

**THE CONSERVATIVE CASE AGAINST LEGACY
PREFERENCES IN COLLEGE & UNIVERSITY
ADMISSIONS**

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INTRODUCTION

Admissions practices at elite colleges and universities have received much national media attention in recent years.¹ A Federal Bureau of Investigation inquiry known as “Operation Varsity Blues” from 2011 to 2018 revealed numerous allegations of mail fraud and honest services fraud involving admissions to elite colleges and universities² such as the University of Southern California,³ Yale,⁴ Stanford,⁵ and Georgetown.⁶ In 2019, fifty people were charged with conspiracy to commit mail services fraud and honest services mail fraud.⁷ A majority of parents involved either -pled guilty or were convicted.⁸

In 2023, admissions practices at colleges and universities once again received national attention with the United States Supreme Court decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*.⁹ In this case, the Supreme Court held the utilization of race as a factor in college and university admissions (the

1. See e.g., Sarah Reber et al., *Admissions at Most Colleges Will Be Unaffected by Supreme Court Ruling on Affirmative Action*, BROOKINGS INST. (Nov. 7, 2023), <https://www.brookings.edu/articles/admissions-at-most-colleges-will-be-unaffected-by-supreme-court-ruling-on-affirmative-action/>.

2. See e.g., Eric Levenson & Mark Morales, *Wealthy Parents, Actresses, Coaches, Among Those Charged in Massive College Cheating Admission Scandal, Federal Prosecutors Say*, CNN (Mar. 13, 2019, 4:14 AM), <https://www.cnn.com/2019/03/12/us/college-admission-cheating-scheme/index.html>.

3. See Laura Ly, *Former USC Official Sentenced in College Admissions Scandal*, CNN (Jan. 6, 2023, 1:51 PM), <https://www.cnn.com/2023/01/06/us/donna-heinel-college-admissions-scandal/index.html>.

4. See Kayla Yup, *College Admissions Scandal Paints Yale in “Varsity Blues”*, YALE DAILY NEWS (May 22, 2022, 11:50 PM), <https://yaledailynews.com/blog/2022/05/22/college-admissions-scandal-paints-yale-in-varsity-blues/>.

5. See Bill Hutchinson, *‘Varsity Blues’ Ringleader Tried to Recruit 7 Stanford Coaches; Investigation*, ABC NEWS (Dec. 4, 2019, 1:13 PM), <https://abcnews.go.com/US/varsity-blues-ringleader-recruit-stanford-coaches-investigation/story?id=67489718>.

6. See Nate Raymond, *Georgetown’s Ex-Tennis Coach Gets 2-1/2 Years in Prison in U.S. College Scandal*, REUTERS (July 1, 2022, 11:47 AM), <https://www.reuters.com/legal/government/georgetown-ex-tennis-coach-gets-2-12-years-prison-us-college-scandal-2022-07-01/>.

7. See Levenson & Morales, *supra* note 2.

8. See Kelly McLaughlin et al., *The Full List of Everyone Who’s Been Sentenced in the College Admissions Scandal so Far*, BUS. INSIDER (May 12, 2023, 4:24 PM), <https://www.insider.com/college-admissions-scandal-full-list-people-sentenced-2019-9>.

9. See *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141 (2023).

policies of Harvard and the University of North Carolina) violates the Equal Protection Clause of the United States Constitution.¹⁰ In essence, moving forward colleges and universities are now effectively barred from considering race as a factor, even if considered among many others, in admissions.¹¹

Admissions today are as competitive as ever.¹² And amidst the competitive environment, the practice of “legacy admissions” exists at some elite schools — giving a critical preferential edge to those who have had the luck of having a parent or grandparent who is an alumnus of the school.¹³ Despite a number of colleges and universities ending the practice in recent years, such as Amherst College,¹⁴ New York University,¹⁵ Johns Hopkins University,¹⁶ and Wesleyan University,¹⁷ the practice still persists.

10. *Id.* at 2175.

11. See Lauren Camera, *Supreme Court Strikes Down Use of Race in College Admissions*, U.S. NEWS & WORLD REP. (June 29, 2023, 10:12 AM), <https://www.usnews.com/news/national-news/articles/2023-06-29/supreme-court-strikes-down-use-of-race-in-college-admissions>.

12. See e.g., Eva Rothenberg, *University Early Decision Applications Mostly Benefit Rich Kids*, CNN (Oct. 22, 2023, 5:19 PM), <https://www.cnn.com/2023/10/22/business/early-decision-college-financial-aid/index.html>.

13. See e.g., Shane LaGesse, *Legacy Admissions: What It Is and Why Colleges Are Reconsidering It*, U.S. NEWS & WORLD REPS. (July 21, 2023, 3:24 PM), <https://www.usnews.com/higher-education/articles/legacy-admissions-what-it-is-and-why-colleges-are-reconsidering-it> (“Legacy admissions, also known as legacy preferences or alumni connections, refers to a boost in a prospective student’s odds of admission to a college just because the applicant is related to an alumnus, usually a parent or grandparent”).

