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RESTORING EXCELLENCE: THE CASE AGAINST DEI

HEARING

BEFORE THE

SUBCOMMITTEE ON HIGHER EDUCATION AND WORKFORCE DEVELOPMENT

OF THE

COMMITTEE ON EDUCATION AND WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINETEENTH CONGRESS

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RESTORING EXCELLENCE: THE CASE AGAINST DEI

Wednesday, May 21, 2025

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HIGHER EDUCATION AND WORKFORCE DEVELOPMENT,
COMMITTEE ON EDUCATION AND WORKFORCE,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:15 a.m., in Room 2175, Rayburn House Office Building, the Hon. Burgess Owens (Chairman of the Subcommittee) presiding.

Present: Representatives Owens, Baumgartner, Grothman, Kiley, Onder, Harris, Walberg, Adams, Takano, McBath, Bonamici, DeSaulnier, and Scott.

Staff present: Lexi Boccuzzi, Investigator; Vlad Cerga, Director of Information Technology; Solomon Chen, Professional Staff Member; Amy Raaf Jones, Director of Education and Human Services Policy; Libby Kearns, Press Assistant; Isaiah Knox, Legislative Assistant; Campbell Ladd, Clerk; R.J. Laukitis, Staff Director; Danny Marca, Director of Information Technology; John Martin, Deputy Director of Workforce Policy/Counsel; Audra McGeorge, Communications Director; Eli Mitchell, Legislative Assistant; Alexis Morgan, Intern; Ethan Pann, Deputy Press Secretary and Digital Director; Kane Riddell, Staff Assistant; Carl Rifino, Intern; Sara Robertson, Press Secretary; Russell Chance, Economist and Policy Advisor; Brad Thomas, Deputy Director of Education and Human Services Policy; Ann Vogel, Director of Operations; Ali Watson, Director of Member Services; James Whittaker, General Counsel; Ellie Berenson, Minority Press Assistant; Ilana Bruner, Minority General Counsel; Ni'Aisha Banks, Minority Policy Aide & Internship Coordinator; Rashage Green, Minority Director of Education Policy & Counsel; Christian Haines, Minority General Counsel; Patrick Jo, Minority Intern; Raiyana Malone, Minority Press Secretary; Véronique Pluviose, Minority Staff Director; Banyon Vassar, Minority Director of IT.

Chairman OWENS. The Subcommittee on Higher Education and Workforce Development will come to order. I note there is a quorum present. Without objections, the Chair is authorized to call a recess at any time. Whitewashing history, creating a conservative bogeyman, using racist dog whistles. This is what the Left's accusation is whenever American's call out the toxic ideology known as diversity, equity and inclusion, or DEI.

DEI supporters promise that they will break barriers, promote opportunity and right our historical wrongs. It is an ideology that

takes its inspiration from Karl Marx, who was honest in his vision of America's historical theft, the first battleground is rewriting history. Its philosophical roots nourished in the seabed of Marxism. DEI states that our surrounding social construct determines our destiny, not effort, tenacity, grit, dreams, or character, but instead our ancestry, history and color.

Demeaning and racist to its core. DEI states that based on your color you are either an evil oppressor or hopeless, hapless, weak and oppressed victim. It teaches that all social ills could be traced to an oppressor, a segment of people in which prejudice and hatred is always justified.

We see results in the teaching of our campus colleges throughout our country where the Jewish race is replaced by Marxist professors at the very top of the oppressor spectrum. Antisemitism therefore runs rampant and unashamed. The vision of our educational institutions from our founding—country's founding, has been to prepare every succeeding generation to be wise stewards of our Nation's commitment to become a more perfect union.

Despite Supreme Court ruling against affirmative action, it appears that some universities are still playing the sematic word game with their admission processes. They are continuing to discriminate against students based on their race, but under different names. DEI adherence in these institutions continue to be a large factor in staff promotions and tenure and continues to feed the lack of ideological diversity among faculty.

Students are forced to participate in DEI programs in order to graduate. Accreditors, instead of holding institutions accountable for the student's outcome, are imposing on them DEI requirements. The most disastrous outcome of this divisive ideology is the impact it has had on low-income, underrepresented populations that democrats claim to care about.

As college costs remain high, self-confidence drops to new lows, and students often leave worse off than if they never attended in the first place. In the strongholds of DEI, students are left to doubt whether their personal accomplishments are due to their merit, or due to their skin color.

There is no worse area for DEI than in medical education. Instead of a focus on the best medical practice for each patient, healthcare disparities are quickly blamed on the oppression. The DEI solution therefore to discrimination is for more discrimination, resulting in racist healthcare policies that in the real world have life and death consequences.

From day one, the Trump administration has taken a strong stance against DEI, recognizing that it is contrary to America's idea of hard work, merit and equality. This administration has undone countless discriminatory Biden/Harris executive orders, and worked to ensure that DEI has no place in our universities.

The universities who believe you can simply change the name of your DEI offices and continue to teach hatred and discrimination, as a heads up, this Committee will not be silent. We owe it to the next generation to teach them that due to our American DNA, based on faith, family, the free market education, there are always reasons to be hopeful and never hopeless.

I look forward to our discussion today, and I yield now to Ranking Member.

[The statement of Chairman Owens follows:]

STATEMENT OF HON. BURGESS OWENS, CHAIRMAN, SUBCOMMITTEE ON HIGHER EDUCATION AND WORKFORCE DEVELOPMENT

Whitewashing history. Creating a conservative boogeyman. Using a racist dog-whistle.

These are the Left's accusations whenever Americans call out the toxic ideology known as "diversity, equity, and inclusion," or D-E-I. DEI supporters promise it will break barriers, promote opportunity, and right our historical wrongs. It is an ideology that takes its inspiration from Karl Marx, who was honest in his vision of historical theft—"the firstbattleground is the rewriting of history."

With its historical and philosophical roots nourished in the seedbed of Marxism, DEI states that our surrounding social construct determines our destiny. Not effort, tenacity, grit, dreams, or character but instead our ancestry, history, and color. Demeaning and racist to its core, DEI claims that based on your color, you are either an evil oppressor or ahopeless, hapless, weak and oppressed victim. It teaches that all societal ills can be traced to an oppressor—a segment of people to which prejudice and hate is always justified. We see the results of this teaching on our college campuses throughout our country where Jews are placed, by Marxist professors, at the very top of its "oppressor" spectrum.Antisemitism therefore runs rampant and unashamed.

The vision of our educational institutions, from our country's founding, has been to prepare every succeeding generation to be wise stewards of our nation's commitment to become a more perfect union.

Despite the Supreme Court ruling against affirmative action, it appears universities are still playing semantic word games with their admissions processes. They are continuing to discriminate against students based on their race but under different names. DEI adherence in these institutions continues to be a large factor in staff promotion and tenure andcontinues to feed the lack of ideological diversity among faculty. Students are forced to participate in DEI programming in order to graduate. Accreditors, instead of holding institutions accountable for student outcomes, are imposing on them DEI requirements.

The most disastrous outcome of this divisive ideology is the impact it's had on the low-income, "underrepresented" populations that Democrats claim to care about. As college costs remain sky high, self-confidence drops to a new low, and students often leave worse off than if they had never attended in the first place. In the strongholds of DEI, students are left to doubt whether their personal accomplishments are due to their merit or to their skin color.

There is no worse area for DEI than in medical education. Instead of a focus on the best medical care for each patient, health care disparities are quickly blamed on "oppression." The DEI "solution" therefore todiscrimination is more discrimination resulting in racist health care policies that in the real world have life and death consequences.

From day one the Trump administration has taken a strong stance against DEI, recognizing that it is contrary to the American ideals of hard work, merit, and equality. This administration has undone countless discriminatory Biden-Harris executive orders and worked to ensure DEI has no place in our universities.

I am excited to see states across the country, including my home state of Utah, work to end this evil presence.

To the institutions who believe you can simply change the name of your DEI offices and continue to teach hatred and discrimination—as a heads up—this Committee will not be silent.

We owe it to the next generation to teach them that due to our American DNA based on faith, family, the free market, and education, there are always reasons to be hopeful and never hopeless. I look forward to our discussion today, and with that I yield to the Ranking Member.

Ms. ADAMS. Thank you, Mr. Chairman. I want to first of all thank all of our witnesses for being here today. Diversity, equity, inclusion and accessibility, DEIA, these efforts are essential to ensuring that our education system reflects the richness of our society, and provides every student with the opportunity to succeed.

DEIA is not about lowering standards or moving away from merit-based selection. It is about ensuring that everyone has a fair shot, everyone is respected and feels like they belong. Historically, policies like slavery and Jim Crow laws, and redlining has systemically excluded marginalized communities from equal opportunities. DEIA works to systematically include people on campuses, and ensure that no one feels unwelcome.

As a former college professor for 40 years, I have seen firsthand how DEIA initiatives can transform the lives of students. These programs provide students from historically marginalized backgrounds with the tools and the resources, and the opportunities they need to succeed and thrive.

DEIA efforts are critical to breaking down barriers, eliminating educational disparities, and ensuring that all students, regardless of their background, receive a high-quality, well-rounded education. Now, these efforts help level the playing field for students from all walks of life, from first generation college students to those from racially diverse communities, to students with disabilities and veterans, and more.

They are vital in creating learning environments where every student has the chance to succeed, not just a few. Every student deserves a safe, diverse and welcoming learning environment. Now, this is not just an ideal, it is a necessity for the future of this Nation. Diversity and education in our classrooms, our campuses, and curriculum leads to better outcomes for all students.

It fosters critical thinking, enriches the educational experience, and it prepares students to navigate the complex and diverse world that we live in. We cannot afford to rewrite history, or roll back the progress that we have made. It is our responsibility to ensure that all Americans, no matter their race, background, or economic status, have access to opportunity to pursue a college degree, and to achieve their dreams.

Today I wanted to take a moment to specifically address the harmful effects these anti-DEI efforts have had on historically black colleges and universities, HBCUs. These are institutions which I hold dear. These attacks on DEIA initiatives, universities like my Alma Mater, North Carolina A&T and Morgan State University, have been forced to confront the loss of millions of dollars in research funding.

These losses are a direct result of Federal grants and contracts that are tied to diversity, equity, inclusion and accessibility programs being slashed, or eliminated altogether. That time may have little or nothing to do with the DEI initiatives, simply having the wrong word in the title of a program can result in your funding being canceled, as Morgan State recently found out.

The school's Center for Equitable Artificial Intelligence and Machine Learning Systems would seeks to create a trustworthy AI that draws on research, and its Federal funding, they had it cut, worked to eliminate AI hallucinations, a problem that we all know exists, is defunded because the word "equitable" was in the Center's title.

For HBCUs, these cuts are especially devastating. HBCUs have long played a critical role in educating students from historically marginalized communities, particularly black students. However,

many of these institutions already operate on tight budgets. They rely heavily on Federal grants and research funding to sustain programs that support students and faculty.

With Federal agencies slashing funding for DEI efforts, HBCUs are forced to do more with fewer resources. Institutions have had to trim already lean budgets, while others are launching emergency fundraising campaigns just to stay afloat. These funding cuts are not just numbers on a page. They represent real consequences for students.

Without these resources, our HBCUs cannot offer the support that so many of their students need to thrive academically, and professionally. The impact is widespread, affecting not just the institutions themselves, but also the students that they educate, the faculty who teach them, and the communities these schools serve. The truth is all institutions are grappling with the crisis as they navigate an ever-shifting Federal funding landscape, that increasingly undermines their ability to fulfill their mission.

The loss of funding for DEI initiatives and research grants represents an attack on the heart of what our universities stand for, providing access to higher education for students who have historically been excluded from these opportunities. We cannot allow the damage to continue. We must work together to ensure that our institutions of higher education receive the support that they need to continue educating the next generation of leaders, doctors, lawyers, teachers, and change makers.

