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## Increasing Ideological Discrimination in Law School Rankings: Measuring the Conservative Penalty and Liberal Bonus with Updated 2024 Rankings Data

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## ARTICLE

### **INCREASING IDEOLOGICAL DISCRIMINATION IN LAW SCHOOL RANKINGS: MEASURING THE CONSERVATIVE PENALTY AND LIBERAL BONUS WITH UPDATED 2024 RANKINGS DATA**

*Michael Conklin*<sup>1</sup>

#### **I. INTRODUCTION**

In 2020, novel research was conducted to measure whether, and to what extent, the *U.S. News & World Report* peer rankings punish conservative law schools and reward liberal law schools.<sup>2</sup> The study discovered a significant conservative penalty and liberal bonus that amounted to a difference in the peer rankings of twenty-eight

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<sup>2</sup> Michael Conklin, *Political Ideology and Law School Rankings: Measuring the Conservative Penalty and Liberal Bonus*, 2020 U. ILL. L. REV. ONLINE 178 (2020), <https://www.illinoislawreview.org/wp-content/uploads/2020/08/Conklin.pdf>.

spots.<sup>3</sup> A follow-up study was conducted using the latest 2023 rankings data.<sup>4</sup> This study discovered a sharp increase in the disparity, at an astounding thirty-two place difference in the peer rankings attributable to political ideology.<sup>5</sup> The present study using updated 2024 rankings data that was released in May 2023 produces similar results—a significant conservative penalty and liberal bonus in the peer rankings that are increasing rapidly in recent years. The difference between the subjective peer ranking and the objective factors in the overall ranking for the conservative and liberal law schools in the 2024 rankings is a staggering 48.92 spots.

This increasing disparity in recent years elicits discussion regarding the effects of recent societal changes in political polarization and civility. This Article discusses how this growing disparity in the rankings likely perpetuates a lack of ideological diversity in legal academia. The harm to professors, students, and society at large from such a lack of ideological diversity is also discussed. Finally, this Article concludes by proposing a simple solution that circumvents this particular manifestation of ideological bias in legal academia.

This research provides a valuable framework for examining a confluence of events at this critical juncture in legal academia. For instance: the recent Supreme Court decisions on affirmative action in higher education will likely affect how diversity is viewed around the country;<sup>6</sup> the American Bar Association's (ABA's) removal of the Law School Admission Test (LSAT) requirement sparked debate about standardized testing;<sup>7</sup> the recent explosion of artificial intelligence technologies calls into question the future of legal education and the legal profession;<sup>8</sup> the expected law school enrollment cliff of 2025 will profoundly affect

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<sup>3</sup> *Id.* at 183.

<sup>4</sup> Michael Conklin, *Law School Rankings and Political Ideology: Measuring the Conservative Penalty and Liberal Bonus with Updated 2023 Rankings Data*, 37 NOTRE DAME J.L. ETHICS & PUB. POL'Y (forthcoming 2023), currently available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4085712](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4085712).

<sup>5</sup> *Id.*

<sup>6</sup> Joseph Ax, *What Happens if the Supreme Court Bans Affirmative Action?*, REUTERS (May 24, 2023), <https://www.reuters.com/legal/what-happens-if-us-supreme-court-bans-affirmative-action-2023-05-24/>.

<sup>7</sup> Karen Sloan, *ABA Votes to End Law Schools' LSAT Requirement, but Not Until 2025*, REUTERS (Nov. 18, 2022), <https://www.reuters.com/legal/legalindustry/aba-votes-end-law-schools-lsat-requirement-not-until-2025-2022-11-18/>.

<sup>8</sup> See, e.g., Steve Lohr, *A.I. Is Coming for Lawyers, Again*, N.Y. TIMES (Apr. 10, 2023), <https://www.nytimes.com/2023/04/10/technology/ai-is-coming-for-lawyers-again.html>.

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law schools;<sup>9</sup> the Varsity Blues admissions scandal calls into question the ability of the well connected to game the system;<sup>10</sup> the new rankings methodology greatly increased the significance of grade point average (GPA) and LSAT scores while greatly decreasing the significance of the peer score as a contributor to the overall score;<sup>11</sup> the decision of top law schools to boycott the rankings immediately after Supreme Court oral arguments in the affirmative action cases illuminates how diversity was likely a driver behind the decision;<sup>12</sup> and lastly, there is an overall increase in political identity salience in society. Consequently, this Article is also examines other questions, such as what role law school rankings should play, the ethics of how law schools alter their behavior based on the rankings, and the role of ideological discrimination in legal education and the practice of law.

## II. LAW SCHOOL RANKINGS

While there are various law school rankings, the two most significant rankings are the overall and peer rankings by the *U.S. News & World Report*. The *U.S. News & World Report* overall rankings (hereinafter “overall rankings”) are primarily based on objective criteria, such as bar passage rate, employment rate, LSAT score, undergraduate GPA, acceptance rate, and student–faculty ratio.<sup>13</sup> The overall rankings are also the standard for measuring American law school prestige.<sup>14</sup> Law schools clearly recognize the significance of the overall rankings,

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<sup>9</sup> Jill Backer, *The Enrollment Cliff of 2025—What Will It Do to Law Schools?*, LAW.COM (Nov. 9, 2022), <https://www.law.com/dailybusinessreview/2022/11/09/the-enrollment-cliff-of-2025-what-will-it-do-to-law-schools/?slreturn=20230503151505>.

<sup>10</sup> Mark J. Drozdowski, *The College Admissions Scandal that Shook Higher Education*, BEST COLLS. (Mar. 21, 2023), <https://www.bestcolleges.com/blog/operation-varsity-blues-college-admissions-scandal/>.

<sup>11</sup> Robert Morse, Kenneth Hines, Eric Brooks & Sam Wellington, *Methodology: 2023-2024 Best Law Schools Rankings*, U.S. NEWS & WORLD REP. (May 10, 2023, 9:00 PM), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology>.

<sup>12</sup> Michael Conklin, *Boycotts, Race, Rankings, and Howard Law School’s Peculiar Position* (2023) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4502610](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4502610).

<sup>13</sup> Morse et al., *supra* note 11.

