

Unequal Opportunity in Education: How Misplaced Meritocracy Falls Short of Achieving the American Dream

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Code Sections Affected

Business and Professions Code §§ 6600, 6601, 6602, 6603 (new).
AB 1312 (Low); held in Senate Appropriations.

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* J.D. Candidate, University of the Pacific, McGeorge School of Law, to be conferred December 2020; B.S. Marketing, The University of Utah, 2015. I would first like to thank my parents, James and Nancy, for their unwavering support, unconditional love, fresh cooked meals, and influence in my decision to pursue a legal education. We have come a long way, Dad, since a four-year-old me was sitting at our table, pointing out countries to you on a globe. I would also like to thank Peter and Paul, for their sound intellect and beacon of insight during my periods of writer’s block. Lastly, I would like to dedicate this article to my late papou Christopher Grellas, for immigrating to America and achieving the American Dream, so generations to come can benefit from his legacy.

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“It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way. . . .”¹

I. INTRODUCTION

On March 12, 2019, the United States Justice Department exposed the largest college admissions scandal in history.² For the past eight years, William “Rick” Singer allegedly colluded with university athletic coaches, administrators, and several parents to secure his clients’ admission to top-tier universities.³ The conspiracy unfolded into three parts: cheating on tests, bribing university officials, and money laundering.⁴

Throughout the scandal, many wealthy parents across the United States paid Singer roughly \$25 million in total to get their children admitted through Singer’s “side door.”⁵ One of these wealthy parents is Lori Loughlin—an actress famous for her role in the series *Full House*.⁶ Loughlin faces up to forty years in prison

1. CHARLES DICKENS, *A TALE OF TWO CITIES* 1 (Dover Thrift ed., Dover Publications 1998) (1859).

2. Jennifer Medina, Katie Benner & Kate Taylor, *Actresses, Business Leaders and Other Wealthy Parents Charged in U.S. College Entry Fraud*, N.Y. TIMES (Mar. 12, 2019), <https://www.nytimes.com/2019/03/12/us/college-admissions-cheating-scandal.html> (on file with *The University of the Pacific Law Review*).

3. Press Release, U.S. Attorney’s Office, Arrests Made in Nationwide College Admissions Scam: Alleged Exam Cheating & Athletic Recruitment Scheme (Mar. 12, 2019), *available at* <https://www.justice.gov/usao-ma/pr/arrests-made-nationwide-college-admissions-scam-alleged-exam-cheating-athletic> (on file with *The University of the Pacific Law Review*).

4. *Id.*

5. *Id.*; Gregory Korte, ‘So That’s What He Was Up to’: Rick Singer, Architect of Scam, Peddled a ‘Side Door’ to College Admissions, USA TODAY (Mar. 12, 2019), <https://www.usatoday.com/story/news/education/2019/03/12/college-scam-rick-singer-william-singer-felicity-huffman-lori-loughlin/3142687002/> (on file with *The University of the Pacific Law Review*).

6. Martha Ross, *Lori Loughlin: New Threat Could Come from Ex-USC Coach Who Helped Fake Olivia*

for conspiracy charges because she allegedly posed her daughters as crew team recruits to get them admitted to the University of Southern California (“USC”).⁷

As a result of the admissions scandal, several California assembly members have proposed modifications to the college admissions system.⁸ The need for reform is clear; “For every student admitted through bribery, there was an honest and talented student that was denied an opportunity to go to college.”⁹ Michael Wang is one of the talented students denied an opportunity to attend the college of his dreams.¹⁰

Stanford and seven out of eight Ivy League schools rejected Wang—who ranked second in his class and scored in the ninety-ninth percentile on his SAT.¹¹ Wang is also a well-rounded student; he competed in national speech and debate competitions; and he sang at President Obama’s 2008 inauguration.¹² Although he excelled in school and earned numerous accolades, these achievements were not enough to gain admission to almost all of the schools he applied to.¹³

AB 1312 regulates the practices of professional college consultants to ensure equal opportunity for all students applying to colleges.¹⁴ California has taken steps to provide effective educational counseling for high school students by regulating the practices of counselors.¹⁵ Although California enacted AB 1312 to bring transparency to the college consultant profession, societal and institutional obstacles will impede the law’s ability to accomplish its goal: equal opportunity.¹⁶

II. LEGAL BACKGROUND

Historically, state and federal governments have not classified independent

Jade’s Athletic Profile, MERCURY NEWS (May 15, 2019), <https://www.mercurynews.com/2019/05/15/lori-loughlin-new-threat-could-come-from-ex-usc-coach-who-helped-fake-olivia-jades-athletic-profile/> (on file with *The University of the Pacific Law Review*).

7. Press Release, *supra* note 3; Ross, *supra* note 6.

8. Larry Gordon, *California Legislators Seek Reforms After College Admissions Scandal*, ED SOURCE (Mar. 28, 2019), <https://edsources.org/2019/california-legislators-seek-reforms-after-college-admissions-scandal/610525> (on file with *The University of the Pacific Law Review*).

9. *Id.*

10. Abby Jackson, *A Perfect ACT Score Couldn’t Get This Student into Yale, Princeton, or Stanford, and He Says It’s Because He’s Asian-American*, BUSINESS INSIDER (June 1, 2015), <https://www.businessinsider.com/michael-wang-says-ivy-league-discriminates-against-asians-2015-5> (on file with *The University of the Pacific Law Review*).

11. *See id.* (stating that Wang was denied from “every Ivy League school except for the University of Pennsylvania”), and Erin Nicole Celletti, *What Is an Ivy League School? Probably Not What You Think*, NICHE, <https://www.niche.com/blog/what-is-an-ivy-league-school/> (last updated Nov. 16, 2018) (on file with *The University of the Pacific Law Review*) (listing eight schools as members of the Ivy League).

12. Jackson, *supra* note 10.

13. *Id.*

14. ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 2 (May 17, 2019).

15. *Infra* Part II.

16. *Infra* Part IV.

educational consultants as a specialized professional group.¹⁷ The United States Bureau of Labor Statistics' *Occupational Outlook Handbook* ("OOH") outlines the duties and education requirements for various occupations.¹⁸ The OOH's "counselor" category includes a catch-all subcategory covering independent college consultants.¹⁹ The OOH labels all other counselors under the "other educational services; state, local and private" subcategory.²⁰ However, the subcategory's employment projection data is undistinguished from the profession as a whole because the OOH does not separate new counselor career sectors from the general group.²¹

Individual states set their own requirements and duties for their school counselors.²² Section A presents the requirements to become a school counselor.²³ Section B examines the role of school district counselors.²⁴ Section C discusses current California legislation regarding the registration and licensing of regulated professions.²⁵

A. Requirements to Become a School Counselor

The OOH provides an overview of generally held education requirements for school counselors.²⁶ However, each state must determine its own certification process and educational requirements for its school counselors.²⁷ At a minimum, most states require a master's degree in school counseling and a state-issued counseling credential.²⁸ Additionally, some states require counselors to intern at

17. *How to Become a College Planning Consultant*, ENTREPRENEUR (Feb. 1, 2008), <https://www.entrepreneur.com/article/190442> (on file with *The University of the Pacific Law Review*).

18. See generally U.S. DEP'T OF JUSTICE BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK (last updated Oct. 24, 2017), <https://www.bls.gov/ooh/a-z-index.htm> (on file with *The University of the Pacific Law Review*) (listing numerous professions included in the OOH).

19. *Id.*

20. U.S. DEP'T OF JUSTICE BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK, 2017 WL 5071203 (database updated Nov. 2018) (on file with *The University of the Pacific Law Review*).

21. See U.S. DEP'T OF JUSTICE BUREAU OF LABOR STATISTICS, OCCUPATIONAL EMPLOYMENT STATISTICS, available at [https://www.bls.gov/oes/current/oes211012.htm#\(1\)](https://www.bls.gov/oes/current/oes211012.htm#(1)) (last updated Mar. 29, 2019) (on file with *The University of the Pacific Law Review*) ("estimates for detailed occupations do not sum to the totals because the totals include occupations not shown separately").

