discriminatory and unnecessary
2 to UC’s admissions process, the Regents nevertheless chose to continue to allow UC campuses to
3 consider SAT and ACT scores as a “value add” in UC’s admissions decisions during the Fall 2021
4 and Fall 2022 admissions cycles.⁶ The Regents also decided to continue using SAT and ACT
5 scores through at least the Fall 2024 admissions cycle for other purposes, including rationing
6 access to UC’s prestigious Regents’ and Chancellors’ scholarships and determining which
7 students are guaranteed admission to UC through its statewide eligibility pathway.⁷ Thus, rather
8 than eliminate the discriminatory barriers to UC access posed by the SAT and ACT to
9 underrepresented students, the Regents deliberately preserved them. As a result, the University’s
10 use of SAT and ACT scores—which over the past 50 years has deprived hundreds of thousands of
11 deserving students from underrepresented minority groups, students from low-income families,
12 and students with disabilities of a fair opportunity to pursue higher education at UC—will
13 continue to exclude tens of thousands more.

14 4. The Regents’ decision is irreconcilable with UC’s most fundamental constitutional
15 obligation: to provide equal access to all qualified students, regardless of their backgrounds. The
16 California Constitution established the University as a public trust and envisioned it as the
17 culmination of the State of California (“State”)’s obligation to provide public education to its
18 citizens.⁸ The University serves as a gateway for California students to build successful careers,
19 pursue their intellectual interests, and gain meaningful access to social mobility. For over three
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21 ⁵ Univ. of Cal. Office of the President, *University of California Board of Regents unanimously*
22 *approved changes to standardized testing requirement for undergraduates* (May 21, 2020),
23 [https://www.universityofcalifornia.edu/press-room/university-california-board-regents-approves-](https://www.universityofcalifornia.edu/press-room/university-california-board-regents-approves-changes-standardized-testing-requirement)
[changes-standardized-testing-requirement](https://www.universityofcalifornia.edu/press-room/university-california-board-regents-approves-changes-standardized-testing-requirement).

24 ⁶ *Id.*; Regents Meeting (Afternoon Session), *supra* note 1, at 1:14–15 (statement of Vice Provost
25 Yvette Gullatt).

26 ⁷ Napolitano Proposal, *supra* note 2, at 2.

27 ⁸ Cal. Const. art. IX, § 9(a); *see id.* § 1. The State of California is the legal and political entity
28 responsible for ensuring that all California public school students receive their individual and
fundamental right to an equal education, under the Equal Protection Clause of the California
Constitution, Article I, section 7(a).

1 decades and in countless iterations, the Regents have expressed their “historic commitment” “as a
2 public institution” to enrolling a student body that “encompasses the broad diversity” of the State.⁹
3 But the Regents’ actions belie their words. Instead of realizing UC’s role as “[a]n engine of
4 opportunity for all Californians”¹⁰ and creating a level playing field in which all students are
5 evaluated based on individual merit, the Regents have chosen once again to continue using tests
6 that are demonstrably discriminatory against the State’s least privileged students, the very students
7 who would most benefit from higher education.

8 5. Although UC regards itself as one of the preeminent public research institutions in
9 the United States, its continued use of the SAT and ACT flies in the face of years of consistent
10 findings and recommendations from its own psychometricians, who have shown that, rather than
11 providing meaningful information about a student’s ability to succeed in college, SAT and ACT
12 scores are largely a proxy for a student’s socioeconomic background and race. As early as 1962,
13 UC decided not to use the SAT because the “scores add little or nothing to the precision with
14 which existing admissions requirements are predictive of success in the University.”¹¹ In study
15 after study over the next six decades, UC psychometricians reached the same conclusion. Taken
16 alone, SAT and ACT scores predict less than two percent of the variation in first-year grade point
17 average (“GPA”) among UC students.¹² Moreover, as UC has acknowledged, “students can be
18 coached, to advantage,” on the SAT and ACT,¹³ diminishing the already limited predictive value

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20 ⁹ Univ. of Cal. Bd. of Regents, *Regents Policy 2102: Policy on Undergraduate Admissions* (1988),
21 <https://regents.universityofcalifornia.edu/governance/policies/2102.html>; *see also infra* paras.
22 204–09.

23 ¹⁰ Univ. of Cal. Office of the President, *Your University of California: A Report from President*
24 *Mark Yudof for Friends of UC* 1 (Sept. 2009), [https://regents.universityofcalifornia.edu/](https://regents.universityofcalifornia.edu/regmeet/sept09/pres.pdf)
25 [regmeet/sept09/pres.pdf](https://regents.universityofcalifornia.edu/regmeet/sept09/pres.pdf).

26 ¹¹ John A. Douglass, *The Conditions for Admission: Access, Equity, and the Social Contract of*
27 *Public Universities* 90 (2007) (quoting BOARS Chairman Charles Jones).

28 ¹² Univ. of Cal. Bd. of Admissions & Rel. with Schs. (BOARS), *Revised Proposal to Reform UC’s*
Freshman Eligibility Policy app. IV 95 (Feb. 20, 2008), [https://](https://senate.universityofcalifornia.edu/_files/underreview/sw.rev.eligibility.02.08.pdf)
senate.universityofcalifornia.edu/_files/underreview/sw.rev.eligibility.02.08.pdf.

¹³ BOARS, *Admissions Tests and UC Principles for Admissions Testing* 21 (Dec. 2009), [https://](https://senate.universityofcalifornia.edu/_files/reports/hp2mgy_boars-testing_010609.pdf)
senate.universityofcalifornia.edu/_files/reports/hp2mgy_boars-testing_010609.pdf.

1 of the tests still further. By contrast, UC researchers have demonstrated that high school grades are
2 consistently the best predictor of college success.

3 6. Such findings are unsurprising, given that the very design of the SAT and ACT
4 places underrepresented minority students at a significant disadvantage. As UC Provost Michael
5 Brown recognized, SAT and ACT results artificially “compare students against one another in a
6 way designed to produce high and low scores.”¹⁴ To repeatedly produce this score distribution, the
7 test development process tends iteratively to discard items on which underrepresented minority
8 students perform well and to retain questions on which they do not do well. Over multiple
9 administrations of the test, this adverse effect reinforces and perpetuates itself, such that
10 subsequent tests are systematically biased against underrepresented minority students—but,
11 because of their “standardized” character, retain a veneer of objectivity. In fact, UC
12 psychometricians studying sections of the SAT have found that up to 12 percent of items are
13 biased against Black students, and up to 10 percent of items are biased against Latinx students.¹⁵
14 UC has displayed a striking lack of curiosity about these findings, failing to collect and analyze
15 data on the current versions of the SAT and ACT to measure biases against underrepresented
16 minority students, students from low-income families, and students with disabilities. Even the
17 Standardized Testing Task Force conceded that, in the absence of this data, UC has no “definitive
18 answer to the question of whether the test and the items making up the tests are biased against
19 members of particular subgroups of test-takers”¹⁶—a question that prospective students would
20 reasonably expect UC to resolve before continuing to use these tests as admissions factors.

21 7. Rather than devote its resources to investigating biases in the tests or to critically
22 evaluating the testing companies’ evolving representations about what the tests purport to
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24 ¹⁴ Teresa Watanabe, *Drop the SAT and ACT as a Requirement for Admission, Top UC Officials*
25 *Say*, L.A. Times (Nov. 23, 2019), <https://www.latimes.com/california/story/2019-11-23/uc-officials-recommend-dropping-sat-admission-requirement>.

26 ¹⁵ Maria Veronica Santelices & Mark Wilson, *On the Relationship Between Differential Item*
27 *Functioning and Item Difficulty: An Issue of Methods? Item Response Theory Approach to*
Differential Item Functioning, 72 Educ. & Psychol. Measurement 5, 24 (2012).

28 ¹⁶ STTF Report, *supra* note 3, at 6.

1 measure, until last month UC simply required them, resulting in starkly disparate student
2 outcomes. According to the College Board’s 2019 data, among students taking the SAT in
3 California, 45 percent of White students scored 1200 or above, compared to only nine percent of
4 Black students and 12 percent of Latinx students.¹⁷ Only one percent of Black students and two
5 percent of Latinx students scored in the top score bracket, compared to 12 percent of White
6 students.¹⁸ And although Asian students had the highest scores when treated monolithically by the
7 College Board, such a grouping hides the fact that certain subgroups score much lower than
8 average.

9 8. Not only have the Regents done nothing to change these disparities, but they offer a
10 continuing boon to the lucrative test preparation industry, which capitalizes on the desires of
11 students and their parents to maximize their odds of admission by securing even incremental score
12 increases. As BOARS and individual Regents have recognized, unequal access to high-quality test
13 preparation gives students from affluent families—who can afford to spend thousands of dollars to
14 learn test-taking tricks and strategies from private tutors—a competitive advantage over their peers
15 with less wealth. According to Regents Chairman John Pérez, “[t]he highest predictive value of an
16 SAT isn’t in how well a student will do in school, but how well they were able to avail themselves
17 of prep material. And access to that prep material is still disproportionately tied to family
18 income.”¹⁹ By incentivizing mastery of test-taking tricks over mastery of curriculum, test
19 preparation “distracts participants from college preparatory coursework.”²⁰ And so long as
20 students can gain an edge in admissions or scholarship consideration by submitting scores,
21 affluent students will continue to avail themselves of test preparation services, forcing
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24 ¹⁷ College Board, *SAT Suite of Assessments Annual Report: California* (2019), <https://reports.collegeboard.org/pdf/2019-california-sat-suite-assessments-annual-report.pdf>.

25 ¹⁸ *Id.*

26 ¹⁹ Teresa Watanabe, *Q&A: Raise UC Tuition? Eliminate SAT Tests? Board of Regents Chairman*
27 *John A. Pérez Has Something to Say*, L.A. Times (Nov. 1, 2019), <https://www.latimes.com/california/story/2019-11-01/q-a-uc-board-of-regents-chairman-john-a-perez>.

28 ²⁰ BOARS, *supra* note 13, at 21.

1 underresourced school districts to divert their limited funds away from substantive education and
2 toward test preparation to enable their students to compete on equal footing.

3 9. These inequities—which the Regents have known about for years—have been
4 severely exacerbated by the COVID-19 pandemic, which has had devastating impacts on students
5 and families in California’s most marginalized communities. In Los Angeles County, for example,
6 Black residents are dying at twice the rate of White residents, and Latinx residents are dying at a
7 rate that is 70 percent higher than that of White residents.²¹ Areas in Los Angeles County with a
8 majority of residents below the poverty line report almost twice as many confirmed COVID-19
9 cases than areas with less than 10 percent of residents below the poverty line.²² Individuals from
10 low-income communities and communities of color have also borne the economic brunt of the
11 pandemic, experiencing disproportionately high rates of pay cuts and job losses.²³ Students from
12 these communities are more likely to have had their educations seriously disrupted by the closure
13 of their schools.²⁴ They are more likely to lack the minimal requirements for remote learning,
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16 ²¹ Rong-Gong Lin II, *Whites far less likely to die from the coronavirus than blacks, Latinos in L.A.*
17 *County*, L.A. Times (May 29, 2020), [https://latimes.com/california/story/2020-05-29/whites-far-](https://latimes.com/california/story/2020-05-29/whites-far-less-likely-to-die-from-the-coronavirus-than-non-whites-in-l-a-county)
[less-likely-to-die-from-the-coronavirus-than-non-whites-in-l-a-county](https://latimes.com/california/story/2020-05-29/whites-far-less-likely-to-die-from-the-coronavirus-than-non-whites-in-l-a-county).

18 ²² L.A. Cty. Dep’t of Pub. Health, *COVID-19 Racial, Ethnic, & Socioeconomic Data & Strategies*
19 *Report 4* (Apr. 28, 2020), [https://publichealth.lacounty.gov/docs/](https://publichealth.lacounty.gov/docs/RacialEthnicSocioeconomicDataCOVID19.pdf)
[RacialEthnicSocioeconomicDataCOVID19.pdf](https://publichealth.lacounty.gov/docs/RacialEthnicSocioeconomicDataCOVID19.pdf).

20 ²³ See generally Joint Econ. Comm., *The Impact of Coronavirus on the Working Poor and People*
21 *of Color* (Apr. 24, 2020), [https://www.jec.senate.gov/public/_cache/files/bbaf9c9f-1a8c-45b3-](https://www.jec.senate.gov/public/_cache/files/bbaf9c9f-1a8c-45b3-816c-1415a2c1ffee/coronavirus-race-and-class-jec-final.pdf)
[816c-1415a2c1ffee/coronavirus-race-and-class-jec-final.pdf](https://www.jec.senate.gov/public/_cache/files/bbaf9c9f-1a8c-45b3-816c-1415a2c1ffee/coronavirus-race-and-class-jec-final.pdf).

22 ²⁴ For example, low-income students and students of color often experience food insecurity and
23 therefore depend on school-provided meals to stave off hunger. Alisha Coleman-Jensen et al.,
24 *Household Food Security in the United States in 2018* (Sept. 2019), [https://www.ers.usda.gov/](https://www.ers.usda.gov/webdocs/publications/94849/err-270.pdf?v=3955.4)
[webdocs/publications/94849/err-270.pdf?v=3955.4](https://www.ers.usda.gov/webdocs/publications/94849/err-270.pdf?v=3955.4). Even though California schools continue to
25 provide meals during the pandemic, these students may lack the necessary means of transportation
26 to access these meals. Abigail Hess, *Widespread School Closures Mean 30 Million Kids Might Go*
Without Meals, CNBC (Mar. 14, 2020), [https://www.cnbc.com/2020/03/14/widespread-school-](https://www.cnbc.com/2020/03/14/widespread-school-closures-mean-30-million-kids-might-go-without-meals.html)
[closures-mean-30-million-kids-might-go-without-meals.html](https://www.cnbc.com/2020/03/14/widespread-school-closures-mean-30-million-kids-might-go-without-meals.html). Lack of adequate nutrition
27 negatively impacts students’ academic performance. See, e.g., Diana F. Jyoti et al., *Food*
Insecurity Affects School Children’s Academic Performance, Weight Gain, and Social Skills, 135
28 J. Nutrition 2831 (Dec. 2005).

1 including adequate internet access, a laptop or desktop computer, and a private space to study.²⁵
2 They are more likely to suffer the trauma and stress of police violence in their neighborhoods,
3 diminishing their capacity to excel on the tests.²⁶ And because their schools are underresourced,
4 they are less likely to have counselors who can advise them on how to secure one of the limited
5 spots in the already-oversubscribed 2020 SAT and ACT test administrations.²⁷ As UC Berkeley
6 Chancellor Carol Christ recognized, the COVID-19 pandemic makes the SAT and ACT “even
7 more biased instrument[s], reflecting differences between those with and without access to the
8 internet, environments more and less conducive to learning and varying access to supportive
9 resources.”²⁸

10 10. The inequities of the SAT and ACT for students with disabilities—for whom the
11 tests are not even validated—have also been exacerbated by the pandemic. Obtaining necessary
12 accommodations for the SAT and ACT has long been an arduous, stressful, and expensive process
13 for students with disabilities. Now the pandemic has resulted in a shortage of seating capacity for
14 upcoming SAT and ACT administrations, due to the cancellation of Spring 2020 test
15 administrations, widespread school closures, and social distancing requirements that reduce test
16 center capacity.²⁹ Even under normal circumstances, students with disabilities must often search
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18 ²⁵ See generally Hernan Galperin et al., *COVID-19 and the Distance Learning Gap*, USC
19 Annenberg Research Network on Int’l Comm’n (Apr. 2020), [http://arnicusc.org/wp-](http://arnicusc.org/wp-content/uploads/2020/04/Policy-Brief-5-final.pdf)
20 [content/uploads/2020/04/Policy-Brief-5-final.pdf](http://arnicusc.org/wp-content/uploads/2020/04/Policy-Brief-5-final.pdf).

21 ²⁶ *Infra* paras. 177–78.

22 ²⁷ See *infra* para. 172; Teresa Watanabe, *SAT plans for at-home tests suspended; some students*
23 *may not have access to exams*, L.A Times (June 2, 2020), [https://www.latimes.com/](https://www.latimes.com/california/story/2020-06-02/sat-exams-are-in-such-high-demand-that-not-every-student-will-be-able-to-take-it)
24 [california/story/2020-06-02/sat-exams-are-in-such-high-demand-that-not-every-student-will-be-](https://www.latimes.com/california/story/2020-06-02/sat-exams-are-in-such-high-demand-that-not-every-student-will-be-able-to-take-it)
25 [able-to-take-it](https://www.latimes.com/california/story/2020-06-02/sat-exams-are-in-such-high-demand-that-not-every-student-will-be-able-to-take-it); Scott Jaschik, *Testing Turmoil*, Inside Higher Ed (June 1, 2020),
26 [https://www.insidehighered.com/admissions/article/2020/06/01/act-replaces-leader-college-board-](https://www.insidehighered.com/admissions/article/2020/06/01/act-replaces-leader-college-board-accused-irregular-registrations-sat)
27 [accused-irregular-registrations-sat](https://www.insidehighered.com/admissions/article/2020/06/01/act-replaces-leader-college-board-accused-irregular-registrations-sat).

28 Univ. of Cal. Bd. of Regents, *Board Morning* at 1:21, YouTube (May 21, 2020),
https://www.youtube.com/watch?v=_OF_-epWecw.

29 *Supra* note 27; see also College Board, *SAT and PSAT-Related Coronavirus Updates*,
<https://pages.collegeboard.org/sat-covid-19-updates> (accessed June 13, 2020) (noting “limited
seating capacity” due to “public health restrictions and high demand”); ACT, Inc., *Cancelled and*
Rescheduled ACT Test Centers, <https://www.act.org/content/act/en/products-and-services/the->

1 for months for a test center willing to accept their accommodations. These students are even less
2 likely to find such test centers during the pandemic, and—if they are able to secure a seat at all—
3 may therefore be forced to test without accommodations if they wish to obtain a score.³⁰

4 11. The Regents have failed to demonstrate that their new admissions policies will not
5 simply replicate the inequities of UC’s previous test score requirement. In fact, Vice Provost
6 Yvette Gullatt stated plainly that SAT and ACT scores will give students who choose to submit
7 them—who are more likely to be White, nondisabled, and affluent,³¹ and who are more likely to
8 have access to high-quality test preparation services—a competitive advantage in the admissions
9 process, where they will operate as a “value add to the application.”³² The Task Force admitted
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12 [act/test-day/rescheduled-test-centers.html](#).

13 ³⁰ Although the College Board and ACT initially announced plans to offer online, at-home testing
14 during the pandemic, they have since backtracked. Watanabe, *supra* note 27; ACT, Inc., *ACT*
15 *Testing Amid COVID-19* (accessed June 13, 2020), [https://www.act.org/content/act/en/covid-](https://www.act.org/content/act/en/covid-19.html)
16 [19.html](https://www.act.org/content/act/en/covid-19.html) (“[Question:] ACT announced at-home testing. Can I do that now? [Answer:] No. The at-
17 home testing option that was recently announced will not be available until late fall or early
18 winter. ACT will be providing more information about this option in the months ahead.”). The
19 College Board’s online, at-home administration of Advanced Placement tests in Spring 2020
20 foreshadows the inequities that will result from future online, at-home SAT or ACT
21 administrations. Not only did thousands of students across the country experience technical
22 problems, including the inability to submit completed exams, but the College Board also denied
23 students accommodations for which they had already been approved. Jenny Gross, *Glitches in*
Online A.P. Tests Add to Students’ Anxieties, N.Y. Times (May 16, 2020), [https://](https://www.nytimes.com/2020/05/16/us/AP-exams-test-glitch-virus.html)
www.nytimes.com/2020/05/16/us/AP-exams-test-glitch-virus.html; Nat’l Fed’n of the Blind,
Blind Students and Advocates Resolve Dispute with College Board over AP Exams (May 29,
2020), [https://www.nfb.org/about-us/press-room/blind-students-and-advocates-resolve-dispute-](https://www.nfb.org/about-us/press-room/blind-students-and-advocates-resolve-dispute-college-board-over-ap-exams)
[college-board-over-ap-exams](https://www.nfb.org/about-us/press-room/blind-students-and-advocates-resolve-dispute-college-board-over-ap-exams) (describing College Board’s refusal to “provide hard-copy Braille
tests and/or hard-copy tactile graphics to students who had requested and been granted those
accommodations”).

24 ³¹ See, e.g., College Board, *supra* note 17; ACT, Inc., *ACT Profile Report – California:*
Graduating Class 2018 (2018), [https://www.act.org/content/dam/act/unsecured/documents/](https://www.act.org/content/dam/act/unsecured/documents/cccr2018/P_05_059999_S_S_N00_ACTGCPR_California.pdf)
25 [cccr2018/P_05_059999_S_S_N00_ACTGCPR_California.pdf](https://www.act.org/content/dam/act/unsecured/documents/cccr2018/P_05_059999_S_S_N00_ACTGCPR_California.pdf); ACT, Inc., *The ACT Technical*
Manual: Fall 2019 Version 3 11.59 (2019), [http://www.act.org/content/dam/act/unsecured/](http://www.act.org/content/dam/act/unsecured/documents/ACT_Technical_Manual.pdf)
26 [documents/ACT_Technical_Manual.pdf](http://www.act.org/content/dam/act/unsecured/documents/ACT_Technical_Manual.pdf) [hereinafter ACT Technical Manual]; Paul Tough, *The*
Years That Matter Most: How College Makes or Breaks Us 171 (2019).

27 ³² Regents Meeting (Afternoon Session), *supra* note 1, at 1:14–15 (statement of Vice Provost
28 Yvette Gullatt).

1 that it is “unsure how best to design a fair, test-optional admissions process.”³³ Yet the University
2 has provided no plan to ensure that its new admissions policies do not simply preserve the
3 structural advantage conferred by SAT and ACT scores on applicants who choose to submit them.
4 It has not even answered what the Task Force identified as “significant questions” that must be
5 addressed in order for UC’s test-optional admissions process “to be transparent and fair,”
6 including “how admissions offices [will] evaluate[] applicants who submit[] SAT scores relative
7 to applicants who d[o] not,” and “whether or how admissions offices [will] impute[] scores” to
8 applicants who do not provide them.³⁴ The University’s silence exacerbates its longstanding lack
9 of transparency regarding its use of SAT and ACT scores, causing unjustifiable squandering of
10 time and resources and intense stress for students, their families, and their schools.

11 12. Plaintiffs are students, organizations, and a school district that are committed to
12 college access for underrepresented minority students, students from low-income families, and
13 students with disabilities. Student plaintiffs are five talented and accomplished young people
14 whose ability to access public higher education has been hindered by UC’s use of SAT and ACT
15 scores. Organizational plaintiffs and Plaintiff Compton Unified School District represent diverse
16 communities and serve thousands of well-qualified students who have been adversely impacted by
17 UC’s unlawful reliance on these discriminatory metrics.

18 13. As UC’s Provost and UC Berkeley’s Chancellor have recognized, “performance on
19 the SAT and ACT [is] so strongly influenced by family income, parents’ education and race that
20 using [the tests] for high-stakes admissions decisions [is] simply wrong.”³⁵ But that is precisely
21 what President Napolitano and the Regents have chosen to do: their new policies provide the
22 State’s most privileged students with an unfair advantage in admissions for two more years and in
23 scholarship consideration for four more years. In California, however, there is no such thing as
24
25

26 _____
27 ³³ STTF Report, *supra* note 3, at 98.

28 ³⁴ *Id.*

³⁵ Watanabe, *supra* note 14.

1 discrimination-optional: UC's continued use of a flatly discriminatory metric violates the Equal
2 Protection Clause of the California Constitution and multiple State antidiscrimination statutes.

3 **PARTIES**

4 ***Individual Student Plaintiffs***

5 14. **Plaintiff Kawika Smith** is an 18-year-old Black student who graduated from
6 Verbum Dei High School in June 2020. Kawika is an active student advocate and organizer in the
7 South Los Angeles community. He serves as the youth representative on his neighborhood
8 council, engages in community organizing with Plaintiff Community Coalition, and advocates for
9 workers through the long-term homecare union SEIU Local 2015. He also works on youth poverty
10 issues with Children's Defense Fund and acts as a youth ambassador for Imagine LA, a nonprofit
11 organization that works to end family homelessness and chronic poverty. Kawika has fought
12 discriminatory policies at his high school and helped to bring about state legislation banning
13 discrimination based on natural hair, Senate Bill 188 (effective January 1, 2020). Kawika has
14 taken multiple honors courses, and he completed UC's A-G coursework requirements for
15 admission. Kawika had a cumulative GPA of 3.56 and an unweighted GPA of 3.32 in December
16 2019. His PSAT score is 1140.

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

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

1 17. Kawika’s school partnered with an SAT program through which local college
2 students from California State University, Dominguez Hills helped students prepare for the SAT.
3 Only one of the tutors offered high-quality instruction, and she was unable to tutor all of the
4 students who sought her assistance. Kawika’s more affluent friends were able to afford private
5 SAT tutoring, with costs ranging from \$2,500 to \$5,000 a month. Although Kawika participated in
6 Khan Academy,³⁶ that program did not help him improve his scores on the PSAT. On simulated
7 SAT tests, Kawika’s score dropped from his 1140 PSAT score to 980. During these tests, Kawika
8 began questioning whether he was intelligent enough to succeed on the SAT, only to realize that
9 the test was entirely unable to measure his many accomplishments. After paying for private
10 tutoring, Kawika’s friends improved their scores on both the PSAT and SAT. Kawika decided not
11 to take the SAT at the same time as many of his peers because he felt underprepared.

12 18. Kawika’s lifelong dream has been to attend either UC Berkeley or UCLA. He takes
13 pride in the UC system and wishes to study in its leading social science departments. Attending
14 college at a UC campus would afford Kawika the opportunity to continue working with
15 California-based community organizations and to apply his college education and experiences to
16 building a more equitable California. When Kawika learned that he would have to take the SAT to
17 be considered at any UC campus, he visited the websites of UC Berkeley and UCLA in an attempt
18 to determine what score he would need for admission. UC Berkeley’s “Freshman Student Profile”
19 listed SAT scores between 1350 and 1540, and UCLA’s “Profile of Admitted Freshmen” listed
20 SAT scores between 1370 and 1540. Given that his simulated SAT score had dropped to 980—
21 well below the lower end of his desired campuses’ published score ranges—Kawika was deterred
22 from applying to UC Berkeley and UCLA. He instead applied to East Coast colleges with test-
23 optional policies.

24 19. Kawika was harmed by UC’s discriminatory practice of considering SAT and ACT
25 scores when he was forced to spend his time, resources, and significant emotional and mental
26

27 ³⁶ 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.
201.

1 energy to prepare for a discriminatory test. He was also harmed when he repeatedly received
2 scores on practice tests—and ultimately, on the SAT itself—that he knew would prevent him from
3 gaining admission to his dream schools. Despite his low practice test scores, Kawika had the
4 courage to take the SAT in December 2019. As his practice scores predicted, his score—1040—
5 was well below the range of scores published by both UCLA and UC Berkeley. Kawika’s lifelong
6 ambition to attend UC Berkeley or UCLA was therefore stymied by UC’s use of test scores that
7 fail to measure his true abilities. UC’s use of SAT and ACT scores has subjected Kawika to
8 unlawful discrimination on the basis of race and wealth and has impaired his access to public
9 higher education.

10 20. **Plaintiff Gloria D.** is an 18-year-old Latinx student who graduated from a private
11 high school in California in May 2020. Gloria D.’s first language is Spanish. As a young child,
12 Gloria woke up at four a.m. every day to commute across the border to attend school.

13 21. Gloria D. is a strong student. She has taken a rigorous course load, and graduated
14 with a weighted GPA of 4.02 and an unweighted GPA of 3.79. Gloria D. completed UC’s A-G
15 coursework requirements for admission. She aspires to be a doctor and has thus taken more
16 science classes than her school requires, including an AP science class. She has received multiple
17 academic awards and is a member of the National Honor Society. Outside of school, Gloria D.
18 volunteers at a hospital and is a dancer.

19 22. Gloria D. has taken the SAT twice: once in the spring of her junior year, and once
20 in the fall of her senior year. As a student for whom English is a second language, Gloria D. has
21 experienced difficulties with the phrasing of SAT questions, including word problems in the math
22 section. She takes a long time to read and understand each word problem, and when she realizes
23 that she is running out of time, she panics and guesses the answer. She has subsequently reviewed
24 word problems she answered incorrectly, only to realize that she understood the underlying
25 mathematical concept, but did not understand the question as phrased. As a result, Gloria D. gets
26 nervous when taking college admissions tests. She has experienced headaches when taking mock
27 exams.

28

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

15 24. Encouraged by her high school to pursue any career to which she aspires, Gloria D.
16 is determined to become a doctor. Gloria D.'s lifelong ambition has been to attend UCLA. UCLA
17 appeals to Gloria D. because it is known as a great research school, which Gloria D. believes will
18 benefit her when she applies to medical school. For Gloria D., obtaining a degree from UCLA
19 would be like obtaining a "seal of approval" when applying to medical school and pursuing a
20 career as a doctor. Attending a UC campus would also be more affordable for Gloria D. and her
21 family than attending a private college. Gloria D. applied to UCLA and two other UC campuses,
22 but due to her SAT scores, she did not gain admission at any of them. When Gloria D. visited one
23 UC campus, a student told her that with her SAT scores, she had no chance of acceptance. UC's
24 use of test scores that fail to measure Gloria D.'s true abilities has devastated her and her mother
25 and shattered her dream of attending UCLA. UC's use of test scores has subjected Gloria D. to
26 unlawful discrimination on the basis of race and wealth and has impaired her access to public
27 higher education.

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1 25. **Plaintiff Stephen C.** is a 17-year-old student who is a rising junior at a public high
2 school in California. He plans to apply to several UC campuses for undergraduate education,
3 including the most selective campuses. Stephen C. has a history of disabilities that have affected
4 his testing performance. Since seventh grade, Stephen C. has had an official school
5 accommodations plan pursuant to Section 504 of the Rehabilitation Act of 1973 (his “504 Plan”),
6 which allows him academic accommodations including extended time on exams, the ability to
7 take exams in a distraction-reduced setting, and preferential seating in class. Stephen C. currently
8 has a GPA over 4.0 and takes one of the most rigorous college preparatory course loads offered at
9 his high school. He is on track to complete UC’s A-G coursework requirements for admission. He
10 is also a varsity athlete.

11 26. Stephen C. plans to apply to UC campuses during the Fall 2022 admissions cycle.
12 During this cycle, the Regents have permitted UC campuses to use SAT and ACT scores for both
13 admissions and scholarship determinations. Because UC and individual campuses have failed to
14 explain how admissions officers will evaluate students who submit SAT or ACT scores relative to
15 students who do not, Stephen C. does not know how non-submission of scores will be viewed in
16 the admissions process, especially at the more selective UC campuses. Nor does he know if he
17 will be fairly considered for scholarships if he does not submit an SAT or ACT score, because UC
18 and individual campuses have not explained how scores (or lack thereof) will be assessed in those
19 determinations, either. Without such information, Stephen C. cannot make an informed decision
20 about whether to expend time and resources to compete for limited testing seats and to prepare to
21 take the SAT or ACT.

22 27. Although UC’s press release promises that “[s]tudents will not be penalized in the
23 admissions review process for not submitting ACT/SAT scores,”³⁷ counselors at Stephen C.’s high
24 school and others familiar with the admissions process have advised him and his peers that they
25 should still submit an ACT or SAT score in order to stay competitive in UC admissions—
26 consistent with Vice Provost Gullatt’s statement that SAT and ACT scores will function as a

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28 ³⁷ Univ. of Cal. Office of the President, *supra* note 5.

1 “value add” in admissions determinations.³⁸ Stephen C. has been advised that there will likely be
2 an increase in qualified applicants to UC due to its new policies, such that he should still seek to
3 obtain high test scores to secure a competitive advantage in admissions. Stephen C. and his peers
4 thus understand that students who have the means to secure test seats and the preparation to
5 achieve competitive scores should submit them.

6 28. Stephen C. has thus begun to prepare for the tests. He has taken practice exams as
7 well as a diagnostic test to determine whether he is likely to secure a higher score on the ACT or
8 SAT. Through this preparation and due to his disabilities—which make it difficult for him to focus
9 for extended periods of time—Stephen C. has decided to take the ACT, which has shorter sections
10 than the SAT.

11 29. Due to his disabilities, Stephen C. requires testing accommodations to take the
12 ACT. Recently, his high school and school district changed their SAT and ACT accommodation
13 policies. Due to the burdens that the standardized testing accommodations process imposes on his
14 high school’s counseling department, Stephen C.’s high school will no longer apply for SAT or
15 ACT accommodations for any of its students or assist students or families with this process. This
16 change has made the process more difficult to complete for Stephen C. and other students in his
17 school district, including the 45 percent of students who are socioeconomically disadvantaged.
18 Because the testing companies prefer applications for accommodations completed by high school
19 counselors,³⁹ students like Stephen C. are less likely to receive the testing accommodations to
20 which they are entitled.

23 ³⁸ Regents Meeting (Afternoon Session), *supra* note 1, at 1:14–15 (statement of Vice Provost
24 Yvette Gullatt).

25 ³⁹ ACT, Inc., *Making a Request*, [http://www.act.org/content/act/en/products-and-services/the-](http://www.act.org/content/act/en/products-and-services/the-act/registration/accommodations.html)
26 [act/registration/accommodations.html](http://www.act.org/content/act/en/products-and-services/the-act/registration/accommodations.html) (“You will need to work with a school official when making
27 your requests. Your school official will submit your request, with documentation, to ACT.”);
28 College Board, *Students with Disabilities*, [https://collegereadiness.collegeboard.org/sat/register/](https://collegereadiness.collegeboard.org/sat/register/special-circumstances/students-with-disabilities)
[special-circumstances/students-with-disabilities](https://collegereadiness.collegeboard.org/sat/register/special-circumstances/students-with-disabilities) (“Students and parents: The best way to get
College Board approval for testing with accommodations is to work with your school. Find out
why working with your school is best.”).

