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Maureen O'Rourke, Chair

Council of the ABA Section of Legal Education and Admissions to the Bar
(via email to jr.clark@americanbar.org)

321 N. Clark Street, 21st Floor
Chicago, IL 60654

Re: Statement in Support of Eliminating the Standard 503 Requirement that Every Prospective Student Submit a Standardized Admissions Test Score

Dear Members of the Council:

The Society of American Law Teachers (SALT) supports the proposal to eliminate the Standard 503 requirement that every prospective law student submit a standardized admissions test score. In previous statements submitted to the Council and to the Standards Review Committee, SALT has noted the problematic effects caused by misuse of the LSAT in the law school admissions process. We appreciate that those concerns have led the Council to consider revising Standard 503. Eliminating the standardized test requirement is also a critical first step in incentivizing the development of alternative tests and admissions practices that may better predict success in law school, and ultimately, as a lawyer.

SALT identified and discussed significant concerns about the LSAT in a 2011 Statement, attached as Appendix A. We will not repeat those arguments but note that the 2011 Statement is equally, if not more, true today. This Statement focuses instead on the potential benefits of eliminating the requirement that law schools use a standardized test in the admissions process while noting the risks inherent in the proposed change.

I. Eliminating the requirement of a standardized test score for admissions allows schools to experiment with other admissions tests and criteria.

A. Undergraduate schools have successfully experimented with “test optional” admissions policies.

Eliminating the requirement that all applicants submit a standardized admissions test score does not signal the demise of the standardized test. Rather, it simply gives law schools the option of allowing some, or all,

prospective students to apply without submitting a standardized test score. For decades, many undergraduate colleges and universities have had a “test optional” admissions policy and the list of schools going “test optional” continues to expand.¹

Many undergraduate institutions allow prospective students the choice of submitting standardized test scores or applying for admission via a “holistic” approach that includes answers to numerous essay questions and looks at a wide range of other factors.² Some studies have shown that students admitted under this “test optional” approach largely perform at the same level as their peers who submitted test scores.³ There is also some evidence that allowing “test optional” policies has increased diversity,⁴ although there is also some evidence to the contrary at the more elite schools.⁵

The flexibility of a “test optional” policy opens the door to prospective students who might otherwise be excluded, and it incentivizes schools to figure out how to help those students succeed. For example, Georgia State University (GSU) committed to increasing its retention and graduation rates through a policy of inclusion, rather than exclusion.⁶ To do so, its admission process focuses mainly on high school grades. GSU accepts large numbers of minority students and Pell Grant recipients who have standardized test scores and other predictors that traditionally would categorize them as “at risk.”⁷ Using data analytics to identify risk factors and appropriate interventions, GSU has one of the highest retention and graduation rates of comparable urban research universities, one of the most diverse student bodies, and no achievement gap between students of color and white students.⁸

GSU’s success story illustrates what can happen if schools have the freedom to admit students without consideration of standardized test scores. Law schools not bound by the standardized test score requirement could admit students whose test scores might otherwise preclude them from law school, and can develop studies and interventions that help insure those students’ success.

¹ Scott Jaschik, *Momentum for Going SAT Optional*, INSIDE HIGHER ED (May 26, 2006), <https://www.insidehighered.com/news/2006/05/26/sat>.

² See e.g., Alexia Brunet Marks & Scott A. Moss, *What Predicts Law Student Success? A Longitudinal Study Correlating Law Student Applicate Data and Law School Outcomes*, 13 J. EMPIRICAL LEGAL STUD. 205 (2016) (finding that factors such as UGPA, undergraduate major, and prior work experience are significant law school academic success predictors).

³ *20 Year Study of Optional SATs Finds No Difference*, BATES NEWS (Oct. 2015), <https://www.bates.edu/news/2005/10/01/sat-study/>.

⁴ Andrew S. Belasco, Kelly O. Rosinger & James C. Hearn, *The Test-Optional Movement at America’s Selective Liberal Arts Colleges: A Boon for Equity or Something Else*, 37 EDUC. EVALUATION AND POLICY ANALYSIS 206 (2015).

⁵ *Id.*

⁶ Timothy Renick, 2015 Status Report Georgia State University, COMPLETE COLLEGE GEORGIA (2015), <http://enrollment.gsu.edu/files/2015/08/Georgia-State-University-CCG-Report-2015.pdf>.