<sup>14</sup> Jeffrey Harmatz, *US News & World Report Law School Rankings: A Double-Edged Sword?*, L. CROSSING (Mar. 19, 2013), <https://www.lawcrossing.com/article/900012518/US-News-World-Report-Law-School-Rankings-A-Double-Edged-Sword/> (“Regardless of its flaws, US News & World Report’s Top Law School rankings are the most popular and preferred law school rankings in the nation, and have become a legal industry institution.”).

as they alter their behavior in attempts to improve their rankings.<sup>15</sup> Even law schools that participated in a rankings boycott nevertheless maintained great interest in their rankings standings.<sup>16</sup> The incentive for a law school to improve its ranking is so strong that some institutions even go so far as to falsely report data<sup>17</sup> and coerce underachieving graduates to delay taking the bar exam.<sup>18</sup> An undesirable drop in the overall rankings frequently results in the firing of deans.<sup>19</sup> Even the perceived value of a law journal is affected by that law school's ranking.<sup>20</sup>

The other rankings provided by the *U.S. News & World Report* are the peer rankings. Unlike the overall rankings, the peer rankings are purely a result of subjective surveys completed by law school deans and select faculty regarding their perceptions of law schools.<sup>21</sup> These peer rankings are also included as a factor in

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<sup>15</sup> Jeffrey Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 IND. L.J. 229 (2006). Because of the role undergraduate GPA plays in the overall rankings, schools favor applicants from mediocre colleges with high GPAs over applicants from elite college with mediocre GPAs. *Id.* at 232. Likely in an effort to affect peer rankings, law schools spend “substantial sums” of money on promotional materials to send to other legal academics. *Id.* at 240. Law schools can increase their standing through accounting tricks, such as paying the greater university directly for their electricity expenditures from tuition dollars instead of having it deducted from the tuition. *Id.* at 241. While this produces no net difference, it increases the financial outlay on resources, which is a factor in the overall rankings. *Id.*

<sup>16</sup> Anemona Hartocollis, *Elite Law Schools Boycotted the U.S. News Rankings. Now, They May Be Paying a Price*, N.Y. TIMES (Apr. 21, 2023), <https://www.nytimes.com/2023/04/21/us/21nat-us-news-rankings-law-medical-school.html> (reporting how the *U.S. News & World Report* wrote, “The level of interest in our rankings, including from those schools that decline to participate in our survey, has been beyond anything we have experienced in the past.”).

<sup>17</sup> Katherine Mangan, *Villanova U. Reveals Its Law School Gave False Reports of GPA's and Test Scores*, CHRON. HIGHER ED. (Feb. 6, 2011), <https://www.chronicle.com/article/Villanova-U-Reveals-Its-Law/126286>; Mark Hansen, *U of Illinois Law School Admits to Six Years of False LSAT/GPA Data*, A.B.A. J. (Nov. 8, 2011, 12:21 AM), [https://www.abajournal.com/news/article/illinois\\_law\\_admits\\_to\\_six\\_years\\_of\\_false\\_lsat\\_gpa\\_data](https://www.abajournal.com/news/article/illinois_law_admits_to_six_years_of_false_lsat_gpa_data).

<sup>18</sup> BENJAMIN H. BARTON, *FIXING LAW SCHOOLS: FROM COLLAPSE TO THE TRUMP BUMP AND BEYOND* 151 (2019) (explaining that InfiLaw—the owner of for-profit Arizona Summit Law school, Florida Coastal School of Law, and recently closed Charlotte School of Law—pays underperforming students not to take the July bar exam after graduating).

<sup>19</sup> Elie Mystal, *Some Students Want Their Deans Fired After Poor Showing in the U.S. News Rankings (and One Head That's Already Rolled)*, ABOVE THE L. (Mar. 14, 2013, 11:20 AM), <https://abovethelaw.com/2013/03/some-students-want-their-deans-fired-after-poor-showing-in-the-u-s-news-rankings-and-one-head-thats-already-rolled/> (“Ever year, deans and assistant deans find themselves ‘pushed out’ of a job thanks to the U.S. News rankings.”).

<sup>20</sup> Robert C. Bird, *Advice for the New Legal Studies Professor*, 29 J. LEGAL STUD. EDUC. 239, 251 (2012) (“The quality of a law review is roughly determined by the prestige of the law school in which the journal is housed.”).

<sup>21</sup> Morse et al., *supra* note 11.

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the overall rankings.<sup>22</sup> Previously, this peer ranking accounted for 25% of the overall ranking but was reduced to 12.5% for the 2024 overall rankings.<sup>23</sup> The existence of these two rankings—one mostly objective and one entirely subjective—provides a unique opportunity to analyze which schools have disproportionately high or low reputations based on what would be expected from their objective performances.

### III. IDEOLOGICAL DIVERSITY AND LAW SCHOOLS

In legal academia, the topics of lack of diversity and discrimination have long been discussed regarding the categories of race and gender.<sup>24</sup> Lack of diversity and discrimination regarding political ideology in legal academia has received much less attention. It was not until 2015 that the first robust analysis of law school ideological diversity was published in the *Harvard Journal of Law & Public Policy* (hereinafter “2015 study”).<sup>25</sup> But even prior to this landmark study, it was already well known that law school professors were disproportionately liberal by a wide margin—both when compared to the overall legal profession and the public at large.<sup>26</sup> A study using 2013 data found that 82% of law school professors were Democrats, and only 11% were Republicans.<sup>27</sup> Even more troubling than the statistics demonstrating the lack of ideological diversity in law schools is the research that demonstrates that the few diverse voices in law schools are the result of discrimination.<sup>28</sup>

The landmark 2015 study set out to determine if the extreme disparity between conservative and liberal law professors was the result of some benign explanation, such as conservatives choosing not to enter legal academia or conservatives being

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> James C. Phillips, *Why Are There So Few Conservatives and Libertarians in Legal Academia? An Empirical Exploration of Three Hypotheses*, 39 HARV. J.L. & PUB. POL'Y 153, 158 (2015).

<sup>25</sup> *Id.*

<sup>26</sup> Adam Bonica, Adam Chilton, Kyle Rozema & Maya Sen, *The Legal Academy's Ideological Uniformity*, 47 J. LEGAL STUD. 1 (2018) (“We find that 15 percent of law professors, compared with 35 percent of lawyers, are conservative. This may not simply be due to differences in their backgrounds: the legal academy is still 11 percentage points more liberal than the legal profession after controlling for several relevant individual characteristics.”).

<sup>27</sup> James Lindgren, *Measuring Diversity: Law Faculties in 1997 and 2013*, 39 HARV. J. L. & PUB. POL'Y 89 (2016).

<sup>28</sup> See, *infra* notes 29–39.

somehow inherently inferior at legal scholarship, rather than the result of discrimination. The results from the 2015 study point emphatically to the latter explanation. The 2015 study found that conservative law professors are more qualified than their liberal peers.<sup>29</sup> Conservative law professors were 68.2% more likely to be former Supreme Court clerks, 24.1% more likely to have graduated from higher-ranked schools, and 5.4% more likely to have served on law review than their liberal counterparts.<sup>30</sup> Additionally, conservative law professors have more extensive publication records, which is the most important factor in hiring and promotions in legal academia.<sup>31</sup> Over the course of ten years, the average conservative professor publishes four to eight more articles than the average liberal professor.<sup>32</sup> Furthermore, the published scholarship from conservative law faculty is significantly more likely to be cited to, which is a leading measure of scholarly significance.<sup>33</sup> These findings combine to make a strong case that the best explanation for the extreme ideological inequalities at law schools is discrimination—whether conscious or subconscious—and not alternative, benign explanations, such as conservatives demonstrating a lack of desire to join academia or diminished abilities and qualifications compared to liberals.