22. U.S. DEP'T OF JUSTICE BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK, available at <https://www.bls.gov/ooh/community-and-social-service/school-and-career-counselors.htm#tab-4> (last updated Apr. 12, 2019) (on file with *The University of the Pacific Law Review*).

23. *Infra* Section II.A.

24. *Infra* Section II.B.

25. *Infra* Section II.C.

26. U.S. DEP'T OF JUSTICE BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK, 2017 WL 5071203.

27. See *id.* (explaining that some states require a master's degree, a license, or both).

28. See U.S. DEP'T OF JUSTICE BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK, *supra* note 22 ("nearly all states and the District of Columbia require school counselors to have a master's degree in school counseling or a related field").

public schools before graduating from a master's degree program.²⁹ The supervised experience period gives interns a chance to perform a school counselor's full duties with assistance from licensed school counselors.³⁰ Furthermore, all public school counselors must have a state-issued credential to practice in the supplying state.³¹

In California, a public school counselor must have a Clear Credential to work as a school district counselor.³² The Clear Credential is a state-issued license specializing in school counseling.³³ The California Commission on Teacher Credentialing outlines the six requirements to earn a Clear Credential.³⁴ Candidates must have a baccalaureate degree from an accredited university and complete a graduate degree specializing in school counseling.³⁵ After meeting the educational requirements, applicants must obtain a recommendation from a California college or university with an approved pupil personnel services program.³⁶ Next, applicants must pass The California Basic Educational Skills Test.³⁷ Finally, the applicant must complete a background check.³⁸

Pursuant to the Teacher Preparation Law of 1970, all public school counselors must specialize in pupil personnel services.³⁹ The School Counseling Credential authorizes a license holder to create and implement a comprehensive school counseling program.⁴⁰ The program can include personal and social, career; and higher academic achievement for all students as described in the

29. U.S. DEP'T OF JUSTICE BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK, 2017 WL 5071203.

30. Compare OCCUPATIONAL OUTLOOK HANDBOOK, *supra* note 28 (explaining that “nearly all states and the District of Columbia require school counselors to have a master’s degree in school counseling or a related field”), with *School Counselor Intern*, SAN JOAQUIN COUNTY OFFICE OF EDUCATIONAL FOUNDATION (Aug. 27, 2015), available at <https://www.edjoin.org/Home/JobPosting/722490> (on file with *The University of the Pacific Law Review*) (describing how a school counselor intern “provides services to pupils through consultation, individual and group counseling, and classroom involvement” and “assists pupils in making academic progress consistent with their abilities”).

31. OCCUPATIONAL OUTLOOK HANDBOOK, 2017 WL 5071203.

32. *State Certification Requirements*, AMERICAN SCH. COUNSELOR ASSN., <https://www.schoolcounselor.org/school-counselors-members/careers-roles/state-certification-requirements> (last updated Nov. 2018) (on file with *The University of the Pacific Law Review*).

33. STATE OF CALIFORNIA COMM’N ON TEACHER CREDENTIALING, PUPIL PERSONNEL SERVICES CREDENTIAL FOR INDIVIDUALS PREPARED IN CALIFORNIA, available at <https://www.ctc.ca.gov/docs/default-source/leaflets/cl606c.pdf?sfvrsn=0> (last visited June 23, 2019) (on file with *The University of the Pacific Law Review*).

34. *Id.*

35. *Id.*

36. *Id.*

37. STATE OF CALIFORNIA COMM’N ON TEACHER CREDENTIALING, BASIC SKILLS REQUIREMENT, available at <https://www.ctc.ca.gov/docs/default-source/leaflets/cl667.pdf?sfvrsn=40> (last visited June 23, 2019) (on file with *The University of the Pacific Law Review*).

38. STATE OF CALIFORNIA COMM’N ON TEACHER CREDENTIALING, PUPIL PERSONNEL SERVICES CREDENTIAL FOR INDIVIDUALS PREPARED IN CALIFORNIA, *supra* note 33.

39. *Id.*; CAL. CODE REGS. § 80049.1(a)(1)–(4) (West 2019) (on file with *The University of the Pacific Law Review*).

40. CAL. CODE REGS. § 80049.1(a)(1).

California Education Code.⁴¹

B. Duties of a School District Counselor

After obtaining a Clear Credential, California permits a school counselor to create and implement comprehensive counseling programs.⁴² According to the OOH, school counselors assist students in developing the academic and social skills necessary to succeed in school.⁴³ At the high school level, counselors provide students with academic advising and career planning.⁴⁴ School counselors also advocate for student academic achievement.⁴⁵

California law authorizes each school district to provide comprehensive educational counseling to students through school counselors.⁴⁶ Counselors can develop and implement programs encouraging academic and personal success for all students, including those from low-income families.⁴⁷ Further, school counselors can help pupils plan for admittance and success in higher education programs.⁴⁸ Academic planning strategies include advising students on classes to take based on the student's needs and abilities, preparation for standardized testing, and help with financial aid.⁴⁹ The California Education Code encourages counselors to provide the opportunities for students to meet and discuss eligibility for admission to a college or university.⁵⁰

C. California's Current Regulation Process for Professionals

The Department of Consumer Affairs ("DCA") functions as a comprehensive licensing entity and regulator.⁵¹ The DCA has the authority under The Consumer Affairs Act to protect consumers from deceptive practices that harm the general welfare.⁵² This section discusses the DCA's authority to regulate professional licensing under the California Business and Professions Code.⁵³ Subsection 1

41. *Id.* § 80049.1(a)(1); CAL. EDUC. CODE § 49600(a)–(c) (West 2018).

42. STATE OF CALIFORNIA COMM'N ON TEACHER CREDENTIALING, PUPIL PERSONNEL SERVICES CREDENTIAL FOR INDIVIDUALS PREPARED IN CALIFORNIA, *supra* note 33.

43. U.S. DEP'T OF JUSTICE BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK, 2017 WL 5071203.

44. *Id.*

45. STATE OF CALIFORNIA COMM'N ON TEACHER CREDENTIALING, PUPIL PERSONNEL SERVICES CREDENTIAL FOR INDIVIDUALS PREPARED IN CALIFORNIA, *supra* note 33.

46. CAL. EDUC. CODE § 49600(a).

47. *Id.* § 49600(c)(2).

48. *Id.* § 49600(d)(4).

49. *Id.* § 49600(d)(4).

50. *Id.* § 49600(e)(3).

51. DEPARTMENT OF CONSUMER AFFAIRS, <https://www.dca.ca.gov/> (last visited June 23, 2019) (on file with *The University of the Pacific Law Review*).

52. CAL. BUS. & PROF. CODE § 300 (West 2019); CAL. BUS. & PROF. CODE § 301 (West 2019).

53. *Infra* Section II.C.

reviews the professional licensing process.⁵⁴ Subsection 2 discloses the DCA's duties when regulating professional standards.⁵⁵ Subsection 3 examines the DCA's authority to suspend or revoke a professional license.⁵⁶

1. Professional Licensing Process

The DCA licenses “more than 3.9 million [professionals] in more than 280 license types. . . .”⁵⁷ The DCA provides licenses for many types of professionals: attorneys, accountants, professional fiduciaries, and immigration consultants.⁵⁸ An applicant must submit license applications exclusively online using the DCA's BreEZe Online Services (“BreEZe”) to either apply for a new license or renew an existing license.⁵⁹

2. Regulation of Professional Standards

The DCA promotes ethical business conduct and investigates matters affecting consumers' interests.⁶⁰ For each license type, the DCA establishes boards to regulate the licensees.⁶¹ The boards regulate licensees engaging in activities and conduct influencing the public health, safety, and welfare.⁶² The boards—along with the Legislature—determine the necessary skills, qualifications, and performance level the licensees must follow to safely and effectively provide services to the public.⁶³ To ensure compliance with the Business and Professions Code, boards periodically evaluate licensees and registrants.⁶⁴ A board investigates and provides a means for disciplining the licensee when an allegation of unprofessional conduct, unlawful activity, or fraudulent action arises.⁶⁵

54. *Infra* Section II.C.1.

55. *Infra* Section II.C.2.

