

TESTIMONY OF ROGER CLEGG, PRESIDENT AND GENERAL COUNSEL,  
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BEFORE THE U.S. COMMISSION ON CIVIL RIGHTS

REGARDING MINORITY ACCESS TO HIGHER EDUCATION

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**Introduction.** Thank you very much, Mr. Chairman, for the opportunity to testify today. My name is Roger Clegg, and I am president and general counsel of the Center for Equal Opportunity, a nonprofit research and educational organization that is based in Falls Church, Virginia. Our chairman is Linda Chavez, and our principal focus is on public policy issues that involve race and ethnicity, such as civil rights, bilingual education, and immigration and assimilation. We do a great deal of work in the field of higher education and, in particular, with regard to the use of racial preferences there. Much of our work is posted on our website, [www.ceousa.org](http://www.ceousa.org).

I should add that Ms. Chavez was once the staff director of the U.S. Commission on Civil Rights, and that I was once the Deputy Assistant Attorney General in the U.S. Justice Department's Civil Rights Division.

**Overview.** The invitation I received said this briefing would be “*examining the possible civil rights impact that access to and completion of higher education has on minority socio-economic mobility.*”

Reading that, and the rest of the invitation letter, suggested to me that many people may reason: (a) You really need a college education these days to succeed, and at as prestigious a school as possible; (b) a disproportionate number of minorities are not admitted to the top schools or don't go to college at all; and (c) therefore, we need laws and programs that target minorities for help in getting into college, especially the top schools.<sup>1</sup>

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<sup>1</sup> Let me make one preliminary point here. I'm not an expert demographer, but I would urge the Commission to be careful in describing precisely to what extent there actually *are* racial and ethnic disparities in education. For example, the Pew Research Center has recently noted that in 2012 “Hispanics’ college enrollment rate among 18- to 24 year-old high school graduates surpassed that of whites, by 49% to 47%.” <http://www.pewresearch.org/fact-tank/2014/04/24/more-hispanics-blacks-enrolling-in-college-but-lag-in-bachelors-degrees/> On the other hand, you have to add some caveats, like the fact a higher percentage of Latinos fail to graduate from high school, as well as the fact that a disproportionate percentage of Latinos go to two-year institutions rather than four-year schools. <http://www.governing.com/gov-data/education-data/state-high-school-graduation-rates-by-race-ethnicity.html> But, to give a counter-caveat, many going to a two-year institutions now go on to graduate from four-year institutions. There are other reasons for the Commission to take care with statistics here: First,

Now, I am not going to dispute that having a college diploma can be a good thing, and a college diploma from a more prestigious school can be an even better thing, and so if people of any color are missing opportunities here then that can be a concern. Nonetheless, there are some significant caveats here and, in my testimony today, I will raise them.

*My principal message is that it is a mistake to look at this area mainly through a racial lens in 2015. The problems are not really about race, and the solutions will not be either. If people are not going to the colleges they ought to, this is a problem regardless of the skin color of the people involved.*

Here are my specific caveats.

**First**, you don't have to have a college education to succeed in life, let alone a diploma from a top college. In any event, not everyone should go to college, let alone a top college. I don't think that many would disagree with this *in principle*, though there are strong differences in opinion about *the extent* to which these points are true.

And, indeed, there is a considerable literature on the issue of to what extent everyone should go to college and how much difference it makes what college you go to. I don't have set views on this, and it's not my area of expertise, but I'll provide just a few cites here to get you started: <http://www.mindingthecampus.org/2015/04/not-in-an-elite-college-no-worries/> (George Leef discussion of Frank Bruni's recent book *Where You Go Is Not Who You'll Be*); <http://www.nationalreview.com/phi-beta-cons/418390/hows-degree-working-out-you-george-leef> (George Leef discussion of recent Accenture survey of recent graduates suggesting skepticism about value of college degree); <http://www.economist.com/news/united-states/21646220-it-depends-what-you-study-not-where> (*Economist* article titled, "It's What You Study, Not Where"); and <http://watchdog.org/210607/silver-collar-workforce/> (article suggested by Dr. Jenna A Robinson, president of the John W. Pope Center for Higher Education Policy, "Rise of the 'silver collar' workforce: When a four-year degree isn't the right move"); Stacy Berg Dale & Alan B. Krueger, "Estimating the Payoff to Attending a More Selective College: an Application of Selection on Observables and Unobservables," 117 *Q.J. Econ.* 1491 (Nov. 2002). Finally, I don't always agree with Charles Murray, but I think the concluding two