14. See Associated Press, *Amherst College Is Ending Legacy Admissions, Which Gave an Edge to Children of Alumni*, NPR (Oct. 20, 2021, 2:38 PM), <https://www.npr.org/2021/10/20/1047687657/amherst-college-ending-legacy-admissions>.

15. See Bruna Horvath, *NYU to Remove Legacy Status Question from Common App*, WASH. SQUARE NEWS (Sept. 7, 2023), <https://nyunews.com/news/2023/09/07/nyu-changes-common-application/>.

16. See Sara Weissman, *Johns Hopkins Ditched Legacy Admissions to Boost Diversity – And It Worked*, DIVERSE: ISSUES IN HIGHER EDUC. (Feb. 5, 2020), <https://www.diverseeducation.com/home/article/15106230/johns-hopkins-ditched-legacy-admissions-to-boost-diversity-and-it-worked>.

17. See Jessica Dickler, *Wesleyan University Ends Legacy Admissions After Supreme Court Decision on Affirmative Action*, CNBC (July 20, 2023, 1:00 PM), <https://www.cnn.com/2023/07/20/wesleyan-ends-legacy-admissions-after-supreme-court-affirmative-action-ruling.html>.

A number of legal commentators have critiqued legacy admissions through the lens of disparate impact,¹⁸ the legality of legacy admissions under the Equal Protection Clause,¹⁹ and the constitutionality of legacy admissions under the Constitution's prohibition on titles of nobility.²⁰ This Article presents a slightly different critique — a conservative critique against legacy admissions — contending legacy preferences in admissions are inimical to the conservative values of hard work and merit as well as self-reliance.

The first part of this Article addresses legacy preferences in admissions through the lens of hard work and merit as well as self-reliance. It then discusses two significant pieces of legislation at the federal level, the Fair College Admissions for Students Act²¹ and the Merit-based Educational Reforms and Institutional Transparency “MERIT” Act,²² and contends that the issue of legacy preferences in admissions today presents a rare opportunity for bipartisan cooperation in the 118th Congress. By examining legislative efforts on legacy admissions at the state level (especially Colorado), as well as recent statements of prominent conservative leaders and the introduction of the MERIT Act in November 2023,²³ there is a clear moment in 2024 for policymakers on both sides of the aisle to resolve the issue of legacy preferences in admissions for good and finally end preferences based on a family collegiate legacy.

I. CONSERVATIVE ARGUMENTS AGAINST LEGACY PREFERENCES IN ADMISSIONS

A. *Hard Work and Merit*

Traditional conservative thought has historically emphasized the significance of hard work and merit to personal success. Russell Kirk,

18. See Kathryn Ladewski, Note, *Preserving a Racial Hierarchy: A Legal Analysis of the Disparate Racial Impact of Legacy Preferences in University Admissions*, 108 MICH. L. REV. 577 (2010).

19. See T. Liam Murphy, Comment, *Scrutinizing Legacy Admissions: Applying Tiers of Scrutiny to Legacy Preference Policies in University Admissions*, 22 U. PA. J. CONST. L. 315 (2019).

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

21. See Fair College Admissions for Students Act, H.R. 4900, 118th Cong. (2023); S. 2524, 118th Cong. (2023).

22. See Merit-based Educational Reforms and Institutional Transparency Act, S. 3232, 118th Cong. (2023).

23. *Id.*

considered by many to be an intellectual founder of modern conservatism,²⁴ noted in “Ten Conservative Principles” that conservatives believe in a linkage between freedom and property.²⁵ Kirk argues that property provides an incentive for individuals to learn not only “responsibility” but to raise humanity above “mere drudgery” and provide individuals “leisure to think and freedom to act.”²⁶ In addition, hard work allows an individual to keep one’s property.²⁷ As Kirk writes:

To be able to retain the fruits of one’s labor; to be able to see one’s work made permanent; to be able to bequeath one’s property to one’s posterity; to be able to rise from the natural condition of grinding poverty to the security of enduring accomplishment; to have something that is really one’s own—these are advantages difficult to deny.²⁸

The prominence of the values of hard work and merit also features prominently in the contemporary conservative political lexicon. In October 2023, Congressman Mike Johnson, a conservative Republican congressman from Louisiana, was elected the Speaker of the United States House of Representatives.²⁹ Johnson is the author of “7 Core Principles of Conservatism.”³⁰ Speaker Johnson wrote in this document, “[p]ublic policy should always encourage education and emphasize the virtue of hard work as a pathway out of poverty, while public assistance programs should be reserved only for those who are truly in need.”³¹

24. See Lee Edwards, *The Conservative Mind of Russell Kirk*, HERITAGE FOUND. (Oct. 23, 2014), <https://www.heritage.org/political-process/report/the-conservative-mind-russell-kirk>.