1 30. Moreover, not all test sites permit students with disabilities to take the ACT with
2 necessary accommodations, such that—unlike examinees without disabilities—Stephen C. may
3 not be able to choose his preferred test location or test date when he registers. Although ACT, Inc.
4 has announced the opening of standard or “national” test centers for the June and July 2020 ACT
5 administrations, Stephen C.’s disabilities require accommodations that ACT, Inc. will not provide
6 at those test centers. Nor can Stephen C. take the online ACT with the accommodations he needs,
7 even though he would prefer to take the online ACT because he has spent the last several months
8 learning, studying, and taking exams online. Instead, test-takers like Stephen C. must take the
9 ACT at their schools, but due to the COVID-19 pandemic, Stephen C.’s high school has been
10 closed for several months. It will not be open in June and July 2020, when students who do not
11 require school-based accommodations will have the opportunity to take the ACT at national test
12 centers, including multiple locations near Stephen C.’s home. Stephen C.’s high school has not yet
13 announced whether it will open in Fall 2020. Even if his school reopens during the window of
14 time in which Stephen C. needs to take the test, ACT, Inc. will not require his school to provide
15 his accommodations, nor will it guarantee his ability to test with accommodations at another
16 location during this window. Accordingly, Stephen C. faces significant hurdles to even take the
17 ACT with the accommodations he needs.⁴⁰ Without these necessary accommodations, Stephen C.
18 will be unable to perform to his full ability on the ACT.

19 31. Stephen C. has also confronted the stigma associated with requesting and using the
20 testing accommodations he requires to demonstrate his abilities. Many of his peers and their
21 parents consider the use of accommodations—even by students who are legally entitled to them
22 and whose 504 Plans or Individualized Education Programs (“IEPs”) provide for them—to be
23 “cheating.” He has found that certain individuals, even those who work with children, consider
24 standardized test accommodations to be a “privilege” instead of a legal right. Following the
25 negative press surrounding the recent college admissions scandal, Stephen C. has had to weigh
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28 ⁴⁰ As described *infra* paras. 184–86, Stephen C. would face similar barriers if he sought to take the SAT with accommodations.

1 using the accommodations he needs against the embarrassment he will experience and suspicion
2 he will face if his peers or their parents—or even college admissions officers—find out.

3 32. Stephen C. will have to spend an unreasonable amount of time and money to secure
4 necessary accommodations and prepare for the ACT, which will be extremely burdensome for him
5 and his family. Because the SAT and ACT are not validated for students with disabilities,⁴¹
6 Stephen C.’s standardized test scores cannot predict his ability to succeed in college. His scores
7 will be an even worse predictor of his college performance if he is unable either to obtain the
8 accommodations he needs or to find a location at which he can test with those accommodations.
9 UC’s continued use of SAT and ACT scores to evaluate applicants thus jeopardizes Stephen C.’s
10 ability to be fairly considered in UC’s admissions process, subjecting him to unlawful
11 discrimination on the basis of disability and impairing his access to public higher education.

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

22 34. A strong and motivated student, Alex applied for and was accepted to John
23 Marshall High School’s School for Advanced Studies (SAS). SAS sites are so designated for their
24 exemplary gifted/talented education programs, which “offer high-level academic opportunities that
25 meet the unique educational needs of K-12 gifted learners.”⁴² In SAS, Alex appreciated being
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27 ⁴¹ *Infra* para. 197.

28 ⁴² L.A. Unified Sch. Dist., *SAS Home: What Are Schools for Advanced Studies?*,
<http://echoices.lausd.net/sas>.

1 surrounded by other talented and driven students, who pushed each other to perform well in their
2 coursework. Alex's favorite classes were English and chemistry. Outside of the classroom, Alex
3 played on her high school's soccer team and participated in Habitat for Humanity. She graduated
4 in June 2019 with a cumulative GPA of approximately 3.4.

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

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

17 37. Alex wanted to attend UC so that she could study among the best students in the
18 State. Although UCLA was Alex's ideal college, she was deterred from applying by its admitted
19 students' high SAT and ACT score ranges, which UCLA publishes on its website and which were
20 well above Alex's scores. Alex qualified for an application fee waiver, which allows students who
21 would otherwise be unable to afford it the ability to apply to up to four UC campuses for no fee.
22 Instead of applying to UCLA, where she felt she had no chance of admission due to her SAT
23 scores, Alex chose to apply to UC Davis, UC Merced, UC Riverside, and UC Santa Cruz. Of those
24 schools, UC Davis—with its College of Agricultural and Environmental Sciences—appealed most
25 strongly to Alex, although she did not feel confident when applying, again because of her SAT
26 scores. UC Davis and UC Santa Cruz denied Alex admission. UC Riverside placed Alex on its
27 waitlist but did not ultimately grant her admission. Although Alex was offered admission at UC
28 Merced, she had little familiarity with its campus and programs and was concerned about whether

1 those programs would meet her educational needs and goals. Although Alex was capable of
2 succeeding academically at the other UC campuses to which she applied, and which would have
3 been a better fit, her SAT scores prevented her from gaining admission to those campuses. Alex
4 ultimately decided to attend Pasadena City College in the hope that by performing well there, she
5 would have the opportunity to transfer to a UC campus that is closer to her family or more suited
6 to her academic interests.

7 38. Alex aspires to a career in which she can work with animals. She dreams of putting
8 her passion for the environment into practice by running her own farm and caring for many
9 animals. UC's use of SAT and ACT scores forced Alex to defer this dream. Alex is currently
10 enrolled at a community college with fewer supports for low-income students than UC and is
11 waiting until her SAT scores no longer constitute a barrier to admission at the UC campuses she
12 hopes to attend. UC's use of SAT and ACT scores has subjected Alex to unlawful discrimination
13 on the basis of race and wealth and has impaired her access to public higher education at UC.

14 39. **Plaintiff Gary W.** is an 18-year-old student who will graduate in 2020 from a
15 public high school in Long Beach, California. Gary W. has a learning disability and a serious
16 health condition that renders him particularly vulnerable to COVID-19. He has completed UC's
17 A-G coursework requirements with a GPA that qualifies him for admission to UC.

18 40. Gary W.'s high school counselors have advised him and his peers that despite
19 UC's new admissions policies, they should nevertheless submit an ACT or SAT score in order to
20 remain competitive in UC's admissions process. Because UC and individual campuses have failed
21 to explain how they will use test scores to evaluate students in admissions and scholarship
22 determinations—other than to state that such scores will operate as a “value add”—Gary W., like
23 Stephen C., does not want to diminish either his chances of admission or of securing a scholarship
24 by not submitting a test score.

25 41. Gary W. has taken the SAT once, as a junior in high school. Because his school
26 failed to order the correct test forms for students with accommodations, Gary W. and the other
27 students with accommodations had to take the test several weeks after their classmates. Gary W.
28 had to miss several classes in order to take the test, whereas the students who tested earlier without

1 accommodations did not. Missing class caused Gary W. to feel stressed and distracted during the
2 test, and he received a score below the range of scores published by his desired UC campuses.

3 42. Near the end of his junior year of high school, Gary W. was diagnosed with his
4 serious health condition. For the remainder of his junior year and until the middle of his senior
5 year, he could not regularly attend school in person. Gary W. was eventually able to return to
6 school, but due to his disabilities and the accommodations he requires, he cannot take the ACT or
7 SAT in a national test center with other students. Although Gary found a school that would allow
8 him to re-take the SAT with his accommodations, that school closed due to the COVID-19
9 pandemic before he could take the test. Due to widespread school closures, Gary W. and other
10 students who require in-school accommodations are unable to find test locations, even though the
11 College Board’s standard or “national” test centers are continuing to test students who do not
12 require school-based accommodations.

13 43. Because Gary W. could not re-take the SAT with accommodations before the
14 application deadline for UC’s Fall 2020 admissions cycle, he is taking a gap year, during which he
15 will attempt to find a location where he can take the SAT with the accommodations he needs.
16 Once Gary W. is able to re-take the SAT with his necessary accommodations, he will apply to
17 several UC campuses as a first-year during the next UC admissions cycle—which, given the
18 shortage of testing capacity for students requiring accommodations, is likely to be the Fall 2022
19 admissions cycle.

20 44. Gary W. has spent, and continues to spend, an unreasonable amount of time and
21 money in seeking to take the SAT with the accommodations he needs. The SAT accommodations
22 and testing process has been extremely burdensome for him and his family. Because the SAT and
23 ACT are not validated for students with disabilities,⁴³ Gary W.’s standardized test scores cannot
24 predict his ability to succeed in college. Like Stephen C.’s, Gary W.’s scores will be an even
25 worse predictor of his college performance if he is unable either to obtain the accommodations he
26 needs or to find a location at which he can test with those accommodations. UC’s continued use of

27
28 ⁴³ *Infra* para. 197.

1 SAT and ACT scores to evaluate applicants has thus forced Gary W. to take a gap year before
2 applying to UC. It has subjected him to unlawful discrimination on the basis of disability and
3 impaired his access to public higher education.

4 ***Organizational Plaintiffs***

5 45. **Plaintiff Chinese for Affirmative Action (“CAA”)** is a community-based civil
6 rights organization in San Francisco, California. The majority of CAA’s constituents and
7 supporters are individuals who reside in California and pay State taxes. The mission of CAA is to
8 defend the civil and political rights of Chinese Americans and to advance multiracial democracy.
9 Community programs at CAA currently encompass direct services, leadership development, and
10 civic engagement programs that prioritize the needs and aspirations of its low-income, limited-
11 English proficient, immigrant community members. Through these programs, CAA reaches and
12 serves approximately 1,000 people each year. CAA constituents contribute to the funding of the
13 organization through individual donations, fundraising drives, and other community fundraising
14 events. Close to 100 percent of CAA’s program participants and constituents are from low
15 socioeconomic status families, and a majority are limited-English proficient or non-English
16 speaking. The majority of participants in CAA’s leadership development work are mothers of
17 students in California’s K-12 public education system. For five decades, CAA’s education equity
18 efforts have involved direct work with English language learners and limited-English proficient
19 parents to ensure that all families have equitable access to high-quality public K-12 education and
20 public higher education.

21 46. CAA is governed by Directors with advisory power, as well as a Board of Trustees.
22 All of the individuals who serve as CAA Directors are of Chinese descent, and from families that
23 are or have been low-income, limited-English proficient, immigrant families, like those of CAA’s
24 program participants and constituents. Directors are nominated and elected based on their
25 connection to CAA’s mission and affiliation with CAA’s community and values. CAA
26 consistently revisits and adapts its programming based on direct feedback from the communities it
27 serves. Constituents who participate in the organization’s leadership development programming
28 identify priority issues and shape what policies the organization addresses through outreach and

1 advocacy.

2 47. CAA has identified the SAT and ACT as a major discriminatory barrier to college
3 access for its program participants and constituents and for all students of diverse backgrounds,
4 including those who are English language learners. In addition, CAA believes that UC's use of
5 SAT and ACT scores has harmfully skewed the priorities and resources of the families it serves
6 and the schools they attend away from initiatives that would focus on high-quality and more
7 equitable education opportunities. Many parent participants in CAA programs wish to have their
8 children attend the UC system, and their children aspire to attend their desired UC campuses.
9 CAA has frequently seen these aspirations frustrated by UC's use of SAT and ACT scores in its
10 admissions and scholarship processes. Parents that CAA serves do not have the economic means
11 to pay for the expensive test preparation tutoring that more affluent families can afford, placing
12 their children at a disadvantage when applying to UC campuses.

13 48. CAA has multiple program participants and constituents who are limited-English
14 proficient; aspire to attend college within the UC system; have taken or are on track to complete
15 UC's required A-G coursework or its equivalent; and have been deterred from applying to, or been
16 rejected from, their desired UC campuses due to their low test scores. CAA also has multiple
17 program participants and constituents who are low socioeconomic status; aspire to attend college
18 within the UC system; have taken or are on track to complete UC's required A-G coursework or
19 its equivalent; and have been deterred from applying to, or been rejected from, their desired UC
20 campuses due to their low test scores.

21 49. CAA has multiple high school student program participants and constituents who
22 are limited-English proficient; aspire to attend college within the UC system; have taken or are on
23 track to complete UC's required A-G coursework or its equivalent; and intend to apply for
24 admission to UC in the Fall 2021, Fall 2022, or Fall 2023 admissions cycles. CAA also has
25 multiple high school student program participants and constituents who are low socioeconomic
26 status; aspire to attend college within the UC system; have taken or are on track to complete UC's
27 required A-G coursework or its equivalent; and intend to apply for admission to UC in the Fall
28 2021, Fall 2022, or Fall 2023 admissions cycles.

1 50. These program participants and constituents will be denied the opportunity to
2 compete on equal footing with their White and more privileged peers for admission to UC (during
3 the Fall 2021 or Fall 2022 admissions cycles); guaranteed admission through the statewide
4 eligibility pathway (during the Fall 2021, Fall 2022, and Fall 2023 admissions cycles); and UC
5 scholarships (during the Fall 2021, Fall 2022, and Fall 2023 admissions cycles).

6 51. For the foregoing reasons, the rights and interests of CAA's program participants
7 and constituents are adversely affected by UC's actions and inactions as alleged in this complaint.
8 Neither the claims asserted nor the relief requested in this complaint require the participation of
9 CAA's individual program participants or constituents.

10 52. CAA has also diverted significant organizational resources to counteract UC's
11 discriminatory use of SAT and ACT scores. Due to the barriers these admissions tests pose for
12 CAA constituents and their families, for the past 15 years, CAA has had to designate the
13 equivalent of a half-time staff member to work on the issue of inequitable college admissions
14 testing. If UC eliminated its use of the SAT and ACT for admissions and scholarship purposes,
15 CAA would allocate that staff time to other educational equity priority areas. Reallocating this
16 time would allow the organization to better address the pressing educational needs of its
17 constituents.

18 53. **Plaintiff College Access Plan ("CAP")** is a nonprofit organization based in
19 Pasadena, California. College Access Plan prepares underserved students to succeed in college.
20 CAP provides programs for students in middle school and high school, as well as a College
21 Success Program for alumni of its high school program who are currently enrolled in college. CAP
22 has approximately 1,600 student participants per year across all programs. CAP students are
23 predominantly low-income students of color. 68 percent of CAP students are Latinx, and 13
24 percent are Black. 80 percent of CAP students receive free or reduced price lunch, and 75 percent
25 are first-generation college-going students. All CAP students are California residents.

26 54. CAP works to address the gap in college knowledge and matriculation among low-
27 income and college-going students in Pasadena's public schools. Working closely with counselors
28 and teachers, CAP has developed a comprehensive program that works in partnership with schools

1 to add meaningful and individualized college readiness support that is open to all students. CAP's
2 opt-in programs prioritize student-driven relationships with trusted adults to embolden students of
3 all ages to envision themselves with a college degree. Because access to education is a right, not a
4 privilege, CAP never selects students based on limiting criteria like grades, test scores, and legal
5 status.

6 55. CAP students shape the organization's programming in multiple ways. CAP has a
7 Student Advisory Council comprised of 10 members of its College Success Program. Student
8 Advisory Council members are current college students and alumni of CAP's college preparation
9 programs. They advise CAP staff and board members on the needs of first-generation college-
10 going students of color, and make suggestions for how CAP can better serve those students.
11 CAP's governing board also has a permanent alumnus/a seat, which is filled by a CAP alumnus/a
12 who serves as a full-time board member. CAP frequently surveys students and families to
13 determine which of its services and programs are most effective and responsive to their needs.

14 56. CAP has multiple program participants who are from underrepresented minority
15 groups; aspire to attend college within the UC system; have taken or are on track to complete
16 UC's required A-G coursework or its equivalent; and have been deterred from applying to, or been
17 rejected from, their desired UC campuses due to their low test scores. CAP also has multiple
18 program participants who are low socioeconomic status; aspire to attend college within the UC
19 system; have taken or are on track to complete UC's required A-G coursework or its equivalent;
20 and have been deterred from applying to, or been rejected from, their desired UC campuses due to
21 their low test scores.

22 57. Two recent CAP alumni, both from the high school class of 2018, demonstrate the
23 impact of these tests on CAP students. Both students were low socioeconomic status, first-
24 generation college-going students with 4.0 GPAs and engineering-focused extracurricular
25 activities. Both had received "A" grades in AP Calculus. However, one student was a recent
26 immigrant to the United States who, despite having worked diligently at test preparation, scored
27 180 points lower on the SAT than the other student.

28

1 58. Both students applied as engineering majors to four UC campuses—the maximum
2 number of campuses at which a student can use his or her application fee waiver. The student with
3 the higher SAT score was accepted to three UC campuses and waitlisted at the fourth; the student
4 with the lower score was rejected from all four UC campuses to which he applied.

5 59. CAP has multiple high school student program participants who are from
6 underrepresented minority groups; aspire to attend college within the UC system; have taken or
7 are on track to complete UC's required A-G coursework or its equivalent; and intend to apply for
8 admission to UC in the Fall 2021, Fall 2022, or Fall 2023 admissions cycles. CAP also has
9 multiple high school student program participants who are low socioeconomic status; aspire to
10 attend college within the UC system; have taken or are on track to complete UC's required A-G
11 coursework or its equivalent; and intend to apply for admission to UC in the Fall 2021, Fall 2022,
12 or Fall 2023 admissions cycles.

13 60. These students will be denied the opportunity to compete on equal footing with
14 their White and more privileged peers for admission to UC (during the Fall 2021 or Fall 2022
15 admissions cycles); guaranteed admission through the statewide eligibility pathway (during the
16 Fall 2021, Fall 2022, and Fall 2023 admissions cycles); and UC scholarships (during the Fall
17 2021, Fall 2022, and Fall 2023 admissions cycles).

18 61. For the foregoing reasons, the rights and interests of CAP's students are adversely
19 affected by UC's actions and inactions as alleged in this complaint. Neither the claims asserted nor
20 the relief requested in this complaint require the participation of individual CAP students.

21 62. CAP has diverted significant organizational resources to counteract UC's
22 discriminatory use of SAT and ACT scores. Due in significant part to UC's use of standardized
23 test scores, CAP targets extensive resources to providing free test preparation courses to students
24 who attend Pasadena's public high schools, as well as to helping students, their families, and
25 CAP's community partners to understand the SAT and ACT, their design and differences, their
26 use by colleges, and their impact on admissions decisions and scholarship consideration. CAP's
27 test preparation program budget is \$92,000 annually. In addition to funding a full-time staff
28 member who supports CAP's test preparation programs throughout the year and designs

1 curriculum, this budget also funds CAP supervisors' oversight and management of test preparation
2 programs, test information sessions, and additional programmatic expenses related to test
3 preparation. CAP also dedicates volunteer resources to its test preparation programs: CAP
4 volunteers assist with pre- and post-test marking and provide in-class support.

5 63. If UC eliminated its use of the SAT and ACT for admissions and scholarship
6 purposes, CAP would experience a decline in demand for its test preparation courses, which
7 would allow CAP to allocate its staff time and resources to other activities—namely those that
8 enrich students' experiences and holistic college readiness, thus actually impacting students'
9 likelihood of graduating from college. CAP would use its staff time and resources to devote
10 greater attention to students' personal, academic, and future professional growth, by connecting
11 them with volunteer opportunities, facilitating their community engagement, and building their
12 leadership capacity and other skills that will assist them in college and in their careers. Instead,
13 UC's use of SAT and ACT scores has forced CAP to prioritize test preparation services that do not
14 prepare students to succeed in college.

15 64. **Plaintiff College Seekers** is a California corporation with State and federal
16 nonprofit taxpayer status. It is a community-based, membership organization whose mission is to
17 improve access to higher education for its members who are primarily from underserved
18 populations in California. College Seekers serves non-traditional learners, especially those who
19 homeschool, use public independent study, or attend non-traditional schools. College Seekers'
20 student members include students from underrepresented minority groups, students with
21 disabilities, students from lower-income families, and students from remote or underserved
22 communities. College Seekers currently has over 2,900 members and typically adds between 100
23 to 150 new members per month. All members are California residents. Members are parents of
24 students and students who learn in non-traditional environments or alternative schooling situations
25 and who intend to apply to four-year colleges and universities. A large subset of members are
26 parents of students and students with a wide range of disabilities, including autism spectrum
27 disorder, hearing and vision impairments, serious health conditions, motor impairments, learning
28 disabilities, and mental health disabilities. Another large subset of members are parents of students

1 and students who have suffered trauma or bullying in traditional high school environments. The
2 Executive Director of College Seekers and a community liaison/volunteer administrator—both
3 College Seekers members—approve new members after an online screening process.

4 65. College Seekers strives to provide increased access to four-year colleges through its
5 members' exchange of ideas and experiences. Members who may not otherwise have access to
6 college counseling resources learn how to navigate the college application process through the
7 shared experiences of other members, which is particularly helpful for parents of students with
8 disabilities and students with disabilities, who face unique challenges with respect to college
9 admissions and standardized testing.

10 66. Members are divided into three different subgroups based upon a student's school
11 type. Each subgroup is comprised of students with disabilities and parents of students with
12 disabilities. Each subgroup has a volunteer member leader who is responsible for outreach and
13 programming within the group.

14 67. College Seekers helps create access to postsecondary options through social capital,
15 awareness of college opportunities, and access to accurate information, including information
16 about standardized testing. College Seekers delivers programming through an online network and
17 social media platform for its members. Programming is driven by members' specific interests and
18 educational goals. College Seekers members have recently expressed heightened concern about
19 the lack of access to standardized testing and its impact on college admissions. Most College
20 Seekers students have applied to or plan to apply to UC.

21 68. College Seekers has seen the lack of access to standardized testing constitute a
22 consistent barrier to higher education for its students. The SAT and ACT accommodations request
23 process and its attendant costs have caused College Seekers' parent and student members to
24 experience distress, frustration, and concern. Even when College Seekers' student members are
25 approved for accommodations, many struggle to find test sites willing to accommodate them.
26 Neither ACT, Inc. nor the College Board assists College Seekers' student members in locating test
27 centers willing to test them with accommodations, and neither testing company guarantees access
28 to accommodated testing on a preferred test date.

1 69. The challenges of obtaining approval for necessary accommodations and finding a
2 test center at which to test with those accommodations reduce access to postsecondary
3 opportunities for students with disabilities, particularly those from disadvantaged and underserved
4 backgrounds and rural areas. These difficulties and expenses have led some parents to urge their
5 children to attend community college and then transfer rather than take the SAT or ACT without
6 accommodations. Because they cannot take the SAT or ACT with the accommodations they need,
7 the majority of College Seekers' student members who apply to UC seek admission as transfer
8 students, rather than as first-years.

9 70. Despite UC's new admissions policies, many of College Seekers' student members
10 may still be required to submit SAT or ACT scores in order to be considered for admission.
11 Because students with disabilities and students who learn in alternative settings may not have
12 access to A-G courses, they may only qualify for admission through UC's "admission by exam"
13 policy.⁴⁴ Under this policy, students who lack access to A-G courses must obtain qualifying scores
14 on the SAT or ACT and two SAT subject tests. Since students cannot take both the SAT and SAT
15 subject tests during a single administration, UC's admission by exam policy requires them to
16 obtain seats for at least two separate test administrations—a feat that is challenging for students
17 with accommodations even under normal circumstances, and virtually impossible during the
18 COVID-19 pandemic, which has resulted in the widespread closure of schools and test locations.

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20
21 ⁴⁴ Univ. of Cal. Admissions, *Admission by exam*, <https://admission.universityofcalifornia.edu/admission-requirements/freshman-requirements/admission-by-exam.html>. UC also accepts a
22 limited number of students who have not fulfilled its eligibility requirements through its
23 "admission by exception" policy. Univ. of Cal. Admissions, *Admission by exception*,
24 <https://admission.universityofcalifornia.edu/counselors/freshman/minimum-requirements/exception/>. However, applicants cannot request admission by exception, and UC's own internal
25 audit found significant problems in UC's implementation of the policy, including failure to
26 "document the exceptional characteristics that caused an applicant to be considered for admissions
27 by exception" and the lack of "independent[] review[] and approv[al] by someone other than the
28 individuals who initially selected the applicants." Univ. of Cal. Ethics, Compliance & Audit
Servs., *Systemwide Audit of Undergraduate Admissions* 11 (June 2019),
<https://www.universityofcalifornia.edu/sites/default/files/audit-report.pdf> [hereinafter June 2019
UC Audit].

1 71. College Seekers has multiple members who are students with disabilities; aspire to
2 attend college within the UC system; have taken or are on track to complete UC's required A-G
3 coursework or its equivalent;⁴⁵ and have been deterred from applying to, or been rejected from,
4 their desired UC campuses due to their low test scores and/or the inaccessibility of testing with
5 necessary accommodations. College Seekers also has multiple members who are low
6 socioeconomic status; aspire to attend college within the UC system; have taken or are on track to
7 complete UC's required A-G coursework or its equivalent; and have been deterred from applying
8 to, or been rejected from, their desired UC campuses due to their low test scores and/or the
9 inaccessibility of testing with necessary accommodations. Finally, College Seekers has multiple
10 members who are students from underrepresented minority groups; aspire to attend college within
11 the UC system; have taken or are on track to complete UC's required A-G coursework or its
12 equivalent; and have been deterred from applying to, or been rejected from, their desired UC
13 campuses due to their low test scores and/or the inaccessibility of testing with necessary
14 accommodations.

15 72. One student member of College Seekers graduated from his public high school in
16 2020 with a 4.0 GPA. He completed UC's A-G coursework requirements for admission. This
17 student, who is from a low socioeconomic status family, scored 1160 on the SAT, below the range
18 of scores published by his desired UC campuses. This student applied, but was not admitted to,
19 any of his desired UC campuses.

20 73. College Seekers' student members who require accommodations have experienced
21 difficulty even accessing SAT and ACT testing. For example, one member of College Seekers, a
22 student with disabilities who is on track to complete his A-G requirements, plans to apply to his
23 desired UC campuses as a first-year. Although ACT, Inc. has approved his necessary
24 accommodations, he has been unable to take the test because he cannot find a location willing to
25 test him with his accommodations. This student received notice from ACT, Inc. informing him
26 that "you have been approved for Special Testing with Accommodations, but . . . your home
27

28 ⁴⁵ *Supra* para. 70.

1 school is unable to administer the test during your scheduled testing window.” ACT told this
2 student that “[o]nce we receive your information, we will attempt to arrange testing at a school
3 within 75 miles of your home. We will notify you via email as soon as we’ve found a location.”
4 However, ACT made clear that there was no guarantee that he would be able to test at all, stating
5 that “[w]e cannot guarantee we will be able to arrange a location or that the location we arrange
6 will be able to test at the time of your choice.” This student continues to search for, but has yet to
7 find, a location that will allow him to take the ACT with the accommodations he needs.

8 74. Another member of College Seekers—a student with disabilities—was on track to
9 complete UC’s A-G coursework requirements and planned to apply to his desired UC campuses as
10 a first-year. Due to his disabilities, the College Board approved his request for SAT
11 accommodations that required school-based testing. However, because his high school was not a
12 College Board-approved test center, this student could not take the SAT with accommodations
13 there. He and his parents unsuccessfully contacted 22 different schools in an attempt to find one
14 that would allow him to test with his necessary accommodations. After this student missed two
15 separate SAT administrations due to his inability to secure a testing location, he decided to take
16 the ACT instead of the SAT. He did not have enough time to seek ACT accommodations prior to
17 testing and therefore did not perform at a level that demonstrated his true abilities. Although this
18 student had hoped to attend UC Irvine, after receiving an ACT score that was below the range of
19 scores published by most UC campuses, he was deterred from applying to the UC system at all.

20 75. Another student member of College Seekers required accommodations to take the
21 SAT due to his multiple disabilities. The College Board initially refused to grant this student’s
22 request for accommodations. He had to file two appeals in order to receive permission to use the
23 accommodations he needed, which took an entire year. One of this student’s necessary
24 accommodations was two-day testing. After the College Board approved his accommodations, he
25 and his parents spent two months searching for a test location that would allow him to use them.
26 This student eventually located a test center, but when he arrived, the proctor tried to force him to
27 complete the test in a single day due to space constraints. In order to use his necessary
28 accommodations, this student had to test late in the day, even though it was more difficult for him

1 to focus at that time. His SAT score thus did not reflect his true abilities. Although he completed
2 UC's A-G coursework requirements, this student was deterred from applying to the UC system
3 because his score was below the range of scores published by most UC campuses. He will be
4 attending a test-optional four-year college in the fall of 2020.

5 76. College Seekers has multiple high school student members who are students with
6 disabilities; aspire to attend college within the UC system; have taken or are on track to complete
7 UC's required A-G coursework or its equivalent; and intend to apply for admission to UC in the
8 Fall 2021, Fall 2022, or Fall 2023 admissions cycles. College Seekers also has multiple high
9 school student members who are low socioeconomic status; aspire to attend college within the UC
10 system; have taken or are on track to complete UC's required A-G coursework or its equivalent;
11 and intend to apply for admission to UC in the Fall 2021, Fall 2022, or Fall 2023 admissions
12 cycles. Finally, College Seekers has multiple high school student members who are
13 underrepresented minority students; aspire to attend college within the UC system; have taken or
14 are on track to complete UC's required A-G coursework or its equivalent; and intend to apply for
15 admission to UC in the Fall 2021, Fall 2022, or Fall 2023 admissions cycles.

16 77. These members will be denied the opportunity to compete on equal footing with
17 their White, nondisabled, and more privileged peers for admission to UC (during the Fall 2021 or
18 Fall 2022 admissions cycles); guaranteed admission through the statewide eligibility pathway
19 (during the Fall 2021, Fall 2022, and Fall 2023 admissions cycles); and UC scholarships (during
20 the Fall 2021, Fall 2022, and Fall 2023 admissions cycles).

21 78. One member of College Seekers—a student with severe disabilities—is on track to
22 complete UC's A-G coursework requirements and plans to apply to UC as a first-year. Due to the
23 severity of his disabilities, which include motor and speech disabilities, he learns at home through
24 home-bound instruction provided by his public school. This student requires a full-time aide
25 provided by his school in order to access his curriculum; he also relies on his mother for physical
26 support. With appropriate support, this student has excelled in advanced coursework throughout
27 high school, receiving high grades that qualify him to attend UC. However, there are no ACT or
28 SAT accommodations that mirror the accommodations and physical support this student receives

1 for his coursework at home. Without such accommodations, this student will be unable to
2 demonstrate his true abilities on either the ACT or SAT. But if he applies to UC without
3 submitting a score, he will be at a disadvantage relative to applicants who do, for whom those
4 scores will operate as a “value add” in the admissions process.

5 79. Another member of College Seekers is a student with disabilities who will graduate
6 from high school in 2021. She is on track to complete UC’s A-G coursework requirements and has
7 a 4.0 GPA. Due to her extreme anxiety and her previous poor performance on standardized tests,
8 this student knows that her test scores will be below the published ranges for her desired UC
9 campuses. Because UC will not require applicants to submit SAT or ACT scores during the Fall
10 2021 admissions cycle, this student is considering applying to her desired UC campuses as a first-
11 year. However, if she does not submit an SAT or ACT score, she will remain at a disadvantage
12 relative to applicants who do submit scores, for whom those scores will operate as a “value add” in
13 the admissions process.

14 80. For the foregoing reasons, the rights and interests of College Seekers’ members are
15 adversely affected by UC’s actions and inactions as alleged in this complaint. Neither the claims
16 asserted nor the relief requested in this complaint require the participation of College Seekers’
17 individual members.

18 81. College Seekers has also diverted significant organizational resources to counteract
19 UC’s discriminatory use of SAT and ACT scores. If UC eliminated its use of the SAT and ACT
20 for admissions and scholarship purposes, College Seekers’ executive director and other member
21 volunteers would spend significantly more time assisting students who do not otherwise have
22 access to college counseling in preparing for and applying to four-year colleges. It would devote
23 more of its programming to college preparatory curriculum, college readiness, and applying to
24 four-year colleges. Instead, due in significant part to UC’s use of standardized test scores, College
25 Seekers has had to expend resources assisting members in overcoming barriers to accessing the
26 SAT and ACT with the accommodations they need and explaining the transfer path to UC for its
27 members who cannot access the tests.

28

1 82. **Plaintiff Community Coalition** is a nonprofit public benefit corporation and
2 membership organization based in South Los Angeles. Its members are students and parents who
3 live in South Los Angeles and who are committed to improving the quality of education in that
4 area. Community Coalition’s members include South Los Angeles residents of all ages, whom the
5 organization serves through programs for children, teenagers, and adults. Among the activities
6 organized by Community Coalition are on-site programs at five South Los Angeles high schools;
7 approximately 150 student members participate in these programs every week. Community
8 Coalition also runs an after-school program—South Central Youth Empowered thru Action
9 (“SCYEA”)—that typically serves 40 to 60 of its high school student members.

10 83. Community Coalition prepares its student members for college and success in the
11 twenty-first century economy and in institutions where they have historically been denied
12 opportunity. Over the last 28 years, Community Coalition has trained high school students in
13 SCYEA to push for reforms that disrupt the “school to prison pipeline,” including by helping
14 young people from South Los Angeles access higher education. Through this work, Community
15 Coalition has repeatedly seen that the UC’s use of SAT and ACT scores impedes that access—
16 without providing any meaningful information to the admissions process—and prevents its
17 members and other South Los Angeles youth from achieving their potential and realizing their
18 dreams. Community Coalition has witnessed how the UC’s use of SAT and ACT scores imposes
19 an obstacle to the advancement of its student members, the next generation of young leaders who
20 are already fighting to transform social and economic conditions in South Los Angeles.

21 84. All of Community Coalition’s student and parent members are Black, Latinx, or
22 Afro-Latinx. The majority of its student and parent members are also low socioeconomic status.

23 85. Community Coalition has a dues-paying membership structure. However,
24 individuals who are unable to pay dues are able to participate in Community Coalition’s programs.
25 Community Coalition also receives funding in the form of voluntary contributions from its
26 members and grant awards from government agencies and private foundations.

27 86. Parent and student members play a central role in Community Coalition’s
28 governance, and member participation and input are integral to the mission of the organization.

1 Within Community Coalition, there are several leadership teams composed of student and parent
2 members. These members, who volunteer to join the leadership teams, drive the organization's
3 advocacy priorities and provide direction on the development of its programs. Apart from these
4 leadership teams, most of Community Coalition's other leaders—including members of its Board
5 of Directors and executive team—are from the South Los Angeles communities that the
6 organization serves. Its leaders also regularly conduct needs assessments to ensure that the
7 organization's programs are maximally impactful and aligned with members' needs.

8 87. Community Coalition has multiple members who are Black, Latinx, or Afro-
9 Latinx; aspire to attend college within the UC system; have taken or are on track to complete UC's
10 required A-G coursework or its equivalent; and have been deterred from applying to, or been
11 rejected from, their desired UC campuses due to their low test scores. Community Coalition also
12 has multiple members who are low socioeconomic status; aspire to attend college within the UC
13 system; have taken or are on track to complete UC's required A-G coursework or its equivalent;
14 and have been deterred from applying to, or been rejected from, their desired UC campuses due to
15 their low test scores.

