

THE POLITICS OF PRESTIGE:

INCREASING IDEOLOGICAL DISCRIMINATION IN LAW SCHOOL RANKINGS

Michael Conklin *

I. INTRODUCTION

In 2023, novel research was conducted to measure how perceived political affiliation of law schools affect their *U.S. News & World Report* peer rankings.¹ This study discovered a significant conservative penalty and liberal bonus. The difference between the subjective peer ranking and the objective factors in the overall ranking for the conservative and liberal law schools was a monumental 48.92 spots.² Furthermore, this study found that this was a rapidly increasing trend.³ The present, updated study using the latest 2024–2025 rankings data confirms the continuation of this trend with a truly astounding overall disparity of 53.14 spots. Given that there are fewer than 200 law schools and the extreme significance schools place on the rankings, it is difficult to overstate the significance of a 53.14 rankings disparity. Furthermore, this increasing ideological disparity in the rankings appears to correspond with the increasing salience of political partisanship in society.

This extremely disparate and consistently increasing result elicits discussion regarding numerous aspects of rankings, academia, and bias. This Article also discusses how these high

* Assistant Professor of Business Law, Texas A&M University Central Texas; Lecturer, Texas A&M University School of Law.

¹ Michael Conklin, *Rising Ideological Discrimination in Law School Rankings: Measuring the Conservative Penalty and Liberal Bonus with Updated 2024 Rankings Data*, 16 TENN. J. LEADERSHIP L. & POL'Y 77 (2024) (parts of this study are repeated here with explicit permission on file with the author).

² *Id.* at 87.

³ *Id.*

levels of disparity based on political ideology in the rankings likely perpetuate a lack of ideological diversity in legal academia. The numerous ways in which a lack of ideological diversity harms professors, students, practicing attorneys, and society at large are also discussed. Finally, this Article concludes by proposing a simple, effective 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 and in society at large. The recent Supreme Court decisions on affirmative action in higher education will likely affect how diversity is viewed.⁴ The American Bar Association's (ABA's) removal of the Law School Admission Test (LSAT) requirement sparked debate about standardized testing.⁵ The recent explosion of artificial intelligence technologies calls into question the future of legal education and the legal profession.⁶ The new rankings methodology implemented by *U.S. News and World Report* drastically decreased the significance of grade point average (GPA) and LSAT scores as well as the significance of the peer score as a contributor to the overall score.⁷ The expected law school enrollment cliff of 2025 will likely have a profound effect on law schools.⁸ *The Black Guide to Law Schools*, written by the group Lawyers of Color, decided in 2023 to stop ranking law schools because they concluded that

⁴ Joseph Ax, *What Happens if the Supreme Court Bans Affirmative Action?*, REUTERS (May 24, 2023, 5:14 AM), <https://www.reuters.com/legal/what-happens-if-us-supreme-court-bans-affirmative-action-2023-05-24/> [https://perma.cc/5UWH-VGB6].

⁵ Karen Sloan, *ABA Votes to End Law Schools' LSAT Requirement, but Not Until 2025*, REUTERS (Nov. 18, 2022, 3:28 PM), <https://www.reuters.com/legal/legalindustry/aba-votes-end-law-schools-lsat-requirement-not-until-2025-2022-11-18/> [https://perma.cc/YW6U-U6E2].

⁶ 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> [https://perma.cc/NJ4Q-4HJ7].

⁷ 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> [https://perma.cc/244S-798D].

⁸ Jill Backer, *The Enrollment Cliff of 2025—What Will It Do to Law Schools?*, LAW.COM (Nov. 9, 2022, 9:18 AM), <https://www.law.com/dailybusinessreview/2022/11/09/the-enrollment-cliff-of-2025-what-will-it-do-to-law-schools/> [https://perma.cc/KLV6-AFFQ].

rankings undermine equity in the legal profession.⁹ The Varsity Blues admissions scandal calls into question the ability of the well-connected to game the system.¹⁰ 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.¹¹ Consequently, this Article is also highly informative regarding larger 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

Despite the existence of alternative law school rankings, the *U.S. News & World Report* overall and peer rankings are considered the most relevant.¹² The overall rankings are primarily based on objective criteria, such as employment rate, bar passage rate, LSAT score, acceptance rate, undergraduate GPA, and student–faculty ratio.¹³ These overall rankings are also the standard for measuring American law school prestige.¹⁴ Behavior from law schools demonstrates that they are well aware of the significance of the overall rankings, as they alter their behavior in attempts

⁹ Paul Caron, *2023 Black Guide to Law Schools Heralds ‘The End of the Rankings Era,’* TAXPROF BLOG (June 12, 2023), https://taxprof.typepad.com/taxprof_blog/2023/06/2023-black-guide-to-law-schools-heralds-the-end-of-the-rankings-era.html [https://perma.cc/6MDH-5B9N].

¹⁰ 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/> [https://perma.cc/S8CJ-MKPK].

¹¹ Michael Conklin, *Boycotts, Race, Rankings, and Howard Law School’s Peculiar Position*, 22 U. N.H. L. REV. 279, 304–08 (2024).

¹² *Id.* at 282.

¹³ Morse et al., *supra* note 7.

¹⁴ 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/> [https://perma.cc/7YBX-7P6S] (“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.”).

to improve their rankings.¹⁵ Even law schools that participated in a rankings boycott in 2022 nevertheless maintained great interest in their standings in the rankings.¹⁶ The incentive for a law school to improve its overall ranking is so strong that some institutions are even willing to go so far as to falsely report data¹⁷ and coerce underachieving graduates to delay taking the bar exam.¹⁸ An undesirable drop in the overall rankings, even a minor one, frequently results in the firing of a dean.¹⁹ The overall ranking even affects the perceived quality of tangentially related areas, such as the quality of that law school's law journal.²⁰

The other rankings provided by the *U.S. News & World Report* are the peer rankings. These differ from the overall rankings in that the peer rankings are the result of a purely subjective survey completed by law school deans and select law school faculty regarding their perceptions of law

¹⁵ 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 naturally prefer applicants from mediocre colleges with high GPAs over applicants from elite colleges 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 who vote in the peer rankings. *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 perception of financial outlays on resources, which is a factor in the overall rankings. *Id.*

¹⁶ 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> [<https://perma.cc/G4LR-BJ73>] (reporting on how the *U.S. News & World Report* stated, “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.”).

¹⁷ 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> [<https://perma.cc/ZY3Z-6XUH>]; 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_lsats_gpa_data [<https://perma.cc/6HKF-D378>].

¹⁸ 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 now defunct Charlotte School of Law—pays underperforming students not to take the July bar exam after graduating).

¹⁹ 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/> [<https://perma.cc/H9BE-TV5A>] (“Ever year, deans and assistant deans find themselves ‘pushed out’ of a job thanks to the U.S. News rankings.”).

²⁰ 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.”).

schools.²¹ These peer rankings are also included as a factor in the overall rankings.²² The peer rankings previously accounted for 25% of the overall rankings, but this was reduced to 12.5% starting with the 2024 overall rankings, which came out in 2023.²³ Fortunately, the existence of these two rankings—one entirely subjective and one mostly objective—provides a unique data set which allows researchers to analyze which schools have disproportionately high or low reputations relative to what would be expected from their objective performances.

III. IDEOLOGICAL DIVERSITY AND LAW SCHOOLS

In legal academia, the lack of diversity regarding race and gender have long been discussed.²⁴ However, the lack of diversity and discrimination regarding political ideology in legal academia receives far 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”).²⁵ But even prior to this landmark study, it was already well known that law school professors were disproportionately liberal by a wide margin.²⁶ This disparity remains both when compared to the overall legal profession and to the public at large.²⁷ A 2015 study found that 82% of law school professors were Democrats, while only 11% were Republicans.²⁸ Even more troubling than the statistics demonstrating the lack of ideological diversity in law schools is the

²¹ Morse et al., *supra* note 7.