In conclusion, we cannot allow the work of advancing educational equity to be undone. We must protect and strengthen DEI efforts, not just for the future of higher education, but for the students it serves. We have a responsibility to ensure that every student, regardless of background, has a real opportunity to succeed.

Mr. Chairman, I thank you and I yield back.

[The statement of Ranking Member Adams follows:]

STATEMENT OF HON. ALMA ADAMS, RANKING MEMBER, SUBCOMMITTEE ON HIGHER EDUCATION AND WORKFORCE DEVELOPMENT

Thank you, Mr. Chairman. I want to first of all thank our witnesses for being here today.

Diversity, Equity, Inclusion, and Accessibility (DEIA) efforts are essential to ensuring that our education systemreflects the richness of our society and provides every student with the opportunity to succeed. DEIA is not aboutlowering standards or moving away from merit-based selection: it is about ensuring that everyone has a fair shot,everyone is respected and feels like they belong. Historically, policies like slavery, Jim Crow laws, and redlininghave systematically excluded marginalized communities from equal opportunities. DEIA works to systematicallyinclude people on campuses and ensure that no one feels unwelcome.

As a former college professor for 40 years, I have seen firsthand how DEIA initiatives can transform the lives ofstudents. These programs provide students from historically marginalized backgrounds with the tools, resources,and opportunities they need to succeed and thrive. DEIA efforts are critical to breaking down barriers, eliminatingeducational disparities, and ensuring that all students regardless of their background receive a high-quality, wellroundededucation.

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Every student deserves a safe, diverse, and welcoming learning environment. This is not just an ideal; it is anecessity for the future of this nation. Diversity in education in our classrooms, campuses, and curricula leads tobetter outcomes for all students. It fosters critical thinking, enriches the educational experience, and

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For HBCUs, these cuts are especially devastating. HBCUs have long played a critical role in educating studentsfrom historically marginalized communities, particularly Black students. However, many of these institutionsalready operate on tight budgets, relying heavily on federal grants and research funding to sustain programs thatsupport students and faculty. With federal agencies slashing funding for DEI efforts, HBCUs are forced to domore with fewer resources. Institutions have had to trim already lean budgets, while others are launchingemergency fundraising campaigns just to stay afloat.

These funding cuts are not just numbers on a page, they represent real consequences for students. Without theseresources, our HBCUs cannot offer the support that so many of their students need to thrive academically andprofessionally. The impact is widespread, affecting not just the institutions themselves, but also the students theyeducate, the faculty who teach them, and the communities these schools serve.

The truth is, all institutions are grappling with a crisis as they navigate an evershifting federal funding landscapethat increasingly undermines their ability to fulfill their mission.

The loss of funding for DEI initiatives and research grants represents an attack on the heart of what our universities stand for: providing access to higher education for students who have historically been excluded from these opportunities. We cannot allow the damage to continue. We must work together to ensure that our institutions of higher education receive the support they need to continue educating the next generation of leaders, doctors, lawyers, teachers, and changemakers.

In conclusion, we cannot allow the work of advancing educational equity to be undone. We must protect andstrengthen DEI efforts-not just for the future of higher education, but for the students it serves. We have aresponsibility to ensure that every student, regardless of background, has a real opportunity to succeed.

Mr. Chairman I thank you, and I yield back.

Chairman OWENS. Thank you so much. I will now turn to the introduction of our four distinguished witnesses. Our first—so sorry, okay. Pursuant to Committee Rule 8–C, all members who wish to insert written statements into the record may do so by submitting them to the Committee Clerk electronically in Microsoft Word format by 5 p.m., 14 days after this hearing.

Without objection, the hearing record will remain open for 14 days to allow for statements and other material noted during the hearing to be submitted for the official hearing record. I will now turn to the introduction of the four distinguished witnesses.

Our first witness is Dan Morenoff, the Executive Director for American Civil Rights Project in Dallas, Texas. Our second witness is Dr. Shaun Harper, the Provost Professor of Education and Public Policy and Business at the University of Southern California in Los Angeles, California.

Our third witness is Ms. Renu Mukherjee, a Fellow for the Manhattan Institute in New York City. The fourth witness is Dr. Kurt Miceli, the Medical Director for Do No Harm in Glen Allen, Virginia.

I want to thank the witnesses for being here today and look forward to your testimony. Pursuant to Committee Rules, I will ask that you each limit your oral presentation to a 3-minute summary of your written statement as Committee members may have questions for you. The clock will countdown for 3 minutes.

Pursuant to Committee Rule 8–D, the Committee practice, however, is I will not cutoff your testimony until you reach the 5-minute mark. I would like to remind the witnesses to be aware of their responsibility to provide accurate information to the Subcommittee. I will first recognize Mr. Morenoff for your testimony.

THE STATEMENT OF MR. DAN MORENOFF, EXECUTIVE DIRECTOR, AMERICAN CIVIL RIGHTS PROJECT, DALLAS, TEXAS

Dr. MORENOFF. Thank you, Mr. Chairman. Congress only realized the promise of the modern Lincolnian Constitution with the passage of the Civil Rights Act of 1964, and associated nondiscrimination statutes. The Lincolnian Constitution places at the center of American government at the State, and at the Federal level, a shared national citizenship, and the equal protection of our laws.

The Supreme Court tried to carve a narrow exception to the resulting rules of nondiscrimination. First in its Bakke decision in 1978 and then in the Grutter decision with an actual majority in 2003, specifically, only four the admission's decisions of institutions of higher education.

Despite how narrow those opinions were, many of our institutions subsequently adopted an overbroad misreading of the cases to create a generalized trump card, which would overrule the Lincolnian Constitution wherever the talisman of diversity was invoked. All of that should have ended with the Harvard decision a few years ago, in which the Supreme Court ended that exception to our generalized rules of nondiscrimination for the admission's decisions of higher educational institutions.

It should have, but by all appearances it did not. The evidence that continues to accrue seems to suggest that our most selective institutions, Harvard, Yale, Princeton, Penn, Duke, are continuing to discriminate in their admissions' decisions. Far more broadly, the evidence seems to show that our colleges and universities are discriminating in their hiring and promotional decisions, as well as in race and sex exclusive scholarships that they continue to administer.

Above and beyond these institution level problems, the Federal Government continues to affirmatively pay colleges and universities to violate our nondiscrimination laws. The signature example here would be NIH's first program, which provided funding only for hirings that would violate Title VII, as well as more generally the Federal Government incentivizing broadly, directly and indirectly, violations of our nondiscrimination laws.

The new administration has begun to address these issues. There is a lot to say about how they have. There are things only Congress

can do. At the top of that list must be amending the Higher Education Act to prevent our accreditors from using their control of their access to Congress's purse to compel violations of nondiscrimination law.

I would also point out only Congress can actually de-authorize and defund programs like the first program. There is much more to say. I have said much of it in my written testimony. I look forward to talking with you about these issues. Thank you for having me.

[The statement of Mr. Morenoff follows:]

WRITTEN STATEMENT FOR THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION & WORKFORCE,
SUBCOMMITTEE ON HIGHER EDUCATION & WORKFORCE DEVELOPMENT

MAY 21, 2025 HEARING ON:
"RESTORING EXCELLENCE: THE CASE AGAINST DEI"

DAN MORENOFF,
EXECUTIVE DIRECTOR,
THE AMERICAN CIVIL RIGHTS PROJECT

I appreciate the Committee allowing me to contribute to its consideration of the status of so-called "DEI" in higher education.[1] Below I briefly summarize existing law, its incompatibility with certain institutional norms across higher education, and steps the current Administration is taking to address those inconsistencies, before turning to the need for Congress to act to codify those steps and to ensure federal law never again promotes the very discriminatory practices it prohibits.

I. THE LINCOLNIAN CONSTITUTION

The Founding Fathers gave us the great American Experiment, but the refounders of the post-Civil War period crafted the legal architecture of modern America. Their work (writing and ratifying the Thirteenth, Fourteenth, and Fifteenth Amendments, as well as passing the Civil Rights Act of 1866 and more) redefined the relationship between the states and the federal government. More, it formally committed our nation at both the state *and* federal levels to a shared national citizenship and the equal protection of the law.

For the better part of a century, after Reconstruction's brief explosion of

[1] I do not use this terminology elsewhere in this testimony. Those who initially labeled the "DEI" movement chose the terms "diversity," "equity," and "inclusion" precisely because they sounded vaguely positive without communicating any specific content. Years of exposure to the excesses of "DEI" have convinced much the public that the phrase is vaguely negative, without adding clarity to the content of the categorization. I am interested in only the material subset of "DEI" programs that involve illegal discrimination. That label illegal discrimination most precisely denotes my topic, so that's the terminology I employ throughout.

equality, our institutions often ignored these promises. Nonetheless, the mid-century triumphs of the Civil Rights Movement (including Jackie Robinson's integration of Major League Baseball in 1947, Truman's integration of the U.S. Military in 1948, the Supreme Court's simultaneous issuance of *Brown v. Board of Education* and *Bolling v. Sharpe* in 1954, and Congress's passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965) restored the centrality of these promises.

Let me highlight three of those successes more specifically.

1. *Brown* established that the Fourteenth Amendment's Equal Protection Clause forbid states from discriminating based on race in the provision of public education, including higher education.

2. *Bolling v. Sharpe*, a sister case addressing the federal public schools of Washington, D.C., recognized that the Constitution imposes the same constraint on federal power that the Fourteenth Amendment's Equal Protection Clause imposes on the states. Congress could no more differentiate its educational programming based on the race of students than could the states.

3. The Civil Rights Act of 1964 largely excised discrimination from public life, very much including in education. This remained necessary, as Justice Marshall famously quipped, because the states had understood *Brown II*'s instruction to integrate with "all deliberate speed" to mean that they could do so "slow[ly.]"[2]

That's why it mattered when Congress imposed on federal funding recipients, through Title VI, a broad sweeping prohibition: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[3] That included almost all colleges and universities. The Courts have long interpreted this language to prohibit intentional discrimination against anyone because of race, color, or national origin.[4]

Congress imposing, through Title VII's prohibitory provisions, a bar on

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[2] Cass R. Sunstein, *Did Brown Matter*, The New Yorker (Apr. 25, 2004), https://www.newyorker.com/magazine/2004/05/03/did-brown-matter.

[3] 42 U.S.C. § 2000d.

[4] *See, e.g.*, *Students for Fair Admissions v. President & Fellows of Harvard College*, 600 U.S. 181, 198 n.2 (reiterating, because "no party asks us to reconsider it," the longstanding proposition that all and only "discrimination that violates the Equal Protection Clause of the Fourteenth Amendment [when pursued by a state actor] also constitutes a violation of Title VI."); *Id.* at 288 (Gorsuch, J., Concurring) (restating that "Title VI…'prohibits only intentional discrimination.' From this, we can safely say that Title VI forbids a recipient of federal funds from intentionally treating one person worse than another similarly situated person on the ground of race, color or national origin.") (citing *Alexander v. Sandoval*, 532 U.S. 275, 280 (2011) (cleaned up)).

almost all employers (including colleges and universities), among others, discriminating in employment actions against "any individual" "because of" "race, color, religion, sex, or national origin"[5] mattered at least as much.

These enactments (and others like them[6]) express and embody our broad, long-standing national consensus in favor of nondiscrimination. They jointly compel equal treatment of individuals, regardless of their race, color, national origin, or sex.