16 88. One Community Coalition member from a Los Angeles high school took the PSAT
17 four times, the SAT three times, and the ACT three times during the college application process.
18 This student is from an underrepresented minority group, and is from a low socioeconomic status
19 family. The student bought an SAT preparation book to study for the test, and Community
20 Coalition used organizational resources to find a tutor to provide support to the student. The
21 student was deterred from even applying to UCLA or UC Berkeley, the student's desired
22 campuses, because of the student's SAT scores. Instead, the student applied to UC Santa Barbara
23 and UC Santa Cruz, but was rejected from both campuses.

24 89. Community Coalition has multiple high school student members who are Black,
25 Latinx, or Afro-Latinx; aspire to attend college within the UC system; have taken or are on track
26 to complete UC's required A-G coursework or its equivalent; and intend to apply for admission to
27 UC in the Fall 2021, Fall 2022, or Fall 2023 admissions cycles. Community Coalition also has
28 multiple high school student members who are low socioeconomic status; aspire to attend college

1 within the UC system; have taken or are on track to complete UC's required A-G coursework or
2 its equivalent; and intend to apply for admission to UC in the Fall 2021, Fall 2022, or Fall 2023
3 admissions cycles.

4 90. These members will be denied the opportunity to compete on equal footing with
5 their White and more privileged peers for admission to UC (during the Fall 2021 or Fall 2022
6 admissions cycles); guaranteed admission through the statewide eligibility pathway (during the
7 Fall 2021, Fall 2022, and Fall 2023 admissions cycles); and UC's Regents' and Chancellors'
8 scholarships (during the Fall 2021, Fall 2022, and Fall 2023 admissions cycles).

9 91. For the foregoing reasons, the rights and interests of Community Coalition's
10 members are adversely affected by UC's actions and inactions as alleged in this complaint.
11 Neither the claims asserted nor the relief requested in this complaint require the participation of
12 Community Coalition's individual members.

13 92. Community Coalition has also diverted significant organizational resources to
14 counteract UC's discriminatory use of SAT and ACT scores. Community Coalition provides
15 college admissions support and services to its student and parent members in the South Los
16 Angeles community, including SAT and ACT preparation, counseling to connect students to
17 resources and help them to understand admissions testing requirements, and parent engagement
18 activities to help parents navigate the UC admissions process and understand the role of the SAT
19 and ACT in that process.

20 93. Due in significant part to UC's use of standardized test scores, Community
21 Coalition employs multiple SAT/ACT tutors and academic tutors who support its student
22 members in preparing for these tests. Community Coalition also employs Academic & Wellness
23 Coordinators, who devote significant time to helping students navigate UC's SAT and ACT
24 requirements. If UC eliminated its use of the SAT and ACT for admissions and scholarship
25 purposes, Community Coalition would shift staff time and organizational resources to serve
26 students' educational needs more holistically, including by providing students with additional
27 support for their college preparatory coursework.

28

1 94. **Plaintiff Dolores Huerta Foundation** is a nonprofit community benefit
2 organization based in California’s Central Valley. It inspires and organizes communities to build
3 volunteer organizations empowered to pursue social justice. Its objective is to empower *Vecinos*
4 *Unidos* (neighborhood organizations), parents, and youth to advocate for policies that promote
5 educational and racial equity for Black and Latinx students in Kern, Fresno, Tulare, and Los
6 Angeles Counties. Dolores Huerta Foundation’s *Vecinos Unidos* (neighborhood organizations)
7 have also successfully advocated for education reforms that disrupt the school-to-prison pipeline
8 and create more support for low-income students, multilingual learners, and students with
9 disabilities. Dolores Huerta Foundation has approximately 3,000 members, who have created ten
10 chapters of *Vecinos Unidos* across the Central Valley, as well as two student-led youth groups.

11 95. The majority of Dolores Huerta Foundation’s members are Latinx, Black, women,
12 low-income, immigrant, and/or non-English speakers. Many members live in mixed immigration
13 status families. Approximately 90 percent of the Foundation’s members are Latinx; the remaining
14 10 percent of members are Black. All members are California residents. Most adult members are
15 the parents of California students; others are grandparents of students or members of the
16 community committed to furthering educational and racial equity in the Central Valley.

17 96. Each of the ten chapters of *Vecinos Unidos* has a member who serves as the lead
18 organizer for that region. Each chapter also has a civic engagement committee and an education
19 committee, comprised of member parents who work on advocacy to local schools and school
20 districts. Each chapter also has two members who serve as co-chairs, and another who serves as
21 secretary. The two youth groups each have a lead youth organizer. Dolores Huerta Foundation’s
22 Board of Directors takes its direction from, and tailors programming to meet the needs of, the
23 Foundation’s member base. The Foundation’s chapters and youth groups create action plans to
24 address issues in their self-selected priority areas, which the Foundation supports by providing
25 training and other resources to help further the priorities of its membership.

26 97. UC’s use of SAT and ACT scores creates a discriminatory barrier to college access
27 for the Foundation’s youth members and for the children of its parent members.
28

1 98. Dolores Huerta Foundation has multiple members who are Latinx, Black, Afro-
2 Latinx, or limited-English proficient; aspire to attend college within the UC system; have taken or
3 are on track to complete UC's required A-G coursework or its equivalent; and have been deterred
4 from applying to, or been rejected from, their desired UC campuses due to their low test scores.
5 Dolores Huerta Foundation also has multiple members who are low socioeconomic status; aspire
6 to attend college within the UC system; have taken or are on track to complete UC's required A-G
7 coursework or its equivalent; and have been deterred from applying to, or been rejected from, their
8 desired UC campuses due to their low test scores.

9 99. One Dolores Huerta Foundation youth member graduated in 2020 from a high
10 school in Bakersfield, California. This student, a California resident, is Latinx and from a low
11 socioeconomic status family. She completed UC's required A-G coursework or its equivalent, and
12 aspired to attend either UC San Diego or UC Santa Barbara. This student prepared for the SAT by
13 studying from an SAT preparation book, participating in Khan Academy, and taking SAT practice
14 tests. Despite these efforts, she earned a score of 1120 on the SAT, which is below the range of
15 scores published by both of her desired campuses. Due to her low SAT score, this student was
16 deterred from applying to either UC San Diego or UC Santa Barbara. Instead, she enrolled in
17 community college, and intends to apply to her desired campuses as a transfer student.

18 100. Dolores Huerta Foundation has multiple high school student members who are
19 Latinx, Black, Afro-Latinx, or limited-English proficient; aspire to attend college within the UC
20 system; have taken or are on track to complete UC's required A-G coursework or its equivalent;
21 and intend to apply for admission to UC in the Fall 2021, Fall 2022, or Fall 2023 admissions
22 cycles. Dolores Huerta Foundation also has multiple high school student members who are low
23 socioeconomic status; aspire to attend college within the UC system; have taken or are on track to
24 complete UC's required A-G coursework or its equivalent; and intend to apply for admission to
25 UC in the Fall 2021, Fall 2022, or Fall 2023 admissions cycles.

26 101. These members will be denied the opportunity to compete on equal footing with
27 their White and more privileged peers for admission to UC (during the Fall 2021 or Fall 2022
28 admissions cycles); guaranteed admission through the statewide eligibility pathway (during the

1 Fall 2021, Fall 2022, and Fall 2023 admissions cycles); and UC’s Regents’ and Chancellors’
2 scholarships (during the Fall 2021, Fall 2022, and Fall 2023 admissions cycles).

3 102. One Dolores Huerta Foundation youth member is a sophomore at a high school in
4 Fresno, California. This student, a California resident, is Asian and from a low socioeconomic
5 status family. She is on track to complete UC’s required A-G coursework or its equivalent, and
6 aspires to attend UCLA, UC Irvine, or UC San Diego. This student has prepared for the SAT by
7 studying from an SAT preparation book, which she borrowed from her school’s library;
8 participating in Khan Academy; and taking SAT practice tests. Despite these efforts, she earned a
9 score of 1160 on the PSAT, which is below the range of scores published by her desired
10 campuses. Because UC and individual campuses have failed to explain how they will use SAT or
11 ACT scores in admissions and scholarship considerations, this student cannot make informed
12 decisions about whether to spend time and resources to try to secure a seat for, and continue to
13 prepare to take, the SAT. UC’s continued use of SAT and ACT scores will also harm this student
14 in admissions and scholarship determinations: even if she is able to secure a seat for and take the
15 SAT, her score will reflect the discriminatory nature of the test, which the Regents have
16 acknowledged. But if this student does not submit a score, she will be at a disadvantage relative to
17 applicants who do, for whom those scores will operate as a “value add” in the admissions process.

18 103. For the foregoing reasons, the rights and interests of Dolores Huerta Foundation’s
19 members are adversely affected by UC’s actions and inactions as alleged in this complaint.
20 Neither the claims asserted nor the relief requested in this complaint require the participation of
21 Dolores Huerta Foundation’s individual members.

22 104. **Plaintiff Little Manila Rising** is a community-based nonprofit organization in
23 Stockton, California. Little Manila Rising provides education and leadership to revitalize
24 Stockton’s Filipinx American community and advocates for the historic preservation of the Little
25 Manila Historic Site in Stockton. Serving local Stockton high school students, the Little Manila
26 After School Program is an Ethnic Studies program focused on Philippine and Filipinx American
27 history, culture, politics, art, community responsibility, and college access. Approximately 100
28 students participate in this program each year. Over the past 11 years, the program has

1 predominantly served low-income, Filipinx high school students from Stockton. Program
2 participants also include Latinx, Black, Southeast Asian, undocumented, LGBT+, and recently-
3 migrated students. Most program participants attend Stockton Unified School District, though
4 Little Manila Rising also provides programs at the Little Manila Center for students from
5 surrounding communities and other school districts. The community served by Little Manila
6 Rising contributes to the funding of the organization through individual donations.

7 105. The Little Manila Rising Board of Directors is comprised entirely of people of
8 color from the Stockton community, which the organization serves and represents. All are first-
9 time board members and come from marginalized backgrounds, like the students and families they
10 represent. The Board of Directors takes direction as to programmatic decisions from the students
11 and families it serves.

12 106. Through the Little Manila After School Program, Little Manila Rising has seen the
13 SAT and ACT operate as a discriminatory barrier to college access for students from Stockton's
14 historically disenfranchised Filipinx community. All of the students that participate in the program
15 are from underrepresented minority groups, and approximately 95 percent are from low
16 socioeconomic status families. Although many of these students aspire to attend UC, they have
17 frequently been deterred even from applying due to UC's use of SAT and ACT scores for
18 admissions and scholarship determinations. When Little Manila students do apply to the UC
19 system, they are often rejected from their campuses of choice or from the system altogether
20 because of their SAT or ACT scores. Students in the Little Manila program do not have access to
21 expensive test preparation services like their more affluent peers, and the tests serve as a major
22 obstacle to their aspirations to attend UC.

23 107. Little Manila Rising has multiple program participants who are Filipinx or Latinx;
24 aspire to attend college within the UC system; have taken or are on track to complete UC's
25 required A-G coursework or its equivalent; and have been deterred from applying to, or been
26 rejected from, their desired UC campuses due to their low test scores. Little Manila Rising also
27 has multiple program participants who are low socioeconomic status; aspire to attend college
28 within the UC system; have taken or are on track to complete UC's required A-G coursework or

1 its equivalent; and have been deterred from applying to, or been rejected from, their desired UC
2 campuses due to their low test scores.

3 108. Little Manila Rising has multiple high school student program participants who are
4 Filipino or Latinx; aspire to attend college within the UC system; have taken or are on track to
5 complete UC's required A-G coursework or its equivalent; and intend to apply for admission to
6 UC in the Fall 2021, Fall 2022, or Fall 2023 admissions cycles. Little Manila Rising also has
7 multiple high school student program participants who are low socioeconomic status; aspire to
8 attend college within the UC system; have taken or are on track to complete UC's required A-G
9 coursework or its equivalent; and intend to apply for admission to UC in the Fall 2021, Fall 2022,
10 or Fall 2023 admissions cycles.

11 109. These program participants will be denied the opportunity to compete on equal
12 footing with their White and more privileged peers for admission to UC (during the Fall 2021 or
13 Fall 2022 admissions cycles); guaranteed admission through the statewide eligibility pathway
14 (during the Fall 2021, Fall 2022, and Fall 2023 admissions cycles); and UC's Regents' and
15 Chancellors' scholarships (during the Fall 2021, Fall 2022, and Fall 2023 admissions cycles).

16 110. For the foregoing reasons, the rights and interests of Little Manila Rising's students
17 are adversely affected by UC's actions and inactions as alleged in this complaint. Neither the
18 claims asserted nor the relief requested in this complaint require the participation of individual
19 Little Manila Rising students.

20 111. Little Manila Rising has also diverted significant organizational resources to
21 counteract UC's discriminatory use of SAT and ACT scores. The Little Manila Rising ethnic
22 studies educators that run the Little Manila After School Program support students in pursuing
23 their goals of applying to and attending college. Because many Little Manila Rising students want
24 to apply to the UC system, the educators spend time helping them understand the role of SAT and
25 ACT scores in admissions and scholarship considerations. Due in significant part to UC's use of
26 standardized test scores, the educators also provide test preparation support to try to level the
27 playing field for Little Manila Rising students, whose families cannot afford expensive test
28 preparation programs. Some students stop attending the Little Manila After School Program

altogether during testing periods, because they feel the need to focus all of their attention on test preparation rather than continued engagement in their ethnic studies courses. If UC eliminated its use of the SAT and ACT for admissions and scholarship purposes, the Little Manila Rising educators would spend more time teaching ethnic studies to their students and supporting their students' holistic educational development in preparation for college.

112. **Plaintiff Compton Unified School District (“CUSD”)** serves nearly 26,000 students at 36 sites in the City of Compton and in parts of the cities of Carson and Los Angeles. CUSD’s mission is to empower leaders to lead, teachers to teach, and students to learn by fostering an environment that encourages leaders and teachers to be visionary, innovative, and accountable for the achievement of all students. Approximately 97 percent of CUSD’s students are from underrepresented minority groups (Black, Latinx, and/or Native American), and approximately 61 percent are multilingual learners. Over 93 percent of CUSD’s students are from low socioeconomic status families. Approximately 12 percent are students with disabilities. Every year, CUSD students who would thrive in the UC system are denied access or discouraged from applying because of their SAT and ACT scores. CUSD’s interests, as well as the interests of its students and member schools, are adversely affected by Defendants’ actions and inactions as alleged in this complaint.

113. CUSD has diverted significant organizational resources to counteract UC’s discriminatory use of SAT and ACT scores. Due in significant part to UC’s use of standardized test scores, which constitutes a significant barrier to UC access for its students, CUSD has spent its limited funds to provide test preparation services in its schools. In the 2019–20 academic year alone, Compton spent approximately \$345,000 on PSAT and SAT exams and test preparation for its students. On information and belief, CUSD spends a larger percentage of its budget on test preparation for its students than more affluent school districts in California. If UC eliminated its use of the SAT and ACT for admissions and scholarship purposes, CUSD would be able to provide fewer of these services to its students and instead devote its funds and instructional time to its core mission: educating students.

Defendants

1 114. **Defendant Regents of the University of California (“Regents”)** is a California
2 public corporation responsible for administering the University of California, a public trust,
3 pursuant to Article IX, Section 9 of the California Constitution. Pursuant to Standing Order 105.2,
4 although the Regents have delegated to the Academic Senate the determination of “the conditions
5 for admission” to the UC, the Regents retain the authority to approve those conditions.⁴⁶

6 115. **Defendant Janet Napolitano**, sued here in her official capacity, is President of the
7 UC and an ex officio Regent. Pursuant to Standing Order 100.4, as the “executive head of the
8 University,” Defendant Napolitano has, with limited exclusions, “full authority and responsibility
9 over the administration of all affairs and operations of the University.”⁴⁷ “The Office of the
10 President is responsible for guiding policy decisions on UC enrollment growth and managing
11 UC’s online application.”⁴⁸

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

21 **FACTUAL ALLEGATIONS**

22 **I. Meaningless Tests**

23 _____
24 ⁴⁶ 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)
[orders/so1052.html](https://regents.universityofcalifornia.edu/governance/standing-orders/so1052.html).

26 ⁴⁷ Univ. of Cal. Bd. of Regents, *Standing Order 100.4: Duties of the President of the University*,
<https://regents.universityofcalifornia.edu/governance/standing-orders/so1004.html>.

27 ⁴⁸ Univ. of Cal. Office of the President, *Office of the President*,
28 <https://www.universityofcalifornia.edu/uc-system/office-of-the-president>.

1 **A. SAT and ACT**

2 117. The SAT is owned by the College Board, which collected roughly \$1.068 billion in
3 revenue in 2017.⁴⁹ Its creator, eugenicist Carl Brigham, based the test on previous IQ tests that
4 purported to measure “native intelligence” and aptitude, as suggested by its original name, the
5 “Scholastic Aptitude Test.”⁵⁰ In the years following World War I, IQ tests were used to channel
6 Black students into vocational education tracks, “justify[ing] educational systems that mainly
7 reproduced extant socio-economic” and racial inequalities.⁵¹ The SAT was first administered in
8 1926.⁵²

9 118. Use of the SAT grew over the next two decades, primarily amongst Ivy League
10 universities and other private institutions on the East Coast.⁵³ In 1947, the Educational Testing
11 Service (ETS) was founded to consolidate the development and administration of standardized
12 tests, including the SAT.⁵⁴ As the testing industry grew, so too did ETS’s budget, burgeoning from
13 approximately \$2 million in 1947 to nearly \$30 million in 1969.⁵⁵ In 1959, the ACT entered the
14 testing market, touted as an alternative to the SAT that was purportedly more curriculum-based.⁵⁶

15 119. During the late 1940s and 1950s, ETS aggressively lobbied the UC to adopt the
16 SAT.⁵⁷ As discussed *infra* paras. 218–21, although the UC was initially reluctant to adopt the test
17

18 ⁴⁹ ProPublica, *Nonprofit Explorer: College Board*, [https://projects.propublica.org/nonprofits/](https://projects.propublica.org/nonprofits/organizations/131623965)
19 [organizations/131623965](https://projects.propublica.org/nonprofits/organizations/131623965).

20 ⁵⁰ See Nicholas Lemann, *The Big Test: The Secret History of American Meritocracy* 29–31, 34
(2000).

21 ⁵¹ Wayne Au, *Hiding Behind High-Stakes Testing: Meritocracy, Objectivity and Inequality in U.S.*
22 *Education*, 12 Int’l Educ. J.: Comp. Persp. 7, 9–10 (2013).

23 ⁵² Douglass, *supra* note 11, at 83.

24 ⁵³ *Id.* at 84.

25 ⁵⁴ Clarence J. Karier, *Testing for Order and Control in the Corporate Liberal State*, 22 Educ.
Theory 154, 174 (1972).

26 ⁵⁵ *Id.* In 2017, ETS had approximately \$1.407 billion in revenue. ProPublica, *Nonprofit Explorer:*
Educational Testing Service, <https://projects.propublica.org/nonprofits/organizations/210634479>.

27 ⁵⁶ Douglass, *supra* note 11, at 84.

28 ⁵⁷ *Id.* at 84–86.

1 due to concerns about its lack of validity, it ultimately incorporated the test into its admissions
2 process for the sake of administrative convenience—as a tool to “cull [its] eligibility pool.”⁵⁸ UC’s
3 adoption of the SAT was a significant financial boon for ETS: as “the largest single user of the
4 SAT,” UC “helped solidify the SAT as the most widely used national admissions test” until
5 2012.⁵⁹

6 120. Despite the test’s ubiquity, socioeconomic and racial disparities in SAT scores led
7 to public criticism of the test as a discriminatory instrument that reinforced social and economic
8 inequality.⁶⁰ These critiques led the College Board to repeatedly rebrand the test in an (ultimately
9 futile) attempt to define what it was actually measuring. In 1994, the College Board
10 redenominated the SAT as the “Scholastic Assessment Test,” seeking to demonstrate the test’s
11 shift in focus away from “aptitude” and toward curricular knowledge.⁶¹ This rebranding was short-
12 lived, however: after only three years, the College Board gave up on using the test’s name to
13 describe the material tested, and now, by the College Board’s own account, SAT “doesn’t stand
14 for anything[.]”⁶² Commentators have suggested that, in light of how SAT scores track student
15 wealth and accumulated advantage, SAT in practice stands for the “Socioeconomic Advantage
16 Test.”

17 121. The College Board also adapted the format of the test in response to the ACT’s
18 gains in national market share and critiques that the SAT was insufficiently tied to high school
19

20 ⁵⁸ Saul Geiser, *Norm-Referenced Tests and Race-Blind Admissions: The Case for Eliminating the*
21 *SAT and ACT at the University of California*, Ctr. for Studies in Higher Educ. 7 (Dec. 2017),
22 [https://cshe.berkeley.edu/sites/default/files/publications/2.rops.cshe.15.2017.geiser.testsrace-](https://cshe.berkeley.edu/sites/default/files/publications/2.rops.cshe.15.2017.geiser.testsrace-blind_admissions.12.18.2017.pdf)
[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).

23 ⁵⁹ Saul Geiser, *The Growing Correlation Between Race and SAT Scores: New Findings from*
24 *California*, Ctr. for Studies in Higher Educ. 1 (Oct. 2015), [https://cshe.berkeley.edu/sites/default/](https://cshe.berkeley.edu/sites/default/files/publications/rops.cshe_.10.15.geiser.racesat.10.26.2015.pdf)
[files/publications/rops.cshe_.10.15.geiser.racesat.10.26.2015.pdf](https://cshe.berkeley.edu/sites/default/files/publications/rops.cshe_.10.15.geiser.racesat.10.26.2015.pdf).

25 ⁶⁰ Tough, *supra* note 31, at 73–74 (2019).

26 ⁶¹ Peter Applebome, *Insisting It’s Nothing, Creator Says SAT, Not S.A.T.*, N.Y. Times (Apr. 2,
27 1997), [https://www.nytimes.com/1997/04/02/us/insisting-it-s-nothing-creator-says-sat-not-](https://www.nytimes.com/1997/04/02/us/insisting-it-s-nothing-creator-says-sat-not-sat.html)
[sat.html](https://www.nytimes.com/1997/04/02/us/insisting-it-s-nothing-creator-says-sat-not-sat.html).

28 ⁶² *Id.*

1 curriculum. Following a proposal by then-UC President Richard Atkinson to drop the SAT as a
2 UC admissions criterion, the College Board in 2005 repackaged the SAT into an ostensibly more
3 curriculum-based exam, adding a writing section and making marginal changes to the test's
4 existing sections.⁶³ In 2014, to increase its competitiveness with the ACT, whose market share had
5 grown larger than that of the SAT, the College Board announced the 2016 redesigned SAT.⁶⁴
6 According to the College Board, the 2016 redesigned SAT is “more closely linked with rich,
7 rigorous course work” than its predecessors,⁶⁵ although recent studies have refuted the alignment
8 between the SAT and Common Core State Standards.⁶⁶ The redesigned SAT eliminated the
9 penalty for guessing incorrectly, dropped arcane vocabulary words, focused the math sections on
10 “linear equations; complex equations or functions; and ratios, percentages and proportional
11 reasoning,” and made the essay optional.⁶⁷ Despite these changes, the SAT remains of limited
12 predictive value, while continuing to adversely affect underrepresented minority students, students
13 with disabilities, and students with less wealth.

14 122. Notably, the College Board itself has demonstrated that the SAT treats students
15 with less accumulated advantage unfairly. In 2010, College Board researchers studied which
16 groups of students tend to have “discrepant” SAT scores, meaning SAT scores that are either
17 much higher or lower than their high school grades would predict.⁶⁸ Its findings were striking:
18

19 _____
20 ⁶³ *Infra* para. 226.

21 ⁶⁴ 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-](https://www.nytimes.com/2014/03/06/education/major-changes-in-sat-announced-by-college-board.html)
23 [board.html](https://www.nytimes.com/2014/03/06/education/major-changes-in-sat-announced-by-college-board.html).

24 ⁶⁵ College Board, *Test Specifications for the Redesigned SAT* 11 (2015), [https://](https://collegereadiness.collegeboard.org/pdf/test-specifications-redesigned-sat-1.pdf)
25 collegereadiness.collegeboard.org/pdf/test-specifications-redesigned-sat-1.pdf.

26 ⁶⁶ Michal Kurlaender & Kramer Cohen, *Predicting College Success: How Do Different High*
27 *School Assessments Measure Up?*, Pol’y Analysis for Cal. Educ. 21 n.20 (Mar. 2019), [https://](https://edpolicyinca.org/sites/default/files/R_Kurlaender_Mar-2019.pdf)
28 edpolicyinca.org/sites/default/files/R_Kurlaender_Mar-2019.pdf.

⁶⁷ Lewin, *supra* note 64. As discussed *infra* paras. 167–70, the redesigned SAT also featured an
increased number of lengthy word problems, placing multilingual learners and students with
certain learning disabilities at a significant disadvantage.

⁶⁸ Tough, *supra* note 31, at 173–74.

1 whereas students with inflated scores were “disproportionately male, affluent, white or Asian, and
2 with highly educated parents,” students with scores that were markedly lower than their high
3 school grades would predict were “disproportionately female, black or Latin[x], low-income, and
4 first-generation.”⁶⁹ Unsurprisingly, the College Board omits this study from the extensive list of
5 research publications on its website.⁷⁰

6 123. As discussed *infra* paras. 132–33, the College Board’s “Landscape” tool—which
7 provides college admissions officers with socioeconomic background information to supplement
8 students’ SAT scores—effectively acknowledges both that SAT scores act as a proxy for
9 socioeconomic status and that the scores cannot accurately measure the potential of less
10 advantaged students to succeed in college.

11 **B. Meaningless Test Results**

12 124. The chief purpose of the SAT and ACT is to predict student performance in
13 college.⁷¹ According to the tests’ proponents, the SAT and ACT provide a common, standardized
14 metric that enables college admissions officers to sort among large numbers of applicants.⁷² But
15 the SAT and ACT fail to deliver on this purpose. Rather than providing meaningful information
16 about a student’s ability to succeed in college, the SAT and ACT are largely a proxy for a
17 student’s socioeconomic background and race.

18 125. These facts—that the SAT and ACT have extremely limited predictive value and
19 act as a stand-in for students’ wealth and race—are well known to the Regents, and have been for
20 decades.⁷³ On information and belief, in addition to publicly available BOARS reports, the
21 Regents, President Napolitano, the Academic Senate, and BOARS possess studies and
22 memoranda—discussing both the SAT and ACT’s weak predictive value and the discrimination

23
24 ⁶⁹ *Id.* at 174–75.

25 ⁷⁰ *Id.*

26 ⁷¹ Geiser, *supra* note 58, at 1.

27 ⁷² Richard C. Atkinson & Saul Geiser, *Reflections on a Century of College Admissions Tests*, Ctr.
for Studies in Higher Educ. 17 (Apr. 2009), [https://cshe.berkeley.edu/sites/default/files/
publications/rops-atkinsongeiser-tests-04-15-09.pdf](https://cshe.berkeley.edu/sites/default/files/publications/rops-atkinsongeiser-tests-04-15-09.pdf).

28 ⁷³ *Infra* paras. 126–30, 134–36, 144–45, 149, 151–53, 157, 218–225, 227.

1 on the basis of race, wealth, and disability that results from their use in admissions decisions—that
2 have not been made public. On information and belief, the Regents, President Napolitano, the
3 Academic Senate, and BOARS have deliberately concealed these studies and memoranda, along
4 with communications amongst themselves, with experts, and with the College Board and ACT,
5 Inc., because disclosure of these documents would demonstrate both their awareness of the
6 unjustifiable discrimination that results from their use of the SAT and ACT, and their failure in
7 practice to support diversity despite their public pronouncements to the contrary. The Regents are
8 also well aware that studies of the tests’ predictive ability fail to take into account the use by
9 affluent students of expensive test preparation services, such as private tutoring.⁷⁴ BOARS has
10 “confirm[ed] that students can be coached, to advantage, for both the old and new SAT” and that
11 “[c]oaching among some students and not others disadvantages low-income groups.”⁷⁵ There is no
12 defensible reason for the Regents to ignore this information in continuing to use the test scores for
13 admission and competitive scholarships.

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

15 126. More than any other admissions criterion, SAT and ACT scores act as a proxy for
16 students’ wealth and accumulated advantage.⁷⁶ When compared with other metrics like high
17 school GPA and class rank, SAT and ACT scores are more highly correlated with socioeconomic
18 characteristics like family income and parents’ education.⁷⁷ In other words, the more money a
19 student’s parents earn, the higher that student’s SAT and ACT scores are likely to be. Similarly,
20 the more education a student’s parents have, the higher his or her SAT and ACT scores are likely
21 to be.

22 127. Among applicants to the UC, this trend has increased dramatically since 1994.⁷⁸

24 ⁷⁴ See Watanabe, *supra* note 19; BOARS, *supra* note 13, at 21.

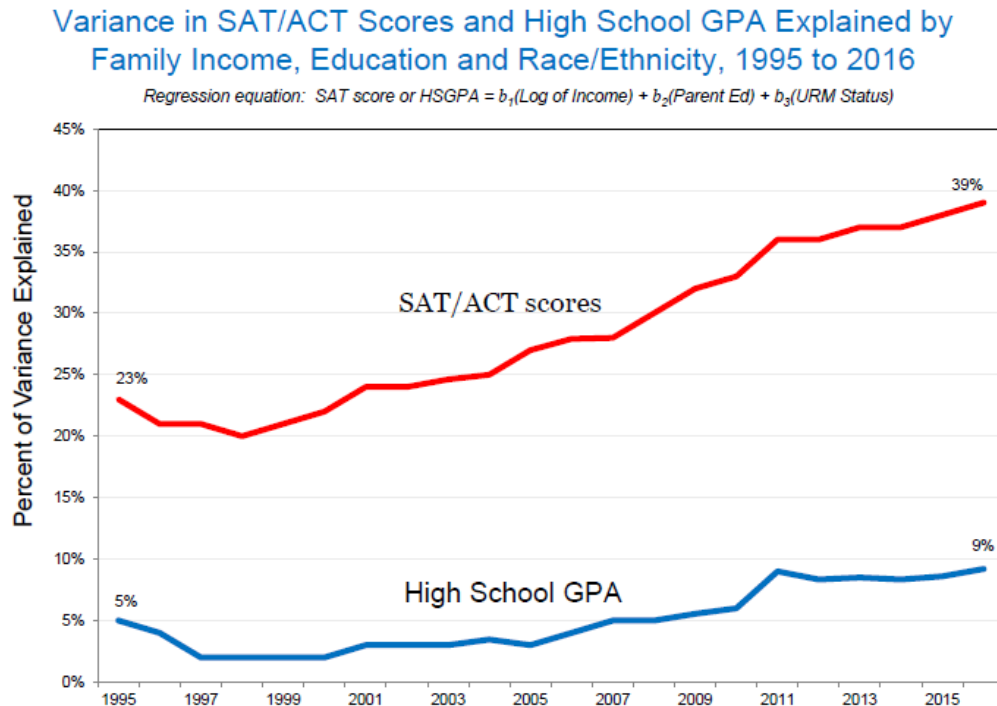
25 ⁷⁵ BOARS, *supra* note 13, at 21.

26 ⁷⁶ Geiser, *supra* note 58, at 1.

27 ⁷⁷ *Id.*

28 ⁷⁸ *Id.* at 2.

Figure 1: Variance in SAT/ACT Scores and High School GPA Explained by Family Income, Parents' Education, and Race/Ethnicity⁷⁹



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

129. By contrast, Figure 1 shows that socioeconomic characteristics are substantially less important in predicting students' high school grades. In 1995, socioeconomic factors accounted for only five percent of the variance in students' high school GPAs but 23 percent of the variance in UC applicants' SAT and ACT scores. The disparity in predictive value increased

⁷⁹ Saul Geiser, Ctr. for Studies in Higher Educ., Univ. of Cal., Berkeley, Presentation at Policy Analysis for California Education (PACE) Conference: UC and the SAT/ACT: Research Findings 1994–2019 (Nov. 22, 2019).

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

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

11 131. In May 2019, the College Board attempted to compensate for the SAT's unequal
12 treatment of applicants from different groups by introducing a planned “adversity score” that
13 purported to quantify students' socioeconomic hardship. Designed to contextualize SAT scores for
14 college admissions officers, the “adversity score” was to be calculated based on 15 factors,
15 including “the relative quality of the student's high school and the crime rate and poverty level of
16 the student's neighborhood,” with higher scores connoting greater levels of “disadvantage.”⁸⁰
17 According to the College Board's CEO, without such information on socioeconomic background
18 characteristics, “the SAT could be misleading.”⁸¹ The College Board's concession, through its
19 adoption of the “adversity score,” that SAT scores alone cannot accurately measure the potential
20 of less advantaged students to succeed in college led to widespread condemnation of not only the
21 “adversity score,” but also the test itself. Education advocates questioned why colleges and
22 universities would continue to use a test after its own maker's acknowledgment that the test

23
24
25 ⁸⁰ 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 ⁸¹ 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 requires “a sophisticated contextual framework to make it valid.”⁸² The College Board’s
2 announcement of the “adversity score” generated such a powerful backlash among educators and
3 parents that the company withdrew its plan only three months later.⁸³

4 132. In response to this backlash, the College Board engaged in another rebranding:
5 although it no longer sums ratings of a student’s school characteristics and neighborhood
6 characteristics into a single numerical score, it continues to provide this data to college admissions
7 officers through the same ratings system—formerly known as the “Environmental Context
8 Dashboard,” which the College Board has renamed “Landscape.”⁸⁴ Landscape provides essentially
9 the same information on a student’s school and neighborhood characteristics as the former
10 “adversity score,” albeit in a slightly disaggregated format: Landscape averages six socioeconomic
11 and demographic indicators to provide a neighborhood rating and a high school rating, which are
12 “presented on a 1—100 scale,” with higher values indicating “higher level[s] of challenge related
13 to educational opportunities and outcomes.”⁸⁵ Practically speaking, therefore, the College Board
14 has not eliminated the “adversity score” at all: it just presents the score’s component information
15 separately.