²² *Id.*

²³ *Id.*

²⁴ 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).

²⁵ *Id.* at 33.

²⁶ Adam Bonica et al., *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.”).

²⁷ *Id.*

²⁸ James Lindgren, *Measuring Diversity: Law Faculties in 1997 and 2013*, 39 HARV. J. L. & PUB. POL’Y 89, 144 n.119, 149 (2016).

evidence that demonstrates how the few diverse voices in law schools are the result of discrimination, rather than some natural, benign occurrence.

The landmark 2015 study set out to determine if the extreme disparity between conservative and liberal law professors was the result of discrimination, or some benign explanation, such as conservatives choosing not to enter legal academia or conservatives being somehow inherently inferior at legal scholarship. The 2015 study found that conservative law professors are more qualified than their liberal peers in numerous categories. Conservative law professors were 24.1% more likely to have graduated from higher-ranked schools, 68.2% more likely to be former Supreme Court clerks, and 5.4% more likely to have served on law review when compared to their liberal counterparts.²⁹ Furthermore, conservative law professors were found to have more extensive publication records, which is the most important factor in hiring and promotions in legal academia.³⁰ Over the course of ten years, the average conservative professor publishes four to eight more articles than the average liberal professor.³¹ Additionally, the published scholarship from conservative law faculty is significantly more likely to be cited to, which is a leading measure of scholarly significance.³² 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.

One could attempt to use this finding of anti-conservative bias in legal academia to argue that it functions to benefit the few conservatives who are allowed in. Such a person could allege that, because there are so few conservative legal scholars, there is a corresponding lack of conservative

²⁹ Phillips, *supra* note 24, at 183.

³⁰ *Id.* at 166.

³¹ *Id.* at 195.

³² *Id.* at 166.

scholarship being submitted to law journals. And therefore, the few conservative legal scholars are at an advantage when it comes to having their scholarship published. First, this theory is of little consolation to conservatives who were not allowed into legal academia because of their political beliefs. Second, applying such an argument to other forms of discrimination demonstrates the problematic nature of this logic. For example, claiming that discrimination against women in traditionally male fields produces benefits to the few women who somehow managed to get in is not a strong argument that gender discrimination is not a problem.³³ Third, 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 demonstrates that conservative and liberal scholarship is far from equally sought after.

A series of internal emails from the *Harvard Human Rights Journal* were inadvertently made public in 2012.³⁴ These emails demonstrate how political affiliation bias in legal academia also infects the law journal decision process.³⁵ The emails document an incident in which the journal editors voiced "major concerns," regarding a submission.³⁶ But these concerns were not regarding the accuracy, quality, or relevance of a submitted manuscript, but rather, about how the submitted manuscript was written by a conservative author.³⁷ The editors concluded that the political

³³ This is similar to the "talking platypus phenomenon" whereby bias against women which results in a diminished perception of their abilities allegedly benefits women by creating a lower bar which is easier for them to exceed. As the theory goes, if you came across a talking platypus, regardless of how elementary his words were, you would nevertheless be highly impressed because you had such low expectations regarding its ability to speak. *See, e.g.,* Paul R. Abramson, Philip A. Goldberg & Linda M. Abramson, *The Talking Platypus Phenomenon: Competency Ratings as a Function of Sex and Professional Status*, 2 PSYCHOL. WOMEN Q. 114, 114 (1977).

³⁴ Conklin, *supra* note 1, at 82–83.

³⁵ *Id.*

³⁶ 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.

³⁷ *Id.* 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 clerking for a conservative judge and working at the White House under the Bush administration. *Id.* This author also participated in public debate, at least one time writing something critical of a liberal Supreme Court justice. *Id.*

ideology of the author alone was “enough to reject the article.”³⁸ Such discriminatory practices demonstrate that the superior publication record obtained by conservative legal scholars is even more impressive than initially perceived. This is because it is achieved 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.³⁹ Furthermore, 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.⁴⁰ These 2012 emails further refute the claim that conservative legal scholars—due to their small numbers—receive an advantage in publishing.

IV. METHODOLOGY

This current study uses the same methodology from the 2023 study. The disparity between the subjective peer rank and the objective overall rank for the top ten most conservative law schools and the top ten most liberal law schools were calculated.⁴¹ To determine the top ten conservative and liberal law schools, the Princeton Review’s ideological rankings were used.⁴² This update uses

³⁸ *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,” 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/\[perma.cc/5W7B-V59M\]](https://abovethelaw.com/2012/09/a-look-inside-the-law-review-sausage-factory-and-possible-evidence-of-bias-against-conservatives/[perma.cc/5W7B-V59M]).

³⁹ 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/\[perma.cc/BFV4-CGX2\]](https://abovethelaw.com/2017/05/why-do-law-professors-write-law-review-articles/[perma.cc/BFV4-CGX2]).

⁴⁰ Phillips, *supra* note 24, at 162–63.

⁴¹ Conklin, *supra* note 1, at 83–85.

⁴² *Most Conservative Students*, PRINCETON REV., [https://www.princetonreview.com/law-school-rankings?rankings=most-conservative-students\[perma.cc/N4WV-FGDP\]](https://www.princetonreview.com/law-school-rankings?rankings=most-conservative-students[perma.cc/N4WV-FGDP]) (last visited Aug. 4, 2024); *Most Liberal Students*, PRINCETON REV., [https://www.princetonreview.com/law-school-rankings?rankings=most-liberal-students\[perma.cc/7TGL-TRXF\]](https://www.princetonreview.com/law-school-rankings?rankings=most-liberal-students[perma.cc/7TGL-TRXF]) (last visited Aug. 4, 2024).

the most recent 2024–2025 law school rankings (released in 2024) and the most recent Princeton Review’s ideological rankings (released in 2024), which provide the following twenty law schools:

Most Conservative

1. Ave Maria School of Law
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. University of Idaho College of Law
8. University of Mississippi School of Law
9. Southern Methodist University Dedman School of Law
10. Mississippi College 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. University of California, Berkeley, School of Law
5. University of Colorado School of Law
6. University of California, Irvine, School of Law
7. American University Washington College of Law
8. Boston University School of Law
9. University of San Francisco School of Law
10. University of California, Los Angeles, School of Law

These schools are hereinafter referenced as the ten most conservative and ten most liberal law schools. Relevant to the topic of ideological bias in legal academia, these two lists should not be interpreted to imply 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 was the most ideologically balanced.⁴³ And yet Brigham Young University is the most conservative law school among the top fifty law schools based on the Princeton rankings.⁴⁴ Furthermore, a 2022 analysis found that 89% of all law schools are more liberal than conservative.⁴⁵

⁴³ Bonica et al., *supra* note 26, at 14.

⁴⁴ *Most Conservative Students*, PRINCETON REV., [https://www.princetonreview.com/law-school-rankings?rankings=most-conservative-students\[perma.cc/N4WV-FGDP\]](https://www.princetonreview.com/law-school-rankings?rankings=most-conservative-students[perma.cc/N4WV-FGDP]) (last visited Aug. 4, 2024).

⁴⁵ Mike Stetz, *Are Law Schools Too Liberal?*, PRE L. (Oct. 20, 2022, 2:22 PM), [https://nationaljurist.com/prelaw/prelaw-news/are-law-schools-too-liberal/\[perma.cc/VBG7-4AGX\]](https://nationaljurist.com/prelaw/prelaw-news/are-law-schools-too-liberal/[perma.cc/VBG7-4AGX]).