II. THE EXCEPTION THAT THREATENED THE RULE

For two generations, the Supreme Court carved what it intended to be a narrow exception to these enactments' requirements of nondiscrimination for the admissions decisions of higher education. For two generations, people who should have known better took that exception as a broadly applicable trump card, overruling the Lincolnian Constitution.[7]

In 1978, while acknowledging that racial discrimination must satisfy strict

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[5] *Compare* 42 U.S.C. §§ 2000e-2(a) ("It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color religion, sex, or national origin."); 2000e-2(b) ("It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin."); 2000e-2(c) ("It shall be an unlawful employment practice for a labor organization (1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin; (2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or (3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section."); and 2000e-2(d) ("It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.").

[6] The most notable such parallel enactments would be 42 U.S.C. § 1981 (which started life as Section 1 of the Civil Rights Act of 1866 and has long been held to bar *all* contracting decisions based on race) and Title IX of the Education Amendments of 1972 (based tightly on Title VI, Title IX bars discrimination on the basis of sex by federal funding recipients engaged in educational programming, outside of specific, legislated exceptions). 20 U.S.C. § 1681(a) ("No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance….").

[7] This section draws heavily on the Brief of Hamilton Lincoln Law Institute and Ilya Shapiro as *Amici Curiae* in Support of Petitioner, filed in the consolidated cases of *Students for Fair Admissions,*

scrutiny to comply with the Equal Protection Clause, a single Justice wrote in *Regents of the University of California v. Bakke* that "the interest of diversity is compelling in the context of a university's admissions program."[8] Justice Powell agreed with four of his colleagues that the discriminatory admissions program at issue nonetheless violated Equal Protection, because it was insufficiently narrowly tailored.[9]

A generation later, in 2003 in *Grutter v. Bollinger*, a Supreme Court majority followed, but narrowed, this lead. Out of respect for "a university's academic decisions" (specifically—and only—the school's "educational judgment" that producing "such diversity" as could only be achieved through race-conscious interventions "is essential to its educational mission") that majority deferred to a defendant on the "compellingness" of this interest.[10] *Grutter* recognized as compelling the school's interest in obtaining for students the alleged educational benefits of a racially diverse student body, while rejecting as insufficient any broader interest in racial balancing for its own sake.[11] Unlike in *Bakke*, after so finding, the *Grutter* Court approved of the tailoring of Michigan's law school's racial discrimination.

Grutter's exception to our nondiscrimination law remained extraordinarily narrow. It applied *only* to higher education.[12] In higher education, it addressed nothing but admissions decisions.

Despite the narrowness of *Grutter*, the years that followed saw institution after institution misread it to more generally bless illegal "diversity"-seeking discrimination. Universities relied on *Grutter* to justify race-based hiring decisions.[13] Public school systems relied on *Grutter* to justify how they assigned students to K-12 public schools.[14] Private companies relied on *Grutter* in announcing that they would refuse to contract with parties unless they discriminated based on race in their hiring, firing, promotional and assignment decisions.[15] Governmental employers relied on *Grutter* to justify

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Inc. v. President and Fellows of Harvard College, Case No. 20-1199, and *Students for Fair Admissions, Inc. v. University of North Carolina*, Case No. 21-707. https://hlli.org/wp-content/uploads/2022/05/SFFA-v-Harvard-HLLI-Shapiro-amicus.pdf.

8 438 U.S. 265, 314 (1978).

9 *Id.* at 320 (holding state failed to meet its burden of demonstrating that "the challenged classification is necessary to promote" the state's interest in obtaining a diverse student body).

10 539 U.S. 306, 328 (2003).

11 *Id.* at 328; *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 729 (2007).

12 *Id.*

13 John Hollis, *President Washington Announces Membership to the Anti-Racism and Inclusive Excellence Task Force*, George Mason University (Sep. 3, 2020), https://www2.gmu.edu/news/2020-inclusive-excellence-task.

14 *See, e.g.*, *Christa McAuliffe Intermediate Sch. PTO, Inc. v. DeBlasio*, 364 F.3d 253, 282-83 (2d Cir. 2019).

15 *See, e.g.*, Sam Skolnik, *Novartis Demands Outside Counsel Make Tough Diversity Guarantees*, BLOOMBERG LAW (Feb. 12, 2020), https://news.bloomberglaw.com/us-law-week/novartis-demands-out-side-counsel-make-tough-diversity-guarantees.

"racial mirroring" promotional decisions.[16] Even *courts* relied on *Grutter* as a basis to discriminate in their selection of class counsel for representative plaintiffs in class-action litigation.[17]

III. THE *SFFA* COURSE CORRECTION

All of that *should* have come to an end with the Supreme Court's reversal of course in *Harvard*.

The Supreme Court ended *Grutter*'s exception to American nondiscrimination law for university admissions decisions.[18] It specified that this was about more than labels: "'The Constitution deals with substance, not shadows,' and the prohibition against racial discrimination is 'leveled at the thing, not the name.'"[19]

If *Grutter* no longer even allowed discrimination in higher education's admissions decisions, it *could not* continue to authorize *any other* illegal discrimination.

IV. CONTINUING PREVALENCE OF DISCRIMINATORY HIGHER EDUCATIONAL NORMS

And yet, evidence continues to suggest that actors have not gotten the memo (or have, and have chosen to disregard its clear meaning). Despite the *Harvard* decision, actors across the nation appear to continue to pursue discrimination in ways that obviously violate the Lincolnian Constitution.

In higher education, reported statistics for the first matriculating classes admitted post-*Harvard* suggest widespread continued discriminatory decision-making. Universities seemingly continue to systematically make discriminatory hiring, promotional, and training decisions, without regard for the limitations imposed by Title VII. Discriminatory scholarships continue to abound, often under the thinnest veneer of lip-service to the requirements of Equal Protection and Title VI. Even the federal government continues to both: (a) maintain and fund expressly discriminatory programs; and (b) provide structural incentives (directly and indirectly) rewarding the same discrimination Congress has banned.

A. ONGOING ADMISSIONS DISCRIMINATION

Throughout the *Harvard* litigation, Harvard maintained that its racial

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16 *See, e.g.*, *Petit v. City of Chicago*, 352 F.3d 1111, 1114 (7th Cir. 2003); *Bresden v. Tenn. Judicial Selection Comm'n*, 214 S.W.3d 419 (Tenn. 2007); *see generally* Darwinder S. Sidhu, *Racial Mirroring*, 17 U. PA. J. CONST. L. 1335, 1342-1347 (2025).

17 *See, e.g.*, *City of Providence v. AbbVie Inc.*, 2020 U.S. Dist. LEXIS 189472, at *26, 2020 WL 6049139 (S.D.N.Y. Oct. 13, 2020).

18 *Harvard*, 600 U.S. at 230.

19 *Id.*

preferences were required to obtain the purported benefits of the racially balanced student body it annually engineered. Specifically, Harvard maintained that race neutrality "would prompt a 33-percent drop in [B]lack and Hispanic students."[20] At the Supreme Court, Yale, Princeton, Duke, and Penn joined 11 other selective colleges in jointly filing an amicus brief, expressly arguing that "using exclusively race-neutral approaches to admissions decisions would undercut [their] efforts to attain 'the benefits of diversity' they seek"—because "no race-neutral alternative presently can fully replace race-conscious [admissions processes] to obtain the diverse student body [they] have found essential to fulfilling their missions."[21]

Given these longstanding, insistent positions, many of these schools' post-*Harvard* releases of demographic data on their later-admitted classes tell on them. Despite Harvard's litigated representations, the percentage of its Class of 2028 comprised of Black and Hispanic students dropped only 4 percent.[22] Meanwhile, Yale saw *no* change in the percentage of its matriculating class that was Black and an *increase* in its Hispanic percentage.[23] Duke matched Yale's performance to a tee.[24] Princeton saw a 0.1% decrease in its Black figure and a 1% drop in its Hispanic one.[25] Penn saw its disclosed percentage of Black and Hispanic students (jointly reported as an undifferentiated mass) drop two percentage points.[26]

These reported demographics cannot be reconciled with the positions the schools took before the Supreme Court. Either what these schools told the Court was factually wrong, then, or they are not engaging in race-neutral admissions now. The hard data does not afford a third possibility.

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[20] Lexi Boccuzzi, *At Some Elite Universities, Affirmative Action Ruling Leaves Little Impact on Racial Makeup, Prompting Scrutiny: 'It Looks to Me Like Yale is Deliberately Sending a Message that it Doesn't Intend to Comply with the Law,' Expert Tells Free Beacon*, WASHINGTON FREE BEACON (Sep. 11, 2024), https://freebeacon.com/campus/at-some-elite-universities-affirmative-action-ruling-leaves-little-impact-on-racial-makeup-prompting-scrutiny/.

[21] Brief of *Amici Curiae* Brown University, California Institute of Technology, Carnegie Mellon University, Columbia University, Cornell University, Dartmouth College, Duke University, Emory University, Johns Hopkins University, Princeton University, University of Chicago, University of Pennsylvania, Vanderbilt University, Washington University in St. Louis, and Yale University, *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, Case No. 20-1199, and *Students for Fair Admissions, Inc. v. University of North Carolina*, Case No. 21-707. https://www.supremecourt.gov/DocketPDF/20/20-1199/232422/20220801150520881_20-1199%20%2021-707%20bsac%20Universities.pdf.

[22] Boccuzzi, *supra* n.20. The four percent drop took the relevant share of Harvard's freshman class from a consistent 18% to 14%. To be fair, that four percent decline in class share works out to a 22.2% reduction in the subgroups' representation.

[23] Yale's Class of 2027 percentages were 14% and 18% (respectively); those for its Class of 2028 were 14% and 19%.

[24] Duke's Class of 2027 percentages were 13% and 13% (respectively); those for its Class of 2028 were 13% and 14%.

[25] Princeton's Class of 2027 percentages were 9% and 10% (respectively); those for its Class of 2028 were 8.9% and 9%.

[26] Penn's Class of 2027 was 25% Black-and-Hispanic; its Class of 2028 was 23%.

B. Apparently Retained Discriminatory Hiring and Promotional Practices

As previously discussed, *Grutter* offered no specific authorization to universities to disregard Title VII and discriminate in their hiring, promotional, and training programs for employees. *Harvard* removed whatever fig-leaf of rhetorical cover they may have perceived for such illegal discrimination. Nonetheless, a steady drumbeat of disclosures has uncovered ongoing employment discrimination by major universities in the years since the Supreme Court decided *Harvard*.

I won't belabor the point. John Sailer (now at the Manhattan Institute) has done yeoman's work uncovering the methods through which major universities have skirted the law over these years. Related private lawsuits were filed against at least UCLA,[27] Northwestern University,[28] and Texas A&M.[29]

C. Apparently Retained Discriminatory Scholarships

Grutter's narrow exception governed *only admissions decisions* for institutions of higher learning. Long before it was decided, the Court of Appeals for the Fourth Circuit had held that the Equal Protection Clause (and therefore, presumptively, Title VI) barred public colleges or universities from discriminating in their provision of financial aid.[30] That precedent was never overturned or limited. As far as I've determined, no sister circuit ever created a circuit split.

Nonetheless, colleges and universities across the nation continued throughout the *Grutter*-era and have continued after its passing to administer and fund scholarships discriminating based on race, national origin, and sex. Since 2023, the Equal Protection Project alone has filed challenges to illegally discriminatory scholarship programs (some discriminating because of race, others because of national origin or sex) at 100 schools.[31]

Above and beyond this clearly established, widespread practice of colleges and universities openly flouting Title VI, Title IX, and the Equal Protection

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27 *Do No Harm v. David Geffen School of Medicine at UCLA*, C.D. Cal. Case No. 2:25-cv-4131.

28 *Faculty, Alumni, and Students Opposed to Racial Preferences (FASORP) v. Northwestern University*, N.D. Ill. Case No. 1:24-cv-05558. The plaintiff voluntarily dismissed this suit on January 31, 2025.