One could attempt to argue that anti-conservative discrimination in legal academia actually benefits the few conservatives who are allowed in. Such reasoning could allege that, because there are so few conservative legal scholars, there is a corresponding lack of conservative scholarship being submitted to law journals. Therefore, the few conservative legal scholars are at an advantage when it comes to having their scholarship published. While this could potentially explain conservative legal scholars' superior publication record without the need to concede that these conservatives are objectively better scholars, an incident in 2012 helps demonstrate that conservative and liberal scholarship is not equally sought after. Therefore, this theory of an advantage for those publishing conservative scholarship is unfounded.

In 2012, a series of internal emails from the *Harvard Human Rights Journal* were inadvertently made public.<sup>34</sup> These emails demonstrate how the anti-

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<sup>29</sup> Phillips, *supra* note 24.

<sup>30</sup> Phillips, *supra* note 24, at 183.

<sup>31</sup> *Id.* at 166.

<sup>32</sup> *Id.* at 195.

<sup>33</sup> *Id.* at 166.

<sup>34</sup> Conklin, *supra* note 2, at 180.

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conservative bias in legal academia also infects the law journal decision process.<sup>35</sup> The emails document an incident in which the journal editors voiced “major concerns,” not regarding the accuracy, quality, or relevance of a submitted manuscript, but about how the submitted manuscript was written by a conservative author.<sup>36</sup> The editors concluded that the political ideology of the author was “enough to reject the article.”<sup>37</sup> Such discriminatory practices demonstrate that the superior publication record obtained by conservative legal scholars demonstrates an even greater scholarly ability than it first appears, as it is accomplished in a climate that discriminates against conservative authorship. And consequently, this further supports the conclusion that it is more difficult for conservatives to obtain faculty positions at law schools, as the ability to publish in top journals is the most significant qualification for aspiring law school faculty.<sup>38</sup> And even the few conservative law school faculty allowed in are disproportionately relegated to topics such as law and economics as opposed to the more prestigious topics, such as constitutional law and federal courts.<sup>39</sup>

#### IV. METHODOLOGY

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<sup>35</sup> *Id.*

<sup>36</sup> Paul Caron, *The Secret Sauce for Law Review Placement: Letterhead, Citations, and Liberal*, TAXPROF BLOG (Sept. 13, 2012), [https://taxprof.typepad.com/taxprof\\_blog/2012/09/the-secret.html](https://taxprof.typepad.com/taxprof_blog/2012/09/the-secret.html). It is important to note that although the *Harvard Human Rights Journal* deemed this author “incredibly conservative,” this assessment was based on his record of government service of clerking for a conservative judge and working at the White House under the Bush administration. *Id.* He also participated in public debate, at least one time writing something critical of a liberal Supreme Court justice. *Id.*

<sup>37</sup> *Id.* The state of ideological bias in legal academia is likely also on display in how this event was described. The clear implications were downplayed as something that merely “suggest[s] possible bias,” *id.*, and “possible evidence of bias against conservatives,” David Lat, *A Look Inside the Law Review Sausage Factory—and Possible Evidence of Bias Against Conservatives*, ABOVE THE L. (Sep. 13, 2012, 12:20 PM), <https://abovethelaw.com/2012/09/a-look-inside-the-law-review-sausage-factory-and-possible-evidence-of-bias-against-conservatives/>. Some even suggested that it is a defense to such discriminatory behavior that “Hey, we’ve seen far worse emails coming out of [Harvard Law School]!” *Id.*

<sup>38</sup> LawProfBlawg, *Why Do Law Professors Write Law Review Articles?*, ABOVE THE L. (May 9, 2017, 2:00 PM), <https://abovethelaw.com/2017/05/why-do-law-professors-write-law-review-articles/>.

<sup>39</sup> Phillips, *supra* note 24, at 162–63.



The original 2020 study used the overall and peer rankings from 2012 to 2021.<sup>40</sup> It measured the disparity between the subjective peer rank and the objective overall rank for the top ten conservative law schools and the top ten liberal law schools.<sup>41</sup> To determine the top ten conservative and liberal law schools, the Princeton Review's ideological rankings were used.<sup>42</sup> This update uses the most recent 2024 law school rankings and the most recent Princeton Review's ideological rankings, which provide the following twenty law schools:

Most Conservative:

1. Ave Maria School of Law<sup>43</sup>
2. Regent University School of Law
3. Brigham Young University J. Reuben Clark Law School
4. George Mason University School of Law
5. Faulkner University Thomas Goode Jones School of Law
6. Louisiana State University Paul M. Hebert Law Center
7. Mississippi College School of Law
8. University of Idaho College of Law
9. University of Mississippi School of Law
10. Southern Methodist University Dedman School of Law

Most Liberal:

1. Northeastern University School of Law
2. City University of New York School of Law
3. New York University School of Law
4. American University Washington College of Law
5. University of California, Berkeley

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<sup>40</sup> Note that the 2021 rankings are published in 2020 and based on 2019 data. Christopher J. Ryan, Jr., *Of Law School Rankings, Disparity, and Football*, 110 GEO. L. J. ONLINE 19 (2021).

<sup>41</sup> Conklin, *supra* note 2, at 181.

<sup>42</sup> *Most Conservative Students*, PRINCETON REV., <https://www.princetonreview.com/law-school-rankings?rankings=most-conservative-students> (last visited July 6, 2023); *Most Liberal Students*, PRINCETON REV., <https://www.princetonreview.com/law-school-rankings?rankings=most-liberal-students> (last visited July 6, 2023).

<sup>43</sup> Note that Ave Maria School of Law had to be excluded from the calculations because it was so low in the overall rankings that it never received an overall ranking score from *U.S. News & World Report*. This makes it impossible to measure how its peer score, which is provided, deviates from its overall score.

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6. University of California, Los Angeles School of Law
7. University of Colorado School of Law
8. University of California, Irvine
9. George Washington University Law School
10. New York Law School

These schools are hereinafter referenced as the ten most conservative and ten most liberal law schools. However, this does not mean that the ten most conservative law schools are as far to the right as the ten most liberal law schools are to the left. For example, a 2018 study found that of the top fifty law schools, Brigham Young University is the most ideologically balanced.<sup>44</sup> And yet Brigham Young University is the most conservative law school among the top fifty law schools.<sup>45</sup>

The 2020 study created the following novel formula to accurately measure the deviation between a law school's overall rank and peer rank:

*peer deviation score*

$$= \frac{(\text{overall rank} - \text{peer rank}) + \left(\frac{\text{overall rank}}{\text{peer rank}}\right)}{2} \times 100$$

The peer deviation score is derived from both the difference between the overall rank and the peer rank and the percentage change between the overall rank and the peer rank. This methodology mitigates the variances that would result from only using one metric or the other.<sup>46</sup> This updated study brings the rankings data under consideration from 2012 to 2024, resulting in thirteen years of data.