25. See Russell Kirk, *Ten Conservative Principles*, RUSSELL KIRK CTR., <https://kirkcenter.org/conservatism/ten-conservative-principles/> (last visited Dec. 9, 2023).

26. *Id.*

27. *Id.*

28. *Id.*

29. See Piper Hudspeth Blackburn & Shania Shelton, *Who Is Rep. Mike Johnson, the New House Speaker?*, CNN, <https://www.cnn.com/2023/10/25/politics/mike-johnson-speaker-nominee/index.html> (last updated Oct. 25, 2023, 8:12 PM).

30. See U.S. Congressman Mike Johnson, *7 Core Principles of Conservatism*, <https://mikejohnson.house.gov/7-core-principles-of-conservatism/> (last visited Dec. 9, 2023).

31. *Id.*

Legacy admissions in colleges and universities are arguably contrary to the values of hard work and merit.³² Instead of placing applicants on an even playing field to be judged on one's own accomplishments, legacy preferences give an advantage to equally qualified candidates and thus decrease the overall importance of hard work and merit to admission decisions. And by decreasing the significance of hard work and merit, legacy preferences run contrary to conservative principles.

B. Self-Reliance

Similar to hard work and merit, legacy preferences also arguably run contrary to the value of self-reliance. Self-reliance also runs prominently in conservative thought.³³ In his October 1928 "Rugged Individualism" campaign address, President Herbert Hoover emphasized the significance of self-reliance in stating, "[o]ur country has become the land of opportunity to those born without inheritance, not merely because of the wealth of its resources and industry but because of this freedom of initiative and enterprise."³⁴ Self-reliance also appears prominently in the conservative philosophy of Paul Ryan, the former United States Speaker of the House of Representatives.³⁵

One of the historical leaders that some contemporary conservatives cite today as a model of conservatism is President Abraham Lincoln.³⁶ And President Lincoln is regularly cited as an exemplar of self-reliance.³⁷ Born in a log cabin in Kentucky in 1809, President Lincoln

32. See Thomas A. Berry, *Conservatives Should Reject Unconstitutional Legacy Preferences*, NAT'L REV. (July 11, 2023, 6:30 AM), <https://www.nationalreview.com/2023/07/conservatives-should-reject-unconstitutional-legacy-preferences/>.

33. See Edwin J. Feulner, *Searching for Self-Reliance*, THE HERITAGE FOUND. (May 30, 2017), <https://www.heritage.org/government-regulation/commentary/searching-self-reliance>.

34. President Herbert Hoover, *Principles and Ideals of the United States Government*, Campaign Speech at Madison Square Garden (Oct. 22, 1928) (transcript available at: <https://millercenter.org/the-presidency/presidential-speeches/october-22-1928-principles-and-ideals-united-states-government>).

35. See Michael Kranish, *Paul Ryan's Early Self-Reliance Laid Ground for Conservatism*, BOS. GLOBE (Aug. 12, 2012, 12:00 AM), <https://www.bostonglobe.com/news/nation/2012/08/11/paul-ryan-mitt-romney-running-mate-formed-beliefs-self-reliance-conservatism-from-early-age/sVM8JHaWZyEy-jjxlb06L2M/story.html>.

36. See John Cribb, *Lincoln's Advice for Success Still Rings True Today*, FOX NEWS (Feb. 20, 2023, 6:00 am), <https://www.foxnews.com/opinion/lincolns-advice-for-success-still-rings-true-today>.

37. *Id.*

taught himself how to read.³⁸ Lincoln also studied the law and without a law school education became a highly successful attorney.³⁹ And without attending an elite college or university, Abraham Lincoln became President of the United States,⁴⁰ having far less formal education than political contemporaries such as Senator Charles Sumner (Harvard Law School),⁴¹ United States Secretary of State William Henry Seward (Union College),⁴² Representative Thaddeus Stevens (Dartmouth College),⁴³ and United States Supreme Court Justice Salmon P. Chase (Dartmouth College).⁴⁴ Lincoln thus became a conservative icon through self-reliance and without many of the educational advantages other political contemporaries had during his time.⁴⁵

Legacy preferences arguably run contrary to the value of self-reliance. Instead of achieving the success of admission to a college or university based on one's individual effort and self-reliance, a legacy preference provides that individual with an advantage due to one's own familial background. Far from a college campus being a land of opportunity for a student irrespective of "inheritance," in the words of President Hoover, a legacy preference provides a student a greater chance of access to that same college campus specifically due to one's own "inheritance."

38. See Joe Sonka, *Is Abe Lincoln's 'Birthplace Cabin' in Kentucky National Park the Real Thing?*, COURIER J. (Dec. 28, 2022, 5:01 AM), <https://www.courier-journal.com/story/news/local/2022/12/28/is-the-abraham-lincoln-birthplace-cabin-in-kentucky-the-real-thing/69670424007/>; Kimbria Alfrear, *Abraham Lincoln's Self-Education*, MEDIUM (Jan. 12, 2021), <https://kimbria-alfrear.medium.com/abraham-lincolns-self-education-37b1ce0da10>.