29 *Lowery v. Texas A&M University Sys.*, S.D. Tex. Case No. 4:22-cv-03091. The court denied the plaintiff had standing to pursue his claims. As the Court of Appeals for the Fifth Circuit noted, Texas subsequently altered its law to prohibit the practices at issue. On both scores, the merits of the plaintiff's allegations were not reached.

30 *Podberesky v. Kirwan*, 38 F.3d 147 (4th Cir. 1994).

31 William A. Jacobson, *Equal Protection Project Challenges 100th School DACA-Only Scholarship at U. Nebraska Omaha*, Legal Insurrection (May 15, 2025), https://legalinsurrection.com/2025/05/equal-protection-project-challenges-100th-school-daca-only-scholarship-at-u-nebraska-omaha/.

Clause, it appears a growing set of schools have chosen to retain discriminatory scholarships post-*Harvard* by outsourcing administration of those scholarships to corporate alter egos. Such schools have variously assigned the offending scholarships to alumni associations or captive supporting foundations, under the apparent theory that these affiliates (as spun-off 501(c)(3)s that do not receive federal funding) are subject to neither the Fourteenth Amendment nor Title VI.[32]

D. CONTINUED DIRECT AND INDIRECT FEDERAL DISCRIMINATION IN HIGHER EDUCATION

We must also acknowledge that until January 2025 (and, as described below, sometimes beyond), *the federal government itself* discriminated—directly and indirectly—in its funding and operation of higher education.

1) Federal Funding of Higher Education's Illegal Discrimination

In ways large and small, federal agencies directly funded illegal discrimination by federal funding recipients in higher education. The National Institutes of Health's Faculty Institutional Recruitment for Sustainable Transformation (FIRST) program is a typical example. Through this grant program, NIH expressly funded "round[s] of awards to enhance [a demographically measured] diversity and inclusion among biomedical faculty."[33] Expressly, FIRST "awards provide[d] funds to recruit [demographically measured] diverse cohorts of early-stage research faculty and establish inclusive environments to help those faculty succeed." This made FIRST funds seemingly contingent on participating recipients intentionally making race-and-sex based recruiting and hiring decisions expressly banned by Title VII, without anything like the kind of strong basis in evidence our case law requires for such an employer to even arguably have the right to make them.[34]

2) Federal Incentivization of Discrimination (Indirect)

Above and beyond such direct funding of illegal discrimination, the federal government indirectly incentivizes illegal discrimination by federal funding recipients through the structure of the Higher Education Act.

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[32] We have recently documented a pair of such examples (at Wright State and Youngstown State). *ACR Project Alerts Ohio AG Yost that State Schools Continue to Operate Illegal, Race-Based Scholarships* (Feb. 3, 2025), https://www.americancivilrightsproject.org/blog/acr-project-alerts-ohio-ag-yost-that-state-schools-continue-to-operate-illegal-race-based-scholarships/.

[33] The FIRST program (including its website) "is no longer an active Common Fund program," but "the program website is being maintained as a[no-longer publicly accessible] archive…" Faculty Institutional Recruitment for Sustainable Transformation (FIRST): Program Snapshot, National Institutes of Health, https://commonfund.nih.gov/FIRST (last visited, May 17, 2025).

[34] *See, e.g.*, *Ricci v. Stefano*, 557 U.S. 557 (2009).

The Higher Education Act authorizes and requires the U.S. Department of Education ("ED") to license accreditors to serve as a "reliable authority as to the quality of education" provided by higher educational institutions.[35] While some level of competition between undergraduate accreditors is possible, a number of fields' professional degrees may only be issued by schools accredited by a single licensed accrediting agency.[36]

The "quality determination" such licensed accreditors reach then determines schools' eligibility for federal funding, including through the federal student loan program.[37] The Higher Education Act specifies a series of "standards for accreditation" that such accreditors *must* assess.[38] The Higher Education Act then specifies both that:

(i) "Nothing in subsection (a)(5) shall be construed to restrict the ability of – (1) an accrediting agency or association to set, with the involvement of its members, and to apply, [additional] accreditation standards[;]"[39] and

(ii) "the Secretary [of Education] shall not promulgate any regulation with respect to the standards of an accreditation agency or association described in subsection (a)(5)."[40]

This structure empowers accreditors (definitionally private actors) to set any standards they choose to impose on their participants and to condition on schools' compliance with those standards the access of such schools to federal funding programs of general applicability.

As of January 2025, numerous accreditors used this delegation to impose race-and-sex-balancing goals and standards onto federal funding recipient schools. For example, the ABA imposed a standard requiring demonstrated commitment both "to having a student body that is diverse with respect to gender, race, and ethnicity" and "to having a faulty and staff that are diverse with respect to gender, race, and ethnicity." The Commission on Accrediting of the Association of Theological Schools imposed a standard requiring "[t]he composition of the faculty [to be] sufficient in number and diversity—demographically and educationally[.]" The various kinds of medical and public health accreditors proved particularly zealous in imposing standards dictating the demography of their schools' enrollments

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35 20 U.S.C. § 1009b(a).

36 E.g., the sole accreditor for American law schools is the American Bar Association's Council of the Section of Legal Education and Admissions to the Bar. See also, (i) the American Dental Association's Commission on Dental Accreditation; (ii) the American Veterinary Medical Association's Council on Education; (iii) the Accreditation Council for Pharmacy Education, and the (iv) Accreditation Commission for Midwifery Education; among others.

37 20 U.S.C. § 1099b(j).

38 20 U.S.C. § 1099b(a)(5).

39 20 USC 1099b(p).

40 20 USC 1099b(o).

and faculties.

And accreditors regularly cited these standards and any perceived noncompliance to pressure universities—by hook or by crook and regardless of laws to the contrary—to produce what they deemed sufficiently racially balanced student bodies and faculties.[41] As a result, because of these standards (and the Higher Education Act's insulation of them from administrative scrutiny), federal dollars have been (and continue to be) used to coerce higher educational institutions to discriminate in their programming and in their employment decisions by race, national origin, and sex in violation of Title VI, Title VII, and Title IX (as well as in violation of Section 1981 and, in the case of public schools, of the Fourteenth Amendment's Equal Protection Clause).

3) Federal Incentivization of Discrimination (Direct)

Similarly, Congress has crafted and continues to fund at least nine (9) "Minority Serving Institution" programs, which expressly condition schools' eligibility for federal money on the racial balances they engineer for their student populations.[42]

Congress created the first of these programs to support "institutions of higher education, which have a student body that has traditionally had a significant portion of [the relevant population of] students[,]"[43] but never incorporated any requirement of any such history into the statute; instead—from the jump—Congress made MSI funding availability contingent on *current* enrollment percentages. By so defining the MSI Programs, Congress denies all other schools an equal opportunity to access federal funding because too few of their students classify in specified racial groups, while too many

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41 Peter Kirsanow and Gail Heriot (of ACR Project Board) Submit Legislative Proposal on Accreditation to Congress, ACR Project (Feb. 26, 2025), https://www.americancivilrightsproject.org/blog/peter-kirsanow-and-gail-heriot-of-acr-project-board-submit-legislative-proposal-on-accreditation-to-congress/.

42 Among those programs are: (i) the Developing Hispanic Serving Institutions Program (the "DHSI Program"); (ii) the Hispanic-Serving Institutions Science, Technology, Engineering, or Mathematics and Articulation Program (the "HSI-STEM Program"); (iii) the Promoting Postbaccalaureate Opportunities for Hispanic Americans Program (the "HSI Postbac Program" and, with the DHSI Program and the HSI-STEM Program, the "HSI Programs"); (iv) the Alaska Native-Serving Institutions Program (the "ANSI Program"); (v) the Native Hawaiian-Serving Institutions Program (the "NHSI Program"); (vi) the Asian American or Native American Pacific Islander-Serving Institutions Program (the "AANAPISI Program"); (vii) the Native American-Serving Nontribal Institutions Program (the "NASN Program"); (viii) the Predominantly Black Institutions Program (the "PBI Program"); and (ix) the Master's Degree Programs at Predominantly Black Institutions Program (the "MPBI Program" and, with the HSI Programs, the ANSI Program, the NHSI Program, the AANAPISI Program, the NASN Program, and the PBI Program, the "Minority Serving Institutions Programs" or the "MSI Programs," with each an "MSI Program").

43 Alexander M. Heideman, *Hispanic-Serving Institutions and Emerging Constitutional Issues*, 24 Federalist Soc'y Rev. 147, 152 (2023) (citing the Hispanic Serving Institutions of Higher Education Act of 1989, H.R. 1561, 101st Cong. (1989)).

identify with others.

These programs primarily flow through ED, which designates the qualifying institutions and awards dedicated grants solely to the schools so designated. Then a host of other federal agencies participate in the same programs by piggybacking on ED's designations of institutions having achieved its to-order racial results and awarding grants solely to those schools. These agencies, like ED, so limit access to federal funding streams to the schools ED favors because of the racial balances of their students.

Through the MSI Programs, the federal government discriminates against students because of their races. Through the MSI Programs, the federal government discriminates against schools because of the races of their students. Those are *Bolling v. Sharpe* constitutional problems, not *Harvard* ones. Through the MSI Programs, the federal government incentivizes schools (including state public schools) to violate the Civil Rights Act of 1964 (and public schools to violate the Fourteenth Amendment).

Let me emphasize that these unlawful programs differ profoundly from other programs which I am *not* discussing here. As far as I am aware, federal support for both Historically Black Colleges and Universities ("HBCUs") and Tribal Colleges and Universities ("TCUs") *do not* suffer from *any* of the MSI Programs' constitutional infirmities.

HBCUs' federal support *is not* conditioned (as the MSI Programs are) on their current demography. Instead, HBCU status (and HBCU funding eligibility) is determined by the "H"—if an institution existed as a school for Black Americans and received federal funding before the passage of the Civil Rights Act of 1964, it retains that funding today, whatever its current student makeup. Congress's continued funding of HBCUs so stands on a different and much stronger constitutional footing.

TCUs' funding likewise lacks the MSI Programs' shared conditioning of federal money on current racial balances. TCUs receive support from the federal government because (regardless of current student body demographics), they are institutions of higher learning maintained by America's *sovereign tribes*. The Tribes maintain TCUs as sovereign political entities, not as racial or ethnic groups. Those political units can and do institute rules for such institutions to assure that they serve the tribes' constituencies in exactly the same way that Georgia charges Georgia residents less for tuition at the University of Georgia than it charges Americans from elsewhere—because tribes are political institutions, this is a political distinction, not a racial or ethnic one, with the treatment turning on constituency-status, not on demography. Again, this leaves Congress's funding of TCUs on a different and much stronger constitutional footing.

Cumulatively, the MSI programs hand out approximately $1 billion per year

in such grants.

4) Federal Discrimination at the Service Academies

Post-*Harvard*, the federally administered service academies also continued to discriminate in their admissions and to vigorously defend that discrimination in court. Students for Fair Admissions documented the ways in which the service academies did so in suits filed against both the United States Naval Academy and the United States Military Academy at West Point.[44]

V. TRUMP ADMINISTRATION ACTIONS TO RESTORE EQUALITY

Since his re-inauguration on January 20, 2025, President Trump and his Administration have taken a series of actions that appear geared toward resolving several of these problems.

A. Ending Direct Federal Funding of Discrimination

Perhaps pursuant to President Trump's January 20, 2025 Executive Order 14151, various agencies have moved to curtail federal funding of explicitly discriminatory employment programs. For example, as mentioned above, NIH has terminated the FIRST program.

While I have not specifically tracked all of the challenges to all of the actions taken by various agencies to curtail federal funding of illegality since January, given the high number of such challenges filed, it is probable that at least some of these cases seek to restore such funding by judicial fiat.

At least to some degree, they have not yet succeeded—again, pointing to the emblematic example of the FIRST program, as of this writing, that program remains dead.