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different ethnic groups have different percentages of young versus old. Second, groups with high percentages of immigrants may have low high-school graduation rates in part because of the fact that the failure to graduate from high school was in the country of origin, not in the United States. Third, attending college does not mean that you graduate from college – a problem that may be partly financial, partly a difference in K-12 education, and also partly a result of "mismatch" caused by the use of racial preferences. There is some useful "big picture" data in *The Chronicle of Higher Education: Almanac 2014-15*, August 22, 2014, especially pp. 42-43 tables on "Racial and Ethnic Representation Among College Students, by Type of Institution, 2012" and "Degrees Awarded, by Race, Ethnicity, and Gender, 2011-12."

paragraphs of a recent op-ed by him are compelling (from “Why the SAT Isn’t a ‘Student Affluence Test,” *Wall Street Journal*, March 24, 2015):

*As long as we insist on blaming inequality of academic outcomes on economic inequality, we will pursue policies that end up punishing children whose strengths do not lie in academics. We will continue to tell them that they will be second-class citizens if they don’t get a college degree; to encourage them to accumulate student debt only to drop out or obtain a worthless degree. Worse, we will prevent them from capitalizing on their other gifts of character, grit and the many skills that the SAT doesn’t test.*

*What we need is an educational system that brings children with all combinations of assets and deficits to adulthood having identified things they enjoy doing and having learned how to do them well. What we need is a society that has valued places for people with all combinations of assets and deficits. Both goals call for completely different agendas than the ones that dominate today’s rhetoric about educational and economic inequality.*

**Second**, “minorities” are not fungible.

It is foolish to think that the issues here are the same for African Americans as for Asian Americans, or for Arab Americans as they are for American Indians. And Latinos present different issues, too, and of course there are many different kinds of Latinos – Puerto Ricans, Cuban Americans, those with other Caribbean or Central or South America ancestry, Mexican Americans – and indeed there are also many different kinds of African Americans and Asian Americans and Arab Americans and American Indians.

To make only the most obvious points: It is much more likely that Asian Americans are discriminated against in Ivy League admissions than that African Americans or Latinos are. (There are pending complaints – one filed in federal court, and one filed with the Justice and Education Departments – against Harvard for anti-Asian American discrimination in undergraduate admissions, and those complaints include impressive documentation.) Conversely, whatever you think of giving racial preferences to “underrepresented minorities” (typically blacks, Latinos, and Native Americans), no one can deny that it is aggressively practiced by many selective schools.

And, as discussed in more detail below, there are differences among minority groups in terms of culture generally and family structure in particular – and those differences have a significant impact on educational outcomes.

One last point here: Just as “minorities” are not fungible, neither are “nonminorities” (i.e., non-Hispanic whites). There are white groups and subgroups, and many difference in wealth, culture – you name it – among them and within them.

As I said at the outset, it is not a good idea to look at higher education issues through a racial lens and to use skin color as a proxy for the characteristics that are really relevant.

**Third**, if some students are not going to college who should be, or are not going to more selective colleges who should be, then programs – especially government-run or government-

funded programs – that help identify them and then help them to go to college should do so without regard to race or ethnicity. Diamonds in the rough come in all colors. (See Hoxby and Avery research finding that many high achieving low-income students do not even apply to selective colleges. [http://www.brookings.edu/~media/projects/bpea/spring-2013/2013a\\_hoxby.pdf](http://www.brookings.edu/~media/projects/bpea/spring-2013/2013a_hoxby.pdf) .)

This nondiscrimination principle is true not only as a matter of fairness, but also as a matter of law, including constitutional law. As the Commission may be aware, the Center for Equal Opportunity has written a great deal over the years about why politically correct racial and ethnic discrimination is wrong as a matter of policy and law, and I will not belabor that point in my written statement, though of course I'm happy to discuss it at greater length in our question-and-answer period.