39. See Mark E. Steiner, *Abraham Lincoln and the Rule of Law Books*, 93 MARQ. L. REV. 1283, 1309, 1321 (2010).

40. See *id.* at 1324.

41. See OFF. SENATE HISTORIAN, *Biographical Directory of the United States Congress: Charles Sumner*, <https://bioguideretro.congress.gov/Home/MemberDetails?memIndex=S001068>

42. See Paul Grondahl, *Union Grad William Henry Seward Gets New Focus*, TIMES UNION (Feb. 20, 2013, 6:55 AM), <https://www.timesunion.com/local/article/Union-grad-William-Henry-Seward-gets-new-focus-4292051.php>

43. See Allison Tong, *Dartmouth College Public Service Legacy: Thaddeus Stevens, Class of 1814*, NELSON A. ROCKEFELLER CTR. FOR PUB. POL'Y & SOC. SCI., <https://rockefeller.dartmouth.edu/news/2018/09/dartmouth-college-public-service-legacy-thaddeus-stevens-class-1814> (last visited Mar. 15, 2024).

44. See Makena Kauhane, *Dartmouth College Public Service Legacy: Salmon P. Chase, Class of 1826*, NELSON A. ROCKEFELLER CTR. FOR PUB. POL'Y & SOC. SCI. <https://rockefeller.dartmouth.edu/news/2018/11/dartmouth-college-public-service-legacy-salmon-p-chase-class-1826> (last visited Mar. 15, 2024).

45. See Edwin J. Feulner, *Honoring Lincoln*, HERITAGE FOUND., (Feb. 11, 2009), <https://www.heritage.org/conservatism/commentary/honoring-lincoln>.

With a number of strong conservative arguments against legacy preferences in admissions, there is a strong potential for bipartisan efforts between progressives and conservatives to end legacy admissions. As illustrated with both federal and state legislative effort to end legacy preferences, this bipartisan movement is starting to congeal together, and it has accelerated in momentum throughout 2023.

II. FEDERAL LEGISLATIVE EFFORTS TO END LEGACY PREFERENCES IN ADMISSIONS

Within the past three years, two key pieces of legislation have been introduced in Congress in an effort to end legacy admissions at colleges and universities within the United States: The Fair College Admissions for Students Act (first introduced in 2022)⁴⁶ and The MERIT Act (introduced in 2023).⁴⁷

A. *The Fair College Admissions for Students Act*

The first major piece of legislation recently proposed at the federal level to end the practice of legacy admissions was the introduction of The Fair College Admissions for Students Act in February 2022 during the 117th Congress.⁴⁸ The Fair College Admissions for Students Act⁴⁹ was presented by two of the most progressive members of the United States Congress: Congressman Jamaal Bowman in the United States House of Representatives⁵⁰ and Senator Jeff Merkley in the United States Senate.⁵¹ The legislation proposed to prohibit any higher education institution that participates in federal student-aid programs from providing any preferential treatment based on relationships to either alumni or donors of the higher education institution.⁵²

46. See Fair College Admissions for Students Act, H.R. 6559, 117th Cong. (2022); S. 3559, 117th Cong. (2022).

47. See Merit-based Educational Reforms and Institutional Transparency Act, S. 3232, 118th Cong. (2023).

48. See H.R. 6559; S. 3559.

49. *Id.*

50. See Hanna Trudo, *Progressives Face Growing Primary Threats Over Gaza Stance*, THE HILL (Dec. 10, 2023, 12:00 PM), <https://thehill.com/homenews/campaign/4350633-cori-bush-jamaal-bowman-rashida-tlaib-squad-israel-palestinians-hamas/>

51. See Burgess Everett, *Meet the Mild-Manner Progressive Who's Breaking the Filibuster*, POLITICO (Jan. 25, 2022, 4:33 AM), <https://www.politico.com/news/2022/01/25/senate-filibuster-jeff-merkley-00001394/>

52. See Fair College Admissions for Students Act, H.R. 6559, 117th Cong. (2022); S. 3559, 117th Cong. (2022).

This particular version of the legislation contained an exception in that the Secretary of the Department of Education could waive the prohibition of preferential treatment in the cases of minority-serving institutions if the minority-serving institution could demonstrate that the utilization of such a policy would be in the best interests of students who are historically underrepresented.⁵³

In the United States House of Representatives, the Fair College Admissions for Students Act was co-sponsored by eleven other members of the House, all Democrats.⁵⁴ In the United States Senate, this legislation was co-sponsored by only one other Senator, Democratic Senator Robert Casey Jr. of Pennsylvania.⁵⁵ The Fair College Admissions for Students Act did not make it past the introduction stage in either the United States House of Representatives or the United States Senate in the 117th Congress.⁵⁶

The Fair College Admissions for Students Act was re-introduced in the 118th Congress in the United States House of Representatives in July 2023 by Congressman Bowman and in the United States Senate by Senator Merkley.⁵⁷ While the legislation contains the same provision prohibiting any higher education institution that is a participant in federal student-aid programs from utilizing legacy preferences, it does not include the possible exception for minority-serving institutions.⁵⁸ The legislation has some momentum in terms of co-sponsors—there are now forty-three co-sponsors in the United States

53. *Id.*

54. See CONGRESS.GOV, *Cosponsors: H.R. 6559 — 117th Congress (2021–2022)*, = <https://www.congress.gov/bill/117th-congress/house-bill/6559/cosponsors?s=1&r=29&overview=closed> (last visited Feb. 2, 2024).