56. *Infra* Section II.C.3.

57. DEPARTMENT OF CONSUMER AFFAIRS, *supra* note 51.

58. AB 1312, 2019 Leg. 2019–2020 Sess. (Cal. 2019) (as amended on May 17, 2019, but not enacted).

59. *See* DEPARTMENT OF CONSUMER AFFAIRS, DCA BREZE ONLINE SERVICES, https://www.breeze.ca.gov/datamart/mainMenu.do;jsessionid=-KL-tOwwXxlVsaWrgfH_KexjIBV7uE4zx7mFvMua.dca-fp-98-o-24 (last visited June 23, 2019) (on file with *The University of the Pacific Law Review*) (explaining the DCA's licensing process); *see also* Letter from DCA's BreEZe Online Services to Christy Grellas, Staff Writer, *The University of the Pacific Law Review* (July 15, 2019) (on file with *The University of the Pacific Law Review*) (clarifying that BreEZe is not an acronym).

60. CAL. BUS. & PROF. CODE § 310(d)–(g) (West 2019).

61. CAL. BUS. & PROF. CODE § 101.6 (West 2019).

62. *Id.* § 101.6.

63. *Id.* § 101.6.

64. *Id.* § 101.6.

65. *Id.* § 101.6.

3. Suspension or Revocation of a License

Under the California Business and Professions Code, boards have the authority to develop criteria to consider when disciplining a licensee.⁶⁶ The DCA’s duty is to respond to consumer complaints concerning its licensees and review alleged unfair or deceptive acts and code violations.⁶⁷ Through BreEZe, a person who believes the licensee has acted in an unfair, deceptive, or violative manner can file a complaint and check the complaint’s status.⁶⁸ A board can suspend, revoke, or deny a license when the licensee commits a wrongful act or crime related to the profession.⁶⁹ Further, the DCA may disqualify applicants if they acted with dishonesty, fraudulence, or deceit to benefit themselves or harm others.⁷⁰

III. AB 1312

AB 1312, the College Consultants Act, strives to make the college admissions process transparent by holding private college consultants accountable for their services.⁷¹ The College Consultants Act requires the Secretary of State—along with the DCA—to recommend an online registration process for private college consultants and college consulting firms.⁷² The registration process must be publicly available on the Secretary of State’s website.⁷³ Further, the process requires every independent college consultant to pay a reasonable registration fee.⁷⁴

AB 1312 defines a college consultant as a person or business who receives \$5,000 or more in annual income from assisting clients with college applications.⁷⁵ Additionally, AB 1312 requires the DCA to create the College Consulting Advisory Task Force (“Task Force”).⁷⁶ Public and private sector representatives with professional education experience will comprise the Task Force.⁷⁷ By January 2022, these representatives must submit recommendations to the Legislature about the best industry practices and actions that the Legislature should take to regulate the industry.⁷⁸

66. CAL. BUS. & PROF. CODE § 481(a) (West 2019).

67. CAL. BUS. & PROF. CODE § 325 (West 2017).

68. DEPARTMENT OF CONSUMER AFFAIRS, DCA BREEZE ONLINE SERVICES, *supra* note 59.

69. CAL. BUS. & PROF. CODE § 490(a) (West 2011).

70. CAL. BUS. & PROF. CODE § 480(a)(2) (West 2019).

71. ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 2 (May 17, 2019).

72. AB 1312, 2019 Leg. 2019–2020 Sess. (Cal. 2019) (as amended on May 17, 2019, but not enacted).

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

IV. ANALYSIS

Assembly Member Evan Low introduced AB 1312 to mitigate systemic inequality in the college admissions process.⁷⁹ Section A analyzes the societal norms hindering AB 1312's ability to effectively regulate the college consultant profession.⁸⁰ Section B addresses institutional obstacles that run counter to AB 1312's purpose.⁸¹ Section C suggests a path to achieve AB 1312's goals.⁸² Section D examines whether AB 1312 can overcome misplaced meritocracy to better provide an equal opportunity for higher education.⁸³ Section E discusses steps Californians can take to ensure AB 1312 reaches a successful outcome.⁸⁴

A. Societal Obstacles Facing AB 1312

AB 1312 acknowledges that the college admissions scandal exposed inequalities in the admissions process.⁸⁵ Three key societal elements contributed to the scandal: parents, independent college consultants, and socioeconomic status.⁸⁶ Subsection 1 discusses the role parents play in the current college admissions system.⁸⁷ Subsection 2 examines the practices of college consultants.⁸⁸ Subsection 3 analyzes socioeconomic obstacles facing college applicants.⁸⁹

1. Financially Elite Parents

AB 1312 regulates the college consultant profession, but is silent as to the role a consultant's clients play in the admissions process.⁹⁰ Parents charged with fraud in the college admissions scandal greatly outnumbered the number of consultants and university faculty charged with the same crime.⁹¹ Low admission

79. See SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1312, at 2–3 (June 10, 2019) (proposing the bill's purpose to create regulations because cheating denies deserving students' admission to colleges).

80. *Infra* Section IV.A.

81. *Infra* Section IV.B.

82. *Infra* Section IV.C.

83. *Infra* Section IV.D.

84. *Infra* Section IV.E.

85. See ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 2 (May 17, 2019) (“[AB 1312] will also provide support to school counselors in combatting bad actors in the field and better ensure that all students have an equal opportunity for acceptance at a college or university.”).

86. *Infra* Part IV.

87. *Infra* Section IV.A.1.

88. *Infra* Section IV.A.2.

89. *Infra* Section IV.A.3.

90. See SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1312, at 2 (June 10, 2019) (stating the purpose of the bill is to regulate the practices of college consultants).

91. See Press Release, *supra* note 3 (totaling the number of Singer's clients charged at thirty-one while

rates, concern for reputation, and university prestige help explain parents' bribes to obtain college acceptances for their less-than-qualified children.⁹²

There has been a roughly thirty percent increase since 2000 in the number of students the National Center for Education Statistics predicts will attend American universities each year.⁹³ A 2018 study titled *How America Values College* found that seventy-seven percent of parents and students agreed that attending college was part of the American Dream.⁹⁴ The increase in college applicant pool size confirms the American Dream is still alive and well.⁹⁵

Richard Weissbourd, a senior lecturer at Harvard's Graduate School of Education, believes that many parents micromanage their children's college admissions.⁹⁶ Some parents believe that their children need to attend elite colleges and universities.⁹⁷ Further, those parents are more likely to be involved in their child's educational career.⁹⁸ Bragging rights and fear of shaming from others drive parents to have their children apply to elite schools.⁹⁹ However, some studies suggest that students who chose less selective public schools over elite private schools end up comparably well-off in the long run.¹⁰⁰ A parent cannot easily convey the choice to forego prestige in favor of practicality on a bumper sticker.¹⁰¹

It is no surprise parents' growing desire to have their children attend prestigious universities correlates with the four hundred percent increase in

the number of consultants and faculty charged is 18).

92. Anemona Hartocollis & Kate Taylor, *Elite Colleges Announce Record Low Admission Rates in Wake of College Cheating Scandal*, N.Y. TIMES (Mar. 29, 2019), <https://www.nytimes.com/2019/03/29/us/college-admissions-rates.html> (on file with *The University of the Pacific Law Review*).

93. NATIONAL CENTER FOR EDUCATION STATISTICS, BACK TO SCHOOL STATISTICS (2018), <https://nces.ed.gov/fastfacts/display.asp?id=372> (on file with *The University of the Pacific Law Review*).

94. *How America Values College*, SALLIE MAE at 2 (May 25, 2018), available at https://www.salliemae.com/assets/research/HAV/HAV2018_Report.pdf (on file with *The University of the Pacific Law Review*).

95. Compare *id.* at 2 (stating that 77% of participants in the study agree that attending college is a part of the American Dream), with Hartocollis & Taylor, *supra* note 92 (noting that Yale's admission rate decreased 0.4% last year due to a record-high pool of 36,843 applicants, and at USC, the rate dropped to the lowest in the school's history).