The present study uses the same, novel formula from the 2023 study to accurately measure the deviation between a law school's overall rank and peer rank:

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

The peer deviation score used to measure the difference between the overall rank and the peer rank 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 otherwise result from only using one metric or the other.⁴⁶

There is one additional calculation that must be conducted to produce the final, adjusted result. Because the peer ranking score is included as a factor in the overall ranking, it must be backed out to reveal the true disparity between the two. To reach this result, the raw rankings disparity is simply multiplied by 1.1425.⁴⁷ This produces the adjusted disparity which shows the full disparity between the subjective peer ranking and the objective elements of the overall ranking.

V. RESULTS

A. 2023 Study

The 2023 study found not only a large ideological disparity in the rankings, but it also found that this disparity has been growing. For the last five consecutive years up to and including the 2023 study, the disparity between the peer rank and overall rank of the most conservative and

⁴⁶ Conklin, *supra* note 1, at 85. 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.

⁴⁷ For example, the data from the present study produces a raw, 46.51 rankings disparity. After multiplying by 1.1425, the adjusted rankings disparity between the peer rankings and the overall rankings is revealed to be 53.14.

liberal law schools has increased.⁴⁸ Starting with the 2020 rankings which were released in 2019 and ending with the 2024 rankings which were released in 2023, the unadjusted peer–overall disparities have been 7.74, 15.39, 25.37, 42.09, and 42.82.⁴⁹ Adjusting the 2024 rankings data (released in 2023), this produced a truly astounding disparity of an average 48.92-spot difference between the conservative law schools and the liberal law schools.⁵⁰

Furthermore, the 2023 study found an apparent correlation between the peer ranking conservative penalty and liberal bonus with the location of each law school in 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 were also the four most conservative law schools on the list.⁵¹ And among the liberal law schools, the three biggest peer–overall disparities were all in the top five most liberal law schools.⁵² This is a further indication as to how strong the ideological bias is.

B. 2024 Study

The present 2024 study using the most recent 2024–2025 data returned even greater ideological disparities. The unadjusted conservative penalty is -24.99 and the unadjusted liberal bonus is 21.52. This results in a raw disparity of 46.51 and an adjusted total disparity of 53.14. Therefore, the adjusted disparities for the last six years are as follows: 7.74, 15.39, 25.37, 42.09, 42.82, and 46.51 respectively.

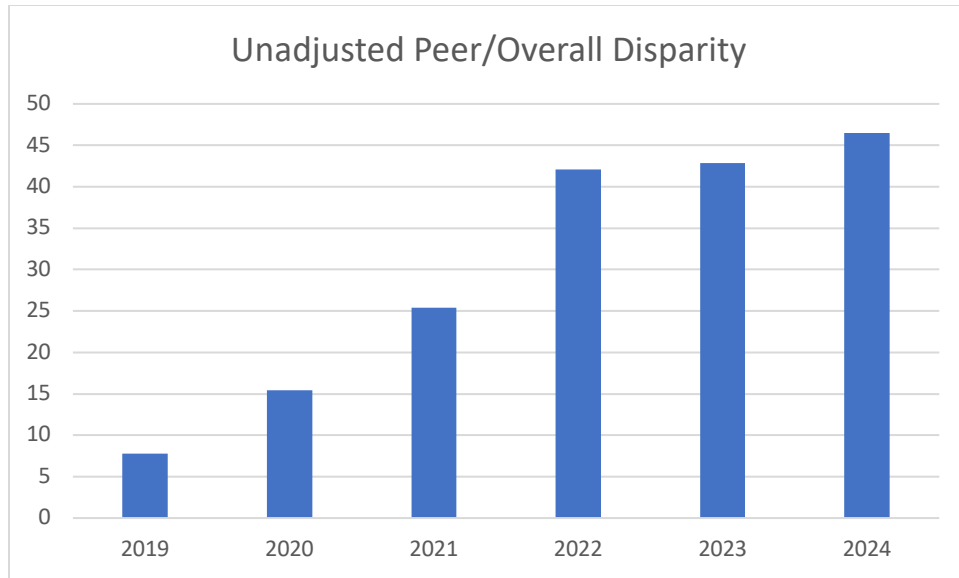
⁴⁸ Conklin, *supra* note 1, at 87.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 87–88.

⁵² *Id.*



The 2023 study found an additional correlation whereby the more conservative or liberal each law school was within its top ten category, the more of a conservative penalty or liberal bonus it was likely to experience on average. In the present study, this remains true for the conservative law schools, where three of the four most disparate conservative penalties were experienced by the top four most conservative law schools, but there is no such correlation among the top ten liberal law schools.

VI. DISCUSSION

The results of the current study using the latest 2024–2025 data provoke discussion on a number of topics. With fewer than 200 ranked law schools, it would be difficult to overestimate just how significant an ideological rankings disparity of 53.14 is. This is the equivalent to two law schools with the same objective outcomes where one is ranked number 102 and the other ranked number forty-nine. Law schools take even slight changes in the rankings very seriously and are willing to go to great lengths just to make slight gains. The amount of resources a law school would have to invest in an effort to improve from number 102 to number forty-nine would be immense.

This section begins by discussing the corresponding increase in societal political partisanship with increasing ideological discrimination in the rankings, thus further strengthening the hypothesis put forth in the 2023 study. This discussion section then addresses the overall harms of ideological discrimination in legal academia, and provides a helpful analogy to employment discrimination to better illustrate the magnitude of the discrimination. Finally, potential non-discriminatory explanations for these results are considered. These 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, random statistical noise, and a possible connection between law school ideology and teaching effectiveness.

A. Corresponding Increase in Ideological Salience

The extreme disparities found in this study are made even more profound by how they have rapidly increased in recent years. Objectively proving why this is the case is beyond the scope of empirical analysis. However, considering potential explanations may help better illuminate the cause of the disparities and potential solutions to the problem. The most likely explanation is the increased political polarization in America.⁵³ It is not hard to imagine how increased political polarization would lead to increased ideological salience, which could lead to existing ideological preferences becoming more heightened.

There is no single, definitive measure to quantify increased political polarization. Regardless, an honest assessment of the political climate in the last few years would likely cause a neutral observer to acknowledge an increase in political polarization. A 2022 analysis found that

⁵³ 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[perma.cc/7SR8-8Q28].

Democrats and Republicans in Congress are more polarized than at any time in the past fifty years.⁵⁴ A 2022 survey found that both Republicans and Democrats significantly increased their negative views of the opposing party with increased perceptions of close-mindedness, dishonesty, immorality, laziness, and a lack of intelligence.⁵⁵ A 2022 survey found that political polarization was the third-most important issue to voters, more important than racism, immigration, healthcare, abortion, education, taxes, and climate change.⁵⁶

There is also strong anecdotal evidence to support the notion of increasing political polarization. The January 6, 2021, attack at the U.S. Capitol was 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.⁵⁷ And Donald Trump, who is currently a slight favorite to win the 2024 presidential election,⁵⁸ stated that he would pardon those convicted in the Capitol attack.⁵⁹

⁵⁴ Drew Desilver, *The Polarization in Today's Congress has Roots that Go Back Decades*, PEW RSCH. CTR. (Mar. 10, 2022), [https://www.pewresearch.org/short-reads/2022/03/10/the-polarization-in-todays-congress-has-roots-that-go-back-decades/\[perma.cc/T5WX-Z4CL\]](https://www.pewresearch.org/short-reads/2022/03/10/the-polarization-in-todays-congress-has-roots-that-go-back-decades/[perma.cc/T5WX-Z4CL]).