55. See CONGRESS.GOV, *Cosponsors: S. 3559 — 117th Congress (2021–2022)*, <https://www.congress.gov/bill/117th-congress/senate-bill/3559/cosponsors> (last visited Feb. 2, 2024).

56. See CONGRESS.GOV, *All Actions Except Amendments: H.R. 6559 — 117th Congress (2021–2022)*, <https://www.congress.gov/bill/117th-congress/house-bill/6559/all-actions-without-amendments?q=%7B%22search%22%3A%22HR+6559%22%7D&s=8&r=2>. (last visited Feb. 2, 2024); See CONGRESS.GOV, *All Actions Except Amendments: S. 3559 — 117th Congress (2021–2022)*, <https://www.congress.gov/bill/117th-congress/senate-bill/3559/actions> (last visited Feb. 2, 2024).

57. See Fair College Admissions for Students Act, H.R. 4900, 118th Cong. (2023); S. 2524, 118th Cong. (2023).

58. *Id.*

House of Representatives (all Democrats)⁵⁹ and there are two co-sponsors (both Democrats) in the United States Senate.⁶⁰

B. The MERIT Act

While the Fair College Admissions for Students Act has only Democrat co-sponsors, the Merit-based Educational Reforms and Institutional Transparency Act (“MERIT Act”) has bipartisan support.⁶¹ Introduced by Republican Senator Todd Young of Indiana and Democrat Senator Tim Kaine of Virginia in November 2023, the MERIT Act establishes a new standard of accreditation for higher education institutions which requires those institutions to prohibit preferential treatment to applicants on the basis of relationships with donors or alumni.⁶² In addition, the legislation provides specifically that religious institutions can continue to make admissions decisions that correspond with their values and it preserves religious freedom.⁶³ In essence, the legislation would effectively eliminate legacy preferences at accredited colleges and universities.

III. CONSERVATIVE OPPOSITION TO LEGACY PREFERENCES IN ADMISSIONS

Given there are viable conservative arguments against the practice of legacy admissions in colleges and universities, one may also expect that many conservative legislators would support the ending of the practice. In examining state legislative efforts to ban legacy admissions at the state level, the recent statements of prominent conservative politicians, and the introduction of the bipartisan MERIT Act, there is an ever-growing conservative opposition to legacy admissions.

59. See CONGRESS.GOV, *Cosponsors H.R. 4900 —118th Congress (2023–2024)*, <https://www.congress.gov/bill/118th-congress/house-bill/4900/cosponsors?s=1&r=1&q=%7B%22search%22%3A%22HR+4900%22%7D> (last visited Feb. 2, 2024).

60. See CONGRESS.GOV, *Cosponsors: S. 2524 —118th Congress (2023–2024)*, <https://www.congress.gov/bill/118th-congress/senate-bill/2524/cosponsors?s=3&r=1&q=%7B%22search%22%3A%22S24%22%7D> (last visited Feb. 2, 2024).

61. See Chris Williams, *We Might Not Even Need the Supreme Court to Get Rid of Legacy Admissions*, ABOVE THE L. (Nov. 7, 2023, 1:18 PM), <https://abovethelaw.com/2023/11/we-might-not-even-need-the-supreme-court-to-get-rid-of-legacy-admissions/>.

62. See Merit-based Educational Reforms and Institutional Transparency Act, S. 3232, 118th Cong. (2023).

63. *Id.*

*A. State Legislative Efforts**1. Colorado*

Colorado is the only state which has prohibited legacy preferences within its state colleges and universities.⁶⁴ On March 4, 2021, House Bill 1173 was introduced in the Colorado House of Representatives which would prohibit state colleges and universities “from considering . . . familial relationships [of] alumni . . . in the admissions process.”⁶⁵ House Bill 1173 was sponsored by four Democrats and co-sponsored by twenty-one Democrats in the Colorado House of Representatives and seven Democrats in the Colorado Senate.⁶⁶

The bill progressed quickly through the Colorado General Assembly. On April 8, 2021, just over a month after its introduction in the Colorado House of Representatives, House Bill 1173 passed in a 43-20 vote.⁶⁷ The bill passed with the support of thirty-nine out of forty-one Democrats in the House (with two excused votes), and all votes in opposition were votes from Republicans (twenty).⁶⁸ However, three Republican Representatives —Representative Mary Bradfield, Representative Tim Geitner, and Representative Colin Larson —voted for House Bill 1173.⁶⁹