Just briefly, however, let me note that the only legal justification the Supreme Court has recognized in this area is the purported “educational benefits” that a university hopes will result from “diversity” in its student body. For a short discussion of why these benefits are unpersuasive and are in any event overwhelmed by the many costs of racial discrimination, see <http://www.scotusblog.com/2012/09/online-fisher-symposium-no-compelling-interest-no-reason-not-to-say-so/> . So this rationale has been under attack – and, in any event, it could be asserted only by the school itself, not by government actors outside it and not when there is no evidence that the program would increase diversity in a particular student body. That is, if the federal government were to offer a general scholarship program that weighed race, it would in my opinion not be permissible for it to invoke the “diversity” rationale, since it is not an educational institution *and* the program might or might not increase “diversity” in particular educational institutions at all, let alone in a way that had educational benefits.

***Fourth***, the reason for the disproportions among different racial and ethnic groups and subgroups here in 2015 is likely not present discrimination or even principally rooted in past discrimination. Certainly there are many causes apart from racial discrimination. Consider, for example, the fact that Asian Americans and Latinos have each been discriminated against in our history, but the educational outcomes in 2015 for the two groups are quite different – and, as noted earlier, there are many subgroups within each group, which in turn also have different educational outcomes.

To the contrary, there is much preferential treatment today that overtly favors underrepresented minorities in higher education (and often discriminates against Asian Americans) as studies by my organization and others have documented (see, e.g., <http://ceousa.org/affirmative-action/affirmative-action-news/education> ). Educators, both public and private, are the most politically correct people in the world. And politically incorrect discrimination in just about any public transaction, and this includes education, has been illegal for decades. That's not to say it doesn't exist, but it does mean that its explanatory value is greatly diminished for individuals who were, after all, born late in the Clinton administration – not in slavery or the Jim Crow era.

Consider: The only academic requirement to be able to get into a college somewhere today is a high school diploma. But there are real racial disparities in meeting even this requirement. From “Helping Black Men Thrive,” by Robert Cherry (Spring 2015 *National Affairs*, <http://www.nationalaffairs.com/publications/detail/helping-black-men-thrive> ):

*The question of why black men are often less competitive for jobs leads back to problems in school. Even among those without college degrees, on average black men have weaker academic skills than white men. Forty-three percent of black 17-year-olds were reading below basic proficiency in 2012, compared to only 19% of white 17-year-olds. These academic deficiencies translate into lower high-school graduation rates: 59% of black men graduate while 80% of white men do. In New York City, only 28% of black males complete high school on time; in Philadelphia, only 24% do. And black graduates, on average, have lower skill levels than white graduates.*

If there are disparities in high school graduation rates, then it will be hard to avoid disparities in college attendance rates. Perhaps some of the former disparities can be blamed on racist teachers and racist school systems, but it is hard to imagine that in 2015 most of them can be.

**Fifth**, the principal reasons for the disproportions are, instead, cultural and thus not really a matter of “civil rights.” In particular, some groups have higher out-of-wedlock birthrates than others, and as it happens these same groups also frequently put less of a premium on educational success than other groups.

According to the most recent government statistics that I could find (*National Vital Statistics Reports*, vol. 64, no. 1, Jan. 15, 2014, table 15), 71.5 percent of African Americans are born out of wedlock, along with 66.4 percent of American Indians/Alaska Natives and 53.2 percent of Hispanics; versus 29.3 percent of non-Hispanic whites and only 17.0 percent of Asian/Pacific Islander Americans.

Those are *enormous* disparities among the different racial and ethnic groups, and whether or not your parents are married when you are born makes an *enormous* difference in likely social outcomes, including educational outcomes. It would actually be surprising if there were no racial disparities in education, given these marked racial disparities in out-of-wedlock birthrates and the high correlation between all kinds of social outcomes, including educational outcomes, and growing up in a home without a father. See generally. Roger Clegg, “1,293,567 Casualties,” May 1, 2000, National Review Online [links: <http://factnet.org/vbforum/christian-centered-groups/twelve-tribes-community-of-believers-messianic-community-northeast-kingdom-community-church-the/miscellaneous/twelve-tribes-archive-042405/1870-twelve-tribes-community-of-believers-messianic-community-northeast-kingdom-community-church-the-new-apostolic-order-in-messiah-the-church-in-island-pond-the-communities-archive-052103/page12> and <http://old.nationalreview.com/comment/comment050100b.html> ].