B. Ending Admissions Discrimination

The Administration has also begun to act against continuing admissions discrimination. On January 21, 2025, President Trump issued Executive Order 14173, which ordered the Attorney General and the Secretary of Education, jointly, to issue within 120-days guidance "regarding the measures and practices required to comply with" *Harvard*. On February 14, 2025, the Department of Education's Office of Civil Rights issued related

[44] These cases were filed as *Students for Fair Admissions v. The United States Naval Academy*, D.Md. Case No. RDB-23-2699 and *Students for Fair Admissions v. The United States Military Academy at West Point*, S.D.N.Y. Case No. 23-cv-08262.

guidance.[45]

A district court in New Hampshire has enjoined enforcement of that guidance document.[46] There is always a question of what an injunction against *guidance*, rather than against any pursuit of the legal theories embedded *in* such guidance, means. Regardless, the injunction currently stands.

C. ENDING EMPLOYMENT DISCRIMINATION IN HIGHER EDUCATION

The same Executive Order 14173 included numerous provisions combating ongoing faddish employment discrimination, including within higher education.

One such provision instructed all federal "agencies, with the assistance of the Attorney General" to "take all appropriate action … to advance in the private sector the policy of individual initiative, excellence and hard work" and to "enforce longstanding civil-rights laws … to combat illegal private-sector … preferences, mandates, policies, programs, and activities." The order instructed all agencies to identify targets for "up to nine potential civil compliance investigations" in specified priority areas, explicitly including "institutions of higher education with endowments over 1 billion dollars[.]"

It is presumably no accident that Acting Chairman of the Equal Employment Opportunity Commission Andrea Lucas filed a commissioners charge against Harvard University relating to its apparent "pattern or practice of disparate treatment against white, Asian, male, or straight employees, applicants, and training program participants in hiring, promotion (including but not limited to tenure decisions), compensation, and separation decisions; internship programs; and mentoring, leadership development, and other career development programs."[47]

Perhaps relatedly, the same order also flat-out revoked Lyndon Johnson's Executive Order 11246, under which the Department of Labor had issued regulations governing all federal contracting for generations.[48] There have

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[45] U.S. Dep't of Educ., Office of Civil Rights, Dear Colleague Letter: Title VI of the Civil Rights Act in Light of *Students for Fair Admissions v. Harvard* (Feb. 14, 2025), https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf.

[46] *See Nat'l Educ. Ass'n v. U.S. Dep't of Educ.*, No. 25-CV-091-LM (D.N.H. Apr. 24, 2025).

[47] U.S. Equal Employment Opportunity Commission, Commissioner's Charge (Apr. 25, 2025), https://freebeacon.com/wp-content/uploads/2025/05/2025.04.25-Commissioner-Charge-Against-Harvard-University.pdf.

[48] In 1964, Congress placed enforcement authority for Title VII in the U.S. Department of Justice. Later, Congress split that authority between the Justice Department and the EEOC. Congress has *never* placed enforcement authority for Title VII in the U.S. Department of Labor. Nor did Congress empower either the Justice Department or the EEOC (much less the Labor Department) to draft *substantive* regulations related to Title VII. Definitionally, DOL's regulations enforcing E.O. 11246 *could not* have altered the meaning of Title VII (to the degree that *any* regulation could

been longstanding questions concerning the compatibility of E.O. 11246 and the regulations the Labor Department issued to effectuate it with Title VII.[49] Those unresolved issues have presumably, at least pro-actively, been mooted by President Trump's revocation of the entire prior regime.

D. CONFRONTING ACCREDITORS' ABUSE OF THEIR DELEGATED POWER OVER CONGRESS'S PURSE

On April 23, 2025, President Trump issued Executive Order 14279, seeking to confront accreditors' misuse of their delegated power over Congress's purse.

The order instructed the Secretary of Education "as appropriate and consistent with applicable law" to:

> hold accountable, including through denial, monitoring, suspension, or termination of accreditation recognition, accreditors who fail to meet the applicable recognition criteria or otherwise violate Federal law, including by requiring institutions seeking accreditation to engage in unlawful discrimination … under the guise of 'diversity, equity, and inclusion' initiatives.

It specifically called for the Secretary of Education, the Secretary of Health & Human Services, and the Attorney General to "assess whether to suspend or terminate" the "status as an accrediting agency" of particular accreditors alleged to have clearly and aggressively used their standard-setting power to press for violations of Title VI and Title VII.

The long-term efficacy of these steps is unclear, but the specifically identified accreditors have since announced their "suspension" (though not their revocation) of the specified standards.[50]

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ever alter the meaning of a statute). Nonetheless in the interest of intra-executive comity the EEOC's longstanding practice on receiving a Title VII charge against a federal contractor was to defer to DOL's assessment of compliance with E.O. 11246, rather than to risk parallel investigations assessing the same behaviors and reaching divergent conclusions on their legality.

[49] As one example, Title VII expressly prohibits "classify[ing] employees or applicants for employment in any way which would … tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(2). DOL, however, long *required* federal contractors to classify all employees and applicants by race and sex in order to track compliance with E.O. 11246.

[50] Breccan F. Thies, *Medical School Accreditor Suspends "Diversity" Requirements After Trump Executive Order*, THE FEDERALIST (May 13, 2025), https://thefederalist.com/2025/05/13/medical-school-accreditor-suspends-diversity-requirements-after-trump-executive-order/. Neetu Arnold, *Woke School Accreditors Must be Stopped*, City Journal (Mar. 6, 2025), https://www.city-journal.org/article/american-bar-association-dei-school-accreditors.

E. ENDING DISCRIMINATION AT THE ACADEMIES

On January 27, 2025, President Trump signed Executive Order 14185, which ordered U.S. Departments of Defense and Homeland Security to end all preferences "on the basis of sex, race, ethnicity, color, or creed[.]" The order specifically ordered the Secretaries of Defense and Homeland Security to align the service academies. By all appearances, the academies have complied and are not—for the duration of President Trump's term at least—currently discriminating in their admissions decisions.

F. STEPS NOT YET TAKEN: DISCRIMINATORY SCHOLARSHIPS AND MSIS

In addition to its guidance concerning admissions policies, OCR's February 14, 2025 guidance package also addressed, in passing, the legality of university-administered discriminatory scholarships.[51] Relevant to the illegality of relabeling a university's discriminatory scholarships those of its affiliates, OCR's related FAQ document recognized that:

> Title VI applies to "any program or activity receiving Federal financial assistance from the Department of Education," and a school's responsibility not to discriminate against students applies to the conduct of everyone over whom the school exercises some control, whether through a contract or other arrangement. A school may not engage in racial preferences by laundering those preferences through third parties.[52]

While this correctly states the law, the same district court that enjoined OCR's guidance letter simultaneously enjoined enforcement of the FAQ.

While parties have since filed administrative complaints against discriminatory scholarships administered by universities,[53] I am unaware of any other steps the administration has taken to confront these practices.

Similarly, I am unaware of *any* action the Administration has yet taken to admit or confront the unconstitutionality of the MSI Programs.

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[51] Office of Civil Rights, Dear Colleague Letter ("Federal law thus prohibits covered entities from using race in decisions pertaining to admissions, hiring, promotion, compensation, *financial aid*, *scholarships*, *prizes*, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life.") (emphasis added).

[52] Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act (first issued on Feb. 28, 2025), https://www.ednc.org/wp-content/uploads/2025/03/frequently-asked-questions-about-racial-preferences-and-stereotypes-under-title-vi-of-civil-rights-act-109530.pdf (internal citations omitted).

[53] *See, e.g.*, Equal Protection Project, *Equal Protection Project v. Univ. of Ala.*, https://equalprotect.org/case/equal-protection-project-v-university-of-alabama/ (last visited May 17, 2025).

VI. NEED FOR CONGRESSIONAL ACTION

As the prior section hopefully leaves obvious, there is only so much that any Administration, even one as creative and aggressive as the Trump Administration, can do to permanently answer these questions. What can be done by one President through the exercise of his discretion can almost always be reversed by a successor through the same. While related regulations could be written in the years to come (and are likely in the works), those, too, can be reversed by a successor willing to put in the work to satisfy the Administrative Procedure Act's requirements.

Simply, there are *necessary* steps that no Administration can take without the participation and active involvement of Congress, because they require legislation.

To assure that all federal programs explicitly funding legal violations by third parties (like the FIRST program) stay dead, Congress must both defund and de-authorize them.

While the law is remarkably clear already, there may be small clarifications to Title VI, Title VII, or Title IX that Congress could pass to disable the arguments in favor of ongoing admissions, employment, and scholarship discrimination by institutions of higher learning.

There are definitely changes Congress can and should make to stop directly and indirectly incentivizing illegal and unconstitutional action by colleges and universities.

At the top of that list must fall amending the Higher Education Act to push accreditors out of dictating *anything* about the demography of schools. In their capacities as U.S. Civil Rights Commissioners, Professor Gail Heriot and Mr. Peter Kirsanow (who are also Directors of the ACR Project) wrote to this Committee in February to explain how this could best be done.[54] The recommended change would be small, but meaningful. It would also serve to re-establish academic freedom, by restoring to individual institutions the setting of any lawful policy on these divisive issues, without duress from non-governmental actors. And, because of the existing language of the Higher Education Act, it is quite likely that *only* such Congressional action *can* prevent accreditors from snapping right back to compelling illegal behavior if and when a future President should prove less equality-friendly than President Trump.

The committee should also consider potential alterations to the MSI

[54] Peter Kirsanow and Gail Heriot (of ACR Project Board) Submit Legislative Proposal on Accreditation to Congress, ACR Project (Feb. 26, 2025), https://www.americancivilrightsproject.org/blog/peter-kirsanow-and-gail-heriot-of-acr-project-board-submit-legislative-proposal-on-accreditation-to-congress/.

Programs. As Professor Heriot, Mr. Kirsanow, and I wrote this Committee in March,[55] Congress can and should address the MSI Program's structural problems. I have drafted model legislation exploring some available options,[56] and I encourage the Committee to consider such improvements.

To make the President's reforms at the service academy permanent (and to disable the "national security demands discrimination" defenses they deployed in litigation during the Biden Administration), Congress must act—pursuant to its Article I, Section 8 power "To make rules for the government and regulation of the land and naval forces"—to bar a future Administration from unwinding them.

[55] *ACR Project Alerts Congress to Unconstitutional MSI Programs*, ACR Project (Mar. 10, 2025), https://www.americancivilrightsproject.org/blog/acr-project-alerts-congress-to-unconstitutional-msi-programs/.

[56] *New Model Legislation: Enforcing the Law on Colorblind Admissions Congress Can Stop Unconstitutional Discrimination and Fund Better Alternatives*, ACR Project (Feb. 2024), https://www.americancivilrightsproject.org/blog/new-model-legislation-enforcing-the-law-on-colorblind-admissions-congress-can-stop-unconstitutional-discrimination-and-fund-better-alternatives/.

Chairman OWENS. Thank you so much. I now recognize Dr. Harper for your testimony.

STATEMENT OF DR. SHAUN HARPER, PROVOST PROFESSOR OF EDUCATION, PUBLIC POLICY AND BUSINESS, UNIVERSITY OF SOUTH CAROLINA, LOS ANGELES, CALIFORNIA

Mr. HARPER. Thank you for inviting me. I am here speaking in my capacity as a researcher, and a tenured professor in 3 years at the University of Southern California, not as a spokesperson for the institution itself.

Offices and programs that ensure access and opportunities for women, students of color, veterans, students with disabilities, low-income Americans, Jewish and Muslim students, LGBTQ people, and other Americans who make institutions diverse have been defunded and eliminated.

Innocent, hard-working, law-abiding and highly qualified professionals who were hired to help colleges and universities actualize espoused institutional commitments to diversity, equity and inclusion, have been fired.