16 133. This superficial repackaging fails to address the hardships or challenges faced by
17 individual students, presenting instead “ratings” based solely on school and neighborhood
18 averages. The College Board does not explain to admissions officers what outcomes, if any, these
19 “ratings” are intended to predict—much less demonstrate that they do, in fact, predict such
20 outcomes.⁸⁶ Critically, Landscape also excludes information about the racial composition of a
21 student’s school and neighborhood, which significantly impacts educational outcomes. Ultimately,
22

23 ⁸² Hartocollis, *supra* note 80.

24 ⁸³ Anemona Hartocollis, *SAT ‘Adversity Score’ Is Abandoned in Wake of Criticism*, N.Y. Times
25 (Aug. 27, 2019), <https://www.nytimes.com/2019/08/27/us/sat-adversity-score-college-board.html>.

26 ⁸⁴ *Id.*

27 ⁸⁵ College Board, *Landscape Comprehensive Data and Methodology Overview* (2019),
<https://secure-media.collegeboard.org/landscape/comprehensive-data-methodology-overview.pdf>

28 ⁸⁶ *See id.*

1 Landscape is a post-hoc attempt to mitigate the SAT’s biases against less advantaged students
2 rather than redress the socioeconomic and racial disparities that make such mitigation necessary.
3 As the Task Force recognized, “[i]f group score differences reflect historic injustices, then
4 continuing to use them contributes to perpetuating the effects of those prior injustices.”⁸⁷ Instead
5 of “retrofitting test results around inequality,”⁸⁸ the University has an obligation to “interrupt
6 [that] inequality” by “expand[ing] college access [for] . . . promising students who have not had
7 equal opportunities.”⁸⁹

8 ***SAT and ACT as a Proxy for Race***

9 134. As compared to other socioeconomic background characteristics—parents’
10 education and family income—race has become the strongest predictor of students’ performance
11 on the SAT and ACT tests.⁹⁰ After controlling for parents’ education and family income, race “has
12 a large, independent, and growing statistical effect” on applicants’ SAT and ACT scores.⁹¹
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23 ⁸⁷ STTF Report, *supra* note 3, at 71.

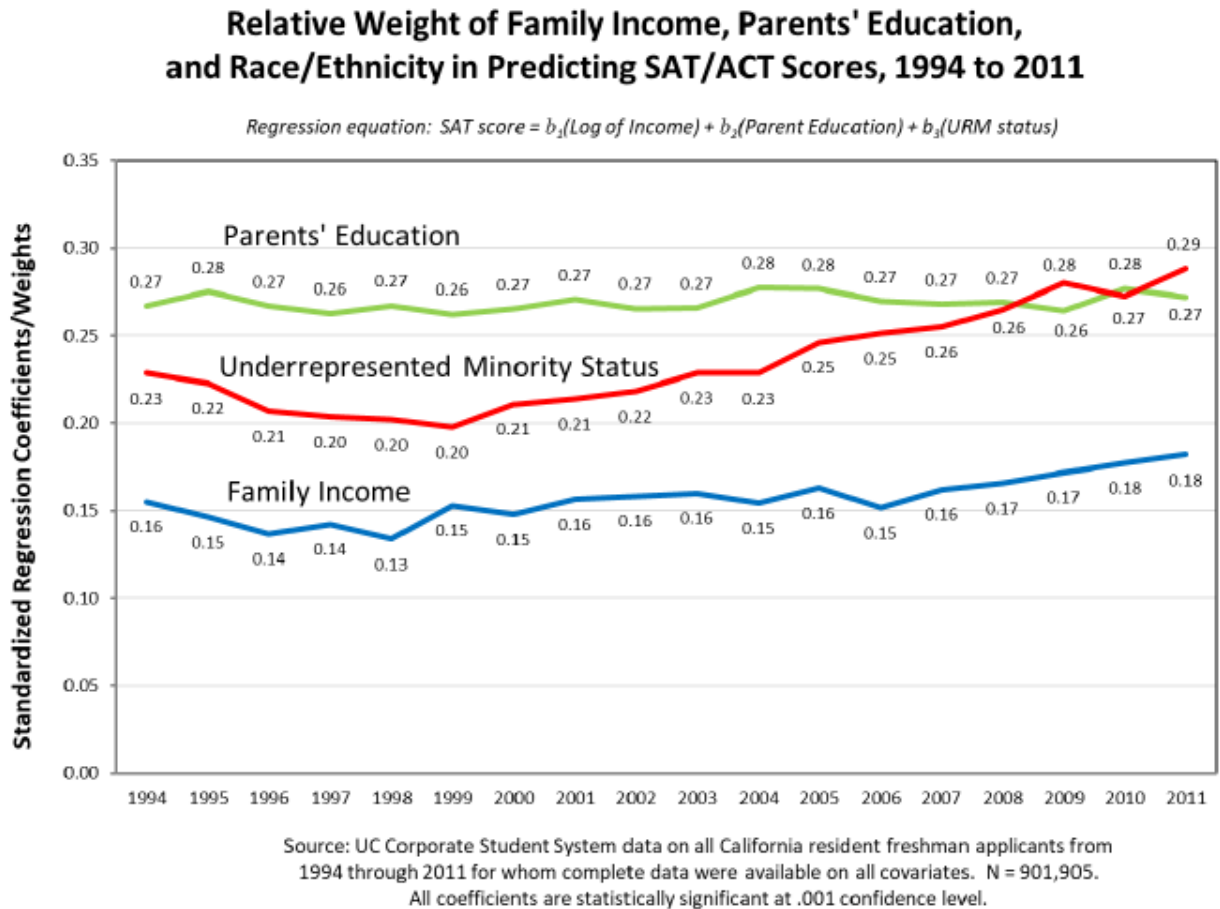
24 ⁸⁸ Andre M. Perry, *Students need more than an SAT adversity score, they need a boost in wealth*,
25 Brookings (May 17, 2019), <https://www.brookings.edu/blog/the-avenue/2019/05/17/students-need-more-than-an-sat-adversity-score-they-need-a-boost-in-wealth/>.

26 ⁸⁹ STTF Report, *supra* note 3, at 36, 75.

27 ⁹⁰ Geiser, *supra* note 58, at 4.

28 ⁹¹ *Id.* at 3.

Figure 2: Relative Weight of Family Income, Parents' Education, and Race/Ethnicity in Predicting SAT/ACT Scores, 1994 to 2011⁹²



135. Figure 2 illustrates the relative importance of three characteristics in predicting students' SAT and ACT scores: underrepresented minority status (self-identification as Black or Latinx), parents' education, and family income.⁹³ As shown in Figure 2, the strongest predictor of UC applicants' SAT and ACT test scores has historically been their parents' level of education. But while the predictive value of parents' education has remained relatively constant over time, family income and race have become increasingly important in predicting test results.

136. Of the three characteristics, race has seen the most dramatic growth in its importance as a predictor of students' SAT and ACT scores, increasing from a standardized

⁹² *Id.* at 4.

⁹³ *Id.*

1 coefficient of “0.23 in 1994 to 0.29 in 2011 (about a 55-point test-score differential).”⁹⁴ For the
2 first time in 2009 and again in 2011, race outweighed parents’ education and family income as the
3 single most important predictor of students’ SAT and ACT scores. Figure 2. Race now does a
4 better job of predicting how well a student will perform on the SAT and ACT than the level of
5 education the student’s parents have or the amount of money the student’s family earns.

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

7 137. Because SAT and ACT scores are so strongly correlated with race and wealth, it is
8 essential to control for those factors when assessing how well those scores predict college
9 performance,⁹⁵ *i.e.*, their “validity.”⁹⁶

10 138. But validity studies conducted by the College Board, ACT, and UC’s own
11 Standardized Testing Task Force fail to do just that.⁹⁷ Instead, many such studies take into account
12 only two predictors of college success: SAT or ACT scores and high school GPA.⁹⁸ Even without
13

14 ⁹⁴ *Id.*

15 ⁹⁵ Saul Geiser & Maria Veronica Santelices, *Validity of High School Grades in Predicting Student*
16 *Success Beyond the Freshman Year: High-School Record vs. Standardized Tests as Indicators of*
17 *Four-Year College Outcomes*, Ctr. for Studies in Higher Educ. 6–7 (June 2007), [https://](https://cshe.berkeley.edu/publications/validity-high-school-grades-predicting-student-success-beyond-freshman-year-high-school)
[cshe.berkeley.edu/publications/validity-high-school-grades-predicting-student-success-beyond-](https://cshe.berkeley.edu/publications/validity-high-school-grades-predicting-student-success-beyond-freshman-year-high-school)
[freshman-year-high-school](https://cshe.berkeley.edu/publications/validity-high-school-grades-predicting-student-success-beyond-freshman-year-high-school).

18 ⁹⁶ Validity is a statistical term that “refers to the degree to which evidence and theory support the
19 interpretations of test scores entailed by proposed uses of tests”—*i.e.*, the degree to which a test
20 succeeds in measuring what it is supposed to measure. Am. Research Ass’n et al., *Standards for*
Educational and Psychological Testing 9 (2014).

21 ⁹⁷ The Task Force report largely omitted student demographics from its prediction models,
22 “creat[ing] the false impression that SAT scores are the stronger predictor than HSGPA with
23 respect to first-year retention, first-year UCGPA, and graduation UCGPA, and are nearly as good
24 as HSGPA in predicting four-year graduation.” Saul Geiser, *SAT/ACT Scores, High-School GPA,*
25 *and the Problem of Omitted Variable Bias: Why the UC Taskforce’s Findings are Spurious*, Ctr.
26 for Studies in Higher Educ. 2–4 (Mar. 2020), [https://cshe.berkeley.edu/sites/default/files/](https://cshe.berkeley.edu/sites/default/files/publications/2.rops.cshe.1.2020.geisersatactommitted_variables.3.18.2020.pdf)
[publications/2.rops.cshe.1.2020.geisersatactommitted_variables.3.18.2020.pdf](https://cshe.berkeley.edu/sites/default/files/publications/2.rops.cshe.1.2020.geisersatactommitted_variables.3.18.2020.pdf). But once student
demographics are taken into account, “the picture is reversed[:] HSGPA is actually the stronger
predictor of first-year retention, the likelihood of graduating in four years, and graduation
UCGPA, and [is] the same as SAT scores in predicting first-year UCGPA.” *Id.* at 2.

27 ⁹⁸ See, e.g., Paul A. Westrick et al., College Board, *Validity of the SAT for Predicting First-Year*
28 *Grades and Retention to the Second Year* 8–9 (May 2019), [https://](https://collegereadiness.collegeboard.org/pdf/national-sat-validity-study.pdf)
collegereadiness.collegeboard.org/pdf/national-sat-validity-study.pdf.

1 controlling for socioeconomic status, these studies demonstrate that SAT and ACT scores add
2 relatively little to the predictive power of high school GPA. That predictive power dwindles even
3 further once socioeconomic factors—which are correlated with both SAT and ACT scores and
4 college outcomes—are taken into account. By failing to control for these factors, simplistic, two-
5 predictor variable models exaggerate the predictive value of these tests.⁹⁹ Nor do such models
6 account for disparate access to expensive, high-quality test preparation services, which provide
7 affluent students a competitive edge over their less advantaged peers. Rather than predicting how
8 well a student is likely to perform in college, “much of the apparent predictive value of test scores
9 reflects the ‘proxy’ effect of [socioeconomic status].”¹⁰⁰

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

16 ***First-Year GPA***

17 140. The College Board defends the use of the SAT through a series of validity studies
18 focused primarily on the SAT’s purported ability to predict first-year grades.¹⁰¹ First-year grades
19 are a dubious metric: no student attends college to attain first-year grades, and no university
20 should seek to design its student body around that metric. Nor are first-year grades particularly
21 reliable indicators of how students will ultimately perform in college, given the myriad
22 nonacademic factors that can impact first-year academic performance—from living away from

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24 _____
⁹⁹ Geiser, *supra* note 58, at 8–9.

25 ¹⁰⁰ *Id.* at 8.

26 ¹⁰¹ See Jonathan Beard & Jessica Marini, College Board, *Validity of the SAT for Predicting First-*
27 *Year Grades: 2013 SAT Validity Sample 2* (2018), [https://files.eric.ed.gov/fulltext/](https://files.eric.ed.gov/fulltext/ED582459.pdf)
28 [ED582459.pdf](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).

1 home to adjusting to a new social and educational environment.¹⁰²

2 141. In May 2019, the College Board released its first national validity study of the
3 current SAT.¹⁰³ Like its predecessors, the study considered only two predictor variables: high
4 school GPA and SAT scores.¹⁰⁴ The correlations found between first-year college GPA, high
5 school GPA, and scores on the current SAT are similar to those shown in previous College Board
6 validity studies.¹⁰⁵

7 142. The study found that, taken individually, high school GPA and SAT scores are
8 similarly correlated to first-year college GPA (“.53 and .51, respectively”).¹⁰⁶ In other words,
9 taken independently, high school GPA is slightly better at predicting a student’s first-year college
10 GPA than SAT scores are. According to College Board researchers, SAT scores are still important
11 because they purportedly add a 15 percent “boost” in the correlation above high school GPA
12 alone.¹⁰⁷ Even according to the College Board, any usefulness of SAT and ACT scores in
13 admissions decisions derives *entirely* from whatever incremental increase in validity (*i.e.*, increase
14 in predictive value) they are able to provide over high school GPA alone.¹⁰⁸

16 ¹⁰² Geiser & Santelices, *supra* note 95, at 17 (“[T]he first year or two in college is a difficult
17 transition period for many students who must adjust not only to the more rigorous academic
18 standards of college but often as well to the experience of being away from home for the first
time.”).

19 ¹⁰³ Westrick et al., *supra* note 98, at 4.

20 ¹⁰⁴ *Id.* at 8–9.

21 ¹⁰⁵ For example, the correlation between SAT score and first-year GPA for the 2017 cohort (a
22 sample of students entering college in fall 2017) was .51, and the correlation for cohorts between
2006 and 2010 ranged from .53 to .56. *Id.* at 10; Krista D. Mattern & Brian F. Patterson, College
23 Board, *Synthesis of Recent SAT Validity Findings: Trend Data over Time and Cohorts* 76 (2014),
24 <https://files.eric.ed.gov/fulltext/ED556462.pdf>. Similarly, the correlation of combined SAT score
and high school GPA with first-year GPA for the 2017 cohort was .61, and between 2006 and
2010 it ranged between .62 and .64. Westrick et al., *supra* note 98, at 11; Mattern & Patterson at
76.

25 ¹⁰⁶ Westrick et al., *supra* note 98, at 11.

26 ¹⁰⁷ *Id.* at 4, 11.

27 ¹⁰⁸ *See also* Geiser, *supra* note 97, at 4 (“In real-world admissions, the question is not what
28 SAT/ACT scores add to high-school grades alone, but what they add to the large body of other
academic and socioeconomic information already available from the UC application.”).

1 143. ACT Research makes similar claims regarding correlations between first-year
2 college GPA, high school GPA, and ACT scores. An ACT Research study found correlations of
3 .58 between high school GPA and first-year college GPA and .51 between ACT scores and first-
4 year college GPA.¹⁰⁹ ACT Research also claims that the ACT scores add only incremental
5 accuracy beyond high school GPA in predicting first-year college GPA.¹¹⁰

6 144. As independent researchers have long noted, however, the two-predictor variable
7 model most frequently utilized by the College Board and ACT leaves out important information
8 about students' socioeconomic characteristics, and thus furnishes results that substantially
9 overstate the predictive value of the SAT and ACT.¹¹¹ According to a UC economist who
10 analyzed UC test score data, "a conservative estimate is that traditional methods and sparse
11 models"—like those typically used by the College Board—"overstate the SAT's importance to
12 predictive validity by 150 percent."¹¹²

13 145. This substantial overstatement of the SAT's predictive value results from
14 traditional models' failure to account for the proxy effect of socioeconomic status.¹¹³ SAT scores
15 function as a stand-in for socioeconomic status, such that when either the scores or a student's
16 demographic information is combined with high school GPA, the strength of the resulting
17 prediction about a student's first-year grades is about the same.¹¹⁴ Due to this proxy effect, studies
18 that omit socioeconomic characteristics from their prediction models "inflate[] the SAT's apparent
19
20

21 ¹⁰⁹ ACT Technical Manual, *supra* note 31, at 11.37.

22 ¹¹⁰ *Id.* at 11.49 ("In most scenarios, using both high school grades and [ACT] scores jointly is
23 better than using either by itself.").

24 ¹¹¹ See, e.g., Jesse Rothstein, *College Performance Predictions and the SAT*, 121 J. Econometrics
297, 298 (2004); Geiser & Santelices, *supra* note 95, at 6.

25 ¹¹² Rothstein, *supra* note 111, at 315.

26 ¹¹³ *Id.*

27 ¹¹⁴ *Id.* at 314 ("[T]ogether with HSGPA, school and individual demographic variables explain
28 45% of the variance in FGPA's, about as much as do SAT and HSGPA together in models
excluding background variables.").

1 validity.”¹¹⁵ This is because, rather than measuring differences in students’ ability to succeed in
2 college, SAT scores simply reflect the socioeconomic differences that themselves predict first-year
3 GPAs.¹¹⁶

4 146. When College Board studies do take socioeconomic characteristics into account,
5 the proxy effect is clear. In July 2019, the College Board released a follow-up to its national
6 validity study for the current SAT, in which it examined validity results by student subgroups.¹¹⁷
7 College Board researchers found that all correlations with first-year GPA—including SAT scores
8 alone and SAT scores combined with high school GPA—“tend[ed] to increase as parental
9 education level increases.”¹¹⁸ ACT Research has also found that ACT scores consistently increase
10 with parental education level.¹¹⁹

11 147. Independent studies that take socioeconomic background characteristics into
12 account have confirmed that SAT and ACT scores add very little incremental validity to
13 predictions of first-year GPA. One such study, prepared in 2008 at the request of BOARS,
14 demonstrated the miniscule contribution of SAT and ACT scores to the prediction of first-year
15 GPA at UC.¹²⁰ The study considered all available information from students’ UC applications,
16 including information about students’ socioeconomic characteristics, such as their parents’
17 education and family income.¹²¹ It found that, taken together, this information accounted for 21.7
18

19 ¹¹⁵ *Id.* at 315.

20 ¹¹⁶ *Id.* (“[T]he SAT score appears to be a more effective measure of the demographic
21 characteristics that predict UC FGPA’s than it is of variations in preparedness conditional on
22 student background.”).

23 ¹¹⁷ Jessica P. Marini et al., *Differential Validity and Prediction of the SAT: Examining First-Year*
24 *Grades and Retention to the Second Year 5* (July 2019), [https://](https://research.collegeboard.org/pdf/differential-validity-and-prediction-sat.pdf)
25 research.collegeboard.org/pdf/differential-validity-and-prediction-sat.pdf.

26 ¹¹⁸ *Id.* at 16.

27 ¹¹⁹ Dina Bassiri, ACT, *ACT Composite Score by Parental Education Level, 2012–2016* (Oct.
28 2016), https://www.act.org/content/dam/act/unsecured/documents/R1608_ACT_Composite_Score_by_Parental_Education_Level_Web.pdf.

¹²⁰ BOARS, *supra* note 12, at 90–132.

¹²¹ *Id.* at 90–92.

1 percent of the variance in first-year GPA among students at UC Berkeley.¹²² The study then
2 determined the unique contribution of SAT scores by removing them from the prediction
3 model.¹²³ Without SAT scores, the explained variance decreased to 19.8 percent.¹²⁴ SAT scores
4 alone thus accounted for only 1.9 percent of the variance in first-year GPA among students at UC
5 Berkeley.¹²⁵ Across the UC system’s undergraduate campuses, SAT scores increased predictive
6 value by only 1.6 percent.¹²⁶ This result accords with earlier findings that, when controlled for
7 socioeconomic factors, SAT scores “add nothing to the prediction of freshman grades beyond that
8 which [high school GPA] and the SAT II already provide.”¹²⁷

9 148. A study of more recent UC data demonstrates that California’s far less
10 discriminatory Smarter Balanced Assessment predicts first-year GPA as well as the SAT.
11 Although the correlation between first-year GPA and combined SAT scores and high school GPA
12 was stronger than that between first-year GPA and high school GPA alone, the difference
13 diminished after controlling for socioeconomic disadvantage, UC campus differences, and high
14 school characteristics.¹²⁸ Once such factors were taken into account, the unique contributions of
15 the SAT and California’s statewide Smarter Balanced Assessment over high school GPA alone
16 were quite similar.¹²⁹

17 *Longer-Term College Outcomes*

18 149. The College Board and ACT also assert that SAT and ACT scores are valid
19 indicators of longer-term measures of college success, including second-year retention, cumulative

21 ¹²² *Id.* at 107.

22 ¹²³ *Id.*

23 ¹²⁴ *Id.*

24 ¹²⁵ *See id.*

25 ¹²⁶ *Id.* at 95.

26 ¹²⁷ Saul Geiser & Roger Studley, *UC and the SAT: Predictive Validity and Differential Impact of the SAT I and SAT II at the University of California*, Univ. of Cal. Office of the President 9 (Oct. 29, 2001).

27 ¹²⁸ Kurlaender & Cohen, *supra* note 66, at 12–13.

28 ¹²⁹ *Id.*

1 GPA, and college completion. Like College Board and ACT validity studies predicting first-year
2 GPA, however, many of these studies fail to control for socioeconomic background factors
3 entirely. A College Board study of four-year college completion, for example, stated that it
4 “intentionally excluded” socioeconomic status as a “predictor[] in our model, knowing that
5 omitted variable bias may be present to a limited extent.”¹³⁰ Similarly, an ACT study of six-year
6 college completion expressly noted its exclusion of “sociodemographic factors,” stating that “[t]he
7 use in this paper of one or two predictors is a mathematical simplification.”¹³¹ Unlike these
8 industry studies, independent studies conducted by UC researchers do take socioeconomic
9 characteristics into account, and their results are striking: across these measures, SAT and ACT
10 scores add minimal or no incremental predictive value over high school GPA, which is
11 consistently a superior predictor of long-term college outcomes. These findings have been
12 corroborated by respected researchers studying universities across the nation.¹³²

13 150. With respect to second-year retention, UC researchers have found that, after
14 controlling for socioeconomic characteristics, combining SAT scores with high school GPA
15 produced only a miniscule increase in predictive value.¹³³ In fact, even before controlling for
16

17 ¹³⁰ Krista D. Mattern et al., College Board, *How Useful Are Traditional Admission Measures in*
18 *Predicting Graduation Within Four Years?* 6 (2013), [https://files.eric.ed.gov/fulltext/](https://files.eric.ed.gov/fulltext/ED562684.pdf)
19 [ED562684.pdf](https://files.eric.ed.gov/fulltext/ED562684.pdf).

20 ¹³¹ 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), [http://www.act.org/content/dam/act/unsecured/documents/](http://www.act.org/content/dam/act/unsecured/documents/ACT_RR2012-5.pdf)
23 [ACT_RR2012-5.pdf](http://www.act.org/content/dam/act/unsecured/documents/ACT_RR2012-5.pdf).

24 ¹³² See Elaine M. Allensworth & Kallie Clark, *High School GPAs and ACT Scores as Predictors*
25 *of College Completion: Examining Assumptions About Consistency Across High Schools*, 49
26 *Educ. Researcher* 198, 209 (2020) (“Studies that used data from samples that include 21
27 prestigious flagship universities from across the country and all public universities in four states
28 (Bowen et al., 2009; Koretz & Langi, 2018; Rothstein, 2004) all showed that HSGPAs are
strongly related to either college graduation or to college freshman GPA and that students’
individual ACT or SAT scores add only modestly to the prediction beyond HSGPA, if at all, in
models that include high school fixed effects and compare similar colleges.”).

¹³³ Kurlaender & Cohen, *supra* note 66, at 13, Panel B, Column 4 (showing that, after controlling
for socioeconomic characteristics and other factors, the difference between the adjusted correlation
coefficients described *infra* note 134 drops to .02).

1 socioeconomic characteristics, SAT scores added very little additional predictive power when
2 combined with high school GPA.¹³⁴

3 151. With respect to long-term college outcomes—cumulative GPA and college
4 completion—UC researchers have found that high school GPA “is the best single predictor.”¹³⁵ In
5 predicting cumulative four-year GPA, SAT I scores have “considerably less predictive weight
6 [than high school GPA] after controlling for student background characteristics.”¹³⁶ The
7 superiority of high school GPA over SAT I scores for predicting cumulative four-year GPA held
8 across all freshman cohorts, UC campuses, and academic fields.¹³⁷ As to four-year graduation,
9 SAT I scores “produce[d] no incremental improvement in prediction” over high school GPA and
10 SAT II scores combined.¹³⁸

11 152. Figure 3 illustrates the superiority of high school GPA over SAT scores as a
12 predictor of five-year graduation from UC.

13 ¹³⁴ *Id.* at 13, Panel B, Column 1 (showing that the adjusted correlation coefficient of high school
14 GPA and second-year retention is .18, whereas the adjusted correlation coefficient of high school
15 GPA and SAT scores combined and second-year retention is .22).

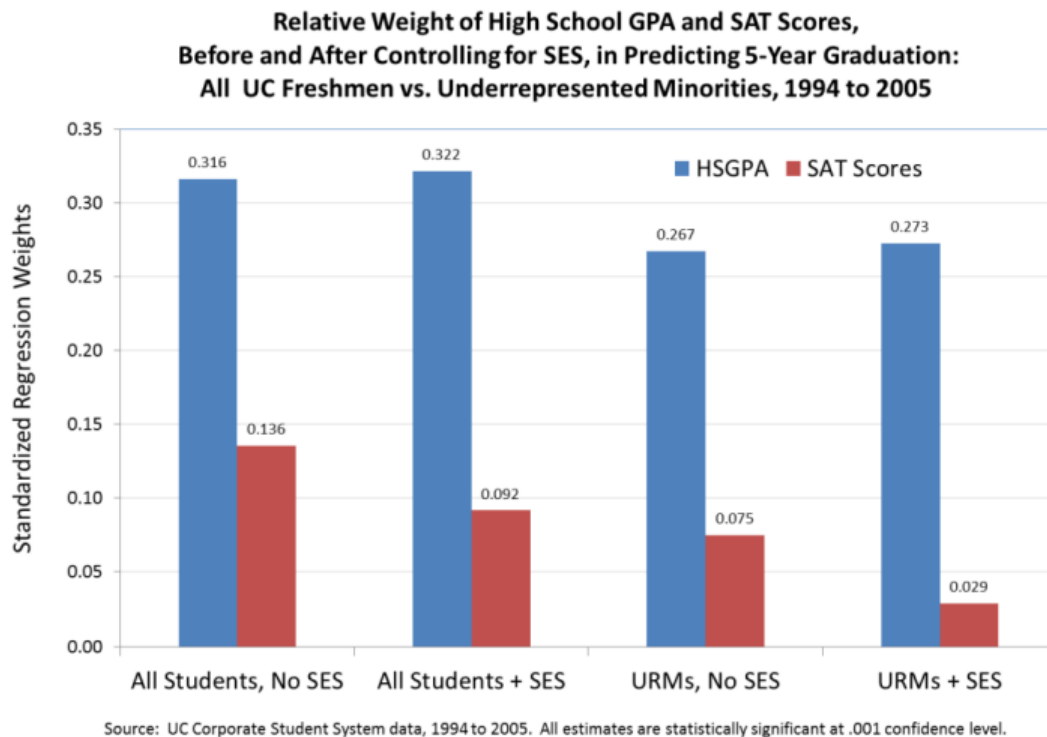
16 ¹³⁵ Geiser & Santelices, *supra* note 95, at 9, 21.

17 ¹³⁶ *Id.* at 10.

18 ¹³⁷ *Id.* at 10–12.

19 ¹³⁸ *Id.* at 22.

Figure 3: 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 2005¹³⁹



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

154. This predictive disparity is magnified among underrepresented minority students. The predictive value of SAT scores declines precipitously when underrepresented minorities are considered alone (“URMs, No SES”), particularly after controlling for socioeconomic characteristics (“URMs + SES”). Figure 3. Thus, “[w]hile SAT scores remain a ‘statistically

¹³⁹ Geiser, *supra* note 58, at 14.

significant' predictor of UC graduation for students of color, the effect size is very small indeed."¹⁴⁰

155. These findings about UC data accord with findings that considered data from across the country's public higher education systems. After examining graduation rates from 21 public flagship universities and four state higher education systems, researchers found that "[h]igh school grades are a far better predictor of both four-year and six-year graduation rates than are SAT/ACT test scores," which "routinely fail to pass standard tests of statistical significance when included with high school GPA in regressions predicting graduation rates."¹⁴¹

Limited Value, Discriminatory Effects

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

157. More importantly, the studies make plain that with respect to the college outcomes that matter most—cumulative GPA and college completion—high school GPA is simply a better predictor than SAT and ACT scores. As discussed *infra* paras. 198–99, the already limited predictive value of the SAT and ACT is further undermined by the fact that many affluent students utilize expensive test preparation services to maximize their scores. Given SAT and ACT scores' adverse impact on students with less accumulated advantage, there can be no justification for UC's continued use of a metric that is both more discriminatory and worse at predicting long-term college outcomes than high school GPA.

II. Bias in the Tests and Testing Conditions

A. Bias Against Underrepresented Minority Students

¹⁴⁰ *Id.*

¹⁴¹ William G. Bowen et al., *Crossing the Finish Line: Completing College at America's Public Universities* 113, 115 (2009).

1 158. The limited predictive value of the SAT and ACT tests—particularly for
2 underrepresented minority students—arises in part from biases built into the development of the
3 tests themselves.

4 ***Norm-Referenced Tests and Reliability***

5 159. The SAT and ACT are norm-referenced tests: they measure a test-taker’s
6 performance against the performance of other test-takers, instead of against a fixed standard.¹⁴²
7 Norm-referenced tests are designed to produce a bell curve, wherein most test-takers score in the
8 middle of the curve, and fewer test-takers score at the high and low tails.¹⁴³ By forcing student
9 scores into a bell curve, norm-referenced tests reflect the unscientific assumption that intelligence
10 in the population is distributed in that pattern.¹⁴⁴ Biases against underrepresented minority
11 students are inherent in the design of norm-referenced tests.¹⁴⁵

12 160. Designers of norm-referenced tests create items that must meet two requirements:
13 first, each item must be “reliable,” *i.e.*, “internally consistent with the other items on the same
14 test.”¹⁴⁶ Second, each item must conform to requirements regarding its level of difficulty, so that
15 the test as a whole can sort students into a bell curve pattern.¹⁴⁷ Through a process known as “pre-
16 testing,” items are reviewed for reliability before being added to the SAT or ACT.¹⁴⁸ An item’s
17 reliability is gauged “by the internal correlation between performance on that item” and
18

19 ¹⁴² Geiser, *supra* note 58, at 11; *see* College Board, *SAT Suite of Assessments Annual Report:*
20 *Total Group* (2019), [https://reports.collegeboard.org/pdf/2019-total-group-sat-suite-assessments-](https://reports.collegeboard.org/pdf/2019-total-group-sat-suite-assessments-annual-report.pdf)
21 [annual-report.pdf](https://reports.collegeboard.org/pdf/2019-total-group-sat-suite-assessments-annual-report.pdf).

22 ¹⁴³ Geiser, *supra* note 58, at 11.

23 ¹⁴⁴ *See* James J. Heckman, *Lessons from the Bell Curve*, 103 J. Pol. Econ. 1091, 1102 (1995)
24 (contesting the “empirically incorrect claim that a single factor—g or IQ—that explains linear
correlations among test scores is primarily responsible for differences in individual performance in
society at large”).

25 ¹⁴⁵ William C. Kidder & Jay Rosner, *How the SAT Creates Built-in-Headwinds: An Educational*
26 *and Legal Analysis of Disparate Impact*, 43 Santa Clara L. Rev. 131, 156–59 (2002).

27 ¹⁴⁶ *Id.* at 156.

28 ¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 156–57.

1 performance on the test overall.¹⁴⁹ Put simply, an item is “reliable” if higher-scoring test-takers
2 tend to answer it correctly, and lower-scoring test-takers tend to answer it incorrectly.¹⁵⁰ Its
3 reliability is not tied to any fixed standard outside of the test itself.¹⁵¹

4 161. If White students have higher overall scores than underrepresented minority
5 students on a given set of pre-test items, a facially neutral reliability analysis will tend to find
6 strong positive correlations for items on which White students perform better, as opposed to
7 “weakly positive or even negative correlations” for items on which underrepresented minority
8 students perform better.¹⁵² Items that favor White students will thus be deemed reliable—resulting
9 in their inclusion on the test—whereas those that favor underrepresented minority students will be
10 deemed unreliable—resulting in their exclusion.¹⁵³

11 162. Over multiple administrations of the test, this adverse effect on underrepresented
12 minority test-takers compounds itself: items that are strongly correlated to items from previous
13 administrations are more likely to remain on the test, whereas more weakly correlated items may
14 be dropped or revised.¹⁵⁴ Because underrepresented minority test-takers have historically scored
15 lower on the SAT and ACT tests for reasons including structural biases in test design and
16 stereotype threat, discussed *infra*, items on which those test-takers perform well are iteratively
17 discarded in order to reproduce score distributions on subsequent tests.¹⁵⁵ By contrast, facially
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19 ¹⁴⁹ Geiser, *supra* note 58, at 10.

20 ¹⁵⁰ Kidder & Rosner, *supra* note 145, at 157.

21 ¹⁵¹ See Geiser, *supra* note 58, at 10–11.

22 ¹⁵² Kidder & Rosner, *supra* note 145, at 158.

23 ¹⁵³ *Id.*

24 ¹⁵⁴ *Id.* at 158–59; Martin Shapiro, *A Psychometric Model for Preserving Discrimination*, 12
25 Berkeley La Raza L.J. 387, 390–91 (2001) (“Pre-test items which the higher-scoring group
26 answers correctly and the lower-scoring group answers incorrectly are considered to be good items
and are likely to be included . . . on a subsequent test form. The same process is repeated on each
subsequent test form. . . . [T]he selection process for pre-tested items continues to discard items
which would reduce the test-score difference between the two groups.”).

27 ¹⁵⁵ Brief for Nat’l Ctr. for Fair & Open Testing (FairTest) as Amicus Curiae Supporting
28 Respondents at 18, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241) [hereinafter FairTest].