## V. RESULTS

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<sup>44</sup> Bonica et al., *supra* note 26, at 14.

<sup>45</sup> *Id.*

<sup>46</sup> Conklin, *supra* note 2, at 181 n.21. For example, if only the percentage change were taken into account, a top law school that went from number four to number two would be viewed the same as a law school that went from number 100 to number fifty. Conversely, if only the numerical change were taken into account, a law school that went from number ten to number one would be viewed the same as a law school that went from number 163 to 153.

### A. 2020 Study

In the original 2020 study, the peer rank deviation score average for the liberal schools was 9.05 spots from the overall rankings.<sup>47</sup> The peer rank deviation score average for the conservative schools was—11.82 spots from the overall rankings.<sup>48</sup> This produced a net difference between conservative and liberal schools of 20.87 spots in the rankings. The odds of randomly selecting two groups of ten law schools that average this level of disparity or greater is less than 0.003%, or roughly one in 33,000.<sup>49</sup>

Given that there are less than 200 ranked law schools, and the immense importance of small changes in the rankings, a disparity of 20.87 is highly significant. And this difference between the objective peer rankings and the subjective measures in the overall rankings is even more disparate than the 20.87 difference depicts. This is because, for all of the years measured in this 2020 study, the peer rank was also included in the overall rankings formula and was heavily weighted at 25%.<sup>50</sup> This rankings methodology functions to significantly mitigate the difference between the peer rankings and the objective factors of the overall rankings.<sup>51</sup> When this is accounted for by mathematically backing out the peer score from the overall score, an even greater disparity appears. The liberal bonus goes up to 12.07, and the conservative penalty goes up to—15.76, resulting in a staggering net difference of 27.83 spots in the rankings.<sup>52</sup>

### B. Updated Study

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<sup>47</sup> *Id.* at 183.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* Note that the 2020 research only calculated the probability of achieving a score of -11.82 or less for one group of ten randomly selected law schools. It did not also factor in the odds of concurrently randomly selecting a second group of ten averaging 9.04 or more. Based on the same computer simulation with 100,000 occurrences, this produces the two probabilities of 0.0008 and 0.03119, respectively. Applying the multiplication rule probability, the odds of both of these occurring in the same sample is 0.00002495, or 0.002495%.

<sup>50</sup> MORSE et al., *supra* note 11, ¶20.

<sup>51</sup> Conklin, *supra* note 2, at 181 n.21. *U.S. News & World Report* does not provide the specific scores for each factor that makes up the overall ranking of a given law school. However, since the weight of the peer assessment score in the overall rankings is known (25%), the effect of removing it from consideration can be calculated by simply multiplying the difference between the overall rankings and the peer rankings by a factor of 1.333.

<sup>52</sup> *Id.* at 183.

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In applying the same methodology from the 2020 study to the updated rankings data and updated law school ideological list, a similar conservative penalty and liberal bonus is found. The peer rank deviation score average for the liberal schools was 7.49 spots from the overall rankings. The peer rank deviation score average for the conservative schools was—15.06 spots from the overall ranking. This produces a 22.55-spot disparity between the peer rank and the overall rank. After performing the calculation to back out the peer score from the overall score, a difference of 30.06 between the peer rank and the objective factors in the overall rank is produced. The odds of a disparity this great being the result of random chance is about 0.0003%, or roughly one in 350,000.<sup>53</sup>

Perhaps even more remarkable than the extreme nature of these results is the clear trajectory in recent years. For the last five consecutive years, the disparity between the peer rank and overall rank of the most conservative and liberal law schools has increased. Starting with the 2020 rankings and ending with the 2024 rankings, the peer–overall disparities have been 7.74, 15.39, 25.37, 42.09, and 42.82, respectively. The steady increase in recent years leads to a truly astounding adjusted disparity with the most recent 2024 data of an average 48.92-spot difference between the conservative law schools and the liberal law schools.<sup>54</sup>

There also appears to be a correlation between the peer ranking conservative penalty and liberal bonus and the location of each law school within its corresponding placement in either the top ten most conservative or most liberal law schools. The four law schools on the conservative list with the greatest peer–overall rankings disparity are the four most conservative law schools on the list.<sup>55</sup> A

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<sup>53</sup> This is based on the same computer simulation from the 2020 study. It calculated 100,000 randomly selected groups of thirteen. Only nine were equal to or less than –15.06, and 291 were equal to or greater than 7.49. Applying the multiplication rule probability this results in  $0.00009 \times 0.0291$ , which equals 0.000003, or 0.0003%.

<sup>54</sup> This is the result of the 42.82 figure multiplied by 1.1425 in order to explain how the peer ranking makes up 12.5% of the overall ranking. Note that because the *U.S. News & World Report* changed the weighting of the peer score in the overall score from 25% to 12.5%, the multiplier to perform this function went from 1.333 in the previous studies to 1.1425 in the present study.

<sup>55</sup> Note that Ave Maria, the #1 conservative law school on the list of conservative law schools, had to be excluded from the calculations because it was so low in the overall rankings that it never received an overall ranking score from *U.S. News & World Report*. Therefore, the top four most conservative law schools available for analysis are #2 Regent University School of Law, #3 Brigham Young University J. Reuben Clark Law School, #4 George Mason University School of Law, and #5 Faulkner University Thomas Goode Jones School of Law. The corresponding average peer–overall rankings disparity for these law schools is, -43.54, -28.32, -28.51, and -23.62, respectively.

similar, although less pronounced effect is present with the list of liberal law schools, in which the three biggest peer–overall disparities are all located in the top five most liberal law schools.<sup>56</sup>

## VI. DISCUSSION

The results of this updated research are consistent with the original 2020 study that also found a significant conservative penalty and liberal bonus in the peer rankings.<sup>57</sup> This updated research is also consistent with the 2015 study, which produced strong evidence of ideological discrimination in legal academia.<sup>58</sup> Constant throughout all three of these studies is the extreme nature of the disparities and little room for any non-discriminatory explanation. This discussion section begins by considering potential non-discriminatory explanations for the results of this study. Some explanations include: a willingness to game the system; faculty quality; law journal quality; use of promotional materials; the presence of more elite law schools in the liberal group; and a possible connection between law school ideology and teaching effectiveness. This discussion section also addresses the widespread harms from ideological discrimination in legal academia, considers potential explanations for how the disparity has steadily increased in recent years, and provides a helpful analogy to employment discrimination to better illustrate the magnitude of the discrimination.