This truth is now recognized on both left and right. I will cite just a few authorities. Isabel Sawhill of the Brookings Institution has written, “[A] wealth of research strongly suggests that marriage is good for children. Those who live with their biological parents do better in school and are less likely to get pregnant or arrested. ... Meanwhile, children who spend time in single-

parent families are more likely to misbehave, get sick, drop out of high school and be unemployed.” [link: <http://bangordailynews.com/2012/05/27/opinion/why-dan-quayle-was-right-about-single-moms/>] See also Ron Haskins & Isabel Sawhill, *Creating an Opportunity Society* 207-08 (Brookings Institution Press, 2009) (“growing up without both biological parents was correlated with ... ‘more substantial reductions in educational attainment or achievement’ ... Equally important ... the higher proportion of black children living in female-headed families is responsible in part for the gap in black-white educational achievement”; “Children raised in single-parent families are more likely to experience such problems as school failure ...”).

Linda Chavez quotes President Obama himself “in his book *The Audacity of Hope* (2006), acknowledging that the breakdown of the black family ‘reflects a casualness toward sex and child-rearing among black men that renders black children more vulnerable—and for which there is simply no excuse.’” “Let Us By All Means Have an Honest Conversation about Race,” *Commentary*, June 2008, at 15, 18. See also Kay S. Hymowitz, *Marriage and Caste in America: Separate and Unequal Families in a Post-Marital Age* (2006); and Bill Cosby & Alvin F. Poussaint, *Come on People: On the Path from Victims to Victors* (2007).

The late James Q. Wilson (“Crime,” in *Beyond the Color Line* (2002), at 120-121); wrote:

*Consider families. Though for many years, some sociologists urged us to believe that single-parent families were an “alternative” to two-parent ones, hardly anybody believes that any more. The evidence shows that single-parent families are a major source of misconduct. A federal survey of the families of sixty thousand American children found that at every income level except the highest (over \$50,000 a year) and for whites, blacks, and Hispanics, children living with a never-married or a divorced mother were much worse off than those living in two-parent families. A survey of all the leading studies shows that both poverty and living in a single parent family contribute to children’s problems.*

Frequently liberals have blamed social problems on “root causes” like poverty; well, there is more poverty among African Americans, so it should come as no surprise to liberals that there are more social challenges here, too. And the disparities come as no surprise to conservatives either, though they blame both social problems like dropping out of school and illegitimacy on a common cultural “tangle of pathology,” to use Daniel Patrick Moynihan’s (another liberal’s) phrase. See also Juan Williams, *Enough: The Phony Leaders, Dead-End Movements, and Culture of Failure That Are Undermining Black America—and What We Can Do about It* (2006).

There is also the problem confronting many African American children that academic success is derided by their peers as “Acting White” (a book by Stuart Buck with that title documents this unfortunate phenomenon). Michael Barone’s book *The New Americans* documents the emphasis placed on educational excellence by Asian Americans (see pages 265-68). He contrasts this with the experience of African Americans (pages 85-89) and Latinos (pages 169-74).<sup>2</sup>

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<sup>2</sup> Let me mention one noncultural problem: In addition to family and peers, it is likely also the case that there are racial disparities among groups in the quality of the K-12 education available

*I am strongly in favor of addressing these cultural problems – but, again, it should not be done in a racially discriminatory way. Out-of-wedlock birthrates, for example, have been climbing for non-Hispanic whites, too, with all the predictable and sad consequences. There are plenty of non-Hispanic whites who fail to recognize the value of education for their children and could learn from other Americans, many of them racial or ethnic minorities, about that value. I have pointed in my testimony today to aggregate data about different racial and ethnic groups, but only to show that the reasons for educational disparities are not about skin color or national origin per se, but instead about cultural habits. And those cultural habits can be shared or rejected by individuals regardless of race or ethnicity.*

**Conclusion.** Thank you very much, Mr. Chairman. I'm happy to try to answer any questions that the Commission might have.

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to students, and of course this will also result in disparities when it comes time to attend college. There are, needless to say, big differences of opinion in how to improve failing public schools, but it seems logical that a good first step is to allow parents more choice in where to send their children. While liberal groups will admit that substandard schools are a problem, they will also resist (partly because of recalcitrant teacher unions) the most promising reforms — involving competition among schools, merit pay for teachers, and more choice for parents and children — in favor of just throwing more money at the problem. But probably that is an issue for another day. See generally Abigail & Stephan Thernstrom, *No Excuses: Closing the Racial Gap in Learning*.