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**Society of American Law Teachers**

c/o Michigan State University College of Law  
 648 N. Shaw Lane, Office 417  
 East Lansing, MI 48823  
[www.saltlaw.org](http://www.saltlaw.org)

28 June 2021

Hon. Scott Bales, Council Chair

William E. Adams, Jr., Managing Director of Accreditations and Legal  
 Education

ABA Section of Legal Education and Admission to the Bar  
 321 N. Clark Street, 21<sup>st</sup> Floor  
 Chicago, IL

Via email: Fernando Mariduena ([Fernando.Mariduena@americanbar.org](mailto:Fernando.Mariduena@americanbar.org))

Dear Chairman Bales and Mr. Adams,

SALT writes today to express our support for the changes proposed to Standard  
 206.

Our position is articulated more completely in the letter dated 27 June 2021,  
 signed by eighteen law deans, and endorsed by SALT. We attach it here for  
 your convenience.

Submitted on behalf of the Society of American Law Teachers by

José R. (Beto) Juárez Jr.  
 Co-President

Catherine M. Grosso  
 Co-President

*Enclosure:* Deans and SALT Final Draft Comment on ABA Proposed Standard 206

June 27, 2021

Comments Regarding ABA Proposed Standard 206

The Honorable Scott Bales

Chair of the Council, ABA Section of Legal Education and Admissions to the Bar

By email to fernando.mariduenaa@americanbar.org

To Justice Bales and the Council:

On behalf of the undersigned deans from American law schools, we write to wholeheartedly endorse the changes proposed to Standard 206.

The American Bar Association, the legal academy, and the legal profession are the gatekeepers of democracy. For democracy to work, we must engage actively in equality work, especially recognizing the disproportionate disadvantage burdening individuals who have been marginalized through ascriptive discrimination, which is cumulative when these individuals have intersecting identities. As well, we must redouble our commitment and collective efforts to sustain and promote our democratic institutions to respond meaningfully to systemic injustices and inequities.

Legal education is at a crossroads following a national racial reckoning. The disproportionate impact of COVID-19 on Black and brown communities, and the real damage resulting from systemic inequality require more attention from lawyers, legal educators, and from the Council to strengthen the existing standards to ensure that this profession meets its special obligations. In explicit recognition of this, we, the undersigned, endorse the recommendation of the Standards Committee with respect to Proposed Standard 206.

Proposed Standard 206 is a reasonable approach through which the Council and the legal academy can support our democracy meaningfully. Proposed Standard 206 adopts the opinion of the United States Supreme Court in *Grutter v. Bollinger*.<sup>[1]</sup>

The first and most important holding of *Grutter* is that attaining a broadly diverse student body is a valid and compelling government interest.<sup>[2]</sup> In that case, the Law School's claim of a compelling interest was further bolstered by its *amici*, who pointed to the educational benefits that flow from student body diversity.<sup>[3]</sup> In addition to the expert studies and reports entered into evidence at trial, the Court noted that "numerous studies show that student body diversity promotes learning outcomes, and 'better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.'"<sup>[4]</sup> *Grutter* also acknowledges that the educational benefits of diversity include a lively classroom, better student learning, and preparation for work in a diverse, global workforce and society. Moreover, as the District Court emphasized, the Law School's admissions policy promotes "cross-racial understanding," helps to break down racial stereotypes, and "enables [students] to better

understand persons of different races."<sup>[5]</sup> These benefits are "important and laudable," because "classroom discussion is livelier, more spirited, and simply more enlightening and interesting" when the students have "the greatest possible variety of backgrounds."<sup>[6]</sup> "These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints."<sup>[7]</sup>

Justice O'Connor once explained why diversity in the student bodies of law schools is so important:

[U]niversities, and in particular, law schools, represent the training ground for a large number of our Nation's leaders. . . . Individuals with law degrees occupy roughly half the state governorships, more than half the seats in the United States Senate, and more than a third of the seats in the United States House of Representatives.<sup>[8]</sup>

The purpose and intent of Proposed Standard 206 is to make real progress in improving diversity in law schools for the educational benefit of law students, the growth and innovation within the legal academy, the resilience of the legal profession, and the durability of the judiciary, all in service to a society that depends on its democratic institutions in order to thrive.