96. Amy Joyce, *The College Admissions Scandal Is More Proof That Helicopter Parenting Hurts Kids*, THE WASHINGTON POST (Mar. 12, 2019), https://www.washingtonpost.com/lifestyle/2019/03/12/college-admissions-scandal-is-more-proof-that-helicopter-parenting-hurts-kids/?utm_term=.c2f4c34b1ade (on file with *The University of the Pacific Law Review*).

97. Johns Hopkins Center for Talented Youth, *Parents' Values and Children's Perceived Pressure: Topical Research Series #4*, <https://cty.jhu.edu/research/topical/pressure.html> (last visited May 27, 2019) (on file with *The University of the Pacific Law Review*).

98. See *id.* (explaining parent involvement by parents encouraging their child's high academic performance).

99. Joe Pinsker, *A Scandal Fit for a Win-at-All-Costs Society*, THE ATLANTIC (Mar. 13, 2019), <https://www.theatlantic.com/education/archive/2019/03/college-admissions-scandal-elite-anxieties/584740/> (on file with *The University of the Pacific Law Review*).

100. *Id.*

101. *Id.*

private college consultants in the last fifteen years.¹⁰² To be good parents by today's standards, parents must provide their children with the best opportunities possible.¹⁰³ Parents who can hire an independent college consultant can also put their children ahead of their peers.¹⁰⁴ The dark side to parents academically prioritizing their children over others is that the action leaves many low-income kids behind.¹⁰⁵ If a college consultant demands their client's child have the best teachers, other children who do not get the best teachers suffer.¹⁰⁶ As a consequence of today's meritocracy, being a good parent conflicts with being a good citizen because what benefits one child is not necessarily beneficial to the rest.¹⁰⁷ Wealthy parents are ultimately choosing to be good parents, unknowingly at the expense of true meritocracy.¹⁰⁸

2. The College Consultant Profession

AB 1312 encourages ethical business practices among college consultants by bringing greater transparency to the profession and leveling the playing field.¹⁰⁹ The American School Counselor Association ("ASCA") recommends a 250-to-1 student-to-counselor ratio.¹¹⁰ As of the 2016–2017 school year, the national average was 455-to-1.¹¹¹ In California, there is only one public school counselor

102. Compare *id.* (explaining that parents increasingly wish for their children to attend prestigious universities), with ASSEMBLY FLOOR, THIRD READING of AB 1312, at 1 (May 17, 2019) (noting an increase in college consultants).

103. Joe Pinsker, *How Well-Intentioned White Families Can Perpetuate Racism*, THE ATLANTIC (Sept. 4, 2018), <https://www.theatlantic.com/family/archive/2018/09/white-kids-race/569185/> (on file with *The University of the Pacific Law Review*).

104. Compare *What Do College Counselors Do?*, THE PRINCETON REVIEW, <https://www.princetonreview.com/college-advice/what-do-college-counselors-do> (last visited May 30, 2019) (on file with *The University of the Pacific Law Review*) (proposing that independent college counselors help put students ahead of their peers), with Pinsker, *How Well-Intentioned White Families Can Perpetuate Racism*, *supra* note 103 (reasoning that parents with financial means can afford to hire consultants).

105. Compare Pinsker, *How Well-Intentioned White Families Can Perpetuate Racism*, *supra* note 103 (concluding when affluent parents think about their children, it comes at an expense of children who do not get the best opportunities), with *23 Billion*, EDBUILD, <https://edbuild.org/content/23-billion> (last visited July 10, 2019) (on file with *The University of the Pacific Law Review*) (providing data that twenty percent of students are enrolled in poor, nonwhite districts while five percent are enrolled in equally poor, white districts).

106. Compare THE PRINCETON REVIEW, *supra* note 104 (explaining the duties of independent college consultants as choosing "courses that will best represent [a child's] strengths"), with Pinsker, *How Well-Intentioned White Families Can Perpetuate Racism*, *supra* note 103 (providing the scenario where a parent calls the school to ask that their child is placed with the best teacher as an example).

107. See Pinsker, *How Well-Intentioned White Families Can Perpetuate Racism*, *supra* note 103 (describing the conflict between being a good parent and being a good citizen).

108. *Id.*

109. SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1312, at 3 (June 10, 2019).

110. AMERICAN SCH. COUNSELOR ASSN., <https://www.schoolcounselor.org/> (last visited May 30, 2019) (on file with *The University of the Pacific Law Review*).

111. *Id.*

for every 945 students.¹¹² Many public high school counselors are “just trying to stay afloat” because of their heavy workloads and the extreme student-to-counselor ratios.¹¹³

Students from low-income public schools receive insufficient guidance from their school counselors because of underprovided time and resources compared to students from more affluent schools.¹¹⁴ As a result, students struggle to schedule one-on-one meetings with their overstretched school counselors.¹¹⁵ Counselors also fall short in providing college options based on a student’s academic performance.¹¹⁶ Students who need additional college counseling often turn to their families.¹¹⁷ Socioeconomic status influences students’ college attendance decisions when their families are involved because tuition cost becomes a substantial factor in the choice.¹¹⁸ Parents may involuntarily pass down their advantages and disadvantages to their children, further perpetuating social hierarchy over true meritocracy.¹¹⁹

Fortunately, some parents are able to hire independent college consultants to increase the chance that a top university will admit their child.¹²⁰ In addition to typical school counselor duties, an independent college consultant chooses standardized tests and classes that augment a student’s strengths.¹²¹ They also help students craft personalized admissions essays and guide their clients through the application process.¹²² Many consultants are licensed educational psychologists, hold educational or financial planner certifications, and have post-graduate degrees in education-related fields.¹²³ With prestigious titles comes a

112. SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1312, at 3 (June 10, 2019).

113. Clare Lombardo, *With Hundreds of Students, School Counselors Just Try to ‘Stay Afloat’*, NPR (Feb. 26, 2018), <https://www.npr.org/sections/ed/2018/02/26/587377711/with-hundreds-of-students-school-counselors-just-try-to-stay-afloat> (on file with *The University of the Pacific Law Review*).

114. Compare Alexandria Walton Radford, *‘No Point in Applying’: Why Poor Students Are Missing at Top Colleges*, THE ATLANTIC (Sept. 16, 2013), <https://www.theatlantic.com/education/archive/2013/09/no-point-in-applying-why-poor-students-are-missing-at-top-colleges/279699/> (on file with *The University of the Pacific Law Review*) (explaining that public high school counselors do not offer customized college counseling for their students), with P.R. Lockhart, *What The College Admissions Scandal Says About Racial Inequality*, VOX (Mar. 20, 2019), <https://www.vox.com/identities/2019/3/20/18271462/college-admissions-race-stuyvesant-affirmative-action-inequality> (on file with *The University of the Pacific Law Review*) (estimating that wealthy “school districts receive \$23 billion more in funding” than low-income school districts).

115. Radford, *supra* note 114.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. See Dana Goldstein & Jack Healy, *Inside the Pricey, Totally Legal World of College Consultants*, N.Y. TIMES (Mar. 13, 2019), <https://www.nytimes.com/2019/03/13/us/admissions-cheating-scandal-consultants.html> (on file with *The University of the Pacific Law Review*) (describing that only the privileged can pay for independent college consulting services).

121. THE PRINCETON REVIEW, *supra* note 104.

122. *Id.*

123. *How to Become a College Planning Consultant*, ENTREPRENEUR (Feb. 1, 2008),

substantial price; some parents pay up to \$1.5 million to have a college consultant help their children with the college admissions process.¹²⁴ Independent college consultants profit from the inequitable—but legal—ways parents can purchase opportunity in the college admissions process.¹²⁵

3. Socioeconomic Status

Socioeconomic status plays a significant role in the ability for high school students to attend college.¹²⁶ As of the first quarter of 2019, the average income in the United States is \$47,060.¹²⁷ In California, of the average after-tax income is \$38,050.¹²⁸ For the 2018–2019 academic year, the average nationwide tuition and fees for public colleges was \$9,716, compared to \$35,676 at private colleges.¹²⁹ Sending a child to public college will cost an American about a quarter of her net earnings, but sending a child to private college will cost 94% of her earnings.¹³⁰ When factoring in the average annual expenditures of a person earning the average income, it is improbable they would be able to pay for college out of pocket.¹³¹

The decrease in college attendance as household income decreases points to

<https://www.entrepreneur.com/article/190442> (on file with *The University of the Pacific Law Review*).