On May 5, 2021, the Colorado Senate voted to approve House Bill 1173 in a 29-5 vote.⁷⁰ All twenty Democrats in the Colorado Senate voted “yes.”⁷¹ But in a change from the vote in the Colorado House, the majority of Republican State Senators —nine out of fifteen —voted “yes,” with one excused vote, giving the bill strong bipartisan support.⁷² And on May 25, 2021, House Bill 1173 became the law in the state of Colorado with the signature of Governor Jared Polis.⁷³ Governor Polis remarked in approving the legislation that “[t]his bill will help move us in a direction where our higher education

64. See Elliott Wenzler, *Two Years After Colorado Banned Legacy Admissions, the State's Public Colleges and Universities Say the Only Real Change is Perception*, COLO. SUN (Aug. 18, 2023, 3:55 AM), <https://coloradosun.com/2023/08/18/two-years-colorado-banned-legacy-admissions-colleges-universities-say-the-only-real-change-is-perception/>.

65. H.R. 1173, 73rd Gen. Assemb., Reg. Sess. (Colo. 2021) (introduced).

66. Colo. H.R. 1173 (adopted).

67. H.R. 73, Reg. Sess., at 2–9, 613–14 (Colo. 2021).

68. *Id.*

69. *Id.*

70. S.73, Reg. Sess., at 737, 1651–52 (Colo. 2021).

71. *Id.*

72. *Id.*

73. H.R.73, Reg. Sess., at 1584 (Colo. 2021).

institutions are moving towards being meritocracies — meaning that you have to earn admission because of who you are and what you can do and what your potential is. Not who your parents or grandparents were.”⁷⁴

House Bill 1173 was not only landmark in its passage as the first state legislation in the United States to prohibit state public colleges and universities from considering legacy as a factor in admissions, but it is also significant in the broad base of support it received from conservative legislators. Colorado stands as an example of conservatives opposing legacy admissions and illustrates that since this occurred at the state level, there can be a groundwork of a bipartisan effort to eliminate legacy preferences at the federal level as well. In the wake of Colorado’s passage of House Bill 1173, other state efforts to eliminate legacy preferences have arisen within the past two years.

2. Connecticut

In February 2022, Raised Bill No. 5034 was introduced in the Connecticut General Assembly.⁷⁵ Raised Bill No. 5034 would prohibit public colleges and universities as well as private colleges and universities from giving preferences for admission “on the basis of the applicant’s familial relationship to a person who has graduated from such institution.”⁷⁶

The Higher Education and Employment Advancement Committee, a joint committee of the House of Representatives and Senate of the Connecticut General Assembly, considered the bill in March 2022.⁷⁷ The Committee amended the bill to remove the prohibition on legacy preferences with private colleges and universities in Connecticut.⁷⁸ On March 3, 2022, the Committee reported the bill favorably out of the Joint Committee in a 15 - 8 vote.⁷⁹

74. See Patty Nieberg, *Colorado Ends ‘Legacy Admissions’ For Higher Education*, ASSOCIATED PRESS (May 25, 2021, 5:33 PM), <https://apnews.com/article/edbc95b683b007e34a2ea214b3e19adb>.

75. H.R. 5034, 2022 Gen. Assemb., Feb. Sess. (Conn. 2022) (introduced).

76. *Id.*

77. See HIGHER EDUC. AND EMP. ADVANCEMENT COMM., JOINT FAVORABLE REPORT, H.R. 2022, Feb. Sess., at 1 (Conn. 2022).

78. *Id.*

79. See Conn. Assembly Bill No. 5034, H.B. 5034 Higher Education and Employment Advancement Committee, Vote Tally Sheet, CONN. GEN. ASSEMBLY (2022), available at: <https://www.cga.ct.gov/2022/TS/H/PDF/2022HB-05034-R00HED-CV40-TS.PDF> (last accessed Dec. 19, 2023).

Fourteen of the “yes” votes for H.B. 5034 were Democrats, while two Democrats voted “no” on the measure.⁸⁰ While six Republican legislators voted “no,” one Republican State Senator, Kevin Witkos, voted “yes,” providing the bill bipartisan support.⁸¹ Despite its passage out of the Joint Committee, the bill did not make it to a full vote in the House of Representatives nor the Senate in 2022.⁸²

3. New York

Assembly Bill A9505 was introduced in the New York State Assembly in March 2022 by Democrat State Representatives Latrice Walker and Al Taylor.⁸³ The bill, entitled the “Fair College Admissions Act,” would prohibit public colleges and universities from considering alumni/ae relationships as a factor in the admissions process.⁸⁴ The bill not only contained a prohibition against legacy preferences in admissions, it also contained a civil penalty provision, unlike the legislation in Colorado and Connecticut.⁸⁵ The Fair College Admissions Act would impose a civil penalty for a violation on a college or university in the amount of ten percent of the number of full-time equivalent first year students the year prior to the violation multiplied by the college or university’s tuition and fees.⁸⁶ A companion version was introduced by Democrat Senator Andrew Gounardes in the New York State Senate in March 2022 as well.⁸⁷ Both bills failed to make it past the Committee stage in 2022.⁸⁸

