



## SOCIETY OF AMERICAN LAW TEACHERS

### COMMENT OF THE SOCIETY OF AMERICAN LAW TEACHERS (SALT) ON ABA STANDARD 503 PROPOSED AMENDMENTS September 1, 2022

SALT appreciates the opportunity to comment on the proposed change to ABA standard 503. Much of the discussion of the proposed change focuses on the validity of the LSAT and other standardized tests in law school admission decisions, and on the question of whether making test-optional admission rules will encourage or adversely impact diversity in law schools. Performance on the LSAT, like many standardized tests, reflects the realities of the oppressive racial and socio-economic hierarchies that exist in the United States.<sup>1</sup>

SALT cautions that the focus on the mandatory or optional status of a standardized admission test obscures the real harm on which the ABA and law schools should be focused: the structural oppression in America that substantially limits the opportunities of members of marginalized communities to enter law school and the legal profession. A debate about the elimination or continuance of an admission test fails to address the changes needed to create equity in the legal profession.

Law schools serve as the initial gatekeepers to the legal profession, admitting only a small percentage of applicants. The humbling impact of this gatekeeping function underscores the importance of a fair and equitable admissions process. SALT urges the Council to increase regulatory attention on the endemic misuse of the LSAT in law school admissions.

Overreliance on LSAT scores has a controlling impact on the composition of the legal profession.<sup>2</sup> For decades SALT has called for the ABA to review the role that standardized testing plays in the Standards, highlighting the gross overuse and misuse of LSAT scores by law schools in admission decisions. As law schools chase ranking and prestige, the LSAT currently serves as a “super-factor” for admission decisions instead of one component in a holistic analysis of an applicant’s profile and overall potential, as urged by the LSAC. The misuse of numerical benchmarks erects

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<sup>1</sup> Marisa Manzi, *'Already Behind': Diversifying The Legal Profession Starts Before The LSAT*, NPR (Dec. 22, 2020, 5:00 AM), <http://www.npr.org/2020/12/22/944434661/already-behind-diversifying-the-legal-profession-starts-before-the-lsat>.

<sup>2</sup> Marjorie Shultz and Sheldon Zedeck, *FINAL REPORT Identification, Development, and Validation of Predictors for Successful Lawyering* (2008) <https://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf>

an unfair and racially biased barrier to law school admissions and financial aid.<sup>3</sup> Such a barrier excludes otherwise meritorious candidates from underrepresented populations, including students of color and students with lower socio-economic status.

The LSAT cannot provide a valid measure of a student’s potential to become a successful and productive member of the legal profession. Rather, it repeats a single measure tied most closely to success on the bar exam. Notably, the bar exam is under greater scrutiny today than it has been in decades. For example, after widespread criticism, NCBE’s multistate bar exam will be abandoned by its producer for the “NextGen” bar exam.

Overuse of standardized test scores amplifies the influence of private interests—such as the U.S. News and World Report and the commercial test preparation industry—that are driven by profit rather than the development of a diverse and inclusive legal profession. The ABA Section of Legal Education and Admissions to the Bar has acknowledged the disparate impact of the bar exam on applicants of color in its first-time bar passage statistics released in 2021.<sup>4</sup> We urge the Council to recognize the inextricable link between any proposed amendments to the admissions standards articulated in Standards 501 and 503 to bar passages standards in Standard 316; these standards must therefore be amended in tandem. The inequities in the application of Standard 316 will be compounded by any independent amendment to the admissions test standards in 503.<sup>5</sup>

SALT recognizes, however, the current lack of research-based evidence regarding the potential costs or benefits of adopting a test-optional admissions standard. SALT is concerned that the current proposal risks the establishment of an additional barrier to access. It may also provoke stigma based on financial means, wherein only applicants who need financial aid will likely be required to take the LSAT. The goal of advancing diversity in the legal profession requires a thoughtful approach that guards against privileged candidates exploiting the system.

Based on these multiple concerns, SALT urges the Council to take an intermediate step and liberally grant variances to Standard 503 that will allow innovation, flexibility, and the collection of necessary data regarding the collateral consequences of moving to a test-optional model in legal education. SALT encourages flexibility within the admissions standards to allow innovation and experimentation while still ensuring that diversity goals are actually achieved; the financial burden of a legal education is not disproportionately borne by Black and brown law students; and objectives articulated in diversity, equity and inclusion standards are not undermined. Moreover, given that the Supreme Court is poised to undermine decades of support for race-conscious admissions in its forthcoming decision in *Students for Fair Admissions v. Harvard/UNC*,<sup>6</sup> it is

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<sup>3</sup> See e.g. David M. White, *The Requirement of Race-Conscious Evaluation of LSAT Score for Equitable Law School Admissions*, 12 BERKLAR L. J. 399, 402-409 (2001) (“Variations in LSAT ranges are the result of the discriminatory impact of the LSAT on minorities.”)

<sup>4</sup> <https://www.americanbar.org/news/abanews/aba-news-archives/2021/07/bar-passage-rates/>

<sup>5</sup> SALT has articulated these concerns in earlier submissions. These include the current challenges with the unfair attribution of bar passage of transfer students, the Uniform Bar Exam accepted in 42 jurisdictions based on wildly different cut-scores, and the impact of the much-anticipated Next Generation Bar Exam and emergent alternative pathways to licensure.

<sup>6</sup> See Brief for 25 Diverse, California-Focused Bar Associations, Lawyers Associations, Civil Rights Organizations, and Community Foundations as Amici Curiae in Support of Respondents, *Students for Fair Admissions, Inc., v.*

incumbent on the ABA in the current climate to carefully consider any changes to the Standards that may negatively impact diversity in legal education.

Scholarship and research—including research funded by LSAC and AccessLex—suggest some alternatives that should inform any future changes to the ABA accreditation standards. SALT and other affiliated organizations have discussed these initiatives in prior position statements. The use of banded reporting of test scores, alternative assessment tests that measure potential to succeed in practice, implementation of qualitative indicators, and so-called “whole file” reviews are some of the alternatives that warrant further investment. As CLEA correctly notes, law school admissions must more closely align with “the actual work of being a lawyer.”

While we applaud the Council’s efforts to curb the misuse of the LSAT, we believe more data is needed before the Council eliminates the requirement for a valid, reliable admissions test. Specifically, SALT urges the Council to first collect and review data regarding the impact of a test-optional standard on minoritized communities. In addition, SALT recommends that the Council simultaneously encourage law schools to act as laboratories for admissions strategy experimentation to attack the larger structural barriers to the profession. A more measured interim approach can help ensure that the collateral consequences of a test-optional standard do not harm the very people they intend to help.

SUBMITTED ON BEHALF OF THE SOCIETY OF AMERICAN LAW TEACHERS BY



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President and Fellows of Harvard College, 2022 WL 3044759 (July 29, 2022) (Nos. 20-1199, 21-707). SALT is proud to support these organizations in defending diversity in higher education.