1 neutral questions that in fact favor White test-takers tend to be retained due to their higher
2 correlations with previously administered items.¹⁵⁶ Reliability analyses during test development
3 thus create an “ongoing feedback loop” that systematically disadvantages underrepresented
4 minority test-takers.¹⁵⁷

5 *Differential Item Functioning*

6 163. Test developers attempt to detect bias in the SAT and ACT by searching for pre-
7 test items that exhibit differential item functioning (DIF).¹⁵⁸ DIF is a measure of bias that “occurs
8 ‘when equally able test takers [as measured by their overall scores] differ in their probabilities of
9 answering a test item correctly as a function of group membership.’”¹⁵⁹

10 164. Critically, however, DIF controls for overall test scores *before* it assesses item
11 bias.¹⁶⁰ That is, because it compares test-takers with the same overall scores, DIF necessarily
12 begins from the assumption that the test overall is unbiased.¹⁶¹ Since DIF assumes that the test as a
13 whole is unbiased, it cannot be used to detect and eliminate systemic biases that affect the test
14 overall.¹⁶² Instead, DIF identifies only major outliers—items that are “grossly unfair to one or
15 another group.”¹⁶³

16 165. Test developers attempt to remove items that exhibit DIF from the tests that are
17 ultimately administered.¹⁶⁴ But as UC psychometricians have demonstrated, these efforts have
18 failed to eliminate statistically significant item bias from the tests. Analyzing multiple SAT forms
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20 ¹⁵⁶ *See id.*

21 ¹⁵⁷ Kidder & Rosner, *supra* note 145, at 158–59.

22 ¹⁵⁸ Shapiro, *supra* note 154, at 391.

23 ¹⁵⁹ Geiser, *supra* note 58, at 11 (citing Am. Research Ass’n et al., *Standards for Educational and*
24 *Psychological Testing* 51 (2014)).

25 ¹⁶⁰ Kidder & Rosner, *supra* note 145, at 163.

26 ¹⁶¹ *Id.*

27 ¹⁶² *Id.*

28 ¹⁶³ FairTest, *supra* note 155, at 19.

¹⁶⁴ Geiser, *supra* note 58, at 11.

1 from different years, the researchers found that up to 12 percent of items exhibited large DIF for
2 Black as compared to White test-takers, and up to 10 percent of items exhibited large DIF for
3 Latinx as compared to White test-takers.¹⁶⁵ Thus, even beyond the systemic biases that DIF fails
4 to detect, a substantial number of questions on the tests remains “grossly unfair” to
5 underrepresented minority test-takers.

6 *Multilingual Learners*

7 166. As the Task Force recognized, “standardized tests likely under-estimate
8 [multilingual learners]’ capabilities because of lack of sensitivity . . . to issues of language
9 difference.”¹⁶⁶ In a State where “[m]ore than 40% of students begin school . . . as English
10 learners,” UC’s continued use of the SAT and ACT leaves “a very large percentage of
11 [underrepresented minority students] . . . vulnerable to mis-assessment.”¹⁶⁷

12 167. Through the Fall 2020 admissions cycle, UC required all applicants to submit
13 scores from the otherwise optional writing sections of the SAT and ACT.¹⁶⁸ Although UC no
14 longer requires scores from these sections, the SAT’s extensive use of word-heavy math problems
15 continues to place multilingual learners at a disadvantage relative to their native English-speaking
16 peers. For test-takers whose first language is not English, lengthy word problems can slow their
17 pace (which is particularly problematic on “speeded” exams like the SAT and ACT) or even limit
18 their comprehension of the underlying math questions.¹⁶⁹

19 168. These disparities have only worsened with the latest iteration of the SAT, which
20 focuses on assessing test-takers’ ability to apply their math skills to “real-world contexts”—
21
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23 ¹⁶⁵ Santelices & Wilson, *supra* note 15, at 23–24 .

24 ¹⁶⁶ STTF Report, *supra* note 3, at 65.

25 ¹⁶⁷ *Id.*

26 ¹⁶⁸ Univ. of Cal. Admissions, *Exam Requirement*, <https://admission.universityofcalifornia.edu/admission-requirements/freshman-requirements/exam-requirement/>.

27 ¹⁶⁹ James S. Murphy, *New SAT, New Problems*, Atlantic (Jan. 20, 2015), <https://www.theatlantic.com/education/archive/2015/01/new-sat-new-problems/384596/>.
28

1 “problems drawn from science, social studies, and careers.”¹⁷⁰ In practice, this emphasis on
2 contextualized math items results in test-takers having to read and understand more text—placing
3 multilingual learners at a significant disadvantage.¹⁷¹

4 169. Even before the redesigned SAT became operational, the College Board was well
5 aware of these problems. In 2014, it administered a prototype of the new SAT and found that
6 approximately half of the test-takers could not complete the math sections of the test.¹⁷² Moreover,
7 revisions to the math section disproportionately affected test-takers at lower-scoring schools (*i.e.*,
8 schools where students posted lower overall test scores on the old SAT): on the calculator portion
9 of the test, seventy-eight percent of students from higher-scoring schools were able to finish, as
10 compared to only 41 percent of students from lower-scoring schools.¹⁷³

11 170. Faced with these disparities, test developers decided to reduce the proportion of
12 “heavy” word problems (defined as problems exceeding 60 words) to only 10 percent of items on
13 the redesigned SAT.¹⁷⁴ But this reduction never happened: in 2015, a College Board executive
14 reported that “heavy” word problems comprised 45 percent of the contextualized math items on
15 redesigned SAT practice tests.¹⁷⁵ After the redesigned SAT became operational, independent
16 analysis of six practice tests—including two previously administered SAT tests—demonstrated
17 that “heavy” word problems continued to constitute at least 45 percent of the contextualized math
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19

20 ¹⁷⁰ College Board, *The Redesigned SAT: Problems Grounded in Real-World Contexts* 1 (2014),
21 [https://www.collegeboard.org/sites/default/files/problems_grounded_in_real_world_](https://www.collegeboard.org/sites/default/files/problems_grounded_in_real_world_contexts.pdf)
22 [contexts.pdf](https://www.collegeboard.org/sites/default/files/problems_grounded_in_real_world_contexts.pdf).

23 ¹⁷¹ Murphy, *supra* note 169.

24 ¹⁷² Renee Dudley, *Despite warnings, College Board redesigned SAT in way that may hurt neediest*
25 *students*, Reuters (Sept. 21, 2016), [https://www.reuters.com/investigates/special-report/college-](https://www.reuters.com/investigates/special-report/college-sat-redesign/)
26 [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 – the 20-
question portion during which calculators aren’t allowed. And just 50 percent completed the
longer 38-question math section, which allows the use of a calculator.”).

27 ¹⁷³ *Id.*

28 ¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

1 items on each test.¹⁷⁶

2 171. These disparities are exacerbated by the difficulties multilingual learners encounter
3 in trying to access English learner (“EL”) accommodations for the SAT and ACT. EL supports are
4 not available at all to students who take regular weekend SAT administrations, SAT Subject Tests,
5 or the PSAT/National Merit Scholarship Qualifying Test (NMSQT).¹⁷⁷ Instead, students with EL
6 supports must test during in-school SAT administrations. Because such administrations have
7 ceased during the COVID-19 pandemic, students who require EL supports and seek to submit
8 SAT scores for the Fall 2021 admissions cycle must take the test without those supports during a
9 regular weekend administration.

10 172. Moreover, because EL supports on the SAT and ACT are approved by the testing
11 companies rather than school districts or high schools, students who have EL supports at school
12 may not be able to use them on the SAT or ACT. EL supports must be requested by a high school
13 counselor, and many multilingual learners at underserved, highly segregated schools have limited
14 access to counselors who can request EL supports on their behalf. During the 2016 to 2017
15 academic year, the ratio of students to counselors in California was 663 to one.¹⁷⁸ This lack of
16 access has been exacerbated by the COVID-19 pandemic, during which many students have had
17 limited or no contact with their counselors. Monolingual parents seeking EL supports for their
18 children also lack adequate information in their native languages about the accommodations
19 process.

20 173. Critically, because English language proficiency may improve over time, EL
21 supports are temporary (*i.e.*, limited to the test date for which they are requested and granted).¹⁷⁹

23 ¹⁷⁶ *Id.*

24 ¹⁷⁷ See College Board, *Testing Supports for English Learners*, [https://](https://collegereadiness.collegeboard.org/educators/k-12/english-learner-supports)
25 collegereadiness.collegeboard.org/educators/k-12/english-learner-supports (EL supports are
26 available only “during SAT School Day, the PSAT 10, and the PSAT 8/9”).

27 ¹⁷⁸ Am. Sch. Counselor Ass’n, *Student-to-School-Counselor Ratio 2016-2017*, [https://](https://www.schoolcounselor.org/asca/media/asca/home/Ratios16-17.pdf)
28 www.schoolcounselor.org/asca/media/asca/home/Ratios16-17.pdf.

¹⁷⁹ College Board, *supra* note 177.

1 The temporary nature of EL supports undermines the assumption that test scores obtained by
2 students receiving these supports will accurately predict their future academic performance.

3 ***Stereotype Threat***

4 174. Beyond biases in the content of the SAT and ACT, underrepresented minority
5 students face the additional barrier of stereotype threat: “the pressure that [students] feel when
6 they fear that their performance could confirm a negative stereotype about their group,” which
7 “manifests itself in anxiety and distraction that interferes with intellectual functioning.”¹⁸⁰ By
8 “artificially depress[ing]” the scores of underrepresented minority students on tests like the SAT
9 and ACT, stereotype threat results in those tests underestimating how well underrepresented
10 minority students are likely to perform in college.¹⁸¹

11 175. As the Standardized Testing Task Force recognized, “stereotype threat is a well-
12 establish phenomenon among [underrepresented minority students] and women.”¹⁸² Multiple
13 studies have confirmed its existence in real world educational and testing environments.¹⁸³ One
14 meta-analysis combining data from more than 3,000 participants found that standard measures of
15 academic performance “underestimate the capacity of students targeted by negative stereotypes by
16 an average of 0.18 standard deviations”—or 63 points on the SAT.¹⁸⁴

17 176. Although all students can potentially experience stereotype threat,¹⁸⁵ the
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19 ¹⁸⁰ Brief of Experimental Psychologists as Amici Curiae in Support of Respondents at 4, *Fisher v.*
20 *Univ. of Texas at Austin*, 136 S. Ct. 2198 (2016) (No. 14-981).

21 ¹⁸¹ Claude M. Steele, *Expert Report of Claude M. Steele*, 5 Mich. J. Race & L. 439, 440 (1999).

22 ¹⁸² STTF Report, *supra* note 3, at 74.

23 ¹⁸³ Toni Schmader et al., *An Integrated Process Model of Stereotype Threat Effects on*
24 *Performance*, 115 Psychol. Rev. 336, 336 (2008) (“[A] large body of work now testifies to the
reliability and generalizability of stereotype threat effects on performance.”); Brief of
Experimental Psychologists, *supra* note 180, at 15–18.

25 ¹⁸⁴ *Id.* at 18 (citing Greg Walton & Steven Spencer, *Latent Ability: Grades and Test Scores*
26 *Systematically Underestimate the Intellectual Ability of Negatively Stereotyped Students*, 20
Psychol. Sci. 1132, 1135 (2009)).

27 ¹⁸⁵ See Tough, *supra* note 31, at 27 (describing how an SAT tutor for wealthy high school students
28 seeks primarily to “reduce his students’ anxiety” by dispelling their beliefs that the SAT and ACT
are “objective, reliable measures” of their academic ability).

1 phenomenon systematically disadvantages underrepresented minority students, who belong to
2 groups that historically have been stereotyped as intellectually inferior.¹⁸⁶ Perversely, the more a
3 student cares about his or her performance on a test, the more likely that student is to experience
4 stereotype threat-induced anxiety.¹⁸⁷ Consequently, “stereotype threat hits the most dedicated
5 students the hardest”¹⁸⁸—a fact the Task Force acknowledged in observing that “the high stakes of
6 the SAT/ACT by themselves” can “depress[] scores even for highly talented [underrepresented
7 minority] students who otherwise perform at high levels and are prepared to succeed” at UC.¹⁸⁹

8 ***Trauma and Other Adverse Life Experiences***

9 177. Research shows that students’ exposure to trauma and other adverse life
10 experiences—including poverty and discrimination—also depresses their performance on
11 standardized tests.¹⁹⁰ Compared to their White and more affluent counterparts, underrepresented
12 minority students and students with less wealth are disproportionately exposed to (and forced to
13 cope with) trauma and adverse life experiences. Researchers’ analysis of data on 84,837 children’s
14 exposure to adversity—including “financial hardship,” “parental divorce/separation,” “parental
15 death,” “parental imprisonment,” “witness to domestic violence,” “victim or witness of
16 neighborhood violence,” “lived with mentally ill/suicidal person,” “lived with someone with
17 alcohol/drug problem,” and “treated unfairly because of race/ethnicity”—revealed striking racial
18 and socioeconomic disparities.¹⁹¹ The researchers found that Black, Latinx, and poorer children
19 had greater rates of exposure to adverse life experiences than White children and wealthier
20 children, noting that racial disparities were “consistent with extensive evidence of racial/ethnic

22 ¹⁸⁶ Brief of Experimental Psychologists, *supra* note 180, at 8.

23 ¹⁸⁷ *Id.* at 15.

24 ¹⁸⁸ *Id.*

25 ¹⁸⁹ STTF Report, *supra* note 3, at 74–75.

26 ¹⁹⁰ Rachael D. Goodman et al., *Traumatic Stress, Socioeconomic Status, and Academic Achievement Among Primary School Students*, 4 Psychol. Trauma: Theory, Res., Prac., & Pol’y 252, 256 (2012).

27 ¹⁹¹ 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).

disadvantages across all major sectors of society,” including education and employment.¹⁹² Young men of color, for example, are “more likely to suffer toxic stresses” caused by “brutality at the hands of the police.”¹⁹³ Studies have also shown that students with lower socioeconomic status experience significantly higher rates of traumatic stress than their more affluent counterparts, suggesting higher rates of exposure to trauma or fewer resources to mitigate its effects.¹⁹⁴

178. Exposure to trauma and adverse life experiences has been shown to hinder working memory—the temporary storage and manipulation of information—in children,¹⁹⁵ which limits the ability of students exposed to trauma to prepare for and succeed on standardized tests. Analyzing data from the Early Childhood Longitudinal Study, researchers found that students with traumatic stress had significantly lower standardized test scores than students without such stress.¹⁹⁶ The researchers concluded that “traumatic stress impairs student performance on standardized tests,” placing students with exposure to trauma at risk of being incorrectly tracked into “low-ability programs.”¹⁹⁷ The researchers’ caution to educators—that “the neuropsychological impact of trauma must be differentiated from actual cognitive ability”¹⁹⁸—arises from the recognition that exposure to trauma distorts student performance on standardized tests, reducing their predictive value still further.

¹⁹² *Id.* at 52.

¹⁹³ John Rich, *Moving Toward Healing: Trauma and Violence and Boys and Young Men of Color* 2 (2016), Drexel Univ. Ctr. for Nonviolence & Soc. Justice, http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2016/rwjf431300/subassets/rwjf431300_1; see also Jocelyn R. Smith Lee & Michael A. Robinson, “*That’s My Number One Fear in Life. It’s the Police*”: Examining Young Black Men’s Exposures to Trauma and Loss Resulting From Police Violence and Police Killings, 45 J. Black Psychol. 143, 157 (“Findings identified police violence as a traumatic stressor in the lives of Black boys and young men that progressed from participants predominantly witnessing police violence in childhood to directly experiencing harassment, verbal abuse, and physical injury from police officers in adolescence and emerging adulthood.”).

¹⁹⁴ Goodman et al., *supra* note 190, at 256.

¹⁹⁵ 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).

¹⁹⁶ Goodman et al., *supra* note 190, at 253, 255.

¹⁹⁷ *Id.* at 256–57.

¹⁹⁸ *Id.* at 257.

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

2 ***Inaccessible Test Sites***

3 179. Neither the College Board nor ACT, Inc. mandates that test sites be accessible to
4 all students with disabilities who require accommodations to access the SAT or ACT. Disability
5 accommodations vary depending on student need, and SAT and ACT test sites—typically high
6 schools—may not provide all necessary accommodations for test-takers for all test
7 administrations. Members of College Seekers and Stephen C. require accommodations, such as
8 more than 50 percent additional time, readers or scribes, alternate format tests, and/or use of a
9 computer, that are not provided at either their schools or national test centers.¹⁹⁹ Students with
10 disabilities are thus unable to choose their preferred test location and may not be guaranteed the
11 ability to test on their desired dates with accommodations, if at all. This inaccessibility has been
12 exacerbated by the COVID-19 pandemic, during which widespread school closures have rendered
13 students who require school-based accommodations unable to take the tests at all.²⁰⁰

14 ***ACT Accessibility***

15 180. A student without disabilities who does not require accommodations to take the
16 ACT is able to choose his or her preferred test site and date and may thus select the most
17 convenient site. Generally, a student testing without accommodations will choose to take the ACT
18 at a national test center, which is typically a local high school. However, a student requesting
19 disability accommodations on the ACT cannot choose a test location during registration, because
20 not all test sites offer accommodations or have sufficient space and proctors for accommodated
21 test-takers. Students with disabilities who cannot test at their chosen location may have to travel
22 significant distances to test, which can result in hardship—including additional stress and
23 expenses—for test-takers and their families.

24 _____
25 ¹⁹⁹ ACT, Inc., *National Versus Special Testing: Which Type of Accommodations or English*
26 *Learner Supports to Select*, [https://www.act.org/content/act/en/products-and-services/the-](https://www.act.org/content/act/en/products-and-services/the-act/registration/accommodations/national-vs-special-text.html)
27 *act/registration/accommodations/national-vs-special-text.html*; College Board, *Administering the*
SAT with Accommodations, [https://accommodations.collegeboard.org/exam-](https://accommodations.collegeboard.org/exam-administration/administrating-sat-accommodations)
administration/administrating-sat-accommodations.

28 ²⁰⁰ See *supra* paras. 10, 30, 42.

1 181. ACT divides its disability accommodations into “national” and “special”
2 categories.²⁰¹ “National” accommodations can be provided at standard or “national” test centers
3 with students who do not have accommodations. National accommodations are limited and
4 generally include 50 percent extended time, preferential seating, and EL supports. ACT’s policies
5 state that the “test location will be provided on the examinee’s admission ticket” for students who
6 are approved for national accommodations. These examinees may not learn their test location until
7 shortly before their scheduled test administration.

8 182. ACT “special” accommodations are for documented disabilities requiring
9 accommodations that “cannot be provided in a National test center.”²⁰² ACT, Inc. requires test-
10 takers who need special accommodations to have the ACT administered by their schools, but does
11 not require those schools to administer the test with special accommodations.²⁰³ Students with
12 disabilities may thus be left without a location at which to test on their desired date. Students with
13 sufficient resources may drive long distances to test locations willing to accept their necessary
14 accommodations.²⁰⁴ For example, a student whose parent is a member of College Seekers, who
15 intends to apply to UC, and who is on track to complete UC’s A-G coursework requirements
16 received notice from ACT, Inc. informing the student that “you have been approved for Special
17 Testing with Accommodations, but . . . your home school is unable to administer the test during
18 your scheduled testing window.” He was told that “[o]nce we receive your information, we will
19 attempt to arrange testing at a school within 75 miles of your home. We will notify you via email

21 ²⁰¹ ACT, Inc., *Accommodations and English Learner Supports for the ACT test*,
22 [https://www.act.org/content/act/en/products-and-services/the-act/registration/
accommodations.html](https://www.act.org/content/act/en/products-and-services/the-act/registration/accommodations.html) (“Based on your approved accommodations ACT will place you in either
National Testing” or “Special Testing[.]”).

23 ²⁰² *Id.*

24 ²⁰³ ACT, Inc., *Accommodations and English Learners Supports for Educators*,
25 [https://www.act.org/content/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
26 notify the examinee that Special testing cannot be administered and the examinee will need to
work with ACT for an alternate location.”).

27 ²⁰⁴ ACT, Inc., *supra* note 201 (“If the examinee’s school is unable to administer Special testing
28 examinees may find a willing school and work with ACT to request testing at this location.”).

1 as soon as we've found a location." However, ACT, Inc. made clear that there was no guarantee
2 that the student would be able to test with accommodations at all, providing that "[w]e cannot
3 guarantee we will be able to arrange a location or that the location we arrange will be able to test
4 at the time of your choice." These practices deter students with disabilities from exercising their
5 rights to request necessary accommodations, from testing with their approved accommodations,
6 and from retesting (which is already cost-prohibitive for many test-takers).

7 183. ACT, Inc. offers students the opportunity to test online to "better align with
8 how today's students learn and the comfort many of them feel taking tests."²⁰⁵ According to ACT,
9 the benefits for students of online testing include students' ability to choose their "most
10 comfortable" test format, to test "without distraction," and to receive their scores more quickly (as
11 soon as two business days after taking the test).²⁰⁶ However, ACT, Inc.'s online testing is not
12 accessible to all test-takers with disabilities, because it does not offer the same accommodations as
13 are available for paper testing. Stephen C. and certain members of College Seekers who intend to
14 apply to UC cannot access ACT's online testing due to their disabilities and required
15 accommodations.

16 *SAT Accessibility*

17 184. Whereas all test-takers without disabilities can register to take the SAT at national
18 test centers, students who require certain testing accommodations due to their disabilities (such as
19 more than 50 percent extended time, breaks as needed, the use of a computer for the SAT essay, or
20 certain nonstandard materials such as Braille or assistive technology) cannot. These students must
21 instead participate in in-school testing to access the SAT.

22 185. Only College Board-approved test centers can administer in-school SAT testing to
23 students with disabilities who require accommodations. However, many California high school
24 students attend schools—such as public charter schools, independent study schools, and small
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26 ²⁰⁵ ACT, Inc., *NEW FIRSTS FOR STUDENTS TAKING THE ACT TEST: FAQs*, [https://](https://www.act.org/content/act/en/products-and-services/more-choices-for-the-act-sept-2020/faqs.html)
27 www.act.org/content/act/en/products-and-services/more-choices-for-the-act-sept-2020/faqs.html
28 (accessed Dec. 3, 2019).

²⁰⁶ *Id.*

1 private schools—that are not College Board-approved test centers. Many students with disabilities
2 thus cannot take the SAT with accommodations at their own schools. These students may register
3 and pay for the SAT and obtain approval for necessary accommodations, only to subsequently
4 receive notice that they do not have a test date or location.

5 186. If a student cannot take the SAT with accommodations at his or her home school,
6 the College Board provides the student with a list of schools that may be willing to test outside
7 students. But the College Board does not require these schools to accept outside students, and if no
8 school is willing to administer the test with accommodations, the student will miss that test
9 administration. One College Seekers member with disabilities was approved for school-based
10 SAT testing. He was on track to complete UC's A-G coursework requirements and hoped to
11 attend UC Irvine. However, because his high school was not a College Board-approved test center,
12 the student could not take the SAT with accommodations there. The student was unable to locate a
13 test center willing to provide in-school testing for two separate exam administrations. Realizing
14 that he would miss early college application deadlines, the student decided not to take the SAT
15 with school-based accommodations at all. Instead, he took the ACT, but did not have enough time
16 to seek ACT accommodations and thus did not perform at a level that demonstrated his true
17 abilities. After receiving an ACT score that was below the range of scores published by most UC
18 campuses, this student was deterred from applying to the UC system at all.

19 ***Failure to Approve Necessary Accommodations***

20 187. The challenge of finding a test site that allows the use of necessary
21 accommodations is only the final hurdle in the testing accommodations process, and it is a step
22 that many students with disabilities never even reach. Students and their families face both
23 administrative and structural (socioeconomic, racial, and language) barriers to obtaining the
24 accommodations they need to access the SAT and ACT exams. As a result of these barriers, even
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1 though approximately 14 percent of California students qualify for special education supports,²⁰⁷
2 only approximately four to five percent of students take the SAT or ACT with accommodations.²⁰⁸

3 188. Unlike tests in high school courses and California State Assessment tests—for
4 which schools are required by State and federal law to provide accommodations—the SAT and
5 ACT may be taken with accommodations only with approval from the College Board or ACT, Inc.
6 For a student’s scores to be reported to colleges, his or her accommodations must be approved by
7 one of the testing companies, even if the student takes the test during the school day. ACT, Inc.
8 and the College Board do not offer students the same accommodations and supports they receive
9 in their school or district plans. This leaves some students without needed accommodations that
10 they are accustomed to receiving in school.

11 189. The SAT and ACT accommodations processes place high demands on schools’
12 resources. Because the testing companies 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. 172, students at underresourced and
15 highly segregated schools have more limited access to their high school counselors, and are thus
16 less likely than their more privileged peers to receive the accommodations they need to access the
17 SAT and ACT. This lack of access has only been exacerbated by widespread school closures
18 during the COVID-19 pandemic.²⁰⁹ One College Seekers member, who intends to apply to UC
19

20 ²⁰⁷ Cal. Dep’t of Educ. DataQuest, *2018-19 Enrollment by Ethnicity*, [https://dq.cde.ca.gov/](https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthLevels.aspx?cds=00&agglevel=State&year=2018-19)
21 [dataquest/dqcensus/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
22 6,186,278 total students and 725,412 students who receive services under the Individuals with
23 Disabilities Education Act (IDEA) (found by filtering by “Students with Disabilities”) enrolled in
24 California K-12 public schools). Based on these numbers, approximately 12 percent of California
25 students receive services through IEPs under IDEA. Because this percentage excludes students
26 who receive accommodations pursuant to 504 Plans, disability experts estimate that the percentage
27 of California students who qualify for special education supports is closer to 14 percent.

28 ²⁰⁸ Nick Anderson, *Abuse of ‘Extended Time’ on SAT and ACT Outrages Learning Disability Community*, Wash. Post (Mar. 29, 2019), 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.

²⁰⁹ *Supra* paras. 10, 30, 42.

1 and is on track to complete its A-G coursework requirements, was recently informed by his
2 California public high school that due to the extreme burdens imposed by the SAT and ACT
3 accommodations processes, “school counselors will no longer submit accommodations requests on
4 behalf of students. It is cumbersome and we can no longer handle the volume.” Parents of students
5 at underresourced public high schools may receive no information at all on the SAT and ACT
6 accommodations process: one mother of a student with A.D.H.D. and a reading disability only
7 learned of the opportunity to request ACT accommodations after transferring her son to a private
8 school, where staff informed her about the process.²¹⁰ Her son was granted an accommodation to
9 take the ACT over multiple days, earning a score of 33.²¹¹

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

15 191. ACT and SAT accommodations require frequent and often expensive evaluations.
16 Both the College Board and ACT, Inc. require medical documentation that is “current.” Each
17 testing entity defines “current” differently, but documentation must be within the past year for
18 many disabilities and within two to five years for others.²¹² Students with stable disabilities,

19 _____
20 ²¹⁰ Dana Goldstein & Jugal K. Patel, *Need Extra Time on Tests? It Helps to Have Cash*, N.Y.
Times (July 30, 2019), <https://www.nytimes.com/2019/07/30/us/extra-time-504-sat-act.html>.

21 ²¹¹ *Id.* Among the graduating class of 2018, an ACT composite score of 33 would place the student
22 in the 98th percentile. ACT, Inc., *ACT Profile Report – National: Graduating Class 2018* 13
(2018), https://www.act.org/content/dam/act/unsecured/documents/cccr2018/P_99_999999_N_S_N00_ACT-GCPR_National.pdf.

23 _____
24 ²¹² ACT requires documentation within one year for mental health conditions, visual impairments,
25 medical conditions, and brain injuries, and within the past three years for learning disabilities,
26 A.D.H.D., hearing impairments, autism, and speech and language disorders. ACT, Inc.,
Documentation by Type of Disability, [http://www.act.org/content/act/en/products-and-](http://www.act.org/content/act/en/products-and-services/the-act/registration/accommodations/policy-for-accommodations-documentation.html)
27 *services/the-act/registration/accommodations/policy-for-accommodations-documentation.html*.
The College Board requires documentation within one year for physical disabilities and mental
28 health conditions, within two years for hearing and vision disabilities, and within five years for
A.D.H.D., autism, and learning disabilities. College Board, *Disability Documentation Guidelines*,

1 therefore, must often undergo expensive and time-consuming medical testing in order to apply for
2 accommodations. High school health resources are already strained, and health professionals
3 cannot always reassess students as frequently as the College Board and ACT, Inc. require.
4 Whereas students attending schools with fewer resources may not be able to obtain evaluations as
5 often as the testing companies require or at all, affluent students can pay for private testing to
6 obtain early diagnosis and to update their evaluations to meet the strict review standards. A private
7 psychologist in New York, for example, charges \$6,000 per evaluation.²¹³

8 192. Relatedly, although the College Board and ACT, Inc. consider a student's history
9 of school accommodations and school-provided information in determining whether to grant SAT
10 or ACT accommodations, underserved students may not be diagnosed soon enough or evaluated
11 frequently enough to show a lengthy history of school accommodations. One student whose parent
12 could not afford a new evaluation had her request for accommodations on the SAT denied after
13 she submitted a seven-year-old A.D.H.D. evaluation.²¹⁴ Students in underresourced and highly
14 segregated schools may be undiagnosed, diagnosed late, or misdiagnosed.

15 193. The "speeded" nature of the ACT and SAT further discriminates against students
16 with disabilities, because there is no evidence that the time limits are essential to the test, and
17 because students with disabilities struggle to complete the tests.²¹⁵ Studies do not consistently
18 show that the time accommodations granted are sufficient for all test-takers, and, as discussed
19 *supra*, the accommodations process for obtaining extended time is onerous and not equally
20 accessible.

21 194. Even when the College Board and ACT do approve accommodations, many
22 students with disabilities are not properly served by those accommodations. Studies have
23 demonstrated that students with certain disabilities, such as hearing loss and dyslexia, are not

24 _____
25 <https://accommodations.collegeboard.org/documentation-guidelines/disability-documentation>.

26 ²¹³ Goldstein & Patel, *supra* note 210.

27 ²¹⁴ *Id.*

28 ²¹⁵ See generally Ruth Colker, *Test Validity: Faster Is Not Necessarily Better*, 49 Seton Hall L. Rev. 679 (2019).

effectively accommodated in testing,²¹⁶ and that their test scores do not predict their likelihood of success in the same way as for their peers without disabilities. For example, researchers have noted the lack of information about the “effects of accommodations for deaf and hard of hearing students who have additional disabilities” and “the range of quality in the implementation of [American Sign Language] accommodations.”²¹⁷ Moreover, “despite the importance of matching accommodations to individual student characteristics and needs, few studies disaggregated findings beyond broad categories” such as deaf, hard of hearing, or hearing.²¹⁸

195. Finally, students with disabilities who *do* receive and use the accommodations they need are experiencing unprecedented levels of suspicion and discrimination. Problematically, test scores are sometimes reported in ways that identify students as having disabilities or as having tested with accommodations. Although students with disabilities have historically feared discrimination based upon self-identification, students who use testing accommodations have been increasingly stigmatized following the recent college admissions scandal, in which wealthy parents of students without disabilities abused the testing accommodations process to give their children a competitive advantage.²¹⁹

Non-College Reportable Scores

196. Rather than honoring all special education supports provided by schools to students with disabilities, the College Board and ACT have devised a system of “non-college reportable” scores for students who take their tests during the school day with their ordinary school accommodations, but who have not been approved for SAT or ACT accommodations. These

²¹⁶ See, e.g., Juliana M. Taymans et al., *Learning to Achieve: A Review of the Research Literature on Serving Adults With Learning Disabilities*, Nat’l Inst. for Literacy 134 (2009), <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”).

²¹⁷ Stephanie Cawthorn & Rachel Leppo, *Assessment Accommodations on Tests of Academic Achievement for Students Who Are Deaf or Hard of Hearing: A Qualitative Meta-analysis of the Research Literature*, 158 Am. Annals Deaf 363, 373 (2013).

²¹⁸ *Id.* at 367.

²¹⁹ Anderson, *supra* note 208.

1 students—who have IEPs, 504 Plans, or access to language supports in school, but who do not
2 receive permission to use these accommodations on the ACT or SAT—receive “non-college
3 reportable scores,” which cannot be sent to colleges, scholarship agencies, or any other outside
4 agencies.²²⁰ This system of non-college reportable scores exists solely because testing providers
5 are unwilling to honor the necessary and legal accommodations and supports provided by schools
6 to their students during school-day testing.

7 ***Exclusion from Validity Studies***

8 197. Students with disabilities who test with necessary accommodations are excluded
9 from the College Board’s current validity studies. A concordance study comparing the 2016
10 redesigned SAT to its predecessor omitted “SSD answer sheets”—those from test-takers with
11 accommodations approved by the College Board’s Services for Students with Disabilities (“SSD”)
12 office—from its analysis.²²¹ Thus, although the College Board claims that its Technical Manual
13 demonstrates that “validity considerations permeate every aspect of the SAT,”²²² this is plainly not
14 the case for students with disabilities who take the SAT with necessary accommodations. ACT,
15 Inc. similarly excludes special-tested students from its National and State Annual Reports of
16 College and Career Readiness, which consequently furnish no support for the validity of the ACT
17 with respect to these students.

18 **III. Unequal Access to Test Preparation**

19 198. The enormous stakes of the SAT and ACT tests have spawned a lucrative test
20

21 ²²⁰ ACT, Inc., *The ACT Test Administration Manual: State Testing District Testing Non-College*
22 *Reportable Accommodations and English Learner Supports* 7 (2020), [https://www.act.org/](https://www.act.org/content/dam/act/secured/documents/pdfs/ACT-Admin-Manual-SD-NCR-Accoms-Paper-Fall-Secured.pdf)
23 [content/dam/act/secured/documents/pdfs/ACT-Admin-Manual-SD-NCR-Accoms-Paper-Fall-](https://www.act.org/content/dam/act/secured/documents/pdfs/ACT-Admin-Manual-SD-NCR-Accoms-Paper-Fall-Secured.pdf)
24 [Secured.pdf](https://www.act.org/content/dam/act/secured/documents/pdfs/ACT-Admin-Manual-SD-NCR-Accoms-Paper-Fall-Secured.pdf) (“ACT will not report scores earned with non-college reportable accommodations
25 and/or supports to colleges, scholarship agencies, or any other entities.”); *see* College Board, *SAT*
26 *School Day Accommodated Testing Manual* 14 (2019), [https://collegereadiness.collegeboard.org/](https://collegereadiness.collegeboard.org/pdf/sat-school-day-accommodated-testing-manual-fall.pdf)
27 [pdf/sat-school-day-accommodated-testing-manual-fall.pdf](https://collegereadiness.collegeboard.org/pdf/sat-school-day-accommodated-testing-manual-fall.pdf) (“College Board requires preapproval
28 for all accommodations” in order for accommodated students to “receive reportable scores[.]”).