⁷ *Id.*

⁸ *Id.*

B. Eliminating a standardized test requirement opens the door to study other predictors that better predict success.

Although the LSAT does not purport to measure success as a lawyer, or claim to measure the wide range of skills lawyers need,⁹ the hegemony of its use deters exploration of other predictors. What the LSAT does do, but only to a very limited extent, is predict first year grades.¹⁰ Law school grades in turn have some association with passing the current knowledge-based bar exam.¹¹ However, the LSAT is far from a perfect predictor for all students,¹² especially in view of the academic success and bar success programs that continue to expand at law schools. For example, a recent peer-reviewed study of 1,400 law students at two schools concluded that while LSAT scores are better than UGPA at predicting first year law student grades, UGPA is a slightly stronger predictor of overall LGPA.¹³ That study also found that factors beyond the LSAT, such as having a STEM or Engineering, Accounting or Finance background, and work experience, especially as a teacher, are significant law school success predictors. In addition to not being as strong a predictor of law school grades as many assume, the test also does not purport to test the wide range of skills lawyers need. In fact, one small study found that while LSAT scores correlated to first year grades in doctrinal courses, the scores

⁹ Cautionary Policies Concerning LSAT Scores and Related Services, LAW SCHOOL ADMISSION COUNCIL, [https://www.lsac.org/docs/default-source/publications-\(lsac-resources\)/cautionarypolicies.pdf](https://www.lsac.org/docs/default-source/publications-(lsac-resources)/cautionarypolicies.pdf) (last visited Feb. 21, 2018).

¹⁰ See Phoebe A. Haddon & Deborah W. Post, *Misuse and Abuse of the LSAT: Making the Case for Alternative Evaluative Efforts and a Redefinition of Merit*, 80 ST. JOHN'S L. REV 41, 53 (2009) (noting that the LSAT is generally accepted as the best available predictor of success in the first year of law school). The LSAT predicts differently at different schools with schools showing a wide range of correlations between LSAT scores and first year LGPA. As the LSAC itself notes, the correlations between first year grades and LSAT scores at various law schools ranged from .12 to .61 with a median of .41, and LSAT scores when combined with UGPAs correlations with first year grades ranged from .26 to .68 with a median of .50 See *LSAT Scores as Predictors of Law School Performance*, available at: <https://www.lsac.org/jd/lsat/your-score/law-school-performance>. As law school assessments change in light of accreditation assessment standards and the Carnegie and Best Practices mandates that focus more on experiential learning, these correlations may become weaker.

¹¹ Keith A. Kaufman, et al., *Passing the Bar Exam: Psychological, Educational, and Demographic Predictors of Success*, 57 J. Legal Educ. 205, 217-218 (2007)

¹² As the LSAC acknowledges, “the LSAT, like any admission test, is not a perfect predictor of law school performance. The predictive power of an admission test is limited by many factors, such as the complexity of the skills the test is designed to measure and the unmeasurable factors that can affect student performance (e.g., motivation, physical and mental health, or work and family responsibilities)” See *supra* note 9, *LSAT Scores as Predictors of Law School Performance*.

¹³ Marks & Moss, *supra* note 2.

did not correlate to grades in legal research and writing courses,¹⁴ the courses that most resemble how lawyers apply legal doctrine in actual law practice.

Legal education would benefit from having more studies that identify other success predictors that are more closely tied to the skills lawyers need in law practice. This kind of innovation is especially important in an age of rapidly changing delivery of legal services, when skills in areas such as project management, artificial intelligence affecting the legal field, and communication with a wide range of clients, may become critical components of future legal practice. Alternative tests could predict a wide range of lawyering skills that lawyers actually use in practice. For example, Professors Shultz and Zedeck developed a pilot test that assesses a wide range of skills lawyers need.¹⁵ As long as the current LSAT is required, there is little incentive to explore those alternative tests. The proposed Standard change potentially incentivizes researchers, schools, and even the LSAC to look at alternative assessments that predict law school success and, most importantly, better predict who will be a competent lawyer.

Some schools have chosen to adopt the GRE as an alternative standardized test to satisfy Standard 503, and some have proposed simply adding the GRE as an alternative admissions test. However, simply adding the GRE as an additional test option raises new problems. First, there are significant validity problems with using the GRE as an admissions test since there is little indication it predicts law school success. Indeed, one study indicates the GRE was not even a good predictor of graduate psychology students' success – despite the fact that it theoretically is supposed to predict success in graduate programs.¹⁶ Additionally, the current pool of GRE test-takers is less diverse than the pool of LSAT test-takers¹⁷ and the GRE, like the LSAT, has a disparate impact on low income and minority test-takers.¹⁸ Additionally, adding the GRE may increase the cost for law school applicants who may feel compelled to study for, and take, two different tests. This option may be more available to applicants from wealthier families, and thus further increase disparities in the applicant pool. Finally, like the LSAT, the GRE does not purport to predict success in the wide range of skills lawyers need. Simply adding the choice of

¹⁴ Andrea A. Curcio, Gregory Todd Jones & Tanya Washington, *Does Practice Make Perfect? An Empirical Examination of the Impact of Practice Essays on Essay Exam Performance*, 35 FL. ST. UNIV. L. REV. 271, 301 (2008).