⁵⁵ *As Partisan Hostility Grows, Signs of Frustration with the Two-Party System*, PEW RSCH. CTR. (Aug. 9, 2022), [https://www.pewresearch.org/politics/2022/08/09/as-partisan-hostility-grows-signs-of-frustration-with-the-two-party-system/\[perma.cc/5U6W-KQZV\]](https://www.pewresearch.org/politics/2022/08/09/as-partisan-hostility-grows-signs-of-frustration-with-the-two-party-system/[perma.cc/5U6W-KQZV]).

⁵⁶ Geoffrey Skelley & Holly Fuong, *3 in 10 Americans Named Political Polarization as a Top Issue Facing the Country*, FIVE THIRTY EIGHT (June 14, 2022, 12:09 PM), [https://fivethirtyeight.com/features/3-in-10-americans-named-political-polarization-as-a-top-issue-facing-the-country/\[perma.cc/BKR6-EM3P\]](https://fivethirtyeight.com/features/3-in-10-americans-named-political-polarization-as-a-top-issue-facing-the-country/[perma.cc/BKR6-EM3P]).

⁵⁷ 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/\[perma.cc/2ACW-E9S7\]](https://www.thecrimson.com/article/2021/2/17/his-petition-trump-officials/[perma.cc/2ACW-E9S7]).

⁵⁸ James Powel, *Presidential Election Odds Take Shape with Trump, Harris Likely Candidates*, USA TODAY (July 22, 2024, 3:38 PM), [https://www.usatoday.com/story/news/politics/elections/2024/07/22/presidential-election-odds-trump-kamala-harris/74501656007/\[perma.cc/UB3Q-PDWZ\]](https://www.usatoday.com/story/news/politics/elections/2024/07/22/presidential-election-odds-trump-kamala-harris/74501656007/[perma.cc/UB3Q-PDWZ]).

⁵⁹ Simon J. Levien, *Trump Says He Would Pardon Jan. 6 Rioters Who Attacked Police*, N.Y. TIMES (July 31, 2024), <https://www.nytimes.com/2024/07/31/us/politics/trump-jan-6-pardons-nabj.html>.

The Black Lives Matter movement, although established in 2013, gained widespread attention starting in 2020 and was highly polarizing.⁶⁰ Recent incidents regarding the teaching of sexuality and gender identity in public schools have sparked controversy, largely along partisan lines.⁶¹ Similarly, the issue of teaching critical race theory in public schools has sparked controversy, mostly along these same partisan lines.⁶² Polarizing positions regarding the COVID-19 pandemic—largely along partisan lines—likely accelerated political polarization.⁶³ Supreme Court nominations have become increasingly partisan.⁶⁴ And finally, the attempted assassination of Donald Trump on July 13, 2024, illuminates extreme political rhetoric from both sides.⁶⁵ This reality supports the claim that law school faculty who vote in the peer rankings would have an increased awareness of ideological differences of the law schools.

⁶⁰ *Black Lives Matter: A Timeline of the Movement*, COSMOPOLITAN (Apr. 21, 2021), [https://www.cosmopolitan.com/uk/reports/a32728194/black-lives-matter-timeline-movement/\[perma.cc/H5ZK-B45G\]](https://www.cosmopolitan.com/uk/reports/a32728194/black-lives-matter-timeline-movement/[perma.cc/H5ZK-B45G]).

⁶¹ See, e.g., Nick Reynolds, *Republicans Declare War on Sex Education*, NEWSWEEK (Jan. 30, 2023, 2:56 PM), [https://www.newsweek.com/republicans-declare-war-sex-education-seek-restrictions-public-schools-1777650\[perma.cc/X8K4-LKX6\]](https://www.newsweek.com/republicans-declare-war-sex-education-seek-restrictions-public-schools-1777650[perma.cc/X8K4-LKX6]).

⁶² “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\[perma.cc/KTJ5-TQD2\]](https://www.economist.com/interactive/united-states/2022/07/14/critical-race-theory-is-being-weaponised-whats-the-fuss-about[perma.cc/KTJ5-TQD2]).

⁶³ 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>.

⁶⁴ It is hard to imagine a time in which a polarizing figure such as Antonin Scalia was confirmed to the Supreme Court by a unanimous Senate vote of 98-0. The last seven Supreme Court appointment votes have been far more contentious at 53-47, 52-48, 50-48, 54-45, 63-37, 68-31, and 58-42. *Supreme Court Nominations (1789–Present)*, U.S. SENATE, [https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm\[perma.cc/CP9V-7XHZ\]](https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm[perma.cc/CP9V-7XHZ]) (last visited Aug. 2, 2024). Furthermore, decisions by Republican Senators to refuse to vote on Obama’s appointment of Merrick Garland while then voting to confirm Amy Coney Barrett demonstrates the politicization of the Supreme Court appointment process. Chelsey Cox, *Fact Check: Senate Republicans Moving to Confirm Trumps’ Supreme Court Nominee but Blocked Obama’s*, USA TODAY (Oct. 21, 2020, 2:03 PM), [https://www.usatoday.com/story/news/factcheck/2020/10/20/fact-check-gop-senators-blocked-nomination-merrick-garland-2016/5916555002/\[perma.cc/2WXY-7ELR\]](https://www.usatoday.com/story/news/factcheck/2020/10/20/fact-check-gop-senators-blocked-nomination-merrick-garland-2016/5916555002/[perma.cc/2WXY-7ELR]).

⁶⁵ Amanda Garrett, *For Americans, Trump’s Assassination Attempt Seeds New Fear About Violent Rhetoric*, USA TODAY (July 15, 2024, 10:39 PM), [https://www.usatoday.com/story/news/politics/elections/2024/07/15/who-is-to-blame-for-american-violent-political-rhetoric-civility/74418818007/\[perma.cc/4LJ6-76SS\]](https://www.usatoday.com/story/news/politics/elections/2024/07/15/who-is-to-blame-for-american-violent-political-rhetoric-civility/74418818007/[perma.cc/4LJ6-76SS]).

1. Have we passed “Peak Wokeness”?

As discussed in the previous section, there is strong evidence to suggest the existence of growing political polarization in recent years. However, there is one aspect of political salience that may be on the decline. “Wokeness” started to gain widespread attention in 2011 and gained popularity until around 2022 when some claim America hit “peak wokeness” after which there was a steep decline.⁶⁶ The term “woke” was originally used by African Americans to refer to the practice of being alert to racial and social injustices.⁶⁷ Starting around 2010, the term became more expansive and was applied to various progressive causes as it gained mainstream popularity.⁶⁸ Today, Webster’s dictionary defines “woke” as “aware of and actively attentive to important societal facts and issues (especially issues of racial and social justice).”⁶⁹

While difficult to prove, many commentators have pointed to evidence to support the claim that “peak wokeness” has already occurred and that we are now in a state of decline. A 2023 analysis of tweets found sharp declines for numerous terms related to the social justice movement such as “racism/racist,” “xenophobia/xenophobic,” “homophobia/homophobic,” and “ableism/ableist.”⁷⁰ A similar 2023 analysis of *New York Times* articles found a decrease in the terms “sexism,” “patriarchy,” “mansplaining,” “male privilege,” “racism/racist/racists,” “systemic

⁶⁶ Shelby Kearns, *ANALYSIS: Wokeness Has Peaked, but It’s Not Going Anywhere, Experts Argue*, CAMPUS REFORM (Mar. 6, 2023, 11:30 AM), <https://www.campusreform.org/article/analysis-woke-ness-has-peaked-but-its-not-going-anywhere-experts-argue/21465>[perma.cc/U8QQ-PPNZ].