### A. Willingness to Game the System

One could posit that it is not the peer rankings that are unjustifiably low for the conservative law schools and high for the liberal law schools but rather that it is the overall rankings that are unjustifiably high for the conservative law schools and low for the liberal schools. This theory could potentially explain the findings of this research without acknowledging ideological bias. However, this would be highly

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<sup>56</sup> The three law schools from the liberal list with the greatest peer–overall average disparity are American University Washington College of Law, University of California, Berkeley, and City University of New York School of Law.

<sup>57</sup> Conklin, *supra* note 2.

<sup>58</sup> Phillips, *supra* note 24, at 206.

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unlikely given that the overall score is primarily the result of objective measures—and is, therefore, largely neither artificially high nor artificially low but exactly what the objective measures dictate that it be. However, law schools sometimes attempt to game the system to make these objective measures appear better than would otherwise be the case. The following are some examples as to what law schools have done to improve their overall rankings: pay underperforming graduates to not take the July bar exam, to increase their first-time bar passage rate;<sup>59</sup> temporarily hire unemployable graduates to increase the employment rate of graduating students;<sup>60</sup> prefer potential students with high undergraduate GPAs from mediocre colleges as opposed to potential students with mediocre GPAs from exceptional undergraduate colleges in order to improve the law school's selectivity score;<sup>61</sup> pay the larger university directly for the law school's electricity expenditures from tuition dollars instead of having the money deducted directly from tuition, thus increasing the per-student financial outlays of the law school reported;<sup>62</sup> blatantly falsify GPA and LSAT scores from entering students to increase the selectivity score.<sup>63</sup>

If a significant number of law schools engaged in these practices, then law schools who did not would have artificially lower overall rankings by comparison. Therefore, if the conservative law schools used in this study do not engage in these practices, but the liberal law schools from this study do, this would provide a non-discriminatory reason why the peer ranks of the former group are so much lower than their overall scores when compared to the latter group.

While this objection is logically sound, it is likely impossible to prove, as there are only a few examples of law schools engaging in such practices. Therefore, this alternative explanation for the peer rankings disparity found in this study is relegated to being highly speculative. Regardless, there is no reason to believe that liberal law schools are more likely to engage in these practices that game the system than conservative law schools. And even in the unlikely circumstance that they did, the first four practices mentioned above would not come close to explaining a 48.92-place gap. The fifth practice mentioned above—that of blatantly falsifying

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<sup>59</sup> BARTON, *supra* note 18, at 151.

<sup>60</sup> David Lat, *In Defense of Law Schools Hiring Their Own Graduates*, ABOVE THE L. (Mar. 28, 2013 6:06PM), <https://abovethelaw.com/2013/03/in-defense-of-law-schools-hiring-their-own-graduates/>.

<sup>61</sup> Stake, *supra* note 15, at 232.

<sup>62</sup> *Id.* at 241.

<sup>63</sup> Mangan, *supra* note 17.

data—could potentially result in extreme disparities, but the notion that the liberal law schools have been falsifying data to an extreme degree for the last thirteen consecutive years without getting caught is so absurd as to not merit further discussion.

### B. Faculty Quality

*U.S. News & World Report* had plans to implement a factor into the overall rankings that covered faculty scholarship for each law school.<sup>64</sup> Perhaps due to the COVID-19 pandemic, this plan was never implemented.<sup>65</sup> Therefore, the law school rankings do not directly account for faculty quality. Because faculty quality is generally measured by scholarly output—which may have negligible or even negative correlation to quality instruction, it is conceivable that a law school with a disproportionately impressive faculty publication record could receive high peer scores relative to the law school’s overall rank. If so, this could provide a potential explanation for the peer–overall rankings disparities uncovered in this study. However, the data reveal that this potential explanation is counterproductive, as faculty scholarship makes the peer rankings disparities found in this study less likely, not more likely because, as mentioned from the 2015 study, conservative law professors are disproportionately *better* scholars, not worse.<sup>66</sup>

### C. Law Journal Quality

There is some evidence to suggest that the flagship law journal from a law school may affect its peer ranking while not directly contributing to its overall ranking.<sup>67</sup> For those who vote in the law school peer rankings, the prestige of a law

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<sup>64</sup> *US News & World Reports Scholarly Impact Project*, HEIN ONLINE, <https://help.heinonline.org/kb/us-news-world-reports-scholarly-impact-project/> (last visited July 6, 2023).

<sup>65</sup> *Id.*

<sup>66</sup> Phillips, *supra* note 24, at 195–201 (noting that conservatives publish at significantly higher rates and that their research is cited to at significantly higher rates).

<sup>67</sup> Alfred L. Brophy, *The Relationship Between Law Review Citations and Law School Rankings*, 39 CONN. L. REV. 43, 55 (2006) (“The findings suggest that law reviews are schools’ ambassadors to the rest of the legal academy. Much of what people at other schools know about a school’s academic orientation may come from the articles and notes published in the school’s law journals.”).

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school's flagship law journal would be a convenient proxy for those who have neither the time nor the inclination to analyze the nuanced aspects of the 192 law schools they are asked to rank.<sup>68</sup> There does exist a high correlation between the Washington & Lee Law Journal Rankings of a law school's flagship journal and that law school's peer rank.<sup>69</sup> A law school's flagship law journal rank is also an effective predictor of the law school's future overall ranking.<sup>70</sup>

When analyzing the flagship law journals from the twenty law schools used in this study, there does appear to be some outliers. Liberal law schools appear to have flagship law journals that are better than their overall ranking would predict. For example, U.C. Berkeley's law school is ranked number ten overall, but its flagship law journal is ranked number four in the Washington & Lee Law Journal Rankings.<sup>71</sup> The other liberal law schools of UCLA, American University, CUNY, and George Washington all have flagship law journals ranked higher than their overall law school rankings, indicating that these law journals outperform what would be expected from a similarly situated law school.<sup>72</sup> However, none of the flagship law journals from the conservative law schools are ranked above their law school ranking.<sup>73</sup>

Consequently, the journal rankings could be an explanation for why the liberal law schools have disproportionately higher peer ranks. After all, most law school faculty are likely acutely aware of the law journal rankings, as they play a critical role in where law school faculty choose to publish. However, this one factor is

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<sup>68</sup> *Id.* at 56.

<sup>69</sup> *Id.* at 48.

<sup>70</sup> Alfred L. Brophy, *The Emerging Importance of Law Review Rankings for Law School Rankings, 2003-2007*, 78 U. COLO. L. REV. 35, 35 (2007) ("Thus, . . . if one wants to know where a law school is heading, . . . one should spend some time studying the scholarship its primary law review publishes.").

<sup>71</sup> *Washington & Lee Law Journal Rankings*, WASH. & LEE SCH. OF L., <https://managementtools4.wlu.edu/LawJournals/Default.aspx> (last visited July 6, 2023).