¹⁵ Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admissions Decisions*, 36 LAW & SOC. INQUIRY 620 (2011).

¹⁶ Robert J. Sternberg & Wendy M. Williams, *Does the Graduate Record Examination Predict Meaningful Success in Graduate Training of Psychologists*, 52 AM. PSYCHOL. 630 (1997).

¹⁷ The most recent available data on LSAT test takers is from 2011-2012. That year, White test-takers accounted for 60% (56,947/93,535) of the LSAT pool and 69% (230,644/318,078) of the GRE pool. See Susan P. Dalessandro, Lisa C. Anthony, & Lynda M. Reese, *LSAT Technical Report Series*, LAW SCHOOL ADMISSION COUNCIL (2012), [https://www.lsac.org/docs/default-source/research-\(lsac-resources\)/tr-12-03.pdf?sfvrsn=4](https://www.lsac.org/docs/default-source/research-(lsac-resources)/tr-12-03.pdf?sfvrsn=4) (last visited Feb. 21, 2018); See also *A Snapshot of the Individuals Who Took the GRE Revised General Test*, EDUCATIONAL TESTING SERVICE (2014), https://www.ets.org/s/gre/pdf/snapshot_test_taker_data_2014.pdf (last visited Feb. 21, 2018).

¹⁸ Aaron N. Taylor, *The GRE Is No Diversity Tool*, THE NATIONAL JURIST (Jun. 7, 2016), <http://www.nationaljurist.com/national-jurist-magazine/gre-no-diversity-tool>.

the GRE, therefore, is not a meaningful improvement to the admissions test requirement dilemma.

II. Eliminating the requirement of a standardized test score may mitigate social justice problems arising from misuse of the LSAT.

Studies indicate that standardized tests have disparate impact on students who do not come from privileged backgrounds. Numerous studies correlate standardized test scores with zip codes and family wealth.¹⁹ These correlations make practical sense – students born into families that live in high-achieving school districts are likely to have greater educational opportunities, greater access to test preparation services and tutoring, and the ability to focus on test preparation rather than working in part time jobs to help ensure food security and adequate housing.

A. Eliminating required test scores may reduce the current misuse of LSAT scores, which is motivated by US News rankings.

Despite the LSAT's limited predictive value and the LSAC's warning not to over-use it in admissions decisions,²⁰ LSAT scores drive the admissions process at most schools. In large part, this is due to *US News and World Report* rankings. LSAT scores account for 12.5% of the data used by US News in its rankings.²¹ While schools have little control over other rankings factors such as peer and judge assessments, they can increase their median LSAT scores by heavily recruiting students with high scores and providing them significant tuition discounts and scholarships. This expensive quest for students who serve median-LSAT goals has skewed scholarship dollars away from needs-based scholarships and toward those with high LSAT scores.²² It also has shifted the cost of legal education onto the shoulders of those with lower LSAT scores.²³ In essence, those with lower test scores bear increased costs to support scholarships and tuition discounts given to those with higher test scores.

The proposed Standards change will not reduce law schools' misplaced obsession with the *US News* formula, but it could ameliorate the destructive impact of that obsession. Gaming the rankings currently means overuse of the LSAT. With the proposed change, law schools will likely find ways to admit students without LSAT scores in hopes of maintaining or improving their median LSAT scores, if those continue to be used in the rankings, as also seems likely. Underuse or selective use of the LSAT is a possible outcome—relying on factors that may or

¹⁹ Catherine Rampell, *SAT Scores and Family Income*, THE NEW YORK TIMES (Aug. 27, 2009), <https://economix.blogs.nytimes.com/2009/08/27/sat-scores-and-family-income/>.

²⁰ See Cautionary Policies, *supra* note 8.

²¹ William D. Henderson & Andrew P. Morris, *Student Quality as Measured by LSAT Scores: Migration Patterns in the U.S. News Rankings Era*, 81 IND. L. J. 163, 165 (2006).

²² David Segal, *How Law Students Lose the Grant Game, and How Schools Win*, THE NEW YORK TIMES, April 30, 2011, <https://www.nytimes.com/2011/05/01/business/law-school-grants.html> (last visited Feb 21, 2018).

²³ Jerome M. Organ, THE VARIABLE AFFORDABILITY OF LAW SCHOOL – HOW GEOGRAPHY AND LSAT PROFILE IMPACT TUITION COSTS (2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2545583 (last visited Feb. 21, 2018).

may not be demonstrably connected to merit or prediction of success—but that challenge can be addressed as law school admissions change in response to the dethroning of the LSAT as the primary way to evaluate applications. Perhaps the change in admissions practices will lead to a change in the *US News* formula, with law schools then shifting admissions strategies in reaction. The rankings impact is impossible to predict, but the status quo is sufficiently destructive that the fact that some new rankings strategies are likely to emerge is not a good reason to maintain the current Standard.