⁶⁷ Mabinty Quarshie, *What Is the Meaning of ‘Woke’? Once a Term Used by Black Americans, It’s Now a Rallying Cry for GOP*, USA TODAY (Mar. 9, 2023 5:00 AM), <https://www.usatoday.com/story/news/politics/2023/03/09/what-is-woke-meaning/11425775002/>[perma.cc/4ED9-JQMH].

⁶⁸ Matthew Crowley, *Political Definitions for ‘Woke’ Are All Over the Place*, POYNTER (Mar. 8, 2023), <https://www.poynter.org/fact-checking/2023/what-does-woke-mean-definition/>[perma.cc/2H3J-MGYW].

⁶⁹ *Woke*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/woke>[perma.cc/XK9Z-P5FG] (last visited Aug. 4, 2024).

⁷⁰ David Rozado, *Is the Great Awakening Really Winding Down? Part I: Some Multifaceted Evidence from Twitter Content*, ROZADO’S VISUAL ANALYTICS (Feb. 24, 2023), <https://davidrozado.substack.com/p/taw>[perma.cc/87UF-8BVA].

racism,” “white privilege,” “gay rights,” “injustice,” “cultural appropriation,” “social justice,” and “equality.”⁷¹ The same trajectory appears to be present in academia as well, where social justice-oriented research is on the decline.⁷²

There is also anecdotal evidence to support the claim that we are now post-“peak wokeness.” Overall support for the Black Lives Matter Movement dropped significantly from 2020 to 2023.⁷³ And corporations have apparently noticed this trend as they have become much quieter on social justice issues.⁷⁴ Some corporations have experienced dramatic blowback against their efforts to promote progressive causes. In early 2023, after Bud Light utilized a transgender spokesperson in a commercial, its sales fell 28%.⁷⁵ In 2023, Disney CEO Bob Iger acknowledged that inserting progressive social messages into films is largely to blame for Disney’s poor performance.⁷⁶ In 2023 and 2024, many DEI positions were cut in response to growing anti-DEI sentiment.⁷⁷ Some corporations are even facing novel legal liability for their progressive actions. For example, the judge in the Elon Musk-funded lawsuit by actress Gina Carano against Disney rejected Disney’s motion to dismiss.⁷⁸ Carano, after sharing a tweet expressing a view that people

⁷¹ *Id.*

⁷² Kearns, *supra* note 66.

⁷³ Juliana Menasce Horowitz, Kiley Hurst & Dana Braga, *Support for the Black Lives Matter Movement Has Dropped Considerably from its Peak in 2020*, PEW RSCH. CTR. (June 14, 2023), <https://www.pewresearch.org/social-trends/2023/06/14/support-for-the-black-lives-matter-movement-has-dropped-considerably-from-its-peak-in-2020/> [https://perma.cc/X38R-5WTB].

⁷⁴ See, e.g., David Christopher Kaufman, *Hollywood Has Reached Peak Woke*, TELEGRAPH (Jan. 2, 2024, 4:42 PM), <https://www.telegraph.co.uk/us/comment/2024/01/02/hollywood-disney-bob-iger-woke-oscars-awards-2024/> [https://perma.cc/D4LF-G329].

⁷⁵ Jura Liaukonyte, Anna Tuchman & Xinrong Zhu, *Lessons from the Bud Light Boycott, One Year Later*, HARV. BUS. REV. (Mar. 20, 2024), <https://hbr.org/2024/03/lessons-from-the-bud-light-boycott-one-year-later> [https://perma.cc/7QDD-QPP9].

⁷⁶ Joshua Chaffin, *Was This the Year of Peak Woke?*, FIN. TIMES (Dec. 29, 2023), <https://www.ft.com/content/6ed60144-85d5-4f06-9f65-b85e8aa403ee> [https://perma.cc/BPL5-VLZB].

⁷⁷ Bruce Crumley, *Diversity Policy Backlash Drives Cuts to DEI Staff*, INC. (Feb. 20, 2024), <https://www.inc.com/bruce-crumley/diversity-policy-backlash-drives-cuts-to-dei-staff.html> [https://perma.cc/6DNR-JJF9].

⁷⁸ Paul Tassi, *Gina Carano’s ‘Mandalorian’ Firing Lawsuit is Actually Moving Forward*, FORBES (July 26, 2024, 9:05 AM), <https://www.forbes.com/sites/paultassi/2024/07/26/gina-caranos-mandalorian-firing-lawsuit-is-actually-moving-forward/> [https://perma.cc/D5W3-YQFZ].

should not hate others for their political beliefs,⁷⁹ was fired by Disney for a lack of “respect, decency, integrity, and inclusion.”⁸⁰

In 2022, Florida Governor Ron DeSantis won reelection by twenty points in what was formerly a swing state by primarily running on being anti-woke, focusing on his “Stop WOKE Act” and pronouncing that Florida is where “woke goes to die.”⁸¹ The NCAA adopted a more restrictive policy regarding transgender athletes.⁸² Incidents such as the murder of George Floyd, the Breonna Taylor killing, and the police-shooting of Michael Brown, which resulted in the “hands up don’t shoot” rallying cry, received widespread media coverage, but there has not been such a high-profile killing by police since 2022. The mocking of woke views in pop culture is becoming more mainstream.⁸³

People who were previously “cancelled” are now coming back. For example, Louis C. K. was dropped by Netflix, HBO, and FX in 2017 but was awarded a Grammy in 2022.⁸⁴ Another

⁷⁹ The complete Tweet read:

Jews were beaten in the streets, not by Nazi soldiers but by their neighbors...even by children. ‘Because history is edited, most people today don’t realize that to get to the point where Nazi soldiers could easily round up thousands of Jews, the government first made their own neighbors hate them simply for being Jews. How is that any different from hating someone for their political views?’

Chelsea Rocks, *What Did Gina Carano Say? Why Actor Has Been Fired from Disney+ Show The Mandalorian After ‘Abhorrent’ Instagram Post – Her Response*, SCOTSMAN (Mar. 4, 2021, 8:23), <https://www.scotsman.com/arts-and-culture/film-and-tv/what-did-gina-carano-say-why-actor-has-been-fired-from-disney-show-the-mandalorian-after-abhorrent-instagram-post-and-her-response-3131574> [https://perma.cc/4M22-4DTP].

⁸⁰ Tassi, *supra* note 78.

⁸¹ Greg Allen, *Eyeing a Run for President, Ron DeSantis Wants to ‘Make America Florida,’* NPR (Mar. 6, 2023, 6:00 AM), <https://www.npr.org/2023/03/06/1160724251/florida-governor-ron-desantis-president> [https://perma.cc/6JKZ-S4UE].

⁸² Adia Robinson, *NCAA Criticized for Changing Policy on transgender Athletes*, ABC NEWS (Jan. 21, 2022, 11:05 AM), <https://abcnews.go.com/Sports/ncaa-criticized-changing-policy-transgender-athletes/story?id=82380905>. [https://perma.cc/Y8TS-3QZN]

⁸³ Oliver Traldi, *Peak Woke?*, CITY J. (July 6, 2022) <https://www.city-journal.org/article/peak-woke> [https://perma.cc/NFW3-8V5Z] (referencing television shows such as *Cobra Kai*, *White Lotus*, *The Chair*, and *The Boys* with high viewership and that “mock woke views and practices . . .”).