<sup>72</sup> *Id.*

<sup>73</sup> However, this is an imperfect metric, as the lower one's overall law school ranking—disproportionately the conservative law schools—the more difficult for one's flagship law journal to be ranked ahead of one's law school. This is because there are so many specialty law journals also in the rankings. Therefore, a law school like LSU from the conservative list which is ranked 99<sup>th</sup> in the overall rankings should not be expected to have a flagship law journal around 99<sup>th</sup> place because specialty journals such as the *Duke Law & Technology Review*, *American Journal of International Law*, and the *Columbia Business Law Review* are ranked 55<sup>th</sup>, 41<sup>st</sup>, and 64<sup>th</sup>, respectively, thus effectively pushing back LSU's flagship law journal ranking. This is not the case for top rated law schools, because there are no specialty journals in the top 25 law journals on Washington and Lee Rankings.



unlikely to explain a 48.92-spot disparity. Also, this appears to be somewhat of an aberration, as the two previous studies on the subject did not find the same correlation.<sup>74</sup> Finally, given the evidence for ideological discrimination in legal academia generally and in legal publishing specifically,<sup>75</sup> it should come as no surprise that journals from liberal law schools have an advantage, as law professors—who are overwhelmingly liberal—likely prefer to publish in and cite to—law journals from liberal law schools.

#### D. Use of Promotional Materials

Due to how the peer rankings are a contributing factor to the overall rankings and the immense importance of the overall rankings, some law schools distribute promotional materials to voters in an effort to improve their peer rankings.<sup>76</sup> Therefore, if the liberal schools engaged in this practice while the conservative schools did not, part of the disparity uncovered in this study could potentially be accounted for. It is beyond the scope of this present research to investigate the extent to which each of the twenty law schools in this dataset engage in sending out promotional materials. However, it is highly unlikely that there would be a significant difference in this matter since all law schools have the same incentive to engage in the practice. Additionally, the effect of these promotional materials is at best minimal, and as some have suggested, the effect may even be non-existent.<sup>77</sup> Consequently, the use of promotional materials is not a viable explanation for the 48.92-place disparity.

#### E. More Elite Law Schools in the Liberal Group

A cursory glance at the law schools in the conservative group and the liberal group demonstrates how the liberal law schools are, on average, made up of law schools that are higher ranked in both the peer rankings and overall rankings. The average overall ranking for the liberal group is 59.4, while the average ranking for

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<sup>74</sup> Conklin, *supra* note 2; Conklin, *supra* note 4.

<sup>75</sup> Phillips, *supra* note 27, at 158, 166, 195, 183; Bonica, et al., *supra* note 25, at 1; Lindgren, *supra* note 26, at 89.

<sup>76</sup> Stake, *supra* note 15, at 240.

<sup>77</sup> Andrew P. Morriss, *Legal Education Through the Blurry Lens of US News Law School Rankings*, 20 GREEN BAG 2d 253, 257 (2017).

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the conservative group is 108.7.<sup>78</sup> The average peer ranking for the liberal group is 46.5, while the average for the conservative group is 122.3. However, this difference between the liberal group and the conservative group in no way functions as an explanation for the rankings disparity uncovered in this research because the starting point of a law school's overall rank is irrelevant when measuring how its peer rank deviates from this starting point. The relevant factor is the upward or downward deviation in the peer rankings from the overall rankings.

**F. Possible Connection Between Law School Ideology and Teaching Effectiveness**

One could attempt to posit a theory whereby there is just something inherent in the conservative law schools that naturally results in an inferior legal education that is not measured in the overall rankings but is apparent to those who vote on the peer rankings. While technically a plausible theory, it is difficult to even imagine what something like this would be. The objective measurements indicate that the conservative law schools are doing a *better* job, not worse, when it comes to educational achievements as compared to the peer ranking. Furthermore, recall that the designation of being one of the most conservative law schools is an indication of being more ideologically balanced, not extremely conservative.

**G. Potential Explanation for Increasing Disparity**

The extreme disparities found in this study are made even more insightful by how they have rapidly increased in recent years. Empirically proving why this is the case is beyond the scope of this Article, but it is interesting to consider potential explanations for the occurrence. The most likely explanation may be the overall increased political polarization in America in recent years.<sup>79</sup> It is not hard to imagine how increased political polarization would lead to increased ideological

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<sup>78</sup> Because Ave Maria Law School did not receive an official overall ranking, an estimated ranking of 188 was attributed to it for the purposes of this calculation.

<sup>79</sup>See generally Levi Boxell, Matthew Gentzkow & Jesse M. Shapiro, Cross-Country Trends in Affective Polarization (Nat'l Bureau of Econ. Rsch., Working Paper No. 26669, 2021), [https://www.nber.org/system/files/working\\_papers/w26669/w26669.pdf](https://www.nber.org/system/files/working_papers/w26669/w26669.pdf) (claiming that over the past four decades, the United States has experienced a substantial and statistically significant increase in affective polarization).

saliency, which could lead to existing ideological preferences becoming more heightened.

The events on January 6, 2021, at the U.S. Capitol were a stark display of political polarization. The response to the Capitol attack further demonstrated the political climate. For example, Harvard Law School students produced a petition with more than 200 signatures calling for a hiring ban on all former Trump administration officials.<sup>80</sup> The Black Lives Matter movement, although established in 2013, gained widespread attention starting in 2020 and was met with polarizing reactions.<sup>81</sup> Recent incidents regarding the teaching of sexuality and gender identity in public schools have sparked controversy, largely aligning with political identification.<sup>82</sup> Similarly, the issue of teaching critical race theory in public schools has sparked controversy, largely along political party lines.<sup>83</sup> One final example is how polarizing positions regarding the COVID-19 pandemic along politically partisan lines likely accelerated political polarization.<sup>84</sup>

It is important to note that the 30.06-place disparity produced in this study vastly underestimates the conservative penalty and liberal bonus present in modern legal academia. This is because it is the result of averaging the last thirteen years. Considering only the latest 2024 rankings data, the disparity between the peer ranking and the objective factors in the overall ranking increases dramatically to 48.92.

## H. Harm from Lack of Ideological Diversity

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<sup>80</sup> Emmy M. Cho, *Harvard Law Students Call on School to Refuse to Hire Former Trump Officials*, HARV. CRIMSON (Feb. 17, 2021), <https://www.thecrimson.com/article/2021/2/17/his-petition-trump-officials/>.

<sup>81</sup> *Black Lives Matter: A Timeline of the Movement*, COSMOPOLITAN (Apr. 21, 2021), <https://www.cosmopolitan.com/uk/reports/a32728194/black-lives-matter-timeline-movement/>.

<sup>82</sup> See, e.g., Nick Reynolds, *Republicans Declare War on Sex Education*, NEWSWEEK (Jan. 30, 2023), <https://www.newsweek.com/republicans-declare-war-sex-education-seek-restrictions-public-schools-1777650>.

<sup>83</sup> “*Critical Race Theory*” *Is Being Weaponized. What’s the Fuss About?*, ECONOMIST (July 14, 2022), <https://www.economist.com/interactive/united-states/2022/07/14/critical-race-theory-is-being-weaponised-whats-the-fuss-about>.