²²¹ College Board, *SAT Suite of Assessments Technical Manual* 115–16 (Dec. 2017),
<https://collegereadiness.collegeboard.org/pdf/sat-suite-assessments-technical-manual.pdf>.

²²² *Id.* at vi.

1 preparation industry which capitalizes on the desires of students and their parents to secure even
2 incremental score increases.²²³ As the Standardized Testing Task Force recognized:

3 Students from more affluent homes can take advantage of an entire industry
4 dedicated to increasing their test scores. In addition to test preparation materials
5 and classes that can cost on average about \$1,000 each, families can purchase
6 coaches or counselors who for several thousand more dollars will work with
7 students with the preparation materials and provide tailor-made assessments and
8 advice. These coaches promise significant gains on the tests and they produce
9 them.²²⁴

10 Unequal access to test preparation services therefore exacerbates the discriminatory nature of the
11 SAT and ACT.

12 199. Affluent students have superior access to high-quality test preparation programs,
13 which can cost “upwards of \$10,000” over the course of multiple sessions.²²⁵ One \$400-per-hour
14 SAT and ACT tutor teaches his students “clever test-taking tricks,” like “plugging a simple
15 number” into algebra equations rather than spending time working through the math.²²⁶ Learning
16 these strategies not only boosts his tutees’ scores, but also reduces their anxiety about the test,
17 which becomes less daunting once they realize that simple “tricks actually work.”²²⁷ As the
18 Standardized Testing Task Force acknowledged, high-quality test preparation can thus “chang[e]
19 the psychology of the test-taker” and, by arming students with “cognitive strategies employed to
20 answer the questions appropriately[,] . . . can increase scores without necessarily increasing
21 academic knowledge.”²²⁸

22 200. The College Board has historically insisted that the only way for students to

23 ²²³ 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
26 services making up 25% of the industry.”).

27 ²²⁴ STTF Report, *supra* note 3, at 75.

28 ²²⁵ Wellemeyer, *supra* note 223.

²²⁶ Tough, *supra* note 31, at 28.

²²⁷ *Id.* at 28–29.

²²⁸ STTF Report, *supra* note 3, at 74–75 (internal punctuation omitted).

1 increase their SAT scores is by learning content.²²⁹ However, the College Board publishes and
2 sells its own test preparation book, the “Official SAT Study Guide,” which it touts as “[t]he best
3 source of information about the SAT.”²³⁰ The Official SAT Study Guide promises students that its
4 “information, advice, and sample questions will help you prepare to take the test with
5 confidence.”²³¹ According to the College Board, “[l]earning about the SAT through this guide
6 . . . will help you be well prepared when your test date arrives.”²³²

7 201. In 2015, in the wake of criticisms regarding the SAT’s lack of predictive value, the
8 College Board dramatically shifted its stance on test preparation by contracting with Khan
9 Academy, a provider of online test preparation services.²³³ Although Khan Academy test
10 preparation is free, its content—particularly the test-taking “strategies” it teaches students—is
11 limited by its affiliation with the College Board. Because the College Board continues to assert
12 that learning content is the best way to succeed on the SAT, Khan Academy does not teach
13 students strategies for “gaming” the test. For example, whereas private tutors instruct students on
14 how to quickly and correctly solve math items without working through every step of the problem,
15 *supra* para. 199,²³⁴ Khan Academy’s math strategies section advises students that their best
16 strategy is to “stop rushing and stop cutting corners.”²³⁵ Similarly, Khan Academy cautions
17 against “mental math,” advising students to “[g]et out of your head” and “do your work on paper”

18
19 ²²⁹ Tough, *supra* note 31, at 74.

20 ²³⁰ College Board, *The Official SAT Study Guide* (2018).

21 ²³¹ *Id.* at 3.

22 ²³² *Id.*

23 ²³³ 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.”).

25 ²³⁴ Tough, *supra* note 31, at 28 (describing how a \$400-per-hour private tutor instructs students to “see if you can figure out the answer” to geometry questions “by just eyeballing the diagram, rather than doing the math”).

27 ²³⁵ Khan Academy, *SAT Math Test Strategies: Controlling Careless Errors on the SAT Math Test*, <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>.

1 by, for example, “[w]rit[ing] down every step of algebra problems.”²³⁶

2 202. Despite these limitations, Khan Academy is yet another tool for test preparation
3 that is leveraged only with access and assistance. Even under normal circumstances, it is used
4 more by affluent students and students whose parents have advanced degrees, furnishing those
5 students with yet one more tool for preparation.²³⁷ The COVID-19 pandemic has created
6 additional barriers to accessing Khan Academy for low-income and underrepresented minority
7 students, whose families are less likely to have a desktop or laptop computer and subscribe to
8 residential broadband, and who are no longer able to use internet and technology resources at other
9 locations, such as libraries and community centers.²³⁸

10 203. Given these disparities in student access to test preparation, underresourced schools
11 and school districts divert valuable instruction time and large amounts from their limited funds
12 toward test preparation, at the expense of providing students with substantive, college preparatory
13 education.

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

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

16 204. The “distinctive mission” of the UC “is to serve society as a center of higher
17 learning, providing long-term societal benefits” through the transmission and discovery of
18 advanced knowledge.²³⁹ The UC thus has an obligation to students and to the people of California
19 to educate students and to prepare them to contribute to the civic and economic life of the State.
20 By continuing to consider SAT and ACT scores in admissions, however, the UC deprives the
21 people of California of the contributions of talented young people who could bring their

22
23 ²³⁶ *Id.*

24 ²³⁷ Tough, *supra* note 31, 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).

27 ²³⁸ See generally Galperin et al., *supra* note 25.

28 ²³⁹ Univ. of Cal. Office of the President, *UC’s Mission*, <https://www.ucop.edu/uc-mission/> (citing Univ. of Cal. Academic Plan, 1974-1978).

1 intelligence, diverse backgrounds, and industry to serve the needs of the State. UC’s continued use
2 of the SAT and ACT thus harms both well-qualified students excluded from public higher
3 education and the people of the State by stymieing these students’ immense potential to contribute
4 to the State’s political and economic vitality.

5 205. UC’s mission is constitutionally mandated: the California Constitution provides
6 that the UC shall be a “public trust” administered by the Regents, and envisions the UC as the
7 culmination of the State’s responsibility to provide public education to its citizens.²⁴⁰ Within the
8 framework of the California Constitution, the UC exists to further the “general diffusion of
9 knowledge and intelligence,” which is “essential to the preservation of the rights and liberties of
10 the people,” and to promote California citizens’ “intellectual, scientific, [and] moral . . .
11 improvement.”²⁴¹ This mission—providing higher education to California citizens—is so critical
12 to the population’s wellbeing that the California Constitution explicitly articulates that no person
13 shall be excluded from higher education at the UC on the basis of race or ethnicity.²⁴² Nor is the
14 constitutional vision of UC’s inclusivity and diversity limited to UC’s student population: the
15 California Constitution expressly provides that UC’s leadership shall be “broadly reflective of the
16 economic, cultural, and social diversity of the State, including ethnic minorities.”²⁴³

17 206. The UC frames this constitutional mandate as three “fundamental missions”:
18 “teaching, research[,] and public service.”²⁴⁴ Undergraduate education is central to UC’s teaching
19 mission. According to the UC, “[u]ndergraduate programs are available to all eligible California
20 high-school graduates.”²⁴⁵ These programs furnish students with the knowledge and skills they
21 need not only to have successful careers, but also to continue growing intellectually and “to
22

23 _____
24 ²⁴⁰ Cal. Const. art. IX, § 9(a); *see id.* § 1.

25 ²⁴¹ *Id.* § 1.

26 ²⁴² *Id.* § 9(f).

27 ²⁴³ *Id.* § 9(d).

28 ²⁴⁴ Univ. of Cal. Office of the President, *supra* note 239.

²⁴⁵ *Id.*

1 contribute to the needs of a changing society.”²⁴⁶ Taken in the aggregate, UC’s education of
2 talented California students “create[s] an educated workforce that keeps the California economy
3 competitive.”²⁴⁷

4 207. UC’s Policy on Undergraduate Admissions unequivocally confirms UC’s
5 commitment to provide higher education to all talented California students, regardless of
6 background:

7 Mindful of its mission as a public institution, the University of California has an
8 historic commitment to provide places within the University for all eligible
9 applicants who are residents of California. The University seeks to enroll, on each
10 of its campuses, a student body that, beyond meeting the University’s eligibility
11 requirements, demonstrates high academic achievement or exceptional personal
12 talent, and that encompasses the broad diversity of cultural, racial, geographic, and
13 socioeconomic backgrounds characteristic of California.²⁴⁸

14 Thus, although the UC permits individual campuses to establish their own admissions procedures,
15 it mandates, at least on paper, that those procedures align with UC’s commitment to building a
16 student body that reflects the “cultural, racial, geographic, and socioeconomic” diversity of the
17 State.²⁴⁹

18 208. The UC has repeatedly reaffirmed this purported commitment to diversity,
19 recognizing that building a diverse and representative student population is integral to fulfilling its
20 “core mission . . . to serve the interests of the State of California.”²⁵⁰ Noting that “[t]he diversity of
21 the people of California has been the source of innovative ideas and creative accomplishments
22 throughout the state’s history into the present,” the UC has recognized the myriad ways in which a
23 diverse educational community fosters its “achievement of excellence”: by “broaden[ing] and

24 ²⁴⁶ *Id.*

25 ²⁴⁷ *Id.*

26 ²⁴⁸ Univ. of Cal. Bd. of Regents, *supra* note 9.

27 ²⁴⁹ *Id.* (“[E]ach campus shall establish procedures for the selection of applicants to be admitted
28 from its pool of eligible candidates. Such procedures shall be consistent with the principles stated
above and with other applicable University policies.”).

²⁵⁰ 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 deepen[ing] both the educational experience and the scholarly environment”; by “promot[ing]
2 mutual respect” and “preparing [students] to participate in an increasingly complex and pluralistic
3 society”; by giving rise to, nurturing, and enriching ideas and practices; and, most critically, by
4 enabling “the full, effective use of the talents and abilities of all to foster innovation and train
5 future leadership.”²⁵¹

6 209. Beyond contributing to UC’s academic mission, UC’s assembling of a diverse
7 student population fulfills an even more fundamental purpose: it “sustain[s] the social fabric of the
8 State” with the “knowledge that the University of California is open to qualified students from all
9 groups, and thus serves all parts of the community equitably.”²⁵² Because the UC exists to serve
10 the people of California, the “State of California has a compelling interest in making sure that
11 people from all backgrounds perceive that access to the University is possible for talented students
12 . . . from all groups.”²⁵³

13 210. These sentiments are simply irreconcilable with UC’s continued use of the SAT
14 and ACT in admissions. By basing admissions and scholarship decisions on tests that discriminate
15 against underrepresented minority students, students with less wealth, and students with
16 disabilities, the UC has failed to provide a level playing field in which all applicants are assessed
17 based on individual merit, drive, and character. Admission to the UC, therefore, is plainly not
18 “open to qualified students from all groups,” rendering the UC utterly unable to “serve[] all parts
19 of the community equitably.”²⁵⁴ Unsurprisingly, UC’s persistent use of these tests has also
20 undermined public confidence in the fairness of UC admissions, as Californians correctly
21 “perceive that access to the University” is premised on access to wealth and other advantages.²⁵⁵
22
23

24 ²⁵¹ *Id.*

25 ²⁵² *Id.*

26 ²⁵³ *Id.*

27 ²⁵⁴ *Id.*

28 ²⁵⁵ *Id.*

211. As the Standardized Testing Task Force recognized, the primary justification for retaining standardized tests—predicting academic performance at UC by ostensibly measuring students’ college preparedness—is directly in tension with UC’s “affirmative role . . . not merely to identify but [also] to foster students’ abilities.”²⁵⁶ UC’s decisions about its use of test scores thus directly implicate the “question of institutional values”—“what the responsibility of a public university is to the people of the state who support it.”²⁵⁷ As framed by the Task Force: “Is the goal to maintain UC’s reputation for excellence” by admitting students with high test scores, “[o]r is it to admit a class representative of the public that UC was created to serve, thereby acknowledging some of the vast inequities in California society?”²⁵⁸ Whereas UC has historically privileged the former, justifying its use of SAT and ACT scores in part because such scores facilitated its “capacity to compare itself to other national institutions,”²⁵⁹ such elitism is even more insupportable in light of President Napolitano’s and the Regents’ recognition that SAT and ACT scores do not, in fact, measure students’ ability to succeed at UC. As the Task Force recognized, “the University has an immediate obligation to admit and support promising students *who are eligible*, but are affected by historic and adverse discrimination, rather than to allow its effects to justify continued exclusion” through UC’s ongoing consideration of SAT and ACT scores that serve only as a proxy for race and wealth.²⁶⁰

B. UC’s Mandate and Fundamental Rights

212. Education is a fundamental right under the California Constitution, and UC’s constitutional mandate—to prepare all qualified students to contribute meaningfully to the State’s economy and society—is premised on that right.²⁶¹ California courts have long recognized that K-

²⁵⁶ STTF Report, *supra* note 3, at 76.

²⁵⁷ *Id.* at 29, 70.

²⁵⁸ *Id.* at 12.

²⁵⁹ BOARS, *supra* note 13, at 4.

²⁶⁰ STTF Report, *supra* note 3, at 72–73 (emphasis in original).

²⁶¹ *Butt v. State*, 4 Cal. 4th 668, 692 (1992) (“[E]ducation is a fundamental interest in California.”).

12 education constitutes a fundamental right precisely because it enables students to access higher education and its attendant opportunities. Permitting equal access to higher education—including “entrance into . . . the University of California”—is the ultimate purpose of public elementary and secondary schooling, which opens “doorways . . . into chambers of science, art and the learned professions, as well as into fields of industrial and commercial activities.”²⁶²

213. As the California Supreme Court has recognized, “the ‘fundamental’ nature of the right to an equal education derives in large part from the crucial role that education plays in ‘preserving an individual’s opportunity to compete successfully in the economic marketplace, despite a disadvantaged background.’”²⁶³ The “public schools of this state”—and none more so than the UC—facilitate the “entry” of students from underrepresented groups into the economic and political spheres from which those groups have historically been excluded.²⁶⁴ Thus, not only does education “prepare[] individuals to participate in the institutional structures . . . that distribute economic opportunities,”²⁶⁵ it also empowers students to engage meaningfully in civic life: education “provide[s] the understanding of, and the interest in, public issues which are the spur to involvement in other civic and political activities.”²⁶⁶ The right to education is therefore fundamental because it enables students of all backgrounds to access social mobility and become successful participants in California’s economy and democracy.

214. Because the principal value of education is as a vehicle of economic and social mobility, the fundamental right to education mandates “more than access to a classroom.”²⁶⁷ In *Butt v. State*, the California Supreme Court made clear that the right requires public institutions not just to provide instruction, but to do so in a way that facilitates students’ “high school

²⁶² *Piper v. Big Pine Sch. Dist. of Inyo Cty.*, 193 Cal. 664, 673 (1924).

²⁶³ *Crawford v. Bd. of Educ.*, 17 Cal. 3d 280, 295 (1976) (quoting *Serrano v. Priest*, 5 Cal. 3d 584, 609 (1971)).

²⁶⁴ *Id.*

²⁶⁵ *Hartzell v. Connell*, 35 Cal. 3d 899, 908 (1984).

²⁶⁶ *Serrano*, 5 Cal. 3d at 607.

²⁶⁷ *Id.* at 607.

1 graduation[] and college entrance.”²⁶⁸ 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.”²⁶⁹ 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.”²⁷⁰

7 215. 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, those
12 with bachelor’s degrees had median weekly earnings of \$1,198, as compared to \$862 for those
13 with associate degrees and \$730 for those with only high school diplomas.²⁷¹ Those with
14 bachelor’s degrees also had lower rates of unemployment than those without.²⁷² 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
18 “now stipulate a college degree as a minimum education requirement.”²⁷³ Employer demand for
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21 ²⁶⁸ 4 Cal. 4th at 687.

22 ²⁶⁹ *Id.* & n.16.

23 ²⁷⁰ *Id.* at 688.

24 ²⁷¹ Elka Torpey, *Education pays*, U.S. Bureau of Labor Statistics (Feb. 2019), https://www.bls.gov/careeroutlook/2019/data-on-display/education_pays.htm.

25 ²⁷² *Id.*

26 ²⁷³ Joseph B. Fuller & Manjari Raman, *Dismissed by Degrees: How Degree Inflation Is*
27 *Undermining U.S. Competitiveness and Hurting America’s Middle Class*, Harvard Bus. Sch. 2
(Oct. 2017), <https://www.hbs.edu/managing-the-future-of-work/Documents/dismissed-by-degrees.pdf>.
28

1 workers with college degrees is on the rise “in the vast majority of occupations.”²⁷⁴

2 216. These trends are particularly pronounced in California, where a dynamic State
3 economy fuels a “[s]trong and growing demand for highly educated workers.”²⁷⁵ According to
4 researchers at the Public Policy Institute of California, “[i]f current trends continue, about 40
5 percent of jobs in California will require at least a bachelor’s degree by 2030.”²⁷⁶ In California,
6 individuals with college degrees have manifold advantages over individuals with only high school
7 diplomas: whereas a typical full-time worker with a college diploma earns \$81,000, a typical full-
8 time worker with a high school diploma earns only \$36,000.²⁷⁷ A college degree produces striking
9 long-term dividends: Georgetown University researchers have found, for example, that economic
10 value of a UC Berkeley degree 40 years after enrollment is \$1,383,000, and that of a UCLA
11 degree is \$1,300,000.²⁷⁸ The “wage premium” associated with a college degree has grown steadily
12 over the last two decades.²⁷⁹ Beyond higher wages, California workers with college degrees have
13 more job security and non-wage benefits, lower rates of poverty and unemployment, and higher
14 rates of homeownership.²⁸⁰ College graduates “are more likely to have long-lasting marriages and
15 to be civically engaged,” and even “have lower mortality rates.”²⁸¹ These disparities make plain
16 that in California, the fundamental right to education cannot end at grade 12. Rather, the ability to
17 access public higher education has become the “major determinant of an individual’s chances for
18

19 _____
20 ²⁷⁴ Pub. Pol’y Inst. of Cal., *Higher Education in California: Meeting California’s Workforce*
21 *Needs* (Oct. 2019), [https://www.ppic.org/wp-content/uploads/higher-education-in-california-](https://www.ppic.org/wp-content/uploads/higher-education-in-california-october-2019.pdf)
22 [october-2019.pdf](https://www.ppic.org/wp-content/uploads/higher-education-in-california-october-2019.pdf).

23 ²⁷⁵ *Id.*

24 ²⁷⁶ *Id.*

25 ²⁷⁷ *Id.*

26 ²⁷⁸ Anthony P. Carnevale et al., *A First Try at ROI: Ranking 4,500 Colleges*, Georgetown Univ.
27 Ctr. on Educ. & Workforce 43 (2019), [https://1gyhoq479ufd3yna29x7ubjn-wpengine.netdna-](https://1gyhoq479ufd3yna29x7ubjn-wpengine.netdna-ssl.com/wp-content/uploads/College_ROI.pdf)
28 [ssl.com/wp-content/uploads/College_ROI.pdf](https://1gyhoq479ufd3yna29x7ubjn-wpengine.netdna-ssl.com/wp-content/uploads/College_ROI.pdf).

²⁷⁹ Pub. Pol’y Inst. of Cal., *supra* note 274.

²⁸⁰ *Id.*

²⁸¹ *Id.*

1 economic and social success in our competitive society.”²⁸² In today’s labor market, the
2 constitutional right to “equal access to a public education system that will teach [students] the
3 skills they need to succeed as productive members of modern society” necessarily means equal
4 access to public higher education.²⁸³

5 217. Closely related to the fundamental right of access to public higher education is the
6 fundamental right to pursue an occupation, which California courts have repeatedly recognized.²⁸⁴
7 It has long been established in California that “[a]ny unreasonable limitation that deprives
8 qualified persons of the equal opportunity to qualify for work is unconstitutional.”²⁸⁵ UC’s
9 continued consideration of SAT and ACT scores in admissions and scholarship determinations is
10 one such “unreasonable limitation”: by hindering the ability of well-qualified, less advantaged
11 students to access high-quality public higher education at the UC, the policy ultimately deprives
12 those students of the opportunity to pursue a wide range of occupations that is granted to their
13 more privileged peers.

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

15 218. UC’s concerns about the validity of the SAT and ACT are longstanding and well-
16 founded. Concerns about the tests’ weak ability to predict student success prevented UC from
17 adopting standardized testing requirements “until later than most other selective US
18 universities.”²⁸⁶ As early as 1956, BOARS—the Academic Senate committee that formulates and
19 regulates UC’s undergraduate admissions policies, subject to ultimate approval by the Regents—
20 rejected a proposal that would have required SAT scores from entering students, based on
21 members’ “grave concerns regarding the validity of standardized tests in predicting the academic
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24 ²⁸² *Serrano*, 5 Cal. 3d at 605.

25 ²⁸³ *O’Connell v. Super. Ct.*, 141 Cal. App. 4th 1452, 1482 (2006).

26 ²⁸⁴ *See, e.g., Hughes v. Bd. of Architectural Exam’rs*, 17 Cal. 4th 763, 788 (1998); *Terry v. Civil*
Serv. Comm’n, 108 Cal. App. 2d 861, 870 (1952).

27 ²⁸⁵ *Terry*, 108 Cal. App. at 870.

28 ²⁸⁶ *Geiser*, *supra* note 58, at 6.

1 performance of university students.”²⁸⁷

2 219. Following this initial rejection, the UC embarked on an experimental study to
3 assess the SAT’s effectiveness.²⁸⁸ For a period of two years, beginning with the class of 1960, the
4 UC required applicants to take the SAT or similar tests.²⁸⁹ During this experimental period, SAT
5 scores were not used to evaluate applicants for admission to the UC, but were instead collected to
6 analyze the capacity of the SAT, as a potential admissions criterion, to predict students’ academic
7 performance.²⁹⁰ The results were unequivocal: BOARS’s chair reported that after “[e]xtensive
8 analysis of the data,” BOARS was “wholly convinced that [SAT] scores add little or nothing to the
9 precision with which existing admissions requirements are predictive of success in the
10 University.”²⁹¹ BOARS thus rejected an SAT requirement by unanimous vote.²⁹² The 1960–62
11 study was the first of several commissioned by BOARS over the past six decades, all of which
12 have demonstrated the limited predictive value of standardized tests like the SAT and ACT in
13 predicting college performance. Despite these results, UC has persisted in using SAT and ACT
14 scores as an admissions criterion.

15 220. In 1963, “[l]obbied by the Educational Testing Service,”²⁹³ BOARS agreed to
16 undertake another study of standardized testing, which would examine the ability of achievement
17 tests (like SAT II subject tests) to predict student performance at the UC.²⁹⁴ The study “echoed the
18 findings of [UC’s] previous analysis of the validity of the SAT,” determining that achievement
19 tests were only “of marginal value in predicting academic success.”²⁹⁵ Notably, even this

21 ²⁸⁷ Douglass, *supra* note 11, at 85 & n.16.

22 ²⁸⁸ *Id.* at 86.

23 ²⁸⁹ *Id.*

24 ²⁹⁰ *Id.*

25 ²⁹¹ *Id.* at 90 (quoting BOARS Chairman Charles Jones).

26 ²⁹² *Id.*

27 ²⁹³ Geiser, *supra* note 58, at 7.

28 ²⁹⁴ Douglass, *supra* note 11, at 91.

²⁹⁵ *Id.*

1 “marginal value” outweighed the predictive value of the SAT.²⁹⁶ The study found that high school
2 GPA remained the best predictor of college performance, explaining 22 percent of the variance in
3 first-year grades (as compared to the achievement tests, which explained only eight percent).²⁹⁷
4 Although the study also determined that combining achievement test scores with high school GPA
5 “appeared to offer a marginal improvement” in predicting first-year grades, this “admittedly
6 slight” gain was not enough to persuade BOARS to adopt an achievement test requirement.²⁹⁸
7 Without a stronger demonstration of the predictive value of the SAT and achievement tests,
8 BOARS refused to impose a testing requirement on applicants to UC.²⁹⁹

9 221. Despite these dismal results, the UC gradually expanded its use of the SAT and
10 ACT tests. In 1968, the UC required SAT and ACT scores from all applicants, but deployed the
11 scores only for the narrow purposes of assessing out-of-state applicants and “in-state students with
12 very low GPAs.”³⁰⁰ By 1979, in an attempt to “cull [its] eligibility pool,” the UC incorporated
13 SAT and ACT scores into an “eligibility index” that combined grades and test scores, effectively
14 “extend[ing] a minimum test-score requirement to most UC applicants.”³⁰¹ UC faculty expressed
15 multiple concerns about the index, questioning the SAT’s predictive value and its efficacy as a
16 “device[] for encouraging increased preparation” and warning of “disproportionate adverse
17 effects” on low-income and underrepresented minority students.³⁰² Despite these concerns, the
18 Regents approved the eligibility index by a close 15-to-12 vote.³⁰³

19 222. In 1988, following UC’s adoption of a centralized application system and
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21 ²⁹⁶ *Id.*

22 ²⁹⁷ *Id.*

23 ²⁹⁸ *Id.* at 91–92.

24 ²⁹⁹ *Id.* at 92.

25 ³⁰⁰ Geiser, *supra* note 58, at 7.

26 ³⁰¹ *Id.*

27 ³⁰² Douglass, *supra* note 11, at 115 (quoting then-Santa Barbara division Chair Robert
28 Michaelson).

³⁰³ *Id.* at 117.

1 subsequent increases in application volume, the UC adopted a new admissions policy at “heavily
2 impacted campuses.”³⁰⁴ The policy provided for the admission of “[t]he top 40% to 60% of the
3 freshman class . . . based solely on high-school grades and SAT/ACT scores.”³⁰⁵

4 223. The increasing weight placed on SAT and ACT scores in UC admissions during
5 this period did not reflect corresponding increases in the tests’ validity, as BOARS’s own studies
6 demonstrated.³⁰⁶ In 1997, BOARS commissioned a study that found that the combination of SAT
7 II math and writing scores outperformed SAT I scores in predicting first-year grades at the UC,
8 likely due to the fact that, unlike the SAT I, SAT II tests were “curriculum driven.”³⁰⁷ Based on
9 this study, the UC revised its eligibility index, including SAT II scores and giving them twice as
10 much weight as SAT I or ACT scores.³⁰⁸

11 224. In 2001, BOARS commissioned a study that again found that SAT I scores
12 contributed “very little, if any, incremental power in predicting UC freshman grades” after taking
13 into account high school GPA and SAT II scores.³⁰⁹ Moreover, the study found that much of the
14 correlation between SAT I scores and first-year grades was “conditioned by socioeconomic
15 factors,” such that after controlling for those factors, “SAT I scores add[ed] nothing to the
16 prediction of freshman grades beyond that which HSGPA and the SAT II already provide[d].”³¹⁰
17 Relying on this analysis, then-UC President Richard Atkinson called for the elimination of the
18 SAT I requirement in UC admissions, and the use instead of curriculum-based achievement tests

20 ³⁰⁴ Geiser, *supra* note 58, at 7.

21 ³⁰⁵ *Id.*

22 ³⁰⁶ *Id.*

23 ³⁰⁷ BOARS, *The Use of Admissions Tests by the University of California* 7–8 (Jan. 2002),
24 https://senate.universityofcalifornia.edu/_files/committees/boars/admissionstests.pdf (quoting Judy
25 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)).

26 ³⁰⁸ *Id.* at 6–8.

27 ³⁰⁹ Geiser & Studley, *supra* note 127, at 4.

28 ³¹⁰ *Id.* at 9.

1 that measure “what [students] have accomplished during four years of high school, taking into
2 account their opportunities.”³¹¹ Ceasing to consider scores on tests like the SAT I and ACT,
3 Atkinson recognized, would redress adverse impacts on students with less wealth and
4 underrepresented minority students and foster “greater public confidence in the fairness of [UC]’s
5 admissions process.”³¹²

6 225. In 2002, BOARS cited its 2001 study in a paper proposing a “new testing array”
7 that expressly excluded the SAT I.³¹³ Instead, BOARS recommended a battery of tests consisting
8 of a yet to be developed “core achievement examination,” testing students’ mastery of language
9 arts and math, and two other subject examinations.³¹⁴

10 226. Recognizing the threat posed by Atkinson’s and BOARS’s proposals, the College
11 Board responded by announcing that it would modify the SAT, starting in 2005, to include a
12 writing section, evaluate “reading for understanding,” and emphasize “mathematical problem
13 solving” through questions modeled on “real-life situations.”³¹⁵ The College Board implied that
14 the revised SAT would be less coachable, stating that rigorous coursework was the best
15 preparation for the test.³¹⁶ Through this “repackaging,” the College Board “appeared to respond to
16 criticism, modified the existing test at the margin,” and ultimately “preserved the market for the
17 SAT I.”³¹⁷

18 227. These changes—including the much-touted writing section, which the UC dropped
19 under its new admissions policies, *infra*—did not substantially enhance the predictive power of the
20 test. BOARS has continued to study the utility of the SAT and ACT in UC admissions, and has

22 ³¹¹ Richard C. Atkinson, Robert H. Atwell Distinguished Lecture at the Eighty-third Annual
23 Meeting of the American Council on Education: Standardized Tests and Access to American
Universities 144 (Feb. 18, 2001), <https://escholarship.org/uc/item/6182126z>.

24 ³¹² *Id.* at 139.

25 ³¹³ BOARS, *supra* note 307, at 16, 18.

26 ³¹⁴ *Id.* at 16–17.

27 ³¹⁵ Douglass, *supra* note 11, at 228.

28 ³¹⁶ *Id.*

³¹⁷ *Id.* at 230.

1 continued to find SAT I scores largely redundant in evaluating applicants. For example, a 2008
2 study commissioned by BOARS determined that SAT scores accounted for only 1.9 percent of the
3 variance in first-year GPA among UC Berkeley students, and only 1.6 percent of the variance
4 across the UC system’s undergraduate campuses.³¹⁸

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

6 228. In 2002, BOARS established a set of principles governing UC’s use of “admissions
7 tests,” which continue to apply today.³¹⁹ The principles enumerate four “desired properties” of
8 admissions tests,³²⁰ which, as President Napolitano and the Regents recognized, are “necessary” to
9 “assess[] whether standardized tests . . . add sufficient value to the admissions process” to justify
10 their continued use.³²¹ The principles provide that an admissions test should:

- 11 a. “be a reliable measurement that provides uniform assessment and . . . be fair across
12 demographic groups”;
- 13 b. “measure levels of mastery of content in UC-approved high school preparatory
14 coursework and . . . provide information to students, parents, and educators
15 enabling them to identify academic strengths and weaknesses”;
- 16 c. “be demonstrably useful in predicting student success at UC and provide
17 information beyond that which is contained in other parts of the application”; and
18 d. “be useful in a way that justifies its social and monetary costs.”³²²

19 Having established these principles, BOARS recommended that “the faculty regularly review
20 UC’s admissions testing policy and practices to ensure that tests are being used in a way that is
21 consistent with . . . [the] desired properties of admissions tests.”³²³

22
23 _____
24 ³¹⁸ BOARS, *supra* note 11, at 95, 107.

25 ³¹⁹ BOARS, *supra* note 307.

26 ³²⁰ *Id.* at 15.

27 ³²¹ Napolitano Proposal, *supra* note 2, at 6.

28 ³²² BOARS, *supra* note 307, at 15–16.

³²³ *Id.* (emphasis omitted).

1 229. BOARS’s application of these principles has been erratic at best. Although UC has
2 repeatedly recognized that the SAT and ACT fail to satisfy its own criteria for admissions tests,
3 BOARS and the Regents have privileged the testing companies’ representations and maintenance
4 of UC’s elite status over expanding access to the University.

5 230. In 2002, for example, BOARS applied its principles to UC testing requirements,
6 and ultimately recommended a testing array that did not include the SAT I.³²⁴ Following the
7 College Board’s announcement of revisions to the test, however, BOARS and UC decided to wait
8 to study the predictive validity of the 2005 SAT—a wait of more than two years.³²⁵

9 231. In 2009, BOARS applied its principles to its testing requirements yet again,
10 recognizing the SAT’s and ACT’s numerous deficiencies: first, BOARS noted the “considerable
11 redundancy” of using both high school GPA and SAT or ACT scores to predict first-year GPA.³²⁶
12 BOARS also recognized that, because the tests could be coached, disparate access to test
13 preparation “disadvantages low-income groups and distracts participants from college preparatory
14 coursework.”³²⁷ Most importantly, BOARS acknowledged the tests’ adverse effects on
15 underrepresented minority students and students with less wealth: BOARS stated that despite
16 revisions to both the ACT and SAT, neither test had “escaped the persistent differences between
17 racial/ethnic groups” that had characterized their predecessors.³²⁸ By contrast, BOARS observed
18 that “[h]igh school GPA has less adverse impact on disadvantaged groups and is the better
19 predictor of student retention over time.”³²⁹ Nevertheless, BOARS chose to keep the tests, citing
20 their “small” contribution to predicting first-year grades, BOARS’s fears that high schools might
21 “engage in more grade inflation,” and its concern about UC losing its “capacity to compare itself
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24 ³²⁴ *Id.* at 18.

25 ³²⁵ Douglass, *supra* note 11, at 231.

26 ³²⁶ BOARS, *supra* note 13, at 15.

27 ³²⁷ *Id.* at 21.

28 ³²⁸ *Id.* at 24.

³²⁹ *Id.*

1 to other national institutions”—that is, its ability to maintain its reputation through national
2 rankings.³³⁰

3 232. In 2014, BOARS merely paid lip service to its principles when it announced that it
4 would “adopt the redesigned SAT test as an acceptable University of California admissions
5 exam”—*without having studied its predictive validity*.³³¹ Relying entirely on information provided
6 by the College Board, BOARS blithely asserted that “the new SAT meets BOARS general
7 objectives and principles for admissions tests and should be an improvement over the current
8 exam.”³³² Based on the College Board’s representations, BOARS stated that it “expects the
9 revised SAT to be a fairer test that is more closely aligned with BOARS’ testing principles than
10 the existing SAT, in that the new test will be more aligned with college-level expectations and
11 high school curriculum.”³³³

12 233. As both President Napolitano and the Regents have recognized, however,
13 BOARS’s expectations proved untrue: neither the redesigned SAT nor the ACT are aligned with
14 either UC’s preparedness expectations or a college preparatory curriculum. The tests “are not
15 clearly linked” “to the curriculum that shapes student readiness” for college-level coursework.³³⁴
16 President Napolitano’s proposal, adopted unanimously by the Regents, demonstrates that the SAT
17 and ACT fail to satisfy UC’s own standards. In calling for the development of a test that is
18 “properly designed and administered” and “content-based”; that is “aligned to BOARS’ admission
19 testing principles and UC college readiness standards”; that “adds value to admissions decisions”
20 and “to the assessment of student academic readiness”; that “enhances equity and access for more
21 students”; that “assess[es] a broad[] array of student learning capabilities” and “provide[s]
22 feedback to schools about student performance in a range of academic subjects”; and that has “a
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24 ³³⁰ *Id.* at 4.