124. Scott Jaschik, *\$1.5 Million to Get Into an Ivy*, INSIDE HIGHER ED (Feb. 12, 2018), <https://www.insidehighered.com/admissions/article/2018/02/12/suit-reveals-elite-college-consultants-charged-family-15-million> (on file with *The University of the Pacific Law Review*).

125. *I Moonlight as a Private College Counselor. Trust Me, the Inequity Is Baked In*, EDUCATION WEEK (Mar. 14, 2019), <https://www.edweek.org/ew/articles/2019/03/15/i-moonlight-as-a-private-college-counselor.html> (on file with *The University of the Pacific Law Review*).

126. See *The Income Gaps in Higher Education Enrollment and Completion*, ASSOCIATION OF AMERICAN COLLEGES & UNIVERSITIES (June/July 2018), <https://www.aacu.org/aacu-news/newsletter/2018/june/facts-figures> (on file with *The University of the Pacific Law Review*) (showing the decline in college attendance as household income decreases, and explaining the increase in tuition coupled with the decline in available financial aid).

127. See Press Release, U.S. Department of Labor Bureau of Labor Statistics, Usual Weekly Earnings of Wage and Salary Workers First Quarter 2019 (Apr. 16, 2019), available at <https://www.bls.gov/news.release/pdf/wkyeng.pdf> (on file with *The University of the Pacific Law Review*) (averaging the weekly full-time salary wage as \$905).

128. See *Income Tax Calculator, California USA*, NEUVOO, https://neuvo.com/tax-calculator/?iam=&uet_calculate=calculate&salary=47060&from=year®ion=California (last visited July 11, 2019) (on file with *The University of the Pacific Law Review*) (calculating net pay of \$47,060 as \$38,050).

129. Farran Powell, *See the Average Costs of Attending College in 2018-2019*, U.S. NEWS EDUCATION (Sept. 10, 2018), <https://www.usnews.com/education/best-colleges/paying-for-college/articles/paying-for-college-infographic> (on file with *The University of the Pacific Law Review*).

130. Compare NEUVOO, *supra* note 128 (calculating net pay of \$47,060 as \$38,050), with *id.* (calculating nationwide public, in-state tuition as \$9,716, and private tuition as \$35,676).

131. Compare DEPARTMENT OF LABOR BUREAU OF LABOR STATISTICS, CONSUMER EXPENDITURE SURVEY, 2017 (Sept. 2019) available at <https://www.bls.gov/cex/2017/combined/income.pdf> (on file with *The University of the Pacific Law Review*) (totaling the \$40,000 to \$49,999 income bracket's average annual expenditures to be \$46,258), with NEUVOO, *supra* note 128 (calculating net pay of \$47,060 as \$38,050), and Powell, *supra* note 129 (calculating nationwide public, in-state tuition as \$9,716, and private tuition as \$35,676).

the inability of students to keep up with the rising price of college.¹³² Students and their families are often unable to pay for college, even after deducting grant aid, tax benefits, and scholarships.¹³³ Without adequate assistance from counselors and outside support from consultants, many families have difficulty assessing and comparing colleges.¹³⁴ The most convenient way to compare institutions defaults to the cost of tuition, rather than the right fit for the student.¹³⁵ While students with strong financial support can afford the price of college, rising tuition prices deter many students with low socioeconomic backgrounds from applying.¹³⁶ A student's decision to attend an affordable school—rather than a prestigious one—can hinder educational achievement and lifelong job prospects, potentially preventing upward socioeconomic mobility.¹³⁷ Nevertheless, low-income students often select colleges based on price—consequently proliferating status quo.¹³⁸

B. Institutional Obstacles Limiting AB 1312's Effectiveness

AB 1312 aims to effectuate equal opportunity in the college admissions process but fails to regulate college admissions boards.¹³⁹ Subsection 1 examines the misleading statistics that colleges and universities release to the public.¹⁴⁰ Subsection 2 discusses the existing inequalities in the current college admissions process.¹⁴¹

1. Transparency and Data Reporting Misleads Students

Many schools have manipulated data to increase their rankings and increase the size of their applicant pools.¹⁴² To improve standardized test score medians,

132. Compare Powell, *supra* note 129 (discussing the difficulty students have with rising costs of higher education), with ASSOCIATION OF AMERICAN COLLEGES & UNIVERSITIES, *supra* note 126 (stating that out of the highest-income quartile, eighty-seven percent of high school students attend college, while only sixty-one percent from the lowest quartile attend).

133. See Powell, *supra* note 129 (discussing the difficulty students have with rising costs of higher education).

134. Radford, *supra* note 114.

135. *Id.*

136. See *id.* (reporting that students from the bottom fifty percent of the income distribution comprise just fourteen percent of the undergraduate population at the United States' most competitive universities, and top performing students are dissuaded from applying to expensive elite schools).

137. *Id.*

138. *Id.*

139. See SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1312, at 3 (June 10, 2019) (on file with *The University of the Pacific Law Review*) (proposing reform to the college consultant career).

140. *Infra* Section IV.C.1.

141. *Infra* Section IV.C.2.

142. Compare Brian Z. Tamanaha, *Law Schools Fudge Numbers, Disregard Ethics to Increase Their Ranking*, THE DAILY BEAST (last updated July 13, 2017), <https://www.thedailybeast.com/law-schools-fudge->

schools give out more merit-based aid at the expense of students who require need-based aid.¹⁴³ Students who score in the bottom half pay full price, while high-scoring students receive financial aid, often regardless of need.¹⁴⁴ As a result, the higher education market prices out low-income students because wealthy students typically outperform their peers on standardized tests and receive merit-based aid.¹⁴⁵ The shift in awarding scholarships creates an unfair advantage because wealthy families can afford college consultants who prepare their children for standardized tests, thus increasing their scores.¹⁴⁶

2. Inequalities in the Current College Admissions Process

Colleges try to recruit as many students as possible to have a lower acceptance rates—a factor in school rankings.¹⁴⁷ With higher rankings and more applicants, universities can be selective when forming their incoming freshman class.¹⁴⁸ Colleges can then utilize financial aid as a weapon to optimize their return on investment.¹⁴⁹ Admissions boards can reject students who do not fit the institution's prestige and deny need-based students financial aid opportunities.¹⁵⁰

numbers-disregard-ethics-to-increase-their-ranking (on file with *The University of the Pacific Law Review*) (discussing several law schools that have falsely inflated data to increase ranking), with *Obsession with Academic Rankings Leads to Cheating – By Colleges*, DAILY BREEZE (Feb. 5, 2012), <https://www.dailybreeze.com/2012/02/05/obsession-with-academic-rankings-leads-to-cheating-by-colleges/> (on file with *The University of the Pacific Law Review*) (describing colleges falsifying data to increase rankings).

143. See Tamanaha, *supra* note 142 (pointing out the shift from need-based financial aid to merit-based aid to attract students who will increase the standardized test median).

144. *Id.*

145. Compare *id.* (explaining that financial aid is shifting away from giving to families who need aid), and Peter Dreier & Richard D. Kahlenberg, *Making Top Colleges Less Aristocratic and More Meritocratic*, N.Y. TIMES (Sept. 12, 2014), <http://www.nytimes.com/2014/09/13/upshot/making-top-colleges-less-aristocratic-and-more-meritocratic.html> (on file with *The University of the Pacific Law Review*) (noting that at top college and universities, students from the top twenty-five percent income quartile outnumber the poorest quartile 14-to-1), with DAILY BREEZE, *supra* note 142 (explaining that wealthy students often score high on SATs and receive merit-based aid for high performance).

146. Compare Goldstein & Healy, *supra* note 120 (describing the process where college consultants coach their students in intensive college entrance exam preparation), with American College Testing, *Investigating Test Prep Impact on Score Gains Using Quasi-Experimental Propensity Score Matching* (2018) available at <https://files.eric.ed.gov/fulltext/ED593130.pdf> (on file with *The University of the Pacific Law Review*) (concluding that data collected shows test preparation improved students' ACT scores and working with a private tutor also improved ACT scores).