College Presidents have been placed in the tough position of choosing between Federal funding on which their institutions rely for survival, or courageously protecting the diverse people, programs and policies that enhance institutional excellence.

Brilliant scholars, who have dedicated their careers to eradicating inequities in education, health, and other sectors of our society, have had their research grants abruptly canceled. All of this destruction is the result of misinformation, disinformation and exaggerations. Politicized attacks on DEI are largely informed by anecdotes and small numbers of reported wrongdoings on a relatively, tiny number of campuses.

Instead of on proof of what is actually occurring in the name of DEI on our Nation's nearly 4,000 degree-granting postsecondary institutions. As a citizen, and scholar, I call for greater reliance on rigorous studies that consistently show the educational benefits of DEI. I also call on opponents to furnish a stronger corpus of evidence to prove that DEI is universally divisive, discriminatory, over-funded, and otherwise harmful to our democracy. Prove it. More than 50 years of research has repeatedly shown the positive educational benefits and outcomes associated with diverse and inclusive learning environments for all students. DEI programs, policies and protocols also help reduce institutional susceptibility to violence, harassment, discrimination and abuse.

In my written testimony I refute several common misconceptions about DEI. One, is that students of color are only admitted to highly selective institutions because of their race. Another is that those presumably unqualified admits are incapable of succeeding academically. Truth is students of color at elite institutions graduate at rates that exceed, match, or just slightly lag behind those of their white peers.

In 2023, 4 days after the U.S. Supreme Court struck down race conscious admissions in higher education, I published an article titled, "Black Harvard and Princeton Students Graduate at Higher Rates than Classmates Overall, Equally at Yale." It was based on data from the U.S. Department of Education.

More recently available Federal statistics show similar patterns. Across the eight Ivy League institutions, on average 96 percent of students graduated within 6 years. It was 95 percent for black stu-

dents, and 94 percent for Latinos. I call on DEI opponents to provide verifiable data from hundreds of rigorous research studies, with defensibly large sample sizes, to confirm five other popular exaggerations.

One, while male students are routinely discriminated against on many campuses. Two, white applicants are being routinely passed over for faculty positions and leadership roles on many campuses. Three, the curriculum has become too woke. Four, accreditors have become too woke. Five, DEI offices are overfunded and accessibly staffed.

There is not enough solid, systematically collected evidence to support the universality of these unverified claims. In the written testimony, I juxtapose these exaggerations with what I know to be true from multiple trustworthy data sources, and from my first-hand experiences.

Anecdotes gathered primarily from outrageous, one-off social media posts, are not credible enough to declare that all DEI initiatives are harmful to higher education, and our democracy. More than five decades of high-quality studies confirm the opposite. Thank you again, I look forward to your questions.

[The statement of Dr. Harper follows:]

Testimony provided to the
United States House of Representatives
Committee on Education and Workforce
Subcommittee on Higher Education and Workforce Development
Hearing on "Restoring Excellence: The Case Against DEI"

May 21, 2025

Shaun Harper, Ph.D.
Provost Professor of Education, Public Policy, and Business
University of Southern California

Culture centers and multicultural affairs offices, programs and activities, resources, and services that ensure access and opportunities for women, students of color, veterans, students with disabilities, low-income Americans, Jewish and Muslim students, LGBTQ+ collegians, and other citizens who make campuses diverse have been defunded and eliminated at many postsecondary institutions across the United States. Highly qualified, extraordinarily dedicated, and law-abiding professionals who were hired to help colleges and universities enact espoused institutional commitments to diversity, equity, and inclusion (DEI) have lost their jobs. Presidents and governing board members have been placed in the tough position of choosing between federal funding on which their institutions rely for survival or protecting the diverse people, programs, and policies that enhance institutional excellence. Over the past five months, brilliant, law-abiding researchers who have dedicated their careers to eradicating inequities in education, health, housing, the economy, and other sectors of our society have had their grants abruptly canceled, which has led to massive layoffs in their labs, centers, and institutes. More alarming is that their important, in several instances lifesaving work has been paused, which will ultimately result in the exacerbation of existing inequities and the manufacturing of new racial, gender, and socioeconomic disparities among Americans.

All of this destruction is the result of baseless lies, misinformation, disinformation, and exaggerations about DEI. Opponents are recklessly making generalizations and unsubstantiated claims about places they have never been. Their attacks are largely informed by anecdotes or small handfuls of reported wrongdoings on a relatively tiny number of campuses instead of on meticulously-derived confirmations about what is *actually* occurring at our nation's nearly 4,000 degree-granting postsecondary institutions. As a citizen and scholar, I highly value and insist on evidence. As a matter of justice, the burden of proof must be on those who make erroneous, highly consequential cases against DEI. I therefore call for greater reliance on rigorous studies about the educational benefits of DEI, as well as a stronger corpus of evidence from attackers who claim that DEI is divisive, discriminatory, overfunded, and otherwise harmful to our democracy. Proof, not political assaults on values that are fundamental to our nation and its educational institutions, is what students, tax-paying families, and employees on college campuses deserve from our government.

Honoring Decades of Empirical Evidence

More than 50 years of research has consistently confirmed the educational benefits associated with DEI in U.S. higher education. Some of it was synthesized in a report produced in response to the March 7, 2024 congressional hearing titled, "Divisive, Excessive, Ineffective: The Real Impact of DEI on College

Campuses."[1] The dozen essays and institutional examples published therein were evidence-based. National Academy of Education inductees, past presidents of the American Educational Research Association and the Association for the Study of Higher Education, and renowned scholars who have conducted DEI-focused research for more than two decades were among the authors. The report was submitted and made part of the official record for the 2024 hearing. Beyond that one document, a more robust corpus of research is published in *The Review of Higher Education*, *Journal of Higher Education*, *Research in Higher Education*, *Journal of College Student Development*, *Journal of Diversity in Higher Education*, and hundreds of other peer-reviewed academic journals, as well as in dozens of books released by well-respected university presses and other top academic publishers.[2] Additionally, the educational benefits of diversity for all students, including white male collegians, has been repeatedly documented in numerous amicus curae submitted to the United States Supreme Court.[3]

With verifiable multiplication across each of the three editions published over a 25-year period, *How College Affects Students,* one of the most-cited books about higher education, presents solid evidence on the positive effects of sustained engagement in DEI-related activities on students' critical thinking skills and cognitive gains, prejudice reduction, and other educational outcomes.[4] Meta-analyses and extensive literature reviews of research about the educational benefits of DEI on campuses also have been published.[5] Because the research evidence is so strong and the findings are so consistent, scholars have spent very little time debating whether DEI strengthens American higher education – many people with Ph.D. degrees from our nation's top universities have repeatedly confirmed that it has, does, and will.

Placing Higher Education At Greater Risk of Violence

In addition to the well-documented outcomes associated with diverse and inclusive learning environments for students, DEI programs, policies, and protocols also help reduce institutional susceptibility to racial crises, sexual harassment, antisemitism, Islamophobia, and other acts of

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[1] Harper, S., & Associates. (2024). *Truths about DEI on college campuses: Evidence-based expert responses to politicized misinformation*. Los Angeles: University of Southern California Race and Equity Center.

[2] Bowen, W. G., & Bok, D. (1998). *The shape of the river: Long-term consequences of considering race in college and university admissions*. Princeton, NJ: Princeton University Press/Chang, M. J., Witt, D., Jones, J., & Hakuta, K. (Eds). (2003). *Compelling interest: Examining the evidence on racial dynamics in colleges and universities*. Stanford, CA: Stanford University Press/ Gurin, P., Lehman, J. S., & Lewis, E. (2004). *Defending diversity: Affirmative Action at the University of Michigan*. Ann Arbor, MI: University of Michigan Press/ Harper, S. R., & Hurtado, S. (Eds.). (2011). *Racial and ethnic diversity in higher education* (3rd ed.). Boston, MA: Pearson/ Smith, D. G. (2024). *Diversity's promise for higher education: Making it work* (4th ed.). Baltimore, MD: Johns Hopkins University Press/Winkle-Wagner, R., & Locks, A. M. (2020). *Diversity and inclusion on campus: Supporting students of color in higher education* (2nd ed.). New York: Routledge.

[3] *Amicus Curiae* Brief of 444 American Social Science Researchers in Support of the Respondent in *Fisher v. University of Texas*, 570 U.S. 297 (2013)/ *Amicus Curiae* Brief of 823 Social Scientists in Support of the Respondent in *Fisher v. University of Texas*, 136 S. Ct. 2198 (2016)/ *Amicus Curiae* Brief of 1,241 Social Scientists in Support of the Respondent in *Students for Fair Admissions v. Harvard University*, No. 20-1199 (2022).

[4] Mayhew, M. J., Rockenbach, A. N., Bowman, N. A., Seifert, T. A., et al. (2016). *How college affects students: 21st century evidence that higher education works*. San Francisco: Jossey-Bass/Pascarella, E. T., & Terenzini, P. T. (1991). *How college affects students: Insights from twenty years of research*. San Francisco: Jossey-Bass/Pascarella, E. T., & Terenzini, P. T. (2005). *How college affects students, Volume 2: A third decade of research*. San Francisco: Jossey-Bass.

[5] Bowman, N. A. (2010). The educational benefits of diversity: Evidence from multiple sectors. *Higher Education: Handbook of Theory and Research, 25*, 145-190/Bowman, N. A. (2011). Promoting participation in a diverse democracy: A meta-analysis of college diversity experiences and civic engagement. *Review of Educational Research, 81*(1) 29-68/ Gurin, P., Dey, E. L., Hurtado, S., & Gurin, G. (2002). Diversity and higher education: Theory and impact on educational outcomes. *Harvard Educational Review, 72*(3), 330-366/Harper, S. R., & Hurtado, S. (2007). *New Directions for Student Services, 120*, 7-24/ Hurtado, S., Alvarez, C. L., Guillermo-Wann, C., Cuellar, M., & Arellano, L. (2012). A model for diverse learning environments: The scholarship on creating and assessing conditions for student success. *Higher Education: Handbook of Theory and Research, 27*, 41-122.

violence, discrimination, and abuse. No credible published evidence shows that violence, harassment, discrimination, and abuse has occurred on any college or university campus *because* of DEI initiatives – they are the antithesis of harm. In the absence of these policies and programs, I predict that people on campuses across the country will likely experience higher rates of violence, harassment, discrimination, and abuse.

Antisemitism is abhorrent. It also is a longstanding problem on college campuses. According to FBI data published in 2024, of the 950 religiously-motivated hate crimes that occurred at educational institutions between 2018 and 2022, 78.4% were targeted at Jewish people. During that same four-year timeframe, FBI data also show that of the 2,624 racially-motivated hate crimes on campuses, 64.4% were targeted at Black people.[6] By comparison, 9.3% of racially-motivated hate crime victims on campuses were white. Slightly more than one-third (35.2%) of these school-based hate crimes occurred at higher education institutions; the rest were in K-12 schools. These and other statistics strongly affirm that more attention must be placed on improving campus climates for Jewish and Black people, as well as other populations that make campuses diverse. Researchers make clear that Islamophobia and discrimination against Muslim people in higher education also is persistent and pervasive.[7] That, too, must be immediately addressed.

DEI professionals play pivotal roles in campus recovery efforts in the aftermath of hate crimes and other tragedies. "Jews will not replace us," was among the antisemitic filth that tiki torch-carrying white nationalists and far-right extremists chanted as they marched through the University of Virginia campus on August 11, 2017. It was mostly white men, not DEI professionals, who participated in the rally that night. It was DEI staff and administrators who swiftly responded by denouncing the antisemitism and racism that poisoned their campus community; by engaging in restorative caretaking for Jewish students and students of color who were targeted; and by bringing members of the UVA campus community together to heal from the devastation that had occurred there. In the absence of DEI professionals, it is unlikely that students, faculty, and staff on the Charlottesville campus would have received the necessary recovery resources.