B. Requiring a standardized test score affects law school compliance with Standard 205.

Standard 205 states that schools shall not use admissions policies or take other action to preclude admission of students on the basis of race, color, national origin and other factors. The current over-reliance on LSAT scores in admissions decisions, and awards of scholarships based upon high LSAT scores rather than financial need, potentially conflicts with Standard 205's mandate.

LSAT scores have a disparate racial impact,²⁴ and have never been validated as an effective measure of lawyer competence. Therefore, using LSAT scores as a linchpin of admissions decisions contributes to a deeply embedded set of discriminatory practices. To the extent all students must submit LSAT scores and schools seek to have median LSAT scores that keep them competitive in the *US News* rankings, supporting a moral and ethical commitment to diversity becomes more costly. Scholarship money is diverted from supporting students in need to achieving the highest possible median LSAT score. The requirement that all prospective students submit LSAT scores presents significant challenges to those who seek to break with these de facto discriminatory practices and admit and support students from a range of socioeconomic backgrounds and thus comply with Standard 205's mandate.

C. Eliminating required test scores may improve access for qualified people with disabilities.

Using a single test as the sole gatekeeper for the legal profession may create an unnecessary obstacle for people with disabilities, particularly when that test, the LSAT, has a record of failing to permit adequate accommodations.²⁵ Allowing a variety of admissions processes could improve the legal profession by enhancing access for disabled students as well as others who are well qualified to be future attorneys, but who may not score high on the LSAT.

²⁴ Richard K. Reeves & Dimitrios Halikias, *Race Gaps in SAT Scores Highlight Inequality and Hinder Upward Mobility*, BROOKINGS INSTITUTE REPORT (Feb. 1, 2017), <https://www.brookings.edu/research/race-gaps-in-sat-scores-highlight-inequality-and-hinder-upward-mobility/> (last visited Feb. 21, 2018); see also Haddon & Post, *supra* note 9.

²⁵ *Dept. of Fair Employment and Housing v. Law School Admissions Council Inc.*, 896 F. Supp. 2d 849 (U.S.D.C. ND California 2012); see also, *Dept of Fair Housing and Employment v. Law School Admissions Council Inc.*, case # 12-cv-01830JCS (U.S.D.C. ND California March 5, 2018) (a 53 page contempt order against LSAC for its failure to provide appropriate accommodations). That order is available at: <https://images.law.com/contrib/content/uploads/documents/292/ContemptDecision.pdf>

III. The risks of eliminating a standardized test requirement

Eliminating the requirement that every student submit a standardized test score will encourage innovation and experimentation, and will ameliorate some of the pernicious effects of the LSAT discussed above. However, it is not without potential downsides.

The LSAT and other standardized tests were originally adopted to reduce cronyism by introducing what was thought to be an objective measure for admissions. Eliminating the test score requirement risks returning to a system where admission was too often based on familial or social connections.

Another potential risk is that some struggling law schools might admit truly unqualified applicants in order to collect tuition. Accreditors would need to be vigilant and flexible in enforcing Standard 501, which requires law schools to admit only applicants who appear capable of satisfactorily completing the program of legal education and being admitted to the bar, and Standard 309, which requires schools to provide appropriate academic support to its admitted students. Schools that move away from a standardized admissions test may need to engage in thorough analyses of student risk factors and design appropriate interventions for students who struggle academically or with bar passage. The work done with undergraduates at GSU demonstrates that schools that are intentional about student success, and use the data available to them, can minimize the weight given to standardized tests, find ways to open their doors to a wide range of students, and work with those students to help ensure their success.

While elimination of the standardized test accreditation requirement may present regulatory challenges, SALT believes, on balance, those challenges can be met via thoughtful application of Standard 501 (admissions), Standard 309 (the academic support standard) and experimentation with both new predictors of academic success and programs designed to identify and devise appropriate interventions for at-risk admitted students.

Conclusion

Used properly, the LSAT can play an important role in law school admissions. However, over the years, its misuse has become greater and its lack of focus on professional success has become more troubling. Therefore, law schools should be given the opportunity to develop and experiment with admissions criteria that go beyond standardized test scores. This is happening at undergraduate institutions, with some measure of success. While eliminating a standardized test score requirement creates some risks, it also creates opportunities to explore how to create an admissions process that better predicts success as a lawyer and that provides opportunities to a wider range of students.

Submitted on behalf of the Society of American Law Teachers by

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