147. See DAILY BREEZE, *supra* note 142 (labeling acceptance rates as a factor in school rankings).

148. Cathy O'Neil, *How Big Data Transformed Applying to College*, SLATE (Sept. 15, 2016), <https://slate.com/business/2016/09/how-big-data-made-applying-to-college-tougher-crueler-and-more-expensive.html>.

149. Compare *id.* (stating that schools with greater selectivity can reject more students, thus increasing prestige), and DAILY BREEZE, *supra* note 142 (explaining that colleges use financial aid as a competitive weapon, rather than as charity act), with James Krouse, *Higher Education Is A Business – Is That So Bad?*, DIGITALIST MAG (May 22, 2018), <https://www.digitalistmag.com/digital-economy/2018/05/22/higher-education-is-business-is-that-so-bad-06167601> (on file with *The University of the Pacific Law Review*) (discussing that maximizing applicants is a necessary investment).

150. Compare O'Neil, *supra* note 148 (stating that schools with greater selectivity can reject more

Accepted students may be satisfied customers, but many talented students who did not fit the university's prestigious profile suffer immensely.¹⁵¹ Ultimately, the college admissions system denies rejected students the benefits of a top education.¹⁵²

Colleges preferring wealthy students from elite families has been a legal form of discrimination for over a century.¹⁵³ In fact, top universities admitted some of the United States' most prominent figures in part for their familial ties to the university.¹⁵⁴ Wealthy parents of prospective students will sometimes make large contributions to a school just before or immediately following their child's admittance.¹⁵⁵ Admissions boards admit legacies at exponentially higher rates because they are heavily reliant on tuition and donors to operate; therefore, legacies are a dependable source of alumni donations.¹⁵⁶ With little money to pay for college and sometimes average grades, admissions offices scarcely recognize low-income students because those students typically lack the same legacy and resource advantages.¹⁵⁷

students, thus increasing prestige), and DAILY BREEZE, *supra* note 142 (explaining that colleges use financial aid as a competitive weapon, rather than as charity act), with Krouse, *supra* note 149 (discussing that maximizing applicants is a necessary investment).

151. Compare Jennifer Robison, *Running a College Like a Business*, GALLUP BUSINESS JOURNAL (Mar. 9, 2006), <https://news.gallup.com/businessjournal/21724/running-college-like-business.aspx> (on file with *The University of the Pacific Law Review*) (explaining the objective of some universities is to have satisfied customers), with Anonymous Former Admissions Counselor, *I Worked In College Admissions and Had To Admit a Bunch Of Mediocre Rich Kids*, BUZZFEED NEWS (Mar. 12, 2019), <https://www.buzzfeednews.com/article/anonymousadmissions/college-admissions-scam-felicity-huffman-lori-loughlin-ivy> (on file with *The University of the Pacific Law Review*) (detailing that students who do not fit the profile of elite universities are not offered a spot in the entering class), and Radford, *supra* note 114 ("alma mater affects students' lifelong educational attainment and job prospects").

152. Compare Anonymous Former Admissions Counselor, *supra* note 151 (detailing that students who do not fit the profile of elite universities are not offered a spot in the entering class), with Radford, *supra* note 114 (explaining that "alma mater affects students' lifelong educational attainment and job prospects").

153. See Jessica Pierre, *The Real College Admissions Scandal*, INEQUALITY.ORG (Mar. 21, 2019), <https://inequality.org/great-divide/real-college-admissions-scandal/> (on file with *The University of the Pacific Law Review*) (noting instances when colleges favored wealthy, well-known families during the admissions process).

154. See *id.* (suggesting that top schools admitted past presidents such as John F. Kennedy and George W. Bush even though their academic performances were under par compared to other applicants).

155. See Scott Jaschik, *Just Because It's Legal Doesn't Make It Right*, INSIDE HIGHER ED (Mar. 18, 2019), <https://www.insidehighered.com/admissions/article/2019/03/18/admissions-scandal-focuses-attention-legal-donations-parents> (on file with *The University of the Pacific Law Review*) (remarking on the numerous articles released post-admissions scandal that note donations from parents that "precede or follow the admission of the donors' children").

156. Compare Alia Wong, *Elite-College Admissions Are Broken*, THE ATLANTIC (Oct. 14, 2018), <https://www.theatlantic.com/education/archive/2018/10/elite-college-admissions-broken/572962/> (on file with *The University of the Pacific Law Review*) (explaining that universities "are heavily reliant on students' tuition money"), with Pierre, *supra* note 153 (discussing colleges' reasons for admitting legacies as a "reliable source of alumni donations").

157. See Anonymous Former Admissions Counselor, *supra* note 151 (describing how the admissions process favors wealthy legacies over low-income students).

C. AB 1312's Goal: To Promote Equal Opportunity

AB 1312 requires a consultant or firm who works a minimum of twenty-five hours per year—or sells around three consulting packages—to register through the implemented process.¹⁵⁸ Should the Task Force's recommended registration process pass through the Legislature, AB 1312 may effectively restrict unethical college consultant practices pursuant to the Business and Professions Code.¹⁵⁹ Members of the public can file a complaint with the DCA if they suspect a consultant drafted a client's admissions essay, facilitated cheating on an admissions exam, or engaged in other unethical practices during the admissions process.¹⁶⁰ Then, the DCA can discipline the licensee by revoking or suspending the license.¹⁶¹

Should college consultant regulations follow the DCA's existing scheme, AB 1312 will achieve its goal to bring accountability to the college consultant industry because the DCA's process is efficient.¹⁶² In 2018, the DCA reported decreases in case duration and pending complaints pertaining to certified public accountants and public accountancy firms.¹⁶³ To further improve the effectiveness of the complaints process, the DCA also increased the number of licensees on probation by eighteen percent.¹⁶⁴ However, the significant increase in disciplined licensees shows the DCA's current enforcement system may not deter bad behavior.¹⁶⁵ Given the data's uncertain implication—and the Task Force's vague instructions—whether AB 1312 will reach its goal is unclear.¹⁶⁶

158. See ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 1 (May 17, 2019) (on file with *The University of the Pacific Law Review*) (explaining that independent college consultants who earn \$5,000 or more per year from consulting services will be required to register and reporting that average fees for college consultants is \$200 per hour and from \$850 for comprehensive packages); see also Goldstein & Healy, *supra* note 120 (noting the price for an independent college consultant as \$300 per hourlong consultation).

159. Compare SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1312, at 2 (June 10, 2019) (authorizing the DCA to only give recommendations to the Legislature), with CAL. BUS. & PROF. CODE §§ 310(d)–(g), 325 (giving the DCA the authority to regulate its licensed professionals).

160. Compare SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1312, at 3 (June 10, 2019) (arguing that the bill will combat unethical private college consultants by increasing accountability), with CAL. BUS. & PROF. CODE § 325, and CAL. BUS. & PROF. CODE § 301.

161. CAL. BUS. & PROF. CODE § 490(a).

162. Compare CAL. BUS. & PROF. CODE § 490(a) (detailing the function of the DCA), with ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1312, at 1 (May 16, 2019) (intending for the bill to “bring transparency and accountability to the college admissions consulting industry”).

163. See DEPARTMENT OF CONSUMER AFFAIRS, ANNUAL REPORT at 16 (2018), available at https://www.dca.ca.gov/publications/2018_annrpt.pdf (on file with *The University of the Pacific Law Review*) (stating the DCA realized a sixty percent decrease in pending complaints since 2016 and a decrease in average days to close a case).

164. See *id.* (stating the DCA realized a sixty percent decrease in pending complaints since 2016, a decrease in average days to close a case, and an eighteen percent increase in the number of licensees on probation).