25 ³³¹ BOARS, *Statement on the Redesigned SAT* (July 8, 2014), [https://
senate.universityofcalifornia.edu/_files/committees/boars/SAT_Redesign.pdf](https://senate.universityofcalifornia.edu/_files/committees/boars/SAT_Redesign.pdf).

26 ³³² *Id.*

27 ³³³ *Id.*

28 ³³⁴ Napolitano Proposal, *supra* note 2, at 8.

1 positive impact on student preparation for a rigorous undergraduate education,” President
2 Napolitano’s proposal makes clear that the SAT and ACT have none of these characteristics.³³⁵

3 234. What President Napolitano and the Regents do not make clear, however, is why—
4 given the foregoing and the University’s plan to cease considering SAT and ACT scores
5 altogether in California resident admissions decisions as of the Fall 2023 admissions cycle—the
6 University has chosen to continue using SAT and ACT scores for any purposes at all. The closest
7 President Napolitano’s proposal comes to offering a justification for this decision is its conclusion
8 that “the University would be remiss not to offer students flexibility beyond one admissions
9 cycle.”³³⁶ Given the discriminatory nature of the tests and disparities in access to testing
10 opportunities during the COVID-19 pandemic, the beneficiaries of this “flexibility” will be
11 precisely those applicants who would previously have benefitted from UC’s test score
12 requirement—*i.e.*, the State’s most privileged students.

13 **E. UC’s Use of the SAT and ACT in Future Admissions Cycles**

14 235. Through the Fall 2020 admissions cycle, UC required all prospective first-year
15 students applying to a UC campus to “submit scores from either the ACT with Writing or SAT
16 with Essay.”³³⁷ In addition to submitting SAT or ACT scores, prospective first-year students were
17 required to complete a minimum of 15 academic or college preparatory courses in certain subjects
18 (“A-G courses”).³³⁸ Students who met these minimum criteria were “entitled to review (ETR)” at
19 any UC campus to which they applied, but were not guaranteed admission to any UC campus.³³⁹

20 236. As of the filing of this amended complaint, UC had not updated its “Freshman
21 requirements” website to reflect admissions requirements for the Fall 2021 admissions cycle and
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23 _____
24 ³³⁵ *Id.* at 5–7, 9.

25 ³³⁶ *Id.* at 9.

26 ³³⁷ Univ. of Cal. Admissions, *supra* note 168.

27 ³³⁸ Univ. of Cal. Bd. of Regents, *Regents Policy 2103: Policy on Undergraduate Admissions Requirements*, <https://regents.universityofcalifornia.edu/governance/policies/2103.html>.

28 ³³⁹ *Id.*

1 beyond.³⁴⁰ Nor had it updated its Policy on Undergraduate Admissions Requirements.³⁴¹

2 However, UC posted a press release announcing the Regents' May 21, 2020 decision to adopt
3 President Napolitano's proposal.³⁴² That proposal provides:

- 4 a. During the Fall 2021 and Fall 2022 admissions cycles, although prospective first-
5 year students will no longer be required to submit SAT or ACT scores, UC will
6 permit its campuses to consider such scores in admissions decisions for students
7 who choose to submit them. Beginning in Fall 2021, students who submit scores
8 will no longer be required to submit scores from the SAT Essay or ACT Writing
9 Test.³⁴³
- 10 b. During the Fall 2023 and Fall 2024 admissions cycles, UC campuses will not
11 consider SAT or ACT scores in admissions decisions for California public and
12 independent high school applicants.³⁴⁴
- 13 c. Through the Fall 2024 admission cycle, UC will continue to use test scores in
14 scholarship consideration, statewide eligibility index calculations, and post-
15 enrollment course placement.³⁴⁵

18 ³⁴⁰ Univ. of Cal. Admissions, *Freshman requirements*, [https://](https://admission.universityofcalifornia.edu/admission-requirements/freshman-requirements/)
19 admission.universityofcalifornia.edu/admission-requirements/freshman-requirements/ (accessed
20 June 15, 2020).

21 ³⁴¹ Univ. of Cal. Bd. of Regents, *supra* note 338.

22 ³⁴² Univ. of Cal. Office of the President, *supra* note 5.

23 ³⁴³ Napolitano Proposal, *supra* note 2, at 2. During the Fall 2022 admissions cycle, UC Berkeley
24 plans not to consider SAT or ACT scores in admissions decisions for California applicants.
25 Catherine Hsu & Alexandra Feldman, *UC Berkeley plans pilot study of test-blind admissions*,
26 *Daily Californian* (May 27, 2020), [https://www.dailycal.org/2020/05/27/uc-berkeley-plans-pilot-](https://www.dailycal.org/2020/05/27/uc-berkeley-plans-pilot-study-of-test-blind-admissions/)
27 [study-of-test-blind-admissions/](https://www.dailycal.org/2020/05/27/uc-berkeley-plans-pilot-study-of-test-blind-admissions/). Although unfortunately framed as a "pilot study," on information
28 and belief, the results of UC Berkeley's test-blind admissions policy will further support President
Napolitano and the Regents' conclusion that the use of SAT and ACT scores is unnecessary to
enroll a diverse and well-qualified class of students that will go on to succeed at the University.

³⁴⁴ *Id.*

³⁴⁵ *Id.*

- 1 d. Beginning in 2020, UC “will undertake a process to identify or create a new test
2 that,” unlike the SAT and ACT, “aligns with the content UC expects students
3 should have mastered to demonstrate college readiness for California freshmen.”³⁴⁶
4 e. If, by the Fall 2025 admissions cycle, UC has not modified or created a test that
5 “aligns with the content UC expects students should have mastered to demonstrate
6 college readiness for California freshmen,” UC will cease using the SAT and ACT
7 for California students for first-year admissions purposes.³⁴⁷

8 237. Both President Napolitano’s proposal and its adoption by the Regents resulted from
9 the advocacy of students, school districts, and organizations—including the Plaintiffs in this
10 lawsuit—who publicly demonstrated the discriminatory impacts of the SAT and ACT; exposed
11 the hollowness of UC’s justifications for requiring the test scores as an admissions criterion; drove
12 the completion of the Standardized Testing Task Force’s report;³⁴⁸ and played a critical role in
13 shaping President Napolitano’s and the Regents’ decisions to reject the Task Force’s
14 recommendation to continue requiring the tests.³⁴⁹

15 238. Although this lawsuit and other advocacy thus persuaded UC to eventually cease
16 using SAT and ACT scores for first-year admissions of California residents, UC has chosen to
17 retain the discriminatory tests for multiple purposes for at least four more years. As described
18 *supra*, UC will continue to use SAT and ACT scores for admissions purposes for all students for
19 two more years. It may continue to use SAT and ACT scores for admissions purposes for

20 _____
21 ³⁴⁶ *Id.*

22 ³⁴⁷ *Id.* at 2, 5.

23 ³⁴⁸ See Letter from Henry Sanchez & Eddie Comeaux, STTF Co-Chairs, to Kum-Kum Bhavnani,
24 Academic Council Chair (Jan. 27, 2020), https://senate.universityofcalifornia.edu/_files/underreview/sttf-report.pdf (describing the STTF Writing Committee’s efforts “to meet
25 accelerated deadlines of completing the report” and noting the “challenging deadlines” set for the Task Force).

26 ³⁴⁹ See Teresa Watanabe, *UC makes landmark decision to drop ACT and SAT requirement for*
27 *admission*, L.A. Times (May 21, 2020), <https://www.latimes.com/california/story/2020-05-21/uc-drops-sat-and-act-test-requirement-for-admission> (discussing Regents’ decision and citing
28 lawsuit); Shawn Hubler, *Why Is the SAT Falling Out of Favor?*, N.Y. Times (May 23, 2020),
<https://www.nytimes.com/2020/05/23/us/SAT-ACT-abolish-debate-california.html> (same).

1 nonresident and international students indefinitely.³⁵⁰ For at least four more years, UC will use
2 SAT and ACT scores to ration access to scholarships, calculate statewide eligibility, and
3 determine post-enrollment course placement.

4 *Scholarships*

5 239. Although President Napolitano and the Regents recognize that SAT and ACT
6 scores are poorly aligned with both “the content UC expects applicants to have learned and with
7 UC’s values,”³⁵¹ the Regents have nevertheless chosen to continue to use those scores in
8 determining which applicants will be offered merit-based scholarships, including the University’s
9 prestigious Regents’ and Chancellors’ Scholarships.³⁵² In addition to monetary awards, these
10 scholarships provide a range of other benefits, many of which would contribute immensely to the
11 college success of underrepresented students from non-college-going backgrounds: at UC
12 Berkeley, for example, Scholars “have access to UC Berkeley faculty mentors to provide guidance
13 on academic and professional endeavors”; “receive priority enrollment for classes” and
14 “guaranteed placement in on-campus housing”; “have a dedicated scholarship coordinator . . . to
15 assist with questions about the [Regents’/Chancellor’s] scholarship and financial aid”; “are
16 automatic members of the Regents’ and Chancellor’s Scholars Association,” which “sponsors
17 academic and professional development activities”; and have the “opportunity to apply for funding
18 of up to \$1,000 in support of current research projects.”³⁵³

19 240. By continuing to use SAT and ACT scores in allocating these scholarships, UC
20 deprives underrepresented students—who stand to benefit the most from these significant
21 academic and career opportunities—of the chance to compete for them on a level playing field.
22 Instead, affluent students who submit SAT or ACT scores will have a leg up in the scholarship
23

24
25 ³⁵⁰ Napolitano Proposal, *supra* note 2, at 8.

26 ³⁵¹ *Id.* at 1.

27 ³⁵² *Id.* at 2.

28 ³⁵³ Univ. of Cal., Berkeley Fin. Aid & Scholarships, *Regents’ and Chancellor’s Scholarship*,
<https://financialaid.berkeley.edu/regents-and-chancellors-scholarship>.

1 process, which will ultimately provide them with yet more advantages—preferential course
2 enrollment, faculty mentors, and exclusive academic and professional development activities.

3 *Statewide and Local Admissions Guarantees*

4 241. There are two paths to guaranteed admission to a UC campus: a statewide path and
5 a local path known as Eligibility in the Local Context.³⁵⁴ Because the statewide path identifies the
6 top nine percent of California graduates using an admissions index of high school GPA and test
7 scores,³⁵⁵ prospective students who are unable or choose not to submit SAT or ACT scores are
8 completely disqualified from guaranteed admission through this path. The local path identifies the
9 top nine percent of students at participating California high schools based solely on grades in A-G
10 coursework.³⁵⁶ Prospective first-year students who qualify for either the statewide path or the local
11 path and are not admitted to any campus to which they apply “will be offered admission at a UC
12 campus with available space.”³⁵⁷ Taken together, the statewide and local guarantees are known as
13 the “9-by-9 policy.”³⁵⁸

14 242. The statewide admissions index places considerable weight on SAT and ACT
15 scores, essentially granting a wealth and race bonus to affluent and White students. A student’s
16 score on the index is calculated by: (1) converting the student’s high school GPA to a standardized
17 “UC GPA”; (2) converting the student’s SAT or ACT score to a “UC Score” using UC conversion
18 tables; and (3) using a UC index table to determine whether the student’s UC Score meets the
19 minimum requirement for the student’s UC GPA range.³⁵⁹ A student falls within the top nine

21 ³⁵⁴ Univ. of Cal. Admissions, *California Residents*, <https://admission.universityofcalifornia.edu/admission-requirements/freshman-requirements/california-residents/>.

22 ³⁵⁵ Univ. of Cal. Bd. of Regents, *supra* note 338.

23 ³⁵⁶ *Id.*

24 ³⁵⁷ *Id.*

25 ³⁵⁸ BOARS, *Impact of the New Freshman Eligibility Policy at the University of California* 3 (Nov.
26 2013), https://senate.universityofcalifornia.edu/_files/committees/boars/Nov52013BOARSReporttoRegents-Final.pdf.

27 ³⁵⁹ Univ. of Cal. Admissions, *Statewide Guarantee*, <https://admission.universityofcalifornia.edu/admission-requirements/freshman-requirements/california-residents/statewide-guarantee/>; Univ. of
28 Cal. Admissions, *Admissions Index Instructions*, <https://admission.universityofcalifornia.edu/>

1 percent of students statewide—and is thus guaranteed admission to a UC campus—if his or her
2 UC Score “meets or exceeds” the minimum score for his or her UC GPA range.³⁶⁰ Thus, a
3 student’s SAT or ACT score is a deciding factor in determining whether the student will be
4 guaranteed admission through the statewide path.

5 243. Although the Eligibility in the Local Context formula relies solely on high school
6 grades to determine which students are guaranteed admission to a UC campus, students have
7 historically been required to submit either SAT or ACT scores with their applications, and those
8 scores were considered by the individual campuses to which they applied. To determine Eligibility
9 in the Local Context, UC identifies the top nine percent of students at participating California high
10 schools based on “GPA in UC-approved coursework completed in the 10th and 11th grades.”³⁶¹ To
11 be considered, a student must have at least a 3.0 GPA and complete required A-G coursework
12 prior to his or her senior year.³⁶² UC then compares the student’s GPA “to the historic top GPA”
13 from the student’s school to determine whether the student falls within the top nine percent of his
14 or her class, and is thus guaranteed admission to a UC campus.³⁶³

15 244. Taking these two policies together, the wealth and race bonus provided by SAT and
16 ACT scores is clear: a student whose GPA does not place him or her in the top nine percent of his
17 or her high school class will not be Eligible in the Local Context, but that student may
18 nevertheless be guaranteed admission through the statewide path if, once his or her GPA is
19 supplemented by his or her SAT or ACT score, he or she falls in the top nine percent of students
20 statewide.³⁶⁴ By contrast, a student who falls just outside of the top nine percent of his or her high

21
22 admission-requirements/freshman-requirements/california-residents/statewide-guarantee/
23 admissions-index-instructions.html [hereinafter Admissions Index].

24 ³⁶⁰ Admissions Index, *supra* note 359.

25 ³⁶¹ Univ. of Cal. Admissions, *Local Guarantee (ELC)*,
26 <https://admission.universityofcalifornia.edu/admission-requirements/freshman-requirements/california-residents/local-guarantee-elc.html>.

27 ³⁶² *Id.*

28 ³⁶³ *Id.*

³⁶⁴ As researchers studying the University of Texas at Austin have shown, eliminating the race and

1 school class, but whose SAT or ACT score is not high enough to place the student in the top nine
2 percent of students statewide or who does not submit an SAT or ACT score, may not be able to
3 attend a UC at all.

4 ***“Holistic” Admissions***

5 245. Although UC professes to employ a “holistic” review process to evaluate
6 applicants, that process is irretrievably tainted by its consideration of SAT and ACT scores. UC
7 ostensibly follows a “comprehensive review” policy in undergraduate admissions, which it defines
8 as evaluating students “using multiple measures of achievement and promise, while considering
9 the context in which each student has demonstrated academic accomplishment.”³⁶⁵ UC’s
10 guidelines for implementing its comprehensive review policy enumerate 14 criteria that individual
11 campuses use to select applicants for admission, including SAT or ACT scores.³⁶⁶ In 2011, the
12

13 wealth bonus conferred by SAT and ACT scores and basing guaranteed admission on high school
14 grades alone results in substantial equity gains. UT Austin—a prestigious university that, like
15 many UC campuses, receives a high volume of applications—automatically admits Texas students
16 whose grades place them within a specified percentile of their high school graduating class. Univ.
17 of Tex. at Austin Office of Admissions, *Admission Decisions*, [https://admissions.utexas.edu/apply/](https://admissions.utexas.edu/apply/decisions#fndtn-freshman-admission)
18 *decisions#fndtn-freshman-admission*. Researchers have found that this process immensely benefits
19 the students it “pulls in” to UT Austin (*i.e.*, high-performing students at schools that have
traditionally sent few or no students to UT Austin), without resulting in significant harm to the
students it crowds out. Sandra E. Black et al., *Winners and Losers? The Effect of Gaining and*
Losing Access to Selective Colleges on Education and Labor Market Outcomes 5–6 (Nat’l Bureau
of Econ. Research Working Paper No. 26821, Mar. 2020).

20 ³⁶⁵ BOARS, *Annual Report on Undergraduate Admissions Requirements and Comprehensive*
Review 8 (Apr. 2019), [https://senate.universityofcalifornia.edu/_files/committees/](https://senate.universityofcalifornia.edu/_files/committees/boars/boars-2019-cr-report.pdf)
21 *boars/boars-2019-cr-report.pdf* (quoting Univ. of Cal. Bd. of Regents, *Regents Policy 2104: Policy*
on Comprehensive Review in Undergraduate Admissions (Nov. 15, 2001)).

22 ³⁶⁶ *Id.* The 14 criteria are (1) academic GPA; (2) SAT or ACT scores; (3) “number, content of, and
23 performance in courses completed in academic subjects beyond the minimum specified by the
University’s eligibility requirements”; (4) “number of and performance in University approved
24 honors courses, College Board Advanced Placement courses, International Baccalaureate courses,
and transferable college courses completed”; (5) Eligibility in the Local Context; (6) “quality of
25 the senior year program”; (7) “quality of academic performance relative to” available educational
opportunities; (8) “[o]utstanding performance in one or more specific academic subject areas”; (9)
26 “[o]utstanding work in one or more special [academic] projects”; (10) “[r]ecent, marked
improvement in academic performance”; (11) “special talents, achievements, and awards in a
27 particular field . . . ; special skills . . . ; special interests . . . ; . . . experiences that demonstrate
28 unusual promise for leadership . . . ; or other significant experiences or achievements that

1 Regents endorsed a resolution stating that a single-score holistic evaluation is “the expected
2 implementation” of comprehensive review.³⁶⁷ Single-score holistic review assigns one score to an
3 applicant based on the totality of the information in his or her application.³⁶⁸ All but three UC
4 undergraduate campuses use a single-score review system.³⁶⁹

5 246. As the Standardized Testing Task Force acknowledged, UC’s “admissions
6 practices are opaque to the public and even to UC faculty.”³⁷⁰ The Task Force itself “could not
7 ascertain the extent to which SAT/ACT scores play a role in the decision to grant or deny
8 admission.”³⁷¹ Even before UC adopted its new admissions policies—which are even more
9 opaque than its previous policies—its messages to applicants were strikingly vague: UC listed
10 SAT and ACT scores among 13 other admissions criteria, noting that different campuses “often
11 apply these factors differently.”³⁷² Although it assured applicants that its admissions officers

12 _____
13 demonstrate the applicant’s promise for contributing to” a campus’s “intellectual vitality”; (12)
14 “[c]ompletion of special projects”; (13) “[a]cademic accomplishments in light of the applicant’s
15 life experiences and special circumstances”; and (14) “[l]ocation of the applicant’s secondary
16 school and residence.” Univ. of Cal., *Guidelines for Implementation of University Policy on
Undergraduate Admissions*, [http://www.ucop.edu/student-affairs/_files/guidelines-for-
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
Review Guidelines].

17 ³⁶⁷ Univ. of Cal. Bd. of Regents, *Regents Policy 2108: Resolution Regarding Individualized
Review and Holistic Evaluation in Undergraduate Admissions*,
18 <https://regents.universityofcalifornia.edu/governance/policies/2108.html>. The resolution
19 nevertheless permitted campuses to use other approaches to “achiev[e] campus and University
goals.” *Id.*

20 ³⁶⁸ See BOARS, *supra* note 365, at 8.

21 ³⁶⁹ *Id.* at 32. At the three campuses that do not use a single-score review system—UC Merced, UC
22 Riverside, and UC Santa Barbara—the adverse effect of consideration of SAT and ACT scores is
23 particularly severe. At UC Merced, although all applicants receive a “point-driven comprehensive
24 review on academic factors,” only a “subset of the applicant pool receiv[es] a human read score.”
25 *Id.* at 37. Although UC Riverside intends to transition to single-score holistic review, it currently
26 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.

26 ³⁷⁰ STTF Report, *supra* note 3, at 67.

27 ³⁷¹ *Id.* at 66.

28 ³⁷² Univ. of Cal. Admissions, *How Applications Are Reviewed*, <https://>

1 “look[ed] beyond . . . test scores” and that their “academic achievements” would be evaluated “in
2 light of the opportunities available to [them],”³⁷³ it also published (and continues to publish) the
3 range of SAT and ACT scores for the middle 50 percent of admitted students at each campus—a
4 practice that the Task Force acknowledged could mislead students about their chances of
5 admission.³⁷⁴

6 247. This opacity as to how each UC campus weighed SAT and ACT scores against
7 other admissions criteria caused significant harm, including by deterring underrepresented
8 minority students from applying to UC (or to their desired UC campuses). As the Task Force
9 recognized, the group of underrepresented minority California high school graduates who did not
10 apply to UC “almost certainly includes some portion of students who declined to apply after
11 considering their chances with a low test score”—who, due to UC’s lack of transparency regarding
12 its admissions process, may have been “unaware of opportunities to apply” or may have
13 underestimated “their likelihood of admission.”³⁷⁵ Thus, “[c]omprehensive review cannot
14 compensate for disparities between applicants” and those who are deterred from applying by UC’s
15 use of test scores.³⁷⁶

16 248. UC’s new admissions policies severely exacerbate this lack of transparency,
17 sending students and parents conflicting messages about how their submission or non-submission
18 of test scores will impact their admissions chances. Whereas President Napolitano’s proposal,
19 adopted by the Regents, promises that “[s]tudents will not be penalized in the admissions review
20 process for not submitting SAT/ACT scores,”³⁷⁷ Vice Provost Gullatt’s statement that SAT and
21 ACT scores will function as a “value add” in admissions determinations makes clear that students

22
23 [admission.universityofcalifornia.edu/how-to-apply/applying-as-a-freshman/how-applications-are-](http://admission.universityofcalifornia.edu/how-to-apply/applying-as-a-freshman/how-applications-are-reviewed.html)
24 [reviewed.html](http://admission.universityofcalifornia.edu/how-to-apply/applying-as-a-freshman/how-applications-are-reviewed.html).

25 ³⁷³ *Id.*

26 ³⁷⁴ STTF Report, *supra* note 3, at 88.

27 ³⁷⁵ *Id.* at 67–68.

28 ³⁷⁶ *Id.* at 68.

³⁷⁷ Napolitano Proposal, *supra* note 2, at 5.

1 who do not submit scores will be at a competitive disadvantage relative to those who do.

2 Admissions directors at UC campuses have underscored this message:

3 UC Santa Barbara admissions director Lisa Przekop said students should consider
4 submitting test scores that help them tell their stories. For instance, she said, those who are
5 passionate about science, technology, engineering and math might explain what they've
6 done to prepare for those fields and mention their math scores.

7 At UC Riverside, students should generally err on the side of submitting scores, according
8 to Emily Engelschall, director of undergraduate admissions. Even if a total score doesn't
9 reach a particular level, she said, strength in one area could add value to the application.³⁷⁸

10 UC Irvine has even continued to offer SAT preparation courses during its 2020 summer quarter,
11 including courses entitled "SAT Blitz" and "SAT Institute."³⁷⁹

12 249. As the Task Force acknowledged, "significant questions" must be answered "if the
13 admissions process is to be transparent and fair," including "how admissions offices [will]
14 evaluate[] applicants who submit[] SAT scores relative to applicants who d[o] not," and "whether
15 or how admissions offices [will] impute[] scores" to applicants who do not provide them.³⁸⁰

16 Although Plaintiffs presented the Regents with these and other questions prior to their May 21
17 discussion and vote,³⁸¹ the Regents have refused to answer them—much less provide the requested

18 ³⁷⁸ Teresa Watanabe, *UC dropped the SAT. Should you take it anyway?*, L.A. Times (June 3,
19 2020), <https://www.latimes.com/california/story/2020-06-03/uc-is-dropping-the-sat-and-act-but-high-school-counselors-say-students-should-take-the-test>.

20 ³⁷⁹ Univ. of Cal. Irvine Div. of Continuing Educ., *Test Preparation*, https://ce.uci.edu/courses/testprep/sat_preparation.aspx.

21 ³⁸⁰ STTF Report, *supra* note 3, at 98.

22 ³⁸¹ Questions posed to the Regents by Plaintiffs included:

- 23 • How will admissions officers evaluate applicants who submit SAT/ACT scores relative to those who do not?
- 24 • Given UC's current lack of transparency in admissions, will UC and/or individual campuses disclose [how admissions officers will evaluate applicants who submit SAT/ACT scores relative to those who do not] to prospective applicants?
- 25 • What, if any, steps will UC and individual campuses take to mitigate the structural advantage conferred by SAT and ACT scores on applicants who choose to submit them
 - 26 ○ In admissions?
 - 27 ○ In consideration for Regents' and Chancellors' Scholarships?

1 information in UC’s public-facing materials. Without this information, students cannot make
2 informed decisions about where to apply and, more importantly, whether to expend precious time
3 and resources to compete for limited testing seats and to prepare to take the SAT or ACT.

4 250. UC’s Comprehensive Review Guidelines instruct admissions officers to consider
5 academic indicators “in the context of other factors that impact performance, including personal
6 and academic circumstances (e.g. low-income status, access to honors courses, and college-going
7 culture of the school).”³⁸² Like the College Board’s failed “adversity score,” however, UC’s
8 guidance to admissions officers cannot cure the unlawful discrimination injected into the
9 admissions process by allowing applicants to submit SAT and ACT scores, which act as a proxy
10 for socioeconomic status and race. As the Task Force acknowledged, “UC admissions practices do
11 not fully make up for disparities that persist along lines of race and class. . . . [T]he outcome of the
12 UC admissions processes is that many of the populations historically excluded from opportunity
13 are still underrepresented by wide margins.”³⁸³

14 251. The adverse effects of UC’s consideration of SAT and ACT scores are particularly
15 pronounced with respect to underrepresented minority students. Whereas UC at least attempts to
16 redress SAT and ACT scores’ wealth-based discrimination by considering applicants’
17 socioeconomic status, UC ceased considering applicants’ race in admissions decisions following
18 the approval of Proposition 209.³⁸⁴ Thus, despite UC’s own research demonstrating that race “has

19
20 ○ In the statewide eligibility index

- 21 • What, if any, steps will UC and individual campuses take to ensure that test- optional
22 admissions do not produce disparate results based on socioeconomic status, race, or
23 disability?
24 • What, if any, steps will UC and individual campuses take to ensure that test- optional
admissions do not stigmatize students from underrepresented groups?

25 Email from Katherine Farkas, Counsel for Plaintiffs, to Hailyn Chen, Counsel for Defendants
26 (May 13, 2020) (on file with author).

27 ³⁸² Comprehensive Review Guidelines, *supra* note 366.

28 ³⁸³ STTF Report, *supra* note 3, at 5.

³⁸⁴ Geiser, *supra* note 58, at 6.

1 a large, independent, and growing statistical effect” on applicants’ SAT and ACT scores, UC
2 admissions officers are effectively prohibited from taking into account how test scores—and
3 access to the tests themselves—are “conditioned by race.”³⁸⁵ The use of SAT and ACT scores
4 therefore incorporates systematic racial discrimination into the structure of UC’s decision-making.

5 252. But UC’s discrimination against the less advantaged is not limited to its
6 consideration of SAT and ACT scores: despite its representations to the contrary, the UC gives
7 preferential access to “legacy” applicants who are related to alumni and to children of wealthy and
8 prospective donors. In the wake of the 2019 college admissions scandal, the UC published on its
9 website a list of frequently asked questions regarding its admissions policies.³⁸⁶ The UC denied
10 “grant[ing] preferential admission to the children of alumni or donors,” citing “long-established
11 UC admissions policy.”³⁸⁷ But as UC’s own internal audit noted, the referenced policy fails to
12 expressly prohibit legacy admissions, providing only that “admissions motivated by concern for
13 financial, political, or other such benefit to the University do not have a place in the admissions
14 process.”³⁸⁸ This failure led UC’s internal audit service to conclude that the policy’s language
15 could be “strengthen[ed] . . . to more explicitly prohibit development and legacy considerations
16 from influencing admissions decisions.”³⁸⁹

17 253. UC’s internal audit also determined that additional protocols were needed to ensure
18 “that admissions decisions are not motivated by concern for financial benefit to the University.”³⁹⁰
19 Specifically, the audit report instructed each UC campus to “limit[] communication between
20 development personnel and the admissions office regarding admissions matters,” and to prohibit
21

22 ³⁸⁵ *Id.*

23 ³⁸⁶ Univ. of Cal., *Current Issues: Frequently Asked Questions on UC Admissions Policies* (June
20, 2019), <https://www.universityofcalifornia.edu/current-issues/admissions/faqs>.

24 ³⁸⁷ *Id.*

25 ³⁸⁸ June 2019 UC Audit, *supra* note 44, at 18 (quoting Univ. of Cal. Bd. of Regents, *Regents*
26 *Policy 2202: Policy Barring Development Considerations from Influencing Admissions Decisions*,
<https://regents.universityofcalifornia.edu/governance/policies/2202.html>).

27 ³⁸⁹ *Id.*

28 ³⁹⁰ *Id.*

1 “communication regarding the admission status of specific applicants.”³⁹¹ The audit report also
2 called for “retrospective review[s] of donations . . . to identify admissions decisions that could
3 have been influenced by these donations.”³⁹²

4 **V. Disparate Outcomes**

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

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

8 255. According to College Board’s 2019 data for students taking the SAT in California,
9 45 percent of White students scored 1200 or above, compared to only nine percent of Black
10 students and 12 percent of Latinx students.³⁹³ Only one percent of Black students and two percent
11 of Latinx students scored in the top score bracket, compared to 12 percent of White students.³⁹⁴ By
12 contrast, 63 percent of Black students and 57 percent of Latinx students scored in the three lowest
13 score brackets, compared to 17 percent of White students.³⁹⁵

14 256. These disparities are replicated on the national scale, where only one percent of
15 Black students and two percent of Latinx students were in the top-scoring bracket, as compared to
16 eight percent of White students.³⁹⁶ Sixty-seven percent of Black students and 56 percent of Latinx
17 students were in the three lowest score brackets, compared to 27 percent of White students.³⁹⁷

18 257. These disparities are longstanding. A Brookings Institute report analyzing College
19 Board data found that between 1996 and 2015, the wide racial gap in SAT math scores “remained
20 virtually unchanged.”³⁹⁸

21
22 ³⁹¹ *Id.*

23 ³⁹² *Id.*

24 ³⁹³ College Board, *supra* note 17.

25 ³⁹⁴ *Id.*

26 ³⁹⁵ *Id.*

27 ³⁹⁶ College Board, *supra* note 142.

28 ³⁹⁷ *Id.*

³⁹⁸ Richard V. Reeves & Dimitrios Halikias, *Race gaps in SAT scores highlight inequality and*

1 258. The ACT exhibits similar disparities. Among the national graduating class of 2018,
2 the average scores were 16.9 for Black students and 18.8 for Latinx students, as compared to 22.2
3 for White students.³⁹⁹ In California, racial disparities in 2018 graduates' ACT scores were even
4 greater: Black and Latinx students had average scores of 19.0 and 19.7, respectively, as compared
5 to 25.5 for White students.⁴⁰⁰

6 259. Although Asian students have the highest scores when grouped together by the
7 College Board and ACT,⁴⁰¹ such groupings mask the demographic diversity of Asian American
8 and Pacific Islander (AAPI) populations.⁴⁰² The College Board and ACT's monolithic treatment
9 of AAPI students obscures the fact that certain subgroups score much lower than average.⁴⁰³ For
10 example, one study found that 48.3 percent of California test-takers received a total SAT score
11 greater than 1500, whereas only 7.6 percent of test-takers at a predominantly Hmong high school
12 and 12.8 percent at a predominantly Filipinx high school received a score in the same range.⁴⁰⁴

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

14 260. The disparate outcomes described above systematically harm underrepresented
15 minority students in the UC admissions process. Because the disparities between underrepresented
16 minority students and others are much greater for SAT and ACT scores than for high school
17

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

20 ³⁹⁹ ACT, Inc., *supra* note 211, at 15.

21 ⁴⁰⁰ ACT, Inc., *supra* note 31.

22 ⁴⁰¹ College Board, *supra* note 17; College Board, *supra* note 142; ACT, Inc., *supra* note 31, at 15.

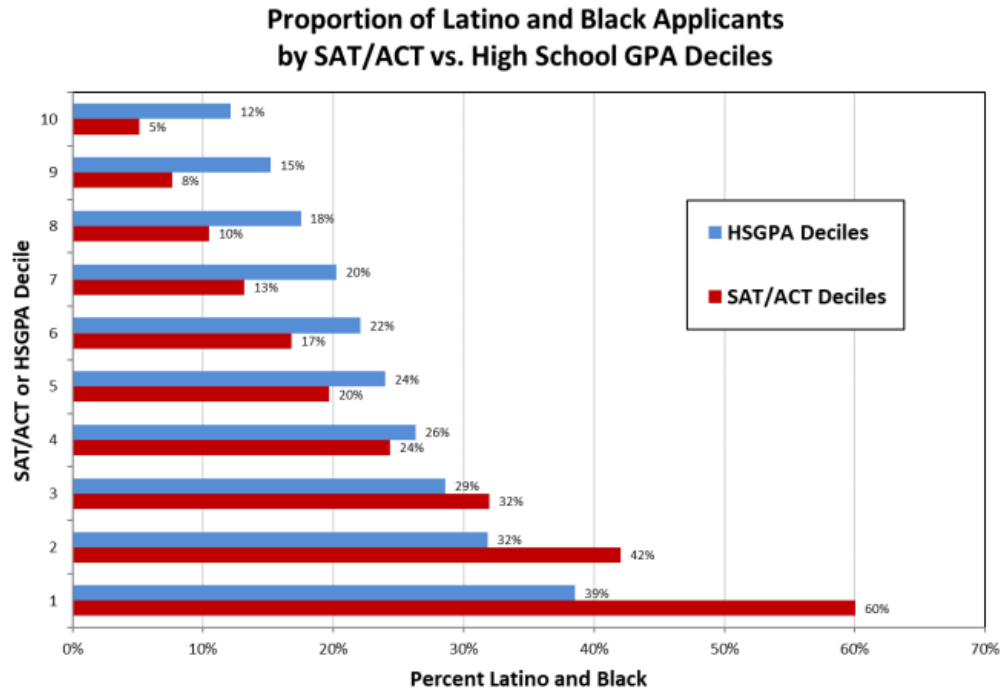
23 ⁴⁰² See, e.g., Robert Teranishi et al., *iCount: A Data Quality Movement for Asian Americans and*
24 *Pacific Islanders in Higher Education*, CARE: Nat'l Comm'n on Asian Am. & Pac. Islander
25 Research in Educ. 9–10 (2013), <https://files.eric.ed.gov/fulltext/ED573772.pdf> (describing
26 differences in educational attainment, median household income, and patterns of immigration
27 among Asian American and Pacific Islander subgroups).