In January 2023, the Fair College Admissions Act was re-introduced in both the New York State Assembly (by Democrat Representative Latrice Walker)⁸⁹ as well as the New York State Senate (by Senator Andrew Gounardes).⁹⁰ To date, the bills have not made it past the Committee stage.⁹¹

80. *Id.*

81. *Id.*

82. See Substitute for Raised H.B. No. 5034 Session Year 2022, CONN. GEN. ASSEMBLY (Conn. 2022), available at: https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB05034&which_year=2022 (last accessed Dec. 19, 2023).

83. See A9505, 245th Sess. (N.Y. 2022).

84. *Id.*

85. *Id.*

86. *Id.*

87. S. 8498, 245th Sess. (N.Y. 2022).

88. See A9505, 245th Sess. (N.Y. 2022); N.Y. S.8498.

89. See A1423A, 246th Sess. (N.Y. 2023).

90. See S. 4170A, 246th Sess. (N.Y. 2023).

91. See N.Y.A1423A; N.Y. S. 4170A.

4. Massachusetts

Democratic State Representatives Simon Cataldo and Pavel Payano introduced a bill (H.3760) in the Massachusetts House of Representatives to prohibit legacy preferences in Massachusetts public and private colleges and universities in April 2023.⁹² Under H. 3760, if a public or private college or university continues to utilize legacy preferences, then the college or university would pay a “public service fee,” which would depend upon the amount of the institution’s endowment, which would ultimately be utilized for the benefit of community colleges in Massachusetts.⁹³

Fifteen Representatives have co-sponsored this legislation; fourteen of the Representatives are Democrats.⁹⁴ However, there is one Republican, Representative Marcus Vaughn, who has co-sponsored the bill, giving it bipartisan support.⁹⁵ Interestingly, the sponsors of the bill, Representatives Cataldo and Payano, have noted that they have not “encountered any opposition” to the bill.⁹⁶ The bill has not made it past the introduction stage yet.⁹⁷

5. Pennsylvania

In July 2023, Democrat State Senator Anthony Williams distributed a memorandum to State Senate colleagues in which he informed colleagues he would be introducing legislation to ban legacy preferences in public as well as private colleges and universities in the state of Pennsylvania.⁹⁸ In his memorandum, Senator Williams cited the U.S. Supreme Court decision on affirmative action in *Students for Fair Admissions v. Harvard* and noted that “[b]anning legacy admissions would be consistent with the Supreme Court’s ruling which focuses on merit-based admissions rather than admissions based on preference.”⁹⁹

92. See H. 3760, 193rd Sess. (Mass. 2023).

93. *Id.*

94. *Id.*

95. *Id.*

96. Mark J. Drozdowski, *Massachusetts Bill Aims to End Legacy Admissions, Early Decision*, BEST COLL. (Nov. 2, 2023), <https://www.bestcolleges.com/news/analysis/massachusetts-seeks-ban-on-legacy-admissions-early-decision/>.

97. See Mass. H.3760.

98. Memorandum from Senator Anthony H. Williams to All Senate Members, Penn. State Senate (July 10, 2023), <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20230&cosponId=41160> (last accessed Dec. 19, 2023).

99. *Id.*

Within the state of Pennsylvania, Carnegie Mellon University and the University of Pittsburgh currently do not consider legacy preferences in their admissions.¹⁰⁰ The legislation has not yet been filed as of this date.

As the states of Colorado, Connecticut, and Massachusetts illustrate, prohibiting legacy preferences in colleges and universities can obtain bipartisan support and support from conservatives. This demonstrates that legislation at the state level can provide a groundswell of increasing support for legislation at the federal level as well.

B. Statements of Prominent Conservative Leaders

The United States Supreme Court's decision in the *Students for Fair Admissions, Inc. v. Harvard*¹⁰¹ case has also appeared to be a moment that has resulted in a conservative reconsideration of legacy preference admissions. This is certainly conveyed by the discussion of state legislation in recent years prohibiting legacy preferences. In addition, in the wake of the decision, prominent conservative leaders at the national level have expressed an openness to prohibiting legacy preferences in admissions.

Senator Tim Scott of South Carolina, a prominent conservative senator¹⁰² and Republican candidate who formerly ran for President in 2023,¹⁰³ expressed in a television interview in June 2023 that he supports the ending of legacy preferences at colleges and universities.¹⁰⁴ Referring specifically to admissions policies at Harvard, Senator Scott noted that “[o]ne of the things that Harvard could do to make that even better is to eliminate any legacy programs where they have preferential treatment for legacy kids, not allow for the professors —their kids to

100. See Paige Rawiszer, *Pa. Senator Proposes State-Wide Ban on Legacy Admissions – Including at Penn*, DAILY PENNSYLVANIAN (Aug. 30, 2023, 9:52 PM), <https://www.thedp.com/article/2023/08/penn-pennsylvania-state-senate-legacy-admissions>.