White supremacists still lurk on and around college campuses. They employ a multitude of tactics to recruit new members, preying most viciously on young white men. Southern Poverty Law Center data show 1,720 instances of hate groups posting flyers on college campuses across the country between 2018 and 2025.[8] In the absence of DEI professionals, policies, and protocols, who will help campuses recover when extremists do elsewhere what they did at UVA? Who will create the educational conditions that protect white undergraduate men from being recruited and radicalized? During and in the aftermath of racial crises and catastrophic attacks on diverse students (including, but not limited to Jews), who will be held responsible for the absence of protective response resources that institutions lost when they were forced to comply with anti-DEI executive orders, 'Dear Colleague' letters from the U.S. Department of Education, and various legislative mandates?

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[6] Federal Bureau of Investigation. (2024). *Reported hate crime at schools: 2018-2022*. Washington, DC: United States Department of Justice, FBI Uniform Crime Reporting Program.

[7] Ahmadi, S., & Cole, D. (Eds.). (2020). *Islamophobia in higher education: Combatting discrimination and creating understanding*. Sterling, VA: Stylus.

[8] Southern Poverty Law Center. (2025). Map of hate group flyering in the U.S. https://www.splcenter.org/flyering-map

Acknowledging Truths About Inequities

Beyond being the most targeted victims of hate crimes, research has long documented other brands of experiential racism among students of color at predominantly white postsecondary institutions – being called racial epithets, being baselessly accused of plagiarism by white professors, being forced to speak on behalf of all members of their racial/ethnic groups, being constantly confused for peers whom they look nothing alike, being caricatured at racist theme parties hosted by predominantly white fraternities, being discriminated against for membership in predominantly white sororities, being passed over by faculty members for mentoring and research opportunities, and being racially profiled by campus police officers, to name a few.[9] Truth is, culture centers and multicultural affairs offices – the epicenters of DEI on many campuses – help students recover from the racism they experience inside and outside of classrooms.

Researchers have long documented racial inequities in college access and opportunity.[10] Truth is, within one year following the U.S. Supreme Court's ruling on Affirmative Action in June 2023, particular colleges and universities (most especially highly-selective institutions) enrolled fewer numbers of talented, highly deserving students of color.[11] In addition to enrollment declines, campus cultures will be negatively affected in ways similar to what University of Maryland Professor Julie J. Park documented in her book, *When Diversity Drops*, which is based on a study of a California university following the passage of a statewide ban on race-conscious admissions in 1996.[12] Noteworthy is that white, Christian collegians were negatively affected by the decrease in students of color on the campus that Dr. Park studied. Truth is, DEI professionals work tirelessly to engender sense of belonging for all students, especially those who are most underrepresented and underserved. This includes men, white collegians, and Jewish students.

Truth is, relative to community colleges and open access public universities, highly-selective postsecondary institutions usually have more well-funded student support resources, including DEI offices and programs. One common misconception is that students of color are only admitted to those colleges and universities because of their race. Another is that those presumably unqualified students are incapable of succeeding academically. Baccalaureate degree attainment is one of the strongest indicators of success. Truth is, students of color graduate at rates that exceed, match, or just slightly lag behind those of their white peers at elite institutions. Four days after the Supreme Court struck down Affirmative Action in college admissions, *Forbes* published an article I wrote titled, "Black Harvard And

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[9] Briscoe, K. L. (2024). "Failing to respond": Black graduate students' perceptions of a university president's responses to racialized Incidents. *Journal of Diversity in Higher Education, 17*(2), 97–109./Feagin, J. R., Vera, H., & Imani, N. (1996). *The agony of education: Black students at white colleges and universities*. New York: Routledge/ Harper, S. R. (2015). Black male college achievers and resistant responses to racist stereotypes at predominantly white colleges and universities. *Harvard Educational Review, 85*(4), 646-674/ Ogunyemi, D., Clare, C., Astudillo, Y. M., Marseille, M., Manu, E., & Kim, S. (2020). Microaggressions in the learning environment: A systematic review. *Journal of Diversity in Higher Education, 13*(2), 97-119/ Yeo, H. J. T., Mendenhall, R., Harwood, S. A., & Huntt, M. B. (2019). Asian international student and Asian American student: Mistaken identity and racial microaggressions. *Journal of International Students, 9*(1), 39-65/Yosso, T., Smith, W., Ceja, M., & Solórzano, D. (2009). Critical Race Theory, racial microaggressions, and campus racial climate for Latina/o undergraduates. *Harvard Educational Review, 79*(4), 659-690.

[10] Bowen & Bok (1998)/Harper, S. R., Patton, L. D., & Wooden, O. S. Access and equity for African American students in higher education: A critical race historical analysis of policy efforts. *Journal of Higher Education, 80*(4), 389-414/Orfield, G., Marin, P., & Horn, C. L. (Eds.). (2005). *Higher education and the color line: College access, racial equity, and social change*. Cambridge, MA: Harvard Education Press.

[11] Bhatia, A., Blatt, B., Paris, F., Parlapiano, A., & Washington, E. (2025, January 15). What happened to enrollment at top colleges after Affirmative Action ended. New York Times, https://www.nytimes.com/interactive/2025/01/15/upshot/college-enrollment-race.html

[12] Park, J. J. (2013). When diversity drops: Race, religion, and Affirmative Action in higher education. New Brunswick, NJ: Rutgers University Press.

Princeton Students Graduate At Higher Rates Than Classmates Overall, Equally At Yale."[13] My declaration was based on statistics from the U.S. Department of Education's Integrated Postsecondary Education Data System (IPEDS). More recently available IPEDS data show similar patterns. As noted below in Table 1, across the eight Ivy League institutions, on average, 96% of students graduated within six years – it is 95% and 94% for Black and Latino collegians, respectively. At Princeton and Yale, the Black student percentages surpassed the overall average. Combined with these students' extraordinary academic talents, DEI initiatives bolster their success by making campus environments safer, more inclusive, and culturally responsive.

Table 1. Six-year graduation rates at Ivy League institutions, 2024

Institution	Overall %	Black %	Latino %
Brown University	96	91	94
Columbia University	95	92	93
Cornell University	95	91	94
Dartmouth College	96	96	93
Harvard University	97	97	96
University of Pennsylvania	97	96	95
Princeton University	97	98	94
Yale University	96	97	95

While completion rates are fairly similar between students of color and their white peers at our nation's most competitive institutions, this is not the case throughout all of higher education. Recent research reports document these and other racial inequities.[14] Scholars have long acknowledged that college student retention and completion rates cannot be attributed to a single or even a narrow set of factors.[15] Student talent, effort, and readiness for the rigors of college-level academic work are indeed important variables – but affordability, safe and inclusive campus climates, engagement in enriching educational experiences, culturally-inclusive classrooms, culturally-relevant curricula, as well as the supportiveness of peers, professors, and staff members, also are powerful contributing factors. That latter set of variables is detachable from DEI policies, programs, and professionals.

Juxtaposing Evidence with Unsubstantiated Claims About DEI

In this section, I juxtapose five unverified claims that opponents frequently make about DEI with what I know to be true from various trustworthy data sources and firsthand experiences.

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[13] Harper, S. (2023, July 3). Black Harvard and Princeton students graduate at higher rates than classmates overall, equally at Yale. Forbes, https://www.forbes.com/sites/shaunharper/2023/07/03/graduation-rates-higher-for-black-collegians-than-for-students-overall-at-harvard-and-princeton-equal-at-yale

[14] The Campaign for College Opportunity. (2024). *Still left out: How exclusion in California's colleges and universities continues to hurt our values, students, and democracy*. Los Angeles, CA: Author/EdTrust-West. (2025). *Black minds matter, 2025: Building bright Black futures*. Oakland, CA: Author/Harper, S. R., & Simmons, I. (2019). *Black students at public colleges and universities: A 50-state report card*. Los Angeles: University of Southern California, Race and Equity Center.

[15] Braxton, J. M., Doyle, W. R., Hartley III, H. V., Hirschy, A. S., Jones, W. A., & McLendon, M. K. (2013). *Rethinking college student retention*. San Francisco: Jossey-Bass.

1. **White male students are being routinely discriminated against** – Over the past 20 years, I have conducted qualitative research on campus racial climates at higher education institutions in every geographic region of the U.S. On each campus, dozens of white male students (including conservatives and liberals) participated in my interviews. White men have never told research team members and me that their racial group routinely experiences discrimination. Also, the National Assessment of Collegiate Campus Climates (NACCC), a suite of quantitative surveys that my research center at the University of Southern California launched six years ago, has been administered to more than 2.5 million students on hundreds of campuses. They are population surveys – meaning, they are sent to every enrolled student. NACCC data do not show high rates of white male respondents reporting routine experiences with racial discrimination and harassment. Surely, there are small numbers of white male individuals who occasionally experience what could be characterized as discrimination on some campuses. But there is not sufficient evidence from large quantitative surveys or from disaggregated analyses of formal discrimination complaint submissions to confirm that white men are being categorically mistreated in ways that DEI opponents exaggerate.

2. **White applicants are being routinely passed over for campus jobs** – U.S. Department of Education data show that during the 2023-24 academic school year, two-thirds of full-time assistant, associate, and full professors at degree-granting postsecondary institutions were white. Also, whites were 74% of full professors – meaning, faculty members at the highest rank. Those same federal data show that three-fourths of professionals who held management positions on college and university campuses were white. According to a 2023 report from the College and University Professional Association for Human Resources, 78% of senior and executive-level admissions officers were white.[16] For nearly 30 years, the American Council on Education has administered a survey that captures the demographic composition of the college presidency – 73% of presidents in the 2022 administration were white.[17] These verifiable demographics do not show white underrepresentation in coveted higher education jobs. Furthermore, large-scale disaggregated analyses of formal discrimination complaint submissions do not exist to confirm that white applicants for faculty, staff, and administrative leadership roles are being disadvantaged in ways that DEI opponents exaggerate.

3. **The curriculum has become too woke** – I am executive producing an hourlong documentary about how the elimination of DEI programs, offices and culture centers, and professional positions are affecting people on college campuses. This spring, I conducted on-camera interviews with nearly 150 undergraduates and graduate students (including conservatives), faculty members, DEI professionals (current and recently fired), alumni, and subject-matter experts at 20 postsecondary institutions across the country. In every student interview, I asked if wokeness pervaded the curriculum and classrooms on their campuses. Students, including conservatives, said no. This is consistent with what collegians report in related NACCC survey questions and what they have been telling me for two decades in qualitative interviews. Noteworthy is that the overwhelming majority of students whom I interviewed for the film (including whites) insisted that their courses, readings, and assignments focus far too little, not too much on DEI-related topics. DEI opponents have not published comprehensive analyses of syllabi from hundreds or even dozens of institutions to corroborate their claims of extreme

[16] Fuesting, M. (2023). *The higher ed admissions workforce: Pay, diversity, equity, and years in position*. Knoxville, TN: College and University Professional Association for Human Resources.

[17] Melidona, D., Cecil, B. G., Cassell, A., & Chessman, H. M. (2023). *The American college president: 2023 edition*. Washington, DC: American Council on Education.

wokeism in the curriculum. Moreover, they have not spent time in classrooms, certainly not the hours, weeks, and months that ethnographers and researchers who employ rigorous participant observation methods would deem sufficient to make such claims.