28 ⁴⁰³ See, e.g., *id.* at 18; Univ. of Cal. San Diego, *SAT Reasoning Test Scores by Gender, Ethnicity,*
Major Field of Study, Home Location, 1st Generation College Status, Income & Athletic Status
(2016), https://ir.ucsd.edu/_files/stats-data/admissions/freshmen/hssat.pdf (showing that from
2011 to 2016, Filipinx students scored lower than both White and Asian Students on the SAT).

⁴⁰⁴ Teranishi et al., *supra* note 402, at 18.

grades, consideration of SAT and ACT scores places underrepresented minority students at a pronounced disadvantage relative to consideration of high school GPA alone.⁴⁰⁵

Figure 4: Distribution of Underrepresented Minority Applicants by SAT/ACT vs. HSGPA Deciles, 1994 to 2011⁴⁰⁶



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.

261. 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

⁴⁰⁵ Geiser, *supra* note 58, at 10.

⁴⁰⁶ *Id.*

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 of the applicant pool.⁴⁰⁷ When ranked by SAT and ACT scores, rather than by high school GPA, “[u]nderrepresented minority applicants are less than half as likely to rise to the top of the pool”—a major roadblock to admission.⁴⁰⁸

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

Figure 5: Acceptance Rates for Freshman Applicants to UC Campuses by Race/Ethnicity, Fall 2018⁴⁰⁹

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

263. Among Asian American and Pacific Islander populations, racial stratification in SAT and ACT scores is also reflected in disparate rates of acceptance to the UC. Duplicated data from UC Berkeley, for example, show that the acceptance rate for Fall 2018 first-years was 16.06 percent for White applicants and 15.06 percent for aggregated Asian applicants.⁴¹⁰ Disaggregating

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.*

⁴⁰⁹ See Univ. of Cal. Infocenter, *Undergraduate admissions summary*, <https://www.universityofcalifornia.edu/infocenter/admissions-residency-and-ethnicity>. Acceptance rates were calculated by dividing the raw number of admitted students by the raw number of applicants from the applicable racial category and year.

⁴¹⁰ See Univ. of Cal. Infocenter, *Disaggregated data*, <https://www.universityofcalifornia.edu/infocenter/disaggregated-data> (“[C]ounts are duplicated if a student selects multiple categories.”). Acceptance rates were calculated by dividing the raw number of admitted students by the raw number of applicants from the applicable racial category, campus, and year. These percentages differ from those represented in Figure 5 because they are based on duplicated data, which is the format in which the UC provides disaggregated data. By contrast, the percentages in Figure 5 are

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.⁴¹¹

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

6 264. 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)."⁴¹²

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26 based on apparently unduplicated data. Univ. of Cal. Infocenter, *supra* note 409.

27 ⁴¹¹ *Id.*

28 ⁴¹² ACT Technical Manual, *supra* note 31, at 11.59.

Figure 6: Average ACT Scores for Students Tested with Accommodations in 2013-2014⁴¹³

	Number of	Average ACT score				
Reference group	students	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: Ndum, 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.⁴¹⁴ 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.⁴¹⁵

Higher Education and Employment

265. 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

⁴¹³ *Id.* at 11.60.

⁴¹⁴ *See id.* at 11.70–11.71.

⁴¹⁵ College Board, *2014 College-Bound Seniors: Total Group Profile Report 1–2* (2014), <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.

5 266. 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.

11 267. Until testing accommodations can be proven effective and equally accessible to all
12 students who need them, until the ACT and SAT are validated for students with disabilities and
13 students testing with accommodations, and until students with disabilities are no longer treated
14 with suspicion and skepticism, the only unbiased way for the UC to evaluate students with
15 disabilities in its admissions process is to cease all reliance on the SAT and ACT.

16 **VI. Intentional Discrimination**

17 268. A decision-making body that persists in employing a criterion that it knows to be
18 biased against underrepresented minority students, students with disabilities, and students with
19 less wealth is engaged in intentional discrimination. Like a zoning board that relies on information
20 that it knows to be inaccurate as to a particular racial group, the Regents have chosen to continue
21 to use, in admissions and scholarship considerations, a criterion that they openly admit is “racist”
22 and a “proxy of opportunity.”⁴¹⁶ The Regents’ candid acknowledgment of the discriminatory
23 nature of the SAT and ACT—together with their recognition that the tests are poorly aligned with
24 “the content UC expects applicants to have learned and with UC’s values” and their failure to
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28 ⁴¹⁶ *Supra* para. 1.

1 provide a reasoned justification for retaining the tests⁴¹⁷—compels the conclusion that the
2 Regents’ decision was motivated at least in part by discriminatory purpose.

3 269. *Disparate adverse impact.* As discussed *supra* paras. 254–64, UC’s use of SAT and
4 ACT scores places underrepresented minority students, students with disabilities, and students
5 from low-income families at a pronounced disadvantage in its admissions process, resulting in
6 substantially lower acceptance rates.

7 270. *Historical background of the decision.* The Regents have understood for decades
8 that the SAT and ACT have only minimal predictive validity and operate to disproportionately
9 exclude low-income and underrepresented minority students from the University—yet they have
10 repeatedly chosen to continue requiring these tests.⁴¹⁸ Although UC regards itself as one of the
11 nation’s leading research institutions, the Regents have brushed aside years of consistent findings
12 and recommendations from UC’s own psychometricians, who have shown that test questions are
13 biased against underrepresented minority students; that SAT and ACT scores act as a proxy for
14 students’ wealth and race; and that high school GPA is a superior predictor of college outcomes.⁴¹⁹

15 271. *Departures from UC’s own policies and procedures.* As discussed *supra* paras.
16 229–34, BOARS and the Regents have repeatedly departed from their own testing principles in
17 order to retain SAT and ACT scores as admissions factors. In 2014, BOARS adopted the 2016
18 redesigned SAT without studying its predictive validity, ignoring its own requirement that
19 admissions tests be “demonstrably useful in predicting student success at UC and provide
20 information beyond that which is contained in other parts of the application.”⁴²⁰ And on May 21,
21 in their most egregious departure from UC’s policies and procedures, the Regents—recognizing
22 that the SAT and ACT fail to satisfy *any* of BOARS’s criteria for standardized tests—nevertheless
23 voted to continue using SAT and ACT scores for at least four more admissions cycles.⁴²¹

24 _____
25 ⁴¹⁷ Napolitano Proposal, *supra* note 2, at 1.

26 ⁴¹⁸ *Supra* paras. 218–25, 227, 229–34.

27 ⁴¹⁹ *Supra* paras. 6, 126–30, 134–36, 144–45, 149, 151–53, 157, 165, 220; *infra* para. 282.

28 ⁴²⁰ *Supra* paras. 228, 232.

⁴²¹ *Supra* paras. 236, 238.

1 272. *Legislative or administrative history.* As the Regents’ contemporaneous statements
2 and President Napolitano’s proposal demonstrate, the University’s leaders are well aware that the
3 SAT and ACT are discriminatory tests. During their May 21 meeting, the Regents repeatedly
4 acknowledged that the SAT and ACT discriminate against the State’s least privileged students.
5 President Napolitano reached the same conclusion. And even the Standardized Testing Task Force
6 acknowledged that UC’s use of standardized test scores contributes to the underrepresentation of
7 Black, Latinx, and Native American students at the University—a result that is fundamentally at
8 odds with UC’s “historic promise” and “acute need to remove barriers to” the enrollment of
9 “talented students . . . from historically excluded populations.”⁴²²

10 273. If the SAT and ACT discriminated against White and privileged students, the
11 Regents would have abandoned their use of these tests long ago. But because the students against
12 whom the tests discriminate are those with the fewest resources to challenge the Regents’
13 decision—and are also those whom the Regents assume to be low-performing—the Regents have
14 continued to rely on these discriminatory tests.

15 **VII. Alternatives to UC’s Discriminatory Use of SAT and ACT Scores**

16 **A. Nondiscriminatory Test-Optional Admissions**

17 274. Simply ceasing to require SAT and ACT scores—without taking into appropriate
18 consideration their failure to contribute meaningfully to the admissions process and their
19 disproportionate adverse impacts—does not render an admissions process nondiscriminatory
20 under California law. Test-optional policies can preserve the structural advantage conferred by
21 SAT and ACT scores on applicants who choose to submit them (*i.e.*, higher-scoring applicants
22 who are, as research demonstrates, disproportionately White, nondisabled, and affluent),⁴²³ and
23 may also result in the stigmatization of underrepresented students, whose peers may assume that
24 they were only able to secure admission by not submitting scores. Moreover, adoption of a test-
25 optional policy does not transform SAT or ACT scores into meaningful predictors of students’
26

27 ⁴²² STTF Report, *supra* note 3, at 9, 76.

28 ⁴²³ *Supra* note 31.

1 ability to succeed in college. Thus, for a test-optional admissions policy to be lawful, a university
2 must demonstrate that the policy: (1) uses SAT and ACT scores in a way that contributes
3 meaningfully to its assessment of applicants who submit those scores; (2) is transparent in
4 application; (3) does not produce disparate results based on socioeconomic status, race, or
5 disability; and (4) does not stigmatize those students who do not submit scores.

6 275. The Regents have provided no assurances, much less demonstrated, that their new
7 admissions policies satisfy any of these criteria. The Regents do not explain how—in light of their
8 and President Napolitano’s concession that the SAT and ACT are not aligned with either UC’s
9 testing principles or college readiness standards—admissions officers will use SAT and ACT
10 scores in a way that contributes meaningfully to their assessment of applicants who have the
11 means to submit them. Nor have they answered even the most fundamental questions about how
12 applicants will be assessed under their new policies, such as how, if a student is unable or chooses
13 not to submit an SAT or ACT score, admissions officers will weigh other criteria in its absence.
14 As the Task Force recognized, unless UC provides prospective students and their families with
15 answers to these “significant questions,” its admissions process cannot be “transparent and
16 fair.”⁴²⁴

17 276. Unsurprisingly, in light of the University’s inability to address the foregoing and its
18 Task Force’s conceded lack of knowledge regarding how “to design a fair, test-optional
19 admissions process,”⁴²⁵ the University has also failed to demonstrate that its new admissions
20 policies will not produce disparate results based on socioeconomic status, race, or disability.
21 Instead, University leaders have made clear that SAT and ACT scores will continue to confer a
22 competitive advantage on students who have the means to submit them, operating as a “value add”
23 in admissions and scholarship determinations.⁴²⁶ The University has failed to set out, much less
24 implement, concrete measures to mitigate this advantage for the State’s most privileged students.

25 _____
26 ⁴²⁴ STTF Report, *supra* note 3, at 98.

27 ⁴²⁵ *Id.*

28 ⁴²⁶ Regents Meeting (Afternoon Session), *supra* note 1, at 1:14–15 (statement of Vice Provost Yvette Gullatt).

1 It has therefore created a two-tiered admissions system, with privileged applicants—who can
2 continue to take the tests and use their high scores to their advantage—on one track, and less
3 privileged applicants on the other.

4 277. The University’s new admissions policies thus confront less advantaged applicants
5 with an impossible dilemma. Knowing that a high test score would improve his or her chances of
6 admission, an applicant from a low-income family or an underrepresented minority group will
7 have to decide whether to expend time, effort, and resources to prepare for and attempt to secure a
8 spot to take a test that is demonstrably biased against him or her. If the applicant were to decide to
9 take the test and receive a low score, then his or her time, effort, and resources would have been
10 wasted. But if the applicant were to choose not to take the test, then he or she would be at a
11 competitive disadvantage relative to White and affluent applicants, whose test scores would
12 provide them with another bite at obtaining admission.

13 278. Even if such applicants were to be admitted to the University, they—regardless of
14 whether or not they submitted scores—may be subjected to unjustified assumptions that they are
15 less academically qualified than their counterparts, and that they were only able to secure
16 admission by electing to avoid the SAT or ACT or “hide” their low scores. As surveys at Harvard
17 and Brown demonstrate, when test scores are included in the admissions process, White students
18 often presume that their underrepresented minority peers had lower scores, and were admitted
19 despite those scores.⁴²⁷ UC has failed to demonstrate that its new admissions policies would not
20 foster precisely these presumptions, which would stigmatize underrepresented students and
21 exacerbate the lack of belonging they already experience.⁴²⁸

23 ⁴²⁷ Natasha Warikoo, *The Diversity Bargain* 101–04 (2019).

24 ⁴²⁸ At UC Berkeley, for example, in response to the statement “I feel that I belong at this
25 university,” 32 percent of Black students and 33 percent of Latinx students answered “Strongly
26 Disagree,” “Disagree,” or “Somewhat Disagree,” as compared to only 23 percent of White
27 students. See Univ. of Cal. Infocenter, *University of California Undergraduate Experience Survey*
28 *(UCUES) Data Tables, 2018*, <https://www.universityofcalifornia.edu/infocenter/ucues-data-tables-2018>. Recipients of Pell Grants and first-generation students also reported lower senses of belonging. See *id.*

1 279. Although President Napolitano and the Regents have characterized their new
2 admissions policies as an opportunity for UC to “learn what it can about how its own policies can
3 advance (or limit) student achievement, access, school choice behaviors, and educational
4 outcomes,”⁴²⁹ there is no need for yet another UC study demonstrating what decades of UC
5 research have shown and what the Regents already know: SAT and ACT scores discriminate
6 against the State’s least privileged students. As their own comments have demonstrated, the
7 Regents are well aware that UC’s continued consideration of discriminatory test scores will hinder
8 and restrict “achievement, access, school choice behaviors, and educational outcomes” for
9 underrepresented students. For that reason, both President Napolitano and the Regents have agreed
10 to eliminate UC’s use of the SAT and ACT to assess California students for any purpose starting
11 in Fall 2025. The Regents have provided no justification for their continued use of the tests until
12 then.

13 **B. Alternative Metrics**

14 280. Under UC’s new admissions policies, SAT and ACT scores will continue to create
15 severe socioeconomic and racial stratification in the UC applicant pool, preventing talented
16 underrepresented minority students, students with less wealth, and students with disabilities from
17 rising to the top. Permitting consideration of SAT and ACT scores concentrates privilege on UC
18 campuses not only by placing White and affluent students at a significant competitive advantage
19 relative to their equally talented peers, but also by preventing admissions officers from according
20 appropriate weight to more meaningful, less biased metrics.

21 281. There are many alternative metrics to SAT and ACT scores that provide
22 comparable or superior information about a student’s ability to succeed in college without creating
23 such extreme socioeconomic and racial disparities. For example, with respect to California
24 applicants and students in the six other states whose high schools use the same exam,⁴³⁰ the

25 _____
26 ⁴²⁹ Napolitano Proposal, *supra* note 2, at 9.

27 ⁴³⁰ Catherine Gewertz, *Which States Are Using PARCC or Smarter Balanced*, Educ. Week,
28 <https://www.edweek.org/ew/section/multimedia/states-using-parcc-or-smarter-balanced.html>
(updated Apr. 9, 2019).

1 statewide Smarter Balanced Assessment provides an alternative reference point whose unique
2 contribution to predicting college outcomes is comparable to that of the SAT, but with less
3 adverse impact on underrepresented minority students and students with less wealth.⁴³¹ Moreover,
4 unlike the SAT and ACT, which are norm-referenced tests, the Smarter Balanced Assessment is a
5 content-based test that measures students against fixed curricular standards, rather than forcing
6 their scores into an artificial bell curve pattern. Because it is tied to curricular standards, the
7 Smarter Balanced Assessment has the advantage of reinforcing the importance of a rigorous
8 college preparatory curriculum in high schools.⁴³² Use of the Smarter Balanced Assessment may
9 also limit harms arising from unequal access to test preparation by rewarding mastery of
10 curriculum over access to expensive SAT and ACT preparation services and re-testing
11 opportunities.

12 282. Ultimately, however, as President Napolitano and the Regents' new admissions
13 policies implicitly concede, UC already has all of the information it needs to fairly evaluate
14 applicants in their admissions files, which contain a wealth of data on students' academic
15 achievements, personal qualities, extracurricular activities, community involvement, and special
16 talents. The most critical piece of information available to UC is a student's high school GPA,
17 which is both less discriminatory and more predictive than his or her SAT and ACT scores.⁴³³ As
18 UC researchers have demonstrated, once socioeconomic background factors are taken into
19 account, high school GPA "is consistently the strongest predictor of four-year college outcomes
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21
22 ⁴³¹ Kurlaender & Cohen, *supra* note 66, at 21 (describing the "difference in magnitude" between
23 the predictive power of the SAT and SBAC as "trivial"); *id.* at 18 (describing how consideration
24 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).

25 ⁴³² Michal Kurlaender et al., *UC Regents should consider all evidence and options in decision on*
26 *admissions policy*, Pol'y Analysis for Cal. Educ. 6–7 (Apr. 2020), [https://edpolicyinca.org/](https://edpolicyinca.org/newsroom/uc-regents-should-consider-all-evidence-and-options-decision-admissionspolicy)
[newsroom/uc-regents-should-consider-all-evidence-and-options-decision-admissionspolicy](https://edpolicyinca.org/newsroom/uc-regents-should-consider-all-evidence-and-options-decision-admissionspolicy).

27 ⁴³³ Although the Task Force report concluded that SAT and ACT scores are better predictors than
28 high school GPA of first-year GPA, this conclusion failed to "address the inflation of the SAT's
predictive power by its correlation with student background." *Id.* at 24.

1 for all academic disciplines, campuses and freshman cohorts in the UC sample,” and it has “less
2 adverse impact than [the SAT and ACT] on disadvantaged and underrepresented minority
3 students.”⁴³⁴ Recent analyses have confirmed that using “[h]igh school GPA as a predictor of
4 college success results in a much higher representation of low income and underrepresented
5 minority students in the top of the UC applicant pool.”⁴³⁵ A truly holistic admissions process that
6 accords appropriate weight to quantitative metrics such as high school GPA and qualitative
7 evaluations by teachers and counselors is not only more equitable, it also results in a more
8 meaningful assessment of each student’s capacity to thrive in college and contribute to the UC
9 community.⁴³⁶ Such a process would enable UC to “fulfill the mission of a great public university:
10 to provide access to diverse quarters of the state.”⁴³⁷

11 **CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**

13 **Violation of State Equal Protection Guarantees**

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

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

16 Against All Defendants

17 283. Plaintiffs reallege and incorporate herein by this reference each of the allegations in
18 Paragraphs 1 through 282, inclusive.

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

22 285. Defendants have expressly and publicly admitted that the SAT and ACT are both
23 discriminatory and unnecessary to UC’s admissions process. By continuing to consider SAT and
24 _____

25 ⁴³⁴ Geiser & Santelices, *supra* note 95, at 1.

26 ⁴³⁵ Kurlaender & Cohen, *supra* note 66.

27 ⁴³⁶ Tough, *supra* note 31, at 176 (describing how SAT and ACT scores act as a “false signal” for
less advantaged students that distracts admissions officers from more meaningful criteria).

28 ⁴³⁷ STTF Report, *supra* note 3, at 36 n. 45 (quoting BOARS, *Comprehensive Review in
Admissions at the University of California: [A]n Update* (Sept. 2012)).

1 ACT scores to evaluate applicants, Defendants have knowingly violated, and continue to violate,
2 Plaintiffs' equal protection rights.

3 286. Through the Fall 2020 admissions cycle, Defendants violated Plaintiffs' equal
4 protection rights by requiring either SAT or ACT scores for students applying for first-year
5 admission to UC and further considering those scores as criteria for admission.

6 287. Defendants continue to violate Plaintiffs' equal protection rights by allowing UC
7 campuses to consider SAT or ACT scores in admissions decisions during the Fall 2021 and Fall
8 2022 admissions cycles, and by using SAT and ACT scores through at least the Fall 2024
9 admissions cycle for other purposes, including scholarship and statewide eligibility
10 determinations.

11 288. The policies described above unlawfully discriminate on the basis of race and
12 wealth, and thereby deny Plaintiffs equal protection under the California Constitution.

13 289. The equal protection clause of the California Constitution also requires that
14 Defendants do not diminish Plaintiffs' fundamental right to education (which includes the right of
15 access to public higher education), or Plaintiffs' fundamental right to pursue an occupation.

16 290. Defendants have knowingly violated, and continue to violate, Plaintiffs'
17 fundamental rights by continuing to use SAT and ACT scores for admissions and other purposes,
18 thereby denying Plaintiffs their right of access to public higher education as well as hindering their
19 right to pursue an occupation.

20 291. Defendants' discriminatory policy denies Plaintiffs equal access to public higher
21 education within California—and all its attendant benefits and opportunities—both by deterring
22 students from underrepresented minority groups, students from disadvantaged socioeconomic
23 backgrounds, and students with disabilities from applying to UC, and by adversely impacting the
24 evaluation of those students' applications, their likelihood of being granted admission, and their
25 likelihood of being awarded scholarships.

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

28

293. Plaintiffs have no plain, speedy, and adequate remedy for Defendants' constitutional violations in the ordinary course of law.

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

295. Wherefore, Plaintiffs pray for relief, as set forth below.

SECOND CAUSE OF ACTION

Discrimination on the Basis of a Protected Classification

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

Against All Defendants

296. Plaintiffs reallege and incorporate herein by this reference each of the allegations in Paragraphs 1 through 282, inclusive.

297. California Government Code section 11135 provides:

(a) No person in the State of California shall, on the basis of . . . race, color, . . . ancestry, national origin, ethnic group identification, . . . mental disability, physical disability, [or] medical condition, . . . be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to 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.

298. Section 11135 further provides that, with respect to discrimination on the basis of disability, covered programs and activities “shall meet the protections and prohibitions contained in Section 202 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132)” and its implementing regulations, except that if the laws of California prescribe stronger protections and prohibitions, covered programs and activities shall be subject to the stronger protections and prohibitions. Cal. Gov’t Code § 11135(b).

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

300. Plaintiffs include qualified individuals with a disability within the meaning of California law, Cal. Gov't Code § 12926.

301. Defendants have admitted, and their own psychometricians have demonstrated, the discriminatory nature of both the SAT and ACT. By continuing to use SAT and ACT scores to evaluate students, Defendants knowingly harm underrepresented minority students and students with disabilities. Defendants' use of SAT and ACT scores in UC admissions and scholarship determinations thus constitutes intentional discrimination against Plaintiffs on the basis of race, color, ancestry, national origin, ethnic group identification, mental disability, physical disability, and/or medical condition.

302. Defendants' continued use of SAT and ACT scores in UC admissions and scholarship determinations also constitutes an ongoing violation of Plaintiffs' right to be free from discrimination, through its well-documented disparate adverse impact on underrepresented minority students and students with disabilities.

303. Defendants cannot justify their policy of continuing to use discriminatory SAT and ACT scores for admissions and scholarship determinations, in light of the more effective and less discriminatory methods to evaluate applicants described above. Defendants have admitted that SAT and ACT scores are not necessary to UC's evaluation of applicants.

304. Defendants' acts and omissions as alleged herein also violate Section 11135 by violating the Americans with Disabilities Act.

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

306. Plaintiffs have no plain, speedy, and adequate remedy for Defendants' legal violations in the ordinary course of law.

307. Unless enjoined, Defendants will continue to violate Plaintiffs' right to receive nondiscriminatory treatment under California law, and Plaintiffs will suffer irreparable harm.

308. Wherefore, Plaintiffs pray for relief, as set forth below.

THIRD CAUSE OF ACTION

Prohibited Discrimination in Education

(Cal. Education Code § 66270; Cal. Civ. Proc. Code §§ 526, 526(a))

Against All Defendants

1 309. Plaintiffs reallege and incorporate herein by this reference each of the allegations in
2 Paragraphs 1 through 282, inclusive.

3 310. California Education Code section 66270 provides:

4 No person shall be subjected to discrimination on the basis of disability, . . .
5 nationality, [or] race or ethnicity, . . . or any characteristic listed or defined
6 in Section 11135 of the Government Code or any other characteristic that is
7 contained in the prohibition of hate crimes set forth in subdivision (a) of
8 Section 422.6 of the Penal Code, including immigration status, in any
9 program or activity conducted by any postsecondary educational institution
10 that receives, or benefits from, state financial assistance or enrolls students
11 who receive state student financial aid.

12 311. The UC is a state-run postsecondary educational institution that receives, or
13 benefits from, State financial assistance and which enrolls students who receive State student
14 financial aid.

15 312. Overwhelming data, including Defendants' own extensive research, demonstrate
16 that the SAT and ACT tests discriminate against underrepresented minority students and students
17 with disabilities. Defendants have made multiple public statements recognizing the accuracy of
18 this data and acknowledging the discriminatory nature of these tests.

19 313. Knowing that consideration of SAT and ACT scores skews admissions and
20 scholarship decisions and deters applications from underrepresented, but equally talented, minority
21 students and students with disabilities, Defendants have nevertheless required, and continue to use,
22 SAT and ACT scores in UC's admissions and scholarship determinations,

23 314. As a result of Defendants' use of SAT and ACT scores, Plaintiffs were and
24 continue to be subjected to discrimination on the basis of disability, nationality, race, and/or
25 ethnicity, depriving them of the right of equal access to the educational benefits and opportunities
26 afforded by UC.

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

 316. Plaintiffs have no plain, speedy, and adequate remedy for Defendants' legal
violations in the ordinary course of law.

317. Unless enjoined, Defendants will continue to violate Plaintiffs' rights to equal access to the UC, and Plaintiffs will suffer irreparable harm.

318. Wherefore, Plaintiffs pray for relief, as set forth below.

FOURTH CAUSE OF ACTION

Violation of the Unruh Act

(Cal Civil Code §§ 51, 52; Cal. Civ. Proc. Code §§ 526, 526(a))

Against All Defendants

319. Plaintiffs reallege and incorporate herein by this reference each of the allegations in Paragraphs 1 through 282, inclusive.

320. The Unruh Act provides that:

[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their . . . race, color, . . . ancestry, national origin, disability, medical condition, . . . [or] primary language . . . are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

Cal. Civ. Code § 51(b). The Unruh Act makes liable any person who “denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51.” *Id.* § 52(a).

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

322. Any violation of the right of an individual under the Americans with Disabilities Act also constitutes a violation of the Unruh Act, Cal. Civ. Code § 51(f).

323. UC's continued use of SAT and ACT scores denies Plaintiffs full and equal accommodations, advantages, facilities, privileges, and/or services on the basis of race, color, ancestry, national origin, disability, medical condition, and/or primary language. This policy does so either directly—through the SAT and/or ACT's discriminatory bias against students from historically underrepresented racial and ethnic groups and students with disabilities—or indirectly, as the continued consideration of SAT and ACT scores in admissions and scholarship determinations deters otherwise-qualified applicants from these groups from applying to UC at all.

324. Nevertheless, Defendants intentionally continue to rely on SAT and ACT scores in admissions and scholarship determinations, despite Defendants' own copious findings—and

1 public acknowledgment—that consideration of SAT and ACT scores advantages White students
2 and is a substantial factor resulting in the exclusion from UC of their underrepresented, but
3 equally talented, peers. Defendants’ admissions that the SAT and ACT tests are “racist” and “a
4 proxy of opportunity,” coupled with their lack of justification for retaining these tests, establish
5 Defendants’ discriminatory intent.

6 325. As a result of Defendants’ conduct, Plaintiffs have been denied the myriad benefits
7 of public higher education, including, without limitation, higher wages and non-wage benefits,
8 greater job security, greater opportunities for homeownership, greater overall personal and family
9 stability, and even a decreased mortality rate.

10 326. By enacting unlawful admissions barriers for underrepresented minority students
11 and students with disabilities and by failing to operate their programs on a nondiscriminatory
12 basis, Defendants denied, aided, or incited a denial, or made a discrimination or distinction
13 contrary to Section 51.

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

16 328. Plaintiffs have no plain, speedy, and adequate remedy for Defendants’ legal
17 violations in the ordinary course of law.

18 329. Unless enjoined, Defendants will continue to deny Plaintiffs full and equal
19 accommodations, advantages, facilities, privileges, and/or services, and Plaintiffs will suffer
20 irreparable harm.

21 330. Wherefore, Plaintiffs pray for relief, as set forth below.

22 **FIFTH CAUSE OF ACTION**

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

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

25 331. Plaintiffs reallege and incorporate herein by this reference each of the allegations in
26 Paragraphs 1 through 282, inclusive.

27 332. The California Disabled Persons Act, Cal. Civ. Code §§ 54 *et seq.* (“CDPA”),
28 guarantees individuals with disabilities equal access to all public places. Any violation of the right

1 of an individual under the Americans with Disabilities Act also constitutes a violation of the
2 CDPA.

3 333. Plaintiffs include persons with disabilities within the meaning of California Civil
4 Code section 54(b)(1).

5 334. The University of California constitutes a public place within the meaning of the
6 CDPA, Cal. Civ. Code § 54.1.

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

10 336. By enacting unlawful admissions barriers for persons with disabilities and by
11 failing to operate their programs on a nondiscriminatory basis, Defendants were and are in
12 violation of the CDPA.

13 337. Defendants knew or should have known that their conduct was directed toward
14 persons with disabilities.

15 338. The CDPA, Cal. Civ. Code § 54.3, provides that:

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

23 339. Defendants' discriminatory conduct is ongoing, and pursuant to the remedies,
24 procedures, and rights set forth in Sections 54, 54.1, and 54.3, Plaintiffs pray for relief, as set forth
25 below.

26 **SIXTH CAUSE OF ACTION**

27 **Declaratory Relief**

28 Against All Defendants

340. Plaintiffs reallege and incorporate herein by this reference each of the allegations in
Paragraphs 1 through 282, inclusive.

1 341. An actual controversy has arisen and presently exists between Plaintiffs and
2 Defendants, because Plaintiffs contend, and Defendants dispute, that Defendants' actions and
3 inactions as described above have violated article I, section 7(a) and article IV, section 16(a) of the
4 California Constitution; California Government Code section 11135; California Education Code
5 section 66270; the Unruh Act, California Civil Code section 51; and the California Disabled
6 Persons Act, California Civil Code sections 54 *et seq.*

7 342. Plaintiffs therefore seek a judicial declaration of each of the following:

- 8 a. That Defendants' discriminatory policy of using SAT and ACT test scores
9 in UC admissions and scholarship determinations violates Plaintiffs' rights
10 to equal protection under the California Constitution, art. I, § 7(a) and art.
11 IV, § 16(a), by discriminating on the bases of race and wealth;
- 12 b. That Defendants' discriminatory policy of using SAT and ACT test scores
13 in UC admissions and scholarship determinations violates Plaintiffs'
14 fundamental right to education under the California Constitution, art. I, §
15 7(a) and art. IV, § 16(a), by denying Plaintiffs access to public higher
16 education, and also violates Plaintiffs' fundamental right to pursue an
17 occupation under the California Constitution, art. I, § 7(a) and art. IV, §
18 16(a);
- 19 c. That Defendants' discriminatory policy of using SAT and ACT test scores
20 in UC admissions and scholarship determinations constitutes intentional
21 discrimination against members of protected classes and therefore
22 constitutes illegal discrimination under Section 11135 of the California
23 Government Code;
- 24 d. That Defendants' discriminatory policy of using SAT and ACT test scores
25 in UC admissions and scholarship determinations results in a
26 disproportionate adverse impact on protected classes and therefore
27 constitutes illegal discrimination under Section 11135 of the California
28 Government Code;

- 1 e. That Defendants knowingly deprived Plaintiffs of the right of equal access
2 to educational benefits and opportunities, in violation of Section 66270 of
3 the California Education Code;
- 4 f. That Defendants' discriminatory policy of using SAT and ACT test scores
5 in UC admissions and scholarship determinations constitutes intentional
6 discrimination against students from underrepresented ethnic and racial
7 backgrounds and students with disabilities in violation of the Unruh Act,
8 California Civil Code section 51;
- 9 g. That Defendant's discriminatory policy of using SAT and ACT test scores
10 in UC admissions and scholarship determinations violates the California
11 Disabled Persons Act, California Civil Code sections 54 *et seq.*, by creating
12 unlawful admissions barriers for persons with disabilities, failing to
13 evaluate applicants on a nondiscriminatory basis, and failing to comply with
14 civil rights and access laws; and
- 15 h. That Defendants are required to prepare a plan, with Court approval and
16 consideration of any objections by Plaintiffs, designed to cure Defendants'
17 violations of law, and bring them into compliance with the law.

18 **REQUEST FOR RELIEF**

19 Wherefore, Plaintiffs request the following relief:

- 20 a. Injunctive relief requiring Defendants and their officers, agents, and employees to
21 cease considering SAT or ACT scores for any purpose in eligibility, admissions, or scholarship
22 determinations, unless Defendants are able to demonstrate UC's ability to assess those scores in a
23 rigorous and meaningful, transparent, nondiscriminatory, and non-stigmatizing manner;
- 24 b. A declaration that Defendants, through their actions and omissions and the
25 policies and procedures complained of, violate:
- 26 i. The right to equal protection under the California Constitution, art. I, § 7(a)
27 and art. IV, § 16(a);
- 28 ii. Section 11135 of the California Government Code;

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- 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.

1 DATED: June 15, 2020

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PROOF OF SERVICE

**Smith v. The Regents of the University of California
Case No. RG19046222**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 800 West Sixth Street, 18th Floor, Los Angeles, CA 90017-2701.

On June 15, 2020, I served true copies of the following document(s) described as **AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address lwahjudi@scheperkim.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 15, 2020, at Los Angeles, California.

/s/Lue Wahjudi

Lue Wahjudi

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