



U.S. Department of Justice

Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

July 25, 2025

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

Re: *State of Tennessee v. U.S. Department of Education*, No. 25-cv-270 (E.D. Tenn.)

Dear Mr. Speaker:

Consistent with 28 U.S.C. 530D, I write to advise you that the Department of Justice has decided not to defend the constitutionality of certain provisions of the Higher Education Act of 1965, 20 U.S.C. 1001 *et seq.*, in the above-captioned case.

The Higher Education Act authorizes the Department of Education to award grants to “Hispanic-serving institutions.” 20 U.S.C. 1101(c). The Act defines a “Hispanic-serving institution” as an institution of higher education that, among other requirements, “has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students.” 20 U.S.C. 1101a(5)(B).

The Department of Justice has determined that those provisions violate the equal-protection component of the Fifth Amendment’s Due Process Clause. The Supreme Court has explained that “[o]utright racial balancing” is “patently unconstitutional.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 223 (2023). And its precedents make clear that the government lacks any legitimate interest in differentiating among universities based on whether “a specified number of seats in each class” are occupied by “individuals from the preferred ethnic groups.” *Id.* at 209. Under those principles, the challenged provisions’ 25-percent racial quota violates the Constitution.

Please let me know if we can be of any further assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. John Sauer". The signature is stylized and fluid, with a long horizontal flourish extending to the right.

D. John Sauer
Solicitor General