<sup>84</sup> See, e.g., Thomas B. Edsall, *America Has Split, and It’s Now in ‘Very Dangerous Territory,’* N.Y. TIMES (Jan. 26, 2022), <https://www.nytimes.com/2022/01/26/opinion/covid-biden-trump-polarization.html>.

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The original 2020 study discussed how the practice of punishing and rewarding law schools in the peer rankings based on political ideology is not only highly unethical but likely perpetuates discrimination against conservative law professors.<sup>85</sup> But conservative law professors are far from the only group negatively affected from this discrimination. The negative externalities likely extend to conservative and liberal law students, conservative law schools, and society in general.

Law students receive an inferior legal education when there is an extreme lack of ideological diversity.<sup>86</sup> A majority of the Supreme Court Justices were appointed by Republican presidents,<sup>87</sup> and many circuit, district, and state supreme court judges are conservative.<sup>88</sup> Because practicing attorneys are highly likely to argue in front of conservative judges, they will pay a high price for not being exposed to conservative thought. Somewhat counterintuitively, it is the liberal law students who are likely harmed the most from a lack of ideological diversity. This is because conservative students are more likely to seek out conservative legal thought outside of the classroom, thus providing them with a more well-rounded education.<sup>89</sup> In the unlikely event that a practicing attorney never argues before a conservative judge or justice, it is still highly beneficial to understand conservative legal arguments in order to better rebut them and anticipate the strongest arguments against the liberal position.<sup>90</sup> Only being exposed to one side of nuanced issues is a disservice to liberal students, as it hinders their ability to modify their positions in light of a fair

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<sup>85</sup> With the importance of law school rankings, law school deans are heavily incentivized to hire and promote faculty who will help, not hinder, their advancement in the rankings. Under the current rankings system and the severe conservative penalty, this would include discriminating against conservative faculty.

<sup>86</sup> See Adam S. Chilton & Eric A. Posner, *An Empirical Study of Political Bias in Legal Scholarship*, 44 J. LEGAL STUD. 277 (2015).

<sup>87</sup> Currently, Alito, Roberts, Thomas, Gorsuch, Kavanaugh, and Barrett are Republican-appointed, and Sotomayor, Kagan, and Jackson are Democrat-appointed. *Current Members*, SUPREME COURT OF THE UNITED STATES, <https://www.supremecourt.gov/about/biographies.aspx> (last visited Dec. 15, 2023).

<sup>88</sup> *Dark Money and the Courts: The Right-Wing Takeover of the Judiciary*, AMERICAN CONSTITUTION SOCIETY, <https://www.acslaw.org/analysis/reports/dark-money/> (Dec. 15, 2023).

<sup>89</sup> See Jeremy A. Frimer, Linda J. Skitkab & Matt Motylb, *Liberals and Conservatives Are Similarly Motivated to Avoid Exposure to One Another's Opinions*, 72 J. EXPERIMENTAL SOC. PSYCH. 1 (2017).

<sup>90</sup> See Roger Clegg, *Toward Intellectual Diversity in Law School*, MINDING THE CAMPUS (Nov. 7, 2014), <https://www.mindingthecampus.org/2014/11/07/toward-intellectual-diversity-in-law-school/>.

assessment of the strongest arguments from both sides. Finally, law students often learn more from the implicit curriculum than what is actually taught.<sup>91</sup> In this way, lack of diversity in legal education can function more as an indoctrination that downplays the importance of critical thinking, which is crucial to the legal profession.<sup>92</sup>

For similar reasons, ideological discrimination in legal academia is harmful to society at large because people who require the services of lawyers may receive inadequate representation. Additionally, these people may rely on law school rankings to determine which attorney to hire. With the presence of a 48.92-spot disparity based on political ideology, the information relied on contributes to hiring-market inefficiencies.<sup>93</sup> Unfortunately, all of these systemic harms discussed in this section are made even worse by how the problem is self-perpetuating because “teachers tend to recreate the system they know best—the one that produced them.”<sup>94</sup>

#### I. Employment Discrimination Analogy

To demonstrate the clear inference from the extreme nature of the disparities uncovered in this research, this section provides an analogy through a more traditional, employment discrimination context. Imagine a business that receives 192 applications each year for highly desirable employment positions. Every year the business makes hiring decisions based on a combination of an objective ranking and a purely subjective ranking. Then, an internal email surfaces in which managers explicitly state that they chose not to hire a potential applicant because he was Muslim. The Equal Employment Opportunity Commission (EEOC) conducts an investigation into the business’s ranking system. The EEOC’s investigation

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<sup>91</sup> David Davenport, *Apparently 90% of Harvard Faculty Can Agree on Something: Giving to Democrats*, FORBES (May 7, 2015), <https://www.forbes.com/sites/daviddavenport/2015/05/07/apparently-90-of-harvardfaculty-can-agree-on-something-giving-to-democrats/#46c79d771b9d>.

<sup>92</sup> *Id.*

<sup>93</sup> See Richard E. Redding, “Where Did You Go to Law School?” *Gatekeeping for the Professoriate and Its Implications for Legal Education*, 53 J. LEGAL EDUC. 594, 596 (2003) (explaining how law school rankings are used as a proxy for quality of law school graduates).

<sup>94</sup> See Jan M. Levine, *Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs*, 45 J. LEGAL EDUC. 530, 541 (1995).

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discovers that, for the most recent year, the difference between the business's subjective ranking and the objective ranking between the ten most devout Muslim applicants and the ten most devout Christian applicants was 48.92 spots. Furthermore, a disparity against Muslim applicants in favor of Christian applicants has existed every year for the last thirteen years at the hypothetical business. When any neutral explanations are considered for how this might not be the result of discrimination, nothing comes close to explaining the highly disparate results.

A plaintiff's lawyer who specializes in employment discrimination would surely be elated to find such a favorable scenario, such as the above hypothetical. The above facts are so incredibly one-sided pointing to discrimination that it is difficult to even imagine a potential defense that could excuse such apparent discrimination. Likewise, the facts of ideological discrimination in legal academia are more than enough to overwhelm even the most skeptical observer who honestly considers the evidence. Such a skeptic is free to hope and wish for some as-of-yet unknown, benign explanation to surface. But until it does, the conclusion that pervasive, systemic discrimination is involved is the only logical conclusion.

## **VII. PROPOSED SOLUTION TO RANKINGS DISPARITY**

A potential solution regarding the general presence of ideological discrimination in legal academia is beyond the scope of this Article. Eliminating—or even just reducing—systemic ideological discrimination in an institution is a difficult and multifaceted effort that requires the acknowledgement of the problem and great effort. Consequently, it does not appear that there is any reason for optimism in this area. However, there is a simple and effective solution to the narrower problem of how the peer rankings distort the overall rankings: Peer ranking scores should be excluded as a factor in the overall rankings.