⁸⁴ Rachael Healy, *‘The Outrageousness of What Louis CK Did Is Totally Lost’: the Film About the Backlash Faced by His Accusers*, GUARDIAN (Mar. 12, 2024, 10:46), <https://www.theguardian.com/stage/2024/mar/12/louis-ck-sexual-misconduct-sorry-not-sorry-backlash> [https://perma.cc/D48T-ZPQQ].

example is comedian Shane Gillis, who was fired from Saturday Night Live in 2019 for a joke he made but was then featured as the guest host on Saturday Night Live in 2024.⁸⁵ The top four highest grossing comedians of 2023 could all be described as anti-woke.⁸⁶

While much of this evidence is anecdotal, it does combine to make a strong case. Much less clear is how the alleged decline of wokeness fits into the overall existence of increasing political partisanship, as it is not necessarily inconsistent with increased political partisanship. Perhaps this only further strengthens the case for partisanship in that one side felt so strongly about the promotion of an ideology that it was able to successfully mobilize against it, promoting often hyperbolic notions regarding its harm.

B. Harm from Lack of Ideological Diversity

The practice of punishing and rewarding law schools in the peer rankings based on political ideology is not only unethical but likely perpetuates further discrimination against conservative law professors.⁸⁷ Unfortunately, conservative law professors are far from the only group negatively affected by this discrimination. The negative externalities likely extend to conservative and liberal law students, conservative law schools, and society in general.

⁸⁵ Jaden Thompson & William Earl, *Shane Gillis Opens 'SNL' Monologue by Addressing Getting Fired from the Show: 'Don't Google That,'* VARIETY (Feb. 24, 2024, 8:47 PM), <https://variety.com/2024/tv/news/shane-gillis-snl-monologue-getting-fired-1235899973/> [<https://perma.cc/ZS3Z-ESWK>].

⁸⁶ Andrew Buss, *Billboard Announces Top 10 Highest Grossing Comics on Tour in 2023*, 800 POUND GORILLA (Dec. 18, 2023), <https://800poundgorillamedia.com/blogs/the-laugh-button/billboard-announces-top-10-highest-grossing-comics-on-tour-in-2023> [<https://perma.cc/U7H4-APRT>] (The top four are Kevin Hart, Dave Chappelle, Bert Kreischer, and Bill Burr.).

⁸⁷ 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.

An extreme lack of ideological diversity in legal academia results in law students who receive an inferior legal education.⁸⁸ A majority of Supreme Court Justices were appointed by Republican presidents,⁸⁹ and many circuit, district, and state supreme court judges are conservative. 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 such 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.⁹⁰ And 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.⁹¹ Furthermore, only being exposed to one side of nuanced issues is harmful as it hinders the ability of one to modify their positions in light of a fair assessment of the strongest arguments from both sides. Finally, law students often learn more from the implicit curriculum than what is explicitly taught.⁹² In this way, lack of diversity in legal education can function more as an indoctrination that downplays the importance of critical thinking, a skill which is crucial to the legal profession.⁹³

⁸⁸ See, e.g., Adam S. Chilton & Eric A. Posner, *An Empirical Study of Political Bias in Legal Scholarship*, 44 J. LEGAL STUD. 277 (2015).

⁸⁹ Currently, Alito, Roberts, Thomas, Gorsuch, Kavanaugh, and Barrett are Republican-appointed, and Sotomayor, Kagan, and Jackson are Democratic-appointed.

⁹⁰ See, e.g., 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).

⁹¹ See, e.g., Roger Clegg, *Toward Intellectual Diversity in Law School*, MINDING CAMPUS (Nov. 7, 2014), <https://www.mindingthecampus.org/2014/11/07/toward-intellectual-diversity-in-law-school/> [https://perma.cc/XU7V-ML5M].

⁹² David Davenport, *Apparently 90% of Harvard Faculty Can Agree on Something: Giving to Democrats*, FORBES (May 7, 2015, 4:48 PM), <https://www.forbes.com/sites/daviddavenport/2015/05/07/apparently-90-of-harvardfaculty-can-agree-on-something-giving-to-democrats/#46c79d771b9d> [https://perma.cc/T7F5-SAUQ].

⁹³ *Id.*

For similar reasons, ideological discrimination in legal academia is harmful to society at large because people in need of legal representation may receive inadequate representation. Additionally, these potential clients may rely on law school rankings to determine which attorney to hire. With the presence of a 53.14-spot disparity based on political ideology, the information relied on contributes to hiring-market inefficiencies.⁹⁴ Unfortunately, all of these systemic harms discussed in this section are made even worse by how the problem is self-perpetuating by the nature of how “teachers tend to recreate the system they know best—the one that produced them.”⁹⁵

C. Employment Discrimination Analogy

To demonstrate the clear inference from the extreme and consistent nature of the disparities uncovered in this research, this section provides an analogy to a more traditional, employment discrimination context. Imagine a large company that every year receives 192 applications for highly desirable employment positions. Every year these hiring decisions are made based on a combination of an objective test and a purely subjective ranking. After an internal email surfaced in which managers of the company explicitly state that they chose not to hire an applicant solely because he was Muslim, the Equal Employment Opportunity Commission conducts an investigation into the company’s ranking system. This investigation discovers that, for the most recent year, the difference between the subjective ranking and the objective ranking between the ten most devout Muslim applicants and the ten most devout Christian applicants was 53.14 spots. Furthermore, a disparity against the Muslim applicants and in favor of the Christian applicants has

⁹⁴ See, e.g., 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).

⁹⁵ 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).

existed every year for the last thirteen years and has been steadily increasing over the last six years. Finally, 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.

An attorney who specializes in employment discrimination would no doubt be elated to represent plaintiffs in such a favorable scenario. The facts are so incredibly one-sided in pointing to discrimination that it is difficult to even imagine what defense could be offered by the company. The highly analogous nature of this hypothetical to the levels of ideological discrimination in legal academia are clear. Therefore, just as the evidence for discrimination in this employment hypothetical is so strong as to overwhelm even the most skeptical observer, the evidence for ideological discrimination in legal academia is obvious to any neutral observer. And, just as in the employment hypothetical, a highly skeptical observer is free to hope and wish for some as-of-yet unknown, benign explanation to emerge. But until it does, the conclusion that pervasive, systemic discrimination is the cause of the disparities is the only logical conclusion permitted by the facts.⁹⁶

D. Potential Non-Discriminatory Explanations

The previous, 2023 study posited that the most likely explanation for the extreme ideological disparities in the peer rankings was the existence of overall bias—whether subconscious or otherwise—in those that vote in the peer rankings.⁹⁷ However, there are alternative, nondiscriminatory explanations that need to be considered. This section will examine

⁹⁶ To be clear, this section is not implying that ideological discrimination in legal academia is illegal just like the employment discrimination in the hypothetical would be illegal. Race is a protected class, and political ideology generally is not. Furthermore, while there is significant evidence to suggest that applicants for faculty positions in legal academia are discriminated against based on their political ideology, even if political ideology were a protected class, the extreme disparities in the rankings discovered in this research do not directly relate to employment decisions (although there is other evidence for this). The purpose of this analogy is only to illustrate how emphatically the evidence points to discrimination.

⁹⁷ Conklin, *supra* note 1, at 99.

seven such explanations. While all could potentially provide a nondiscriminatory explanation, they lack explanatory power when applied to the reality of legal academia and the findings of these rankings studies. Therefore, the initial hypothesis proposed in the 2023 study, that race is the most likely explanation for the extreme ideological disparities in the peer rankings, is strengthened.

1. Willingness to Game the System

One potential, nondiscriminatory explanation for the consistent results of ideological disparities in the peer rankings is 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 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. 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 in an effort to improve their overall rankings:

- Pay underperforming graduates to not take the July bar exam to increase their first-time bar passage rate;⁹⁸

⁹⁸ BARTON, *supra* note 18, at 151.