Proposed Standard 206 is the direct result of the Invitational Roundtable discussions sponsored by the ABA Section on Legal Education and Admissions to the Bar, which brought together national leaders in legal education. These leaders called for more guidance from the Council to improve progress with diversity, equity, and inclusion (DEI) in legal education and for assistance in achieving improved DEI results. Replacing the requirement that law schools demonstrate "concrete actions" toward improving diversity with the requirement that they take "effective actions that lead to progress" reflects the Council's intention to underscore the importance of DEI in the regulatory framework to ensure demographic representation in law schools, the legal profession, and the judiciary. Proposed Standard 206 also responds to the call from law school deans—on behalf of their students, staff, and faculty—to adopt concrete Antiracist measures in light of the most recent racial reckoning that jolted this Nation.<sup>[9]</sup>

Neither individuals nor a specific law school are authorized to determine for the entire legal academy and its accreditor that there are no educational benefits resulting from diversity; the United States Supreme Court has already determined that diversity is a compelling state interest that can justify the use of race in admissions. Further, the Court has explained that, absent a quota system, it will defer to a school's judgment once that school has offered a reasonable and principled explanation for how diversity provides educational benefits to its students.<sup>[10]</sup> Proposed Standard 206 provides institutions the requisite latitude to increase diversity without imposing quotas or other impermissible means.

If a law school disagrees with the ABA that the "enrollment of a diverse student body has been proven to improve the quality of the educational environment of all students, and further prepares law students for competent practice by providing opportunities for cross-cultural

understanding; dispelling stereotypes; and enabling students to better understand persons of different backgrounds,” then that specific law school may request a variance that explains why adherence to Proposed Standard 206 is a hardship for said law school. Said law school may detail why a diverse student body cannot and does not provide educational benefits for its students.

Current Standard 206 has proven inadequate in promoting diversity throughout our Nation’s law schools. The data from 2014 to the present demonstrate that there has been little to no improvement in diversifying law schools, the legal profession, and the judiciary.<sup>[11]</sup> To challenge Proposed Standard 206 because it provides one actionable suggestion for how to comply with the standard is to grasp at an infinitesimal straw. The status quo has led to documented underrepresentation of minoritized people in law schools, the legal profession, and the judiciary. The legal profession, law schools, and its accreditors must commit to take reasonable and tailored actions to improve the dismal representation of lawyers of color, which, by the ABA’s own measurement, is barely five percent nationally for Black attorneys, as one example.

For these reasons, we, the undersigned, endorse the recommendation of the Standards Committee.

Respectfully submitted,

Michèle Alexandre  
Dean and Professor of Law  
Counsel to the President for Strategic Initiatives and Operations (starting July 1, 2021)  
Stetson University College of Law

Patricia Bennett  
Dean & Henry Vaughan Watkins and Selby Watkins McRae  
Professor of Law  
Mississippi College School of Law

Marcilynn A. Burke  
Dean and Dave Frohnmayer Chair in Leadership and Law  
University of Oregon School of Law

Danielle M. Conway  
Dean and Donald J. Farage Professor of Law  
Penn State Dickinson Law

Rose Cuisson-Villazor  
Interim Dean Designate (July 1, 2021)  
Rutgers Law School-Newark

Zelda B. Harris  
Interim Dean Designate (July 1, 2021)  
Loyola University Chicago School of Law

Cassandra L. Hill  
Dean and Professor of Law  
Northern Illinois University College of Law

Danielle Holley-Walker  
Dean and Professor of Law  
Howard University School of Law

Renée McDonald Hutchins  
Dean & Rauh Chair of Public Interest Law  
UDC Law

Lolita Buckner Inniss  
Dean and Provost's Professor of Law  
University of Colorado School of Law

Kimberly Mutcherson  
Dean and Professor of Law  
Rutgers Law School

Eboni S. Nelson  
Dean and Professor of Law  
University of Connecticut School of Law

Camille A. Nelson  
Dean and Professor of Law  
University of Hawai'i at Mānoa  
William S. Richardson School of Law

Angela Onwuachi-Willig  
Dean and Ryan Roth Gallo & Ernest J. Gallo Professor of Law  
Boston University School of Law

Sean Scott  
President and Dean  
California Western School of Law

Sudha Setty  
Dean and Professor of Law  
Western New England University School of Law

Elizabeth Kronk Warner  
Jefferson and Rita Jefferson Presidential Dean and Professor of Law  
S.J. Quinney College of Law, University of Utah

Verna L. Williams  
Dean and Nippert Professor of Law  
University of Cincinnati College of Law

This comment is also endorsed by:

Society of American Law Teachers  
Co-President Catherine M. Grosso  
Co-President José R. (Beto) Juárez Jr.

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[1] 539 U.S. 306 (2003).

[2] *Id.* at 325.

[3] *Id.* at 330 (internal citations omitted).

[4] *Id.* at 330 (citing the record).

[5] *Id.* at 330 (internal citations omitted).

[6] *Id.*

[7] *Id.*

[8] *Id.* at 332 (internal citations omitted).

[9] See AALS Law Deans Antiracist Clearinghouse Project, available at <https://www.aals.org/antiracist-clearinghouse/> (last visited Jun. 24, 2021) (The Project in which 185 law deans issued law school solidarity and Antiracism statements following the murder of Mr. George Floyd.).

[10] 539 U.S. at 329 (internal citations omitted).

[11] See ABA Profile of the Legal Profession 2020, Ch. 3, available at <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf> (last visited Jun. 24, 2021).