101. See *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141 (2023).

102. See Michael Kruse & Sydney Gold, *55 Things You Need to Know About Tim Scott*, POLITICO (May 22, 2023, 4:30 AM), <https://www.politico.com/news/magazine/2023/05/22/tim-scott-55-things-you-need-to-know-00097711>.

103. See Aaron Pellish, et al., *Republican Sen. Tim Scott Suspends Presidential Campaign*, CNN (Nov. 13, 2023, 4:53 AM), <https://www.cnn.com/2023/11/12/politics/tim-scott-ends-presidential-campaign/index.html>.

104. See Lauren Sforza, *Tim Scott Calls on Universities to End Legacy Admissions*, THE HILL (June 29, 2023, 3:54 PM), <https://thehill.com/homenews/campaign/4074428-tim-scott-calls-on-universities-to-end-legacy-admissions/>.

come to Harvard as well.”¹⁰⁵ In addition, conservative Republican Senators Bill Cassidy of Louisiana¹⁰⁶ and Ted Cruz of Texas¹⁰⁷ conveyed criticism of legacy preferences, and Senator Cruz noted that a ban on legacy preferences at colleges and universities might be a “reasonable policy” to potentially consider.¹⁰⁸

C. *The Bipartisan MERIT Act*

Finally, the introduction of the MERIT Act in November 2023 shows there is clear momentum toward increasing conservative support for the ending of legacy preferences in 2024.¹⁰⁹ As Republican Senator Todd Young remarked in support of the legislation, “America is a land of opportunity, not a land of aristocracy,”¹¹⁰ harkening the conservatism expressed by President Herbert Hoover in his “Rugged Individualism” speech.

It is especially notable that Indiana Republican Senator Todd Young, a conservative,¹¹¹ has co-sponsored the legislation on the federal level with Democratic Senator Tim Kaine, a progressive.¹¹² While it is unclear how much support this legislation truly has in Congress,¹¹³ it is landmark in the sense that it is the first legislation at the federal

105. See Eden Villalovas, *Tim Scott Calls For End to Legacy Admissions in Wake of Affirmative Action Decision*, WASH. EXAMINER (June 29, 2023, 11:02 PM), <https://www.washingtonexaminer.com/politics/tim-scott-end-legacy-admissions-affirmative-action-supreme-court>.

106. See Mike Allen, *GOP Sen. Cassidy Warns of “True Colors” Test*, AXIOS (Oct. 17, 2021), <https://www.axios.com/2021/10/17/bill-cassidy-conservative-louisiana-hbo>.

107. See Nancy Cook, *Cruz Would Be the Most Conservative Nominee in Generations*, POLITICO (Apr. 8, 2016, 2:03 PM), <https://www.politico.com/story/2016/04/ted-cruz-most-conservative-republican-nominee-221729>.

108. See Igor Bobic, *Republicans Question Legacy Admissions at Top Colleges*, HUFFPOST (July 27, 2023, 5:45 AM), https://www.huffpost.com/entry/legacy-admissions-affirmative-action_n_64c181a9e4b08cd259de64f5.

109. See Press Release, Todd Young, U.S. Senator for Indiana, Young, Kaine Introduce Bill to End Legacy Admissions (Nov. 7, 2023), <https://www.young.senate.gov/newsroom/press-releases/young-kaine-introduce-bill-to-end-legacy-admissions>.

110. *Id.*

111. See Maureen Groppe, *Todd Young: I’m Not Just a Rhetorical Conservative*, COURIER & PRESS (Apr. 16, 2016, 1:03 PM), <https://www.courierpress.com/story/news/politics/2016/04/16/todd-young-im-not-just-a-rhetorical-conservative/87174306/>.

112. See Ana Faguy, *Senators Introduce Bipartisan Legislation To End Legacy Admissions*, FORBES (Nov. 7, 2023, 1:28 PM), <https://www.forbes.com/sites/anafaguy/2023/11/07/senators-introduce-bipartisan-legislation-to-end-legacy-admissions/?sh=19a63f1450ce>.

113. See *id.*

level which has bipartisan co-sponsors and has a conservative as a backer.

CONCLUSION

With the 2024 elections approaching, there will be significant hurdles to enact any controversial legislation in the United States Congress. However, with recent developments in the past few months, momentum is certainly building toward conservative support to work in a bipartisan manner to eliminate legacy preferences at college and universities. The elimination of legacy preferences at colleges and universities will place more emphasis on the hard work and merit of students to achieve admission into elite institutions – and provide more equal opportunities for students of all backgrounds, irrespective of parentage and pedigree, to achieve the American dream.