- Temporarily hire unemployable graduates to increase the employment rate of graduating students;⁹⁹
- Prefer applicants with high undergraduate GPAs from mediocre colleges to applicants with mediocre GPAs from exceptional undergraduate colleges in order to improve the law school's selectivity score;¹⁰⁰
- 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;¹⁰¹
- Blatantly falsify GPA and LSAT scores from entering students to increase the selectivity score.¹⁰²

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 liberal law schools used in this study do not engage in these practices, but the conservative 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.

This alternative explanation is logically sound. However, 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

⁹⁹ David Lat, *In Defense of Law Schools Hiring Their Own Graduates*, ABOVE THE L. (Mar. 28, 2013, 6:06 PM), <https://abovethelaw.com/2013/03/in-defense-of-law-schools-hiring-their-own-graduates/> [https://perma.cc/9BYR-NNCS].

¹⁰⁰ Stake, *supra* note 15, at 232.

¹⁰¹ *Id.* at 241.

¹⁰² Mangan, *supra* note 17.

speculative. Regardless, there is no reason to believe that conservative law schools are more likely to engage in these practices that game the system than liberal 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 data—could potentially result in extreme disparities, but the notion that the conservative 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.

2. Quality Faculty

U.S. News & World Report had plans to implement a factor (called the Scholarly Impact Ranking) into the overall rankings that covered faculty scholarship for each law school.¹⁰³ Perhaps due to the COVID-19 pandemic, this plan was never implemented.¹⁰⁴ Therefore, the current law school rankings do not directly measure 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.

¹⁰³ *US News & World Reports Scholarly Impact Project*, HEIN ONLINE, <https://help.heinonline.org/kb/us-news-world-reports-scholarly-impact-project/> [<https://perma.cc/B4XQ-S4J4>] (last visited Aug. 4, 2024).

¹⁰⁴ *Id.*

This is because, as mentioned from the 2015 study, conservative law professors are disproportionately *better* scholars, not worse.¹⁰⁵

3. Law Journal Quality

There is evidence to suggest that a law school's flagship law journal may affect its peer ranking while not directly contributing to the overall ranking.¹⁰⁶ For those who vote in the law school peer rankings, the prestige of a law school's flagship law journal would be a convenient proxy of quality 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.¹⁰⁷ And indeed, 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.¹⁰⁸ Furthermore, a law school's flagship law journal rank is also an effective predictor of the law school's future overall ranking.¹⁰⁹

The 2023 study found that the flagship law journals from the ten liberal law schools received higher rankings relative to their overall law school ranking than did the conservative flagship law journals.¹¹⁰ This remains constant with the law schools in the current 2024 study. Five of the

¹⁰⁵ 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).

¹⁰⁶ ALFRED L. BROPHY, THE RELATIONSHIP BETWEEN LAW REVIEW CITATIONS AND LAW SCHOOL RANKINGS 16 (Univ. Ala. Pub. L. Rsch. Paper, Paper No. 08–04, 2005), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=868541 [<https://perma.cc/2KEK-L3BK>] (“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.”).

¹⁰⁷ *Id.* at 16–17.

¹⁰⁸ *Id.* at 5.

¹⁰⁹ 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.”).

¹¹⁰ Conklin, *supra* note 1, at 91.

flagship law journals at the liberal law schools are ranked higher than the school and none of the conservative law schools have a flagship journal ranked higher than the law school.¹¹¹

Therefore, this could explain why the liberal law schools have disproportionately higher peer ranks. After all, most law school faculty are likely acutely aware of law journal rankings, as they play a critical role in where law school faculty choose to publish. However, this one factor inadequately explains the 53.04-spot disparity. Additionally, this result in 2023 and 2024 may be somewhat of an aberration, as this was not the case in 2022 or 2021.¹¹² Finally, given the evidence of ideological discrimination in legal academia generally (and in legal publishing specifically),¹¹³ 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.

4. Use of Promotional Materials

Because peer rankings are a contributing factor to a law school's overall ranking and because of the immense importance of the overall rankings, some law schools distribute promotional materials to voters in an effort to improve their peer rankings.¹¹⁴ Therefore, if the liberal law schools engaged in this practice while the conservative law schools did not, or if the liberal law

¹¹¹ *Washington & Lee Law Journal Rankings*, WASH. & LEE SCH. OF L., (last visited Aug. 2, 2024), <https://managementtools4.wlu.edu/LawJournals/Default.aspx> [<https://perma.cc/CFS8-GCRC>]. However, it should be noted that this is an imperfect metric. This is because the lower an overall law school ranking is—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 numerous specialty law journals also in the rankings. These specialty journals generally do not start to appear in the Washington & Lee rankings until after the top fifty. Therefore, it is easier for the number thirty-ranked law school to have a law journal ranked higher than thirty because at that echelon, it is only competing against one flagship journal from the other schools. But if a law school is ranked number 120, in order for its flagship journal to be ranked higher than 120, it has to compete against the other flagship journals plus all of the specialty journals ranked in the top 120.

¹¹² See Conklin, *supra* note 1, at 87.

¹¹³ See *supra* notes 24–32 and accompanying text.

¹¹⁴ See Stake, *supra* note 15, at 240.

schools were more effective at this practice, part of the disparity found 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 engaged in sending out promotional materials. However, it is highly unlikely that there would be a significant difference in the use of promotional materials 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 concluded, the effect may even be non-existent.¹¹⁵ Consequently, the use of promotional materials is not a viable explanation for the 53.14-spot disparity.

5. More Elite Law Schools in the Liberal Group

A cursory glance at the law schools in the conservative group and the liberal group demonstrates that the liberal law schools are, on average, of a higher ranking in both the peer ranking and overall ranking than the conservative law schools. However, this difference between the liberal group and the conservative group in no way functions as an explanation for the rankings disparity found in this research. This is 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, which is used in this study, is the upward or downward deviation in the peer rankings from the overall rankings.

¹¹⁵ Andrew P. Morriss, *Legal Education Through the Blurry Lens of US News Law School Rankings*, 20 GREEN BAG 2d 253, 257 (2017).

6. Possible Connection Between Law School Ideology and Teaching Effectiveness

It could be argued that there is just something inherent in the conservative law schools that naturally results in an inferior legal education, and that whatever that is, it is not measured in the overall rankings but is readily apparent to those who vote on the peer rankings. While such an explanation could account for a rankings disparity, it is difficult to imagine what such a factor could be. The objective measurements indicate that the conservative law schools are doing *better*, not worse, when it comes to educational achievements as compared to their peer rankings. The notion that there is some significant factor of legal education that is readily visible to the peer voters but does not in any way improve the objective measurements of law school success strains credulity. Such an explanation is further unlikely because the designation of being one of the most conservative law schools is an indication of being more ideologically balanced, not extremely conservative.¹¹⁶

7. Random, Statistical Noise

As with all findings of statistical disparities, there is always the potential explanation that a result is simply the product of random, statistical noise and nothing more.¹¹⁷ And while this could be true of the findings of this study, the extreme, consistent, and rapidly accelerating nature of the disparities combine to make this explanation exceedingly improbable. Furthermore, a cumulative case is made when the rankings data are combined with other evidence of discrimination such as the Harvard emails and the disproportionately low hiring of conservative law professors given their qualifications.¹¹⁸

¹¹⁶ See *supra* notes 43–45 and accompanying text.

¹¹⁷ Conklin, *supra* note 11, at 297.

¹¹⁸ See *supra* notes 24–39 and accompanying text.

VII. PROPOSED SOLUTION TO RANKINGS DISPARITY

The ideological rankings disparity uncovered in this research of 53.14 spots demands a solution. While such a solution to overall ideological discrimination in legal academia is far beyond the scope of this Article, fortunately, there is a simple and effective solution to address much of the rankings problem: peer ranking scores should be excluded as a factor in the overall rankings. Doing so would prevent the discriminatory results of peer scores from affecting the overall rankings.