Even disregarding how peer rankings punish conservative law schools and reward liberal law schools, using peer rankings as a factor in the overall rankings makes little sense. Most prospective law students likely care very little about how law school faculty would rank law schools. These prospective students likely care far more about minimizing student debt, small class sizes, campus amenities, passing the bar, and acquiring a job upon graduation. Therefore, average student

debt, student–faculty ratio, per-pupil spending, bar passage rates, and employment rates—not peer assessment scores—should be emphasized in the overall rankings. Additionally, there is already a lawyers’ and judges’ assessment score that contributes to the overall score.<sup>95</sup> Prospective law students likely find this metric far more significant than the peer assessment score, as lawyers and judges hire many more law school graduates than do law school faculty. The lawyers’ and judges’ assessment score is also convenient because judges and practicing attorneys are more likely to be ideologically diverse than law school faculty.<sup>96</sup>

When the lack of ideological diversity in legal academia is properly understood, it becomes highly peculiar how little law schools devote to the topic, especially when compared to other categories of inequalities, such as race. After all, focusing on the race of faculty and students is a rather circuitous method of achieving increased diversity in classroom instruction. Even worse, using race as a proxy for increased diversity of opinion is likely to perpetuate harmful stereotypes because implicit in the logic that increasing the racial minorities in law professor positions will increase diversity of ideas is the belief that different races necessarily think differently—a belief that is at the heart of much white supremacist advocacy.<sup>97</sup>

Further, including the peer rankings in the overall rankings is not even sound methodologically because the peer assessment rankings are affected by the objective factors already measured in the overall rankings. For example, if a law school significantly improves its bar passage rates and entering student credentials, this will likely correspond to improvements in the peer rankings.<sup>98</sup> Therefore, the peer assessment score and the other factors, such as the bar passage rate and entering student credentials, are collinear terms.<sup>99</sup> In statistics, when collinear terms exist, it is generally prudent to remove at least one. Here, the one to remove is clearly the one that is subjective, that perpetuates harmful discrimination, and that

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<sup>95</sup> See MORSE et al., *supra* note 11.

<sup>96</sup> Michael Conklin, *Walking on a Wire: The Delicate Balance of Free Speech on College Campuses*, 9 HOUS. L. REV. ONLINE 35, 43 (2018).

<sup>97</sup> See Michael E. Ruane, *A Brief History of the Enduring Phony Theories That Perpetuates White Supremacy*, WASH. POST (Apr. 30, 2019, 11:38 AM), [https://www.washingtonpost.com/local/a-brief-history-of-the-enduring-phony-science-that-perpetuates-white-supremacy/2019/04/29/20e6aef0-5aeb-11e9-a00e-050dc7b82693\\_story.html](https://www.washingtonpost.com/local/a-brief-history-of-the-enduring-phony-science-that-perpetuates-white-supremacy/2019/04/29/20e6aef0-5aeb-11e9-a00e-050dc7b82693_story.html).

<sup>98</sup> Although, these factors do affect the peer rankings on a delayed timeframe. See Christopher J. Ryan, Jr. & Brian L. Frye, *A Revealed-Preferences Ranking of Law Schools*, 69 ALA. L. REV. 495, 500 (2017).

<sup>99</sup> Ryan, *supra* note 37, at 25–26.

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students care the least about.<sup>100</sup> An additional benefit to using objective factors instead of peer rankings in the overall rankings is that peer rankings are a lagging indicator.<sup>101</sup> Changes in objective factors, such as entering LSAT scores, immediately impact the rankings, while peer rankings are far less responsive.<sup>102</sup> Therefore, the objective factors provide more up-to-date and accurate information for the people who look to the law school rankings.

## VIII. CONCLUSION

This Article provides a strong, cumulative case for the existence of ideological discrimination in legal academia in general and, more specifically, in the law school rankings. As demonstrated, the potential, non-discriminatory explanations for the results are inadequate to describe the wide and growing disparity. The conclusion of ideological discrimination is further strengthened when the results of this research are considered in tandem with the compelling evidence of ideological discrimination in hiring law school faculty<sup>103</sup>—a decision in which law school deans and faculty also play a significant role. Because peer rankings are the leading factor in the overall rankings, this anti-conservative bias also inflicts a conservative penalty in the overall rankings as well, although less severe.

While the magnitude of ideological bias discovered in this study may be surprising, the notion that law school deans and faculty—consciously or otherwise—apply a conservative penalty and liberal bonus when ranking law schools should not be a surprise to those aware of the existing ideological disparities in legal academia and evidence for ideological discrimination, such as the 2015 study and the Harvard emails.<sup>104</sup> The law school deans and faculty who vote in the peer rankings are overwhelmingly liberal.<sup>105</sup> And political ideology functions as a powerful prism that affects how the world is perceived.<sup>106</sup> Just as a conservative

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<sup>100</sup> *See id.*

<sup>101</sup> *See* Ryan & Frye, *supra* note 98, at 506.

<sup>102</sup> *See id.* at 503.

<sup>103</sup> *See* Phillips, *supra* note 24.

<sup>104</sup> Conklin, *supra* note 2, at 180.

<sup>105</sup> *See generally* Bonica, *supra* note 26.

<sup>106</sup> *See, e.g.,* Jennifer Jerit & Jason Barabas, *Partisan Perceptual Bias and the Information Environment*, 74 J. POL. 672, 672 (2012) (“[P]eople perceive the world in a manner consistent with their political views. The result is a selective pattern of learning in which partisans have higher



may view a liberal law school with heightened skepticism, it appears liberal law school deans and faculty view conservative law schools in this same way. Recent polarizing events such as the January 6<sup>th</sup> Capitol insurrection, the COVID-19 pandemic, and the Black Lives Matter movement are ideal candidates for why this ideological bias has increased in recent years.

The willingness of those who participate in the peer rankings to vote based on political preferences is further demonstrated in a recent study. The study found that law schools at historically Black colleges and universities receive disproportionately high peer rankings given their objective performance.<sup>107</sup> For example, in the 2024 rankings, the disparity between Howard Law School's peer ranking and objective factors in the overall ranking was eighty-seven spots.<sup>108</sup> The evidence suggests that this is the result of increased racial salience, rather than any factor actually related to law school performance.<sup>109</sup>

This Article documents the harm from ideological bias in law school rankings to conservative professors, liberal and conservative law students, and society at large. Fortunately, a simple and effective solution is available. Removing the peer score from the overall rankings calculation will reduce such harm while providing the benefits of reducing inefficiencies in the hiring market, better informing prospective law students, and contributing to greater ideological diversity in law schools and legal scholarship.

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levels of knowledge for facts that confirm their world view and lower levels of knowledge for facts that challenge them.”).

<sup>107</sup> See Conklin, *supra* note 12.

<sup>108</sup> *Id.* at 9.

<sup>109</sup> See *id.*

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