165. *Id.*

166. Compare *id.* (stating the DCA realized an eighteen percent increase in the number of licensees on

D. Will AB 1312 Overcome the Obstacles Facing It?

The Task Force may help combat corrupt college consultants in the industry and provide an even playing field for all college applicants, but it has no binding authority yet.¹⁶⁷ Subsection 1 discusses AB 1312’s potential to prevail over the privileges financially elite parents use to their advantage.¹⁶⁸ Subsection 2 evaluates AB 1312’s ability to curtail the actions of independent college consultants.¹⁶⁹ Subsection 3 analyzes whether AB 1312 addresses the socioeconomic restraints that the college admissions process puts on students.¹⁷⁰ Subsection 4 analyzes whether the current admissions system will overshadow AB 1312’s efficacy in promoting a fair admissions process.¹⁷¹

1. Can AB 1312 Prevail Over Privileged Parental Guidance?

AB 1312 does little to control the actions of powerful parents; AB 1312 merely advocates for limiting college consultants’ authorized duties.¹⁷² The Task Force could restrict college consultants’ direct involvement in authoring and submitting their clients’ application materials.¹⁷³ However, if a college consultant’s moral compass does not satisfy parents, the parents can simply find another willing consultant to get their child into a top university.¹⁷⁴ The Legislature—with the Task Force’s recommendations—could limit parents’ power by creating laws that prevent practices benefitting a client at the direct expense of another student.¹⁷⁵ Parents can file a complaint with the DCA if they feel a college consultant directly put their child at an academic disadvantage.¹⁷⁶ However, AB 1312 has as much authority as a suggestion box when it comes to

probation), with ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 1 (May 17, 2019) (noting that the Task Force shall only give a recommendation to the Legislature).

167. See ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 1 (May 17, 2019) (requiring the Task Force to prepare “a report of its findings and recommendations to the Legislature, including, but not limited to, best practices in the college consulting industry”).

168. *Infra* Section IV.D.1.

169. *Infra* Section IV.D.2.

170. *Infra* Section IV.D.3.

171. *Infra* Section IV.D.4.

172. See SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1312, at 2 (June 10, 2019) (supporting stricter regulation of college consultants).

173. ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 1 (May 17, 2019).

174. *Supra* Section IV.A.1.

175. Compare SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1312, at 2 (June 10, 2019) (authorizing the DCA to only give recommendations to the Legislature), with Pinsker, *supra* note 103 (providing the scenario where a parent calls the school to ask that their child is placed with the best teacher as an example of when providing the best opportunities for their child comes at the expense of other children).

176. See CAL. BUS. & PROF. CODE § 101.6 (acknowledging that one of the purposes of the DCA is to “provide a means for redress of grievances by investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public. . .”).

effectuating change.¹⁷⁷

2. Will AB 1312 Effectively Regulate College Consultants?

Currently, college consultants may belong to a professional association, but membership is voluntary.¹⁷⁸ The Independent Educational Consultants Association (“IECA”) is the largest college consultant membership organization.¹⁷⁹ The IECA requires its members to complete an ethics course and a peer evaluation of marketing and promotional materials.¹⁸⁰ Predictably, Mr. Singer—the infamous consultant of the college admissions scandal—was never a member of any of the professional college consultant associations.¹⁸¹ When a consultant’s guidance leaves a student with a bad fit for college, the consequences are costly in time, money, and psychological well-being.¹⁸²

If AB 1312 results in a comparable regulation process to the DCA’s existing licensure system, clients who received ill-advised direction can report the consultant to the DCA.¹⁸³ The DCA will publicly post the action on its website to bring awareness to future consumers about the reprimanded consultant.¹⁸⁴ AB 1312 can impose duties of diligence and transparency upon licensed college consultants to combat the wrong fit.¹⁸⁵

3. Can AB 1312 Overcome Socioeconomic Disadvantages?

Although supporters of AB 1312 claim it will provide equal opportunity for higher education, it does not address socioeconomic restraints that the college

177. See SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1312, at 2 (June 10, 2019) (authorizing the DCA to only give recommendations to the Legislature).

178. See ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 2 (May 17, 2019) (describing membership with college consultant professional associations as voluntary).

179. Letter from Mark H. Sklarow, Chief Exec. Officer, Independent Educational Consultants Association to Evan Low, Assembly Member, Cal. State Assembly (June 18, 2019) (on file with *The University of the Pacific Law Review*).

180. *Id.*

181. See ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 2 (May 17, 2019) (stating Mr. Singer was not a member of any professional college consultant association).

182. Steve Cohen, *College Rankings Aren’t Meaningless; They’re Just Misleading*, *Forbes* (Mar. 25, 2013), <https://www.forbes.com/sites/stevecohen/2013/03/25/college-rankings-arent-meaningless-theyre-just-misleading/#23c5e2ea57d0> (on file with *The University of the Pacific Law Review*).

183. See CAL. BUS. & PROF. CODE § 101.6 (acknowledging that one of the purposes of the DCA is to “provide a means for redress of grievances by investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public. . .”).

184. DEPARTMENT OF CONSUMER AFFAIRS, DCA BREEZE ONLINE SERVICES, *supra* note 59.

185. Compare SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1312, at 3 (June 10, 2019) (concluding when college consultants are uncompliant with the highest legal and ethical standards, it is harmful to their client’s educational career), with CAL. BUS. & PROF. CODE § 310(d)–(g) (explaining that the DCA promotes ethical conduct and investigates matters affecting consumers’ interests.).

admissions process puts on students.¹⁸⁶ While independent college consultants can help their clients choose the right educational career path, low-income students cannot afford the extra assistance.¹⁸⁷ Even if AB 1312 results in a heavily-regulated profession, most low-income students still cannot afford college consultants and access to prep courses.¹⁸⁸ Regardless of whether unethical college consulting practices exist, low-income students do not have the resources to get into a top school.¹⁸⁹ Therefore, because AB 1312 does not address socioeconomic disadvantages, today's meritocracy will continue to reward the financial attainments of parents while ignoring the academic achievements of students across the socioeconomic spectrum.¹⁹⁰

4. Will AB 1312 Reconstruct the College Admissions System?

To successfully increase transparency in the profession, the Task Force should seek to limit college consultants' roles as liaisons for college donations and other contributions from their clients.¹⁹¹ Individuals handling another's finances typically have a fiduciary duty to their clients.¹⁹² Fiduciaries owe a duty of loyalty and good faith to their clients.¹⁹³ Since college consultants advise their clients on educational investments, one possible solution would be to require college consultants to place client funds into separate trust accounts, similar to other fiduciaries.¹⁹⁴ This would allow the DCA to effectively regulate designated trust accounts to ensure independent college consultants are liable for their

186. See generally ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 2 (May 17, 2019) (noting that supporters of the bill address the actions of independent college consultants as a factor in unequal admissions opportunity, but fails to address other factors).

187. Compare Radford, *supra* note 114 (explaining that high-achieving, low income students "receive insufficient, impersonal guidance about colleges from their public high schools"), and NEUVOO, *supra* note 128 (calculating net pay of \$47,060 as \$38,050), with ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 1 (May 17, 2019) (reporting that average fees for college consultants is \$200 per hour and from \$850 for comprehensive packages).

188. Compare ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 1 (May 17, 2019) (reporting that average fees for college consultants is \$200 per hour and from \$850 for comprehensive packages), with Press Release, *supra* note 127 (averaging the weekly full-time salary wage as \$905).

189. Compare ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 1 (May 17, 2019) (reporting that average fees for college consultants is \$200 per hour and from \$850 for comprehensive packages), with Press Release, *supra* note 127 (on file with *The University of the Pacific Law Review*) (averaging the weekly full-time salary as \$905).

190. Radford, *supra* note 114.

191. See SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1312, at 2 (June 10, 2019) (supporting stricter regulation of college consultants).

192. *Fiduciary Duty*, WEX, https://www.law.cornell.edu/wex/fiduciary_duty (last visited Aug. 2, 2019) (on file with *The University of the Pacific Law Review*).