Even setting aside 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 rank law schools.¹¹⁹ These prospective students likely place far more emphasis on minimizing student debt, small class sizes, campus amenities, passing the bar exam, 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.¹²⁰ Prospective law students likely find this metric far more significant than the peer assessment score, as lawyers and judges hire far more law school graduates than do law school faculty. This is also

¹¹⁹ Haskell Murray, *Peer Reputation Score v. Overall Rank*, L. PROFESSOR BLOG NETWORK (Mar. 31, 2021) (describing how one pre-law professor explains that when his students are informed of how heavily the overall rankings weigh the peer rankings score, they question “why would I care what deans and faculty at other schools think?” Though the peer ranking has since been reduced from 25% to 12%, the fact remains that students simply care very little about this metric.) https://lawprofessors.typepad.com/business_law/2021/03/peer-reputation-score-v-overall-rank.html [<https://perma.cc/X3LY-HRUK>].

¹²⁰ See Morse, *supra* note 7.

convenient because judges and practicing attorneys are more likely to be ideologically diverse than law school faculty.¹²¹

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 students and faculty is a rather circuitous method of achieving increased diversity in the classroom. Even worse, using race as a proxy for diversity of opinion risks perpetuating harmful stereotypes. This is because implicit in the logic that increasing the racial minorities in law professor positions will increase diversity of thought is the belief that different races necessarily think differently—a belief that is at the heart of much white supremacist advocacy.¹²²

Including peer rankings in the overall rankings is not even methodologically sound because the peer assessment rankings are affected by 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 result in a corresponding improvement in the peer rankings, albeit on a delayed timeframe.¹²³ Therefore, the peer assessment score and other factors, such as the bar passage rate and entering student credentials, are collinear terms.¹²⁴ In statistics, when collinear terms exist, it is prudent to remove at least one. Here, the one to remove is clearly the

¹²¹ See Michael Conklin, *Walking on a Wire: The Delicate Balance of Free Speech on College Campuses*, 9 HOUS. L. REV. ONLINE 35, 42–43 (2018).

¹²² See Michael E. Ruane, *A Brief History of the Enduring Phony Theories That Perpetuates White Supremacy*, WASH. POST (Apr. 30, 2019), 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.

¹²³ See Christopher J. Ryan, Jr. & Brian L. Frye, *A Revealed-Preferences Ranking of Law Schools*, 69 ALA. L. REV. 495, 500–01 (2017).

¹²⁴ Christopher J. Ryan, Jr., *Of Law School Rankings, Disparity, and Football*, 110 GEO. L. J. ONLINE 19, 25–26 (2021).

one that is subjective, perpetuates harmful discrimination, and students care the least about.¹²⁵ An additional benefit to using objective factors instead of peer rankings in the overall rankings is that peer rankings are a lagging indicator.¹²⁶ Changes in objective factors, such as entering LSAT scores, immediately impact the rankings, while peer rankings are far less responsive.¹²⁷ Therefore, the objective factors provide more up-to-date and accurate information.

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 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—decisions, in which law school deans and faculty also play a significant role.¹²⁸ Because peer rankings are also a significant factor in the overall rankings, an anti-conservative bias among faculty inflicts a “conservative penalty” in the overall rankings as well.

Some may be surprised to learn of the magnitude of ideological discrimination in law school rankings uncovered in this 2024 study. But the notion that law school deans and faculty consciously (or otherwise) apply a conservative penalty and liberal bonus in their rankings should not be a surprise to those aware of the role political ideology plays in legal academia. The law

¹²⁵ *See id.*

¹²⁶ *See Ryan, supra* note 123, at 506.

¹²⁷ *See id.* at 503.

¹²⁸ *See Phillips, supra* note 24.

school deans and faculty who vote in the peer rankings are overwhelmingly liberal.¹²⁹ And political ideology functions as a powerful prism that affects how the world is perceived.¹³⁰ Just as a conservative 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. Furthermore, prior research such as the 2015 study provide strong evidence for how these disparities are the result of systemic discrimination.¹³¹ And finally, the Harvard emails provide a powerful illustration of the discrimination conservative professors face.

A recent study further demonstrates the willingness of those who participate in the peer rankings to vote based on political preferences. The study found that law schools at historically Black colleges and universities (HBCUs) receive disproportionately high peer rankings despite their objective performance.¹³² For example, in the 2024 rankings that were released in 2023, the disparity between Howard Law School's peer ranking and objective factors in the overall ranking was eighty-seven spots.¹³³ The evidence strongly points to this being the result of increased racial salience, rather than any factor actually related to law school performance.¹³⁴

This Article documents the widespread harm incurred from ideological discrimination in legal academia. The practice negatively affects conservative professors, liberal and conservative law students, and society at large. Fortunately, a simple and effective solution is provided. Removing the peer score from the overall rankings will reduce such harm while providing the benefits of

¹²⁹ See Bonica, *supra* note 26.

¹³⁰ See Jennifer Jerit & Jason Barabas, *Partisan Perceptual Bias and the Information Environment*, 74 J. POL. 672, 672 (2012) (“... people perceive the world in a manner consistent with their political views. The result is a selective pattern of learning in which partisans have higher levels of knowledge for facts that confirm their world view and lower levels of knowledge for facts that challenge them.”).

¹³¹ Phillips, *supra* note 24.

¹³² See Conklin, *supra* note 11, at 308.

¹³³ *Id.* at 287.

¹³⁴ See *id.* at 298–304.

reducing inefficiencies in the hiring market, better informing prospective law students, and contributing to greater diversity in law schools and in legal scholarship. Unfortunately, there is not a correspondingly simple and effective solution for the general problem of ideological discrimination in legal academia. 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 a willingness to pursue solutions. Consequently, it does not appear that there is any reason for optimism that such efforts will be made in legal academia.

This Article will hopefully serve as a powerful catalyst to spark future research in related areas. This could include future efforts to analyze the apparent causal link between societal political partisanship and ideological discrimination in legal academia. Also, future studies that measure other aspects of ideological discrimination could better illuminate the problem. For example, research could be conducted into how a professor's political ideology affects student evaluations, time to acquire tenure, or ability to negotiate a starting salary. Additionally, a quantitative analysis could measure if, after controlling for prestige, those who graduated from more conservative law schools are at a disadvantage when applying for faculty positions at law schools when compared to their counterparts who graduated from more liberal law schools. The present study also provides a valuable framework for measuring the perceptions of law schools relative to their objective performance. This novel methodology could be applied in other areas to uncover potential biases related to a law school's location in a red or blue state, recent negative

press about a school or city, the benefit to having more voting faculty at a given law school,¹³⁵ or even how some law schools may be confused with others.¹³⁶

¹³⁵ There is evidence to suggest that faculty vote in a manner that best improves their school's ranking and diminishes competing school's rankings. For example, in the latest 2024–2025 peer rankings, Yale, Chicago, Columbia, and NYU all received a peer ranking of 4.5 out of 5. This means that, at best, half of the survey respondents ranked these schools a 4 out of 5. It would be highly unlikely that half of all respondents truly believed that these schools were not in the top quintile. Therefore, it is very possible that respondents are voting down other law schools in an effort to improve the standing of their own law school.

¹³⁶ For example, Indiana University Maurer School of Law may be confused with Indiana University McKinney School of Law. University of Washington School of Law may be confused with Washington University School of Law. Boston College may be confused with Boston University. And Penn State Law School may be confused with Penn State Dickinson Law School.