193. *Id.*

194. Compare CAL. BUS. & PROF. CODE § 6211(a) (West 2019) (requiring attorneys, in the course of the practice of law, shall place all client funds in a trust account), with Cohen, *supra* note 182 (explaining how college is comparable to an investment).

actions.¹⁹⁵

Further, if universities want to improve admissions for the working class, they should stop legacy admissions and refuse to consider donations from applicants' parents as an admissions factor.¹⁹⁶ A talented student with real financial need, who has earned their place at a university, should have priority over a student with a less-than-stellar academic performance.¹⁹⁷ Ultimately, AB 1312 cannot stop colleges from accepting bribes; however, AB 1312 can inhibit consultants from arranging them.¹⁹⁸

E. Ballot Initiative: Plan B to AB 1312

AB 1312's potential letdown is that the Task Force does not have binding authority unless the Legislature passes its recommendations.¹⁹⁹ AB 1312 also does not specify to what extent the Task Force's recommendations must be reasonably and factually based.²⁰⁰ The vague report instruction leaves the quantity and quality of insight backing the recommendations up to the Task Force's interpretation.²⁰¹ The Task Force could decline to follow the DCA's existing model, or the Legislature could disregard the Task Force's recommendations.²⁰² Therefore, it is unknown whether AB 1312 will accomplish its goal without involvement from California voters.²⁰³

California's ballot initiative process allows citizens to propose and pass laws without the support of the Legislature.²⁰⁴ Californians have been successful in leveraging the state's ballot initiative process when legislators refuse to legislate

195. ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 2 (May 17, 2019).

196. Sarah Jones, *Colleges Can't Fix Their Unfair Admissions Process on Their Own*, N.Y. MAG (Mar. 14, 2019), <http://nymag.com/intelligencer/2019/03/college-admissions-scandal-inequality.html> (on file with *The University of the Pacific Law Review*).

197. *Compare* Jennifer Earl, *Lori Loughlin's YouTube Star Daughter Olivia Jade Said Parents Advised 'Hard Work Pays Off' Before Scandal*, FOX NEWS (Mar. 13, 2019), <https://www.foxnews.com/entertainment/lori-loughlins-youtube-star-daughter-olivia-jade-said-parents-advised-hard-work-pays-off-before-scandal> (on file with *The University of the Pacific Law Review*) (summarizing Loughlin's daughter's statements that she is indifferent about school), *with id.* (explaining that a talented, underprivileged student could have taken Loughlin's daughters' spot at USC), *and* Jackson, *supra* note 10 (detailing Wang's admissions experience).

198. *Compare* Jones, *supra* note 196 (postulating that access to elite colleges is sometimes paid for in bribes), *with* ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 2 (May 17, 2019) (AB 1312 will bring greater transparency to the college admissions process and increase the accountability of private college consultants).

199. *See* SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1312, at 2 (June 10, 2019) (allowing recommendations).

200. ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 1 (May 17, 2019).

201. *Id.*

202. SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1312, at 2 (June 10, 2019).

203. *Id.*

204. STATE OF CALIFORNIA DEPARTMENT OF JUSTICE OFFICE OF THE ATTORNEY GENERAL, BALLOT INITIATIVES 1, <https://oag.ca.gov/initiatives> (last visited July 14, 2019) (on file with *The University of the Pacific Law Review*).

important issues.²⁰⁵ When the California Legislature demonstrated legislative complacency regarding internet privacy, a concerned citizen pursued a ballot initiative to push into law a significant societal issue facing Californians.²⁰⁶ The measure received double the number of required signatures; this pressured the Legislature to pass a bill to satisfy the ballot measure, and Governor Brown signed it into law.²⁰⁷

California legislators are generally hesitant to create new boards governing professions.²⁰⁸ If the Task Force supports its recommendations with factual findings, any complacency from the Legislature regarding this important issue could be a basis for a ballot initiative.²⁰⁹ Therefore, if the Legislature refuses to legislate, a concerned citizen can utilize the ballot initiative process to campaign the goals of AB 1312 into law.²¹⁰

V. CONCLUSION

Prior to AB 1312, no statewide regulations for independent college consultants existed AB 1312.²¹¹ Assembly Member Low introduced AB 1312 to regulate the college consultant profession and promote equality in the college admissions process.²¹² AB 1312 proposes a respectable framework to restrict the previously unregulated independent college consultant profession.²¹³ However, it is not enough to address all of the failures that fall down on the working class from the current misplaced meritocratic system.²¹⁴

205. See Thomas Gerhart, *AB 2182 and Chapter 55: Enacting Privacy Regulations in the Face of Legislative Complacency*, 50 U. Pac. L. Rev. 177, 196–97 (2019) (on file with *The University of the Pacific Law Review*) (describing Alistair Mactaggart’s success with pursuing a ballot initiative regarding a topic disregarded by the legislature).

206. *Id.*

207. Compare John Myers, *There’s a Season for California’s 2018 Ballot Initiatives, and This is It*, L.A. TIMES (Jan. 21, 2018), https://www.latimes.com/politics/la-pol-ca-road-map-ballot-initiatives-signatures-20180121-story.amp.html?_twitter_impression=true (on file with *The University of the Pacific Law Review*) (requiring 365,880 valid signatures for a ballot initiative to get a topic legislators refused to legislate on the ballot and in response, the California Legislature passed a bill that “mirrored the ballot measure”), with Gerhart, *supra* note 205 at 196 (specifying MacTaggart’s ballot initiative received 629,000 signatures, and explaining when “Mactaggart withdrew his ballot measure, and Governor Brown signed Chapter 55 into law”).

208. Interview with Christopher Mair, Legislative Aid, Assembly Member Evan Low, in Sacramento, Cal. (July 26, 2019) (notes on file with *The University of The Pacific Law Review*).

209. Compare SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1312, at 2 (June 10, 2019) (authorizing the DCA to only give registration process recommendations to the Legislature), with STATE OF CALIFORNIA DEPARTMENT OF JUSTICE OFFICE OF THE ATTORNEY GENERAL, BALLOT INITIATIVES, *supra* note 204 at 1 (proposing that California citizens can use the ballot initiative process to propose laws without support of the Legislature).

210. STATE OF CALIFORNIA DEPARTMENT OF JUSTICE OFFICE OF THE ATTORNEY GENERAL, BALLOT INITIATIVES, *supra* note 204 at 1.

211. AB 1312, 2019 Leg. 2019–2020 Sess. (Cal. 2019) (as amended on May 17, 2019, but not enacted).

212. ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 2 (May 17, 2019).

213. AB 1312, 2019 Leg. 2019–2020 Sess. (Cal. 2019) (as amended on May 17, 2019, but not enacted).

214. *Supra* Part IV.

Misplaced meritocracy rewards the achievements of parents rather than the hard work of students.²¹⁵ College consultants capitalize on the resources and privileges wealthy families have at their fingertips.²¹⁶ To maintain their top spots, elite universities run unfair admissions systems that favor students with financial means over equal consideration to all applicants.²¹⁷ This triple threat—in addition to socioeconomic disadvantages—makes AB 1312’s goal to promote equal admissions opportunity an unlikely feat.²¹⁸

The Task Force may provide a more even playing field for all students applying to colleges and universities, but has no binding authority yet.²¹⁹ If the Legislature fails to take action to eliminate unequal opportunity, concerned citizens could take matters into their own hands via a ballot initiative refining AB 1312’s vision.²²⁰ Ultimately, AB 1312 is a step in the right direction for equal opportunity in higher education, but may not be sufficient to correct systemic social and institutional inequalities.²²¹

215. *Supra* Section IV.A.1.

216. *Supra* Section IV.A.2.

217. *Supra* Section IV.B.

218. *Supra* Part IV.

219. *See* ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 1 (May 17, 2019).

220. *Compare* ASSEMBLY FLOOR, THIRD READING OF AB 1312, at 1 (May 17, 2019) (requiring the Task Force to prepare “a report of its findings and recommendations to the Legislature, including, but not limited to, best practices in the college consulting industry”), *with* STATE OF CALIFORNIA DEPARTMENT OF JUSTICE OFFICE OF THE ATTORNEY GENERAL, BALLOT INITIATIVES 1, <https://oag.ca.gov/initiatives> (last visited July 14, 2019) (on file with *The University of the Pacific Law Review*) (explaining California’s ballot initiative process).

221. *Supra* Part IV.