4. **Accreditors have become too woke** – I have served on an institutional review team for the Western Association of Schools and Colleges (WASC). Nothing about that experience or the metrics that the accreditation body asked us to use hardly qualifies as wokeness. DEI opponents have not published results of quantitative surveys capturing the experiences and perspectives of significant numbers of accreditation team members, including conservatives. They also have not published qualitative data from individual interviews and focus groups with defensible sample sizes of people who were previously engaged in the task that I performed for WASC. Furthermore, opponents have not released reports or datasets that include rigorous analyses of complaints from thousands or even hundreds of college presidents, trustees, and other institutional actors who criticized the accreditation process for being unfairly or lopsidedly focused on DEI. Lastly, they have neither engaged in demographic stocktaking of people who have served on accreditation teams in recent years (disaggregated by race, gender, and political party affiliation) nor have they furnished proof of conservative postsecondary institutions being unreasonably punished for failing to fulfill their own self-determined DEI commitments.

5. **DEI is overfunded and excessively staffed** – In a October 2024 *New York Times Magazine* article, investigative journalist Nicholas Confessore noted the following: "Michigan has poured roughly a quarter of a billion dollars into D.E.I. since 2016."[18] He went on to cite a report published by the Heritage Foundation that found, "Michigan to have by far the largest D.E.I. bureaucracy of any large public university." If Confessore's analysis spanned the eight years between 2016 and the date his article was published, the $250 million that he approximated averaged $31.25 million per year. Confessore did not specify what that unverified total included. Was it all institutional dollars? Or were grants from the state of Michigan, federal government, and private foundations that funded research on assorted inequities, along with donations from philanthropists also included? Even if the entire sum was from the institution, $31.25 million would have accounted for 0.2% of the entire $13.4 billion operating budget for fiscal year 2024-25.[19] The Confessore article also claimed that Michigan had 241 DEI employees at the time. Excluding student workers, the Ann Arbor campus had 49,355 total employees in 2023, according to statistics published by the University's Office of Budget and Planning.[20] If, in fact, 241 were in DEI roles, that would have accounted for 0.5% of the institution's workforce. Noteworthy is that those DEI professionals would have been responsible for serving 52,065 students and 49,355 employees. Opponents who make claims of so-called DEI budget bloat and bureaucracy rarely put their numbers in context like this, which is terribly dishonest of them.

   The University of Michigan is just one of many postsecondary institutions whose DEI numbers are routinely misrepresented by conservative opponents. I noted the following in the aforementioned report published in response to the 2024 House Subcommittee hearing on DEI:

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[18] Confessore, N. (2024, October 16). The University of Michigan doubled down on D.E.I.: What went wrong? *The New York Times Magazine*, https://www.nytimes.com/2024/10/16/magazine/dei-university-michigan.html

[19] University of Michigan. (2024). University budget book: Fiscal year 2024. https://obp.umich.edu/wp-content/uploads/pubdata/budget/ubudgetbook_fy24.pdf

[20] University of Michigan Office of Budget and Planning. (2024). University of Michigan-Ann Arbor faculty and staff headcount summary. https://obp.umich.edu/wp-content/uploads/pubdata/factsfigures/facstaffsumm_umaa.pdf

Bob Good (R-VA) talked about the University of Virginia in the March 7 House Committee on Education and the Workforce Hearing. 'The Vice President for DEI and Community Partnerships makes $340,000,' he stated. 'It's double the average of a university professor at UVA, which is about $175,000. Is there any way you could justify that or explain why we would pay the head of DEI double what we pay a college professor?'

UVA has approximately 3,000 full-time faculty members, but just one chief diversity officer (CDO). At research universities, most tenure-track professors teach four courses annually. Even those who teach exceptionally large courses are typically responsible for fewer than 1,000 students in any given year (plus they have teaching assistants). The CDO is expected to serve the entire campus – every student, every employee. According to an open access salary database,167 UVA employees' annual salaries are higher than the CDO's – more than two dozen of them are professors. The head football coach, head men's basketball coach, head of athletics, several academic deans, and at least six other vice presidents earn more than the CDO.

In the congressional hearing, Rep. Good said UVA employs 94 DEI officers. The number is actually 55, which accounts for 0.5% of the University's workforce. The $5.8 million it [reportedly] spends on DEI is just 0.1% of UVA's $5.4 billion budget.[21]

Conclusion

Two decades ago, under the leadership of then-vice president Alma Clayton-Pedersen, the Association of American Colleges and Universities (AAC&U) introduced the term "Inclusive Excellence."[22] Inspired by a robust corpus of highly credible research studies and expert practice, AAC&U maintained that diversity, equity, and inclusion activities indeed strengthen postsecondary institutions, thereby making them more excellent. That remains as true today as it was when the term, its corresponding framework, and actualization guidance were first introduced. Moreover, truly excellent colleges and universities enhance our democracy by expanding, not restricting access for more talented Americans; by teaching full truths about our nation's racial past and present; and by ensuring that twenty-first century college graduates enter the workforce with skills that will enable them to maximize the benefits of our nation's diversity. Any effort, legislative or otherwise, that aims to pursue excellence in U.S. higher education without DEI will ultimately fail because it is inconsistent with what 50 years of research shows and because it is incongruent with values that are fundamental to our multicultural democracy. Homogeneity is the opposite of diversity, inequity is the opposite of equity, and exclusion is the opposite of inclusion. It ought not be the goal of our government to make colleges and universities more homogeneous, inequitable, and exclusive. Doing so undermines much of what makes our nation's entire system of higher education excellent.

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[21] Harper, S., & Associates, p. 10.

[22] Brown, S. (2022, February 8, 2022). 'Inclusive Excellence' is everywhere. What does it mean? *Chronicle of Higher Education*, https://www.chronicle.com/newsletter/race-on-campus/2022-02-08.

Chairman OWENS. Thank you so much. Appreciate that. Our third witness is Ms. Renu Mukherjee.

STATEMENT OF MS. RENU MUKHERJEE, FELLOW, MANHATTAN INSTITUTE, NEW YORK CITY, NEW YORK

Ms. MUKHERJEE: Mukherjee.

Chairman OWENS. Mukherjee, thank you. I appreciate it. Sorry about that.

Ms. MUKHERJEE: Chairman Owens, Ranking Member Adams, and all other members of this distinguished body, I would like to begin by thanking you for the opportunity to testify on an important topic, and stress that all opinions expressed by me today are my own.

I am here to address the negative impacts of DEI in higher education. Before I do, I want to call attention to two very recent and significant developments in the history of racial preferences in the U.S. First, the Supreme Court's 2023 decision in Students For Fair Admissions versus President and Fellows of Harvard College, or SFFA, which banned the consideration of race in university admissions after 45 years.

This development is important because race conscious admissions can be understood as the foundation of the so-called diversity industrial complex in American higher education. Second, President Trump's Executive Order, ending illegal discrimination and restoring merit-based opportunity. This executive order is important in the context of higher education because it empowers the Departments of Justice and Education to enforce SFFA, and the principles of color blindness and equal opportunity articulated therein.

Unfortunately, many universities have continued to engage in illegal race-based discrimination, defying both the Nation's highest Court and the President. A professor at the University of Chicago Law School found for example that more than two-thirds of the country's top 65 universities included a diversity identity, or adversary related question on their application in 2024, up from 42 percent in 2020, and 54 percent in 2022.

In a similar vein, an April 16th report from Parents Defending Education noted that 245 universities still have institution-wide DEI offices, or programming, and that 180 colleges or schools within universities do as well. Some universities have merely renamed or rebranded their DEI offices.

At Harvard, the Office for Equity, Diversity, Inclusion and Belonging has become the office of community and campus life. Headed by the university's former Chief Diversity Officer, Sherry Ann Charleston. Racial preferences and DEI programs are not only unlawful and wrong, but are also profoundly harmful to students of all racial and ethnic backgrounds.

First and foremost, these policies regularly villainize whites, Asian Americans, Jews, and any other group deemed privileged. A November 2024 study conducted jointly by the Network Contagion Research Institute and Rutger's University found that rather than ease racial tensions among college students, the antiracism and anti-oppression teachings of Ibram X. Kendi, and Robin DeAngelo, two prominent DEI scholars, increased feelings of hostility and prejudice for dominant groups on campus.

Moreover, in an amicus brief filed in SFFA, a grass roots alliance of 368 Asian small businesses, and parent groups detailed the anguish that Asian high schoolers feel when applying to college because they know they will face race-based discrimination in admissions.

Meanwhile, Jewish undergraduates across the U.S. have sounded the alarm on how DEI pedagogue not only excludes Jews, but actively foments antisemitism on their campuses. Racial preferences and DEI harm underrepresented minorities too, the very group that these policies were intended to help.

This is because racial preferences and DEI stigmatize their purported beneficiaries. Indeed, the possibility looms large that such programs might lead people to believe that underrepresented minorities are intellectual inferior, which is of course, false and dangerous.

There is, however, reason for hope. As of early March, 17 states have passed legislation that bans the types of racially discriminatory practices frequently affiliated with university DEI offices, such as race preferences, mandatory diversity statements, and hiring and segregated graduation ceremoneys.

As Chief Justice John Roberts wrote in his majority opinion in SFFA, "Many universities have for too long wrongly concluded that the touchstone of an individual's identity is not challenge, it is vested, skills built, or lessons learned, but the color of their skin." Accordingly, racial preferences and DEI should be rejected full stop. Thank you.

[The statement of Ms. Mukherjee follows:]

Written Testimony
Renu Mukherjee
Fellow, The Manhattan Institute

Diversity, Equity, and Inclusion (DEI) programs have had a profoundly negative impact in higher education. Research shows that these programs are just as harmful to their intended beneficiaries, so-called "underrepresented minorities," as they are to whites, Asian Americans, Jews, and any other group deemed "privileged" in American society. To fully understand the harms that DEI has inflicted on college students of *all* racial and ethnic backgrounds, it is important to first consider the policy from which DEI originated: racial preferences in university admissions. Accordingly, this testimony begins with a brief legal history of race-conscious admissions, followed by a discussion of the adverse effects of racial preferences and DEI in higher education. The testimony concludes by describing the state of play of these policies in America's universities and the need to return to a culture of merit.

While the use of racial preferences in university admissions dates back the 1960s, the Supreme Court did not seriously take up the issue until 1978, in *Regents of the University of California v. Bakke*.[1] The respondent in that case was a 32 year-old white male named Allan Bakke, who had applied for admission to the University of California at Davis Medical School.[2]

At the time, the medical school operated two admissions programs for its entering class of 100 students—the regular admissions program and the special admissions program. Under the regular program, about one in six applicants were offered an interview. Those who completed an interview were then rated on a scale of one to 100 by the admissions committee, based on the quality of the interview, undergraduate grades, score on the Medical College Admissions Test (MCAT), letters of recommendation, and extracurricular activities. Applicants whose undergraduate grade point averages (GPA) fell below 2.5 on a 4.0 scale were summarily rejected.[3]

A separate admissions committee, made up primarily of racial minorities, operated the special program. To be eligible to apply to the medical school under this program, applicants had to be "black," "Chicano," "American Indian," or "Asian." These applicants did not have to meet the 2.5 GPA cutoff, and they were not ranked against applicants in the regular program. Additionally, the medical school reserved 16 seats in each incoming class for those who had applied for admission under the special program.[4]

Allan Bakke was rejected from the medical school, but special-program applicants with significantly lower scores than his were admitted. Thus, he sued the University of California for racial discrimination and contended that the reservation of 16 seats in each incoming class for minorities constituted an illegal quota. While black, Chicano, American Indian, and Asian

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[1] The Supreme Court was poised to consider a challenge to the University of Washington Law School's race-conscious admissions policy in 1974's *DeFunis v. Odegaard*. However, in a 5-4 per curiam opinion, the Court held that the case was moot.

[2] *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

[3] Ibid.

[4] Ibid.

applicants could compete for any of the 100 seats in the class (through either the regular program or the special program), non-minority applicants could compete for only 84 of these seats (through the regular program).[5]

The Supreme Court's decision in the case was muddled. On the question of whether the medical school's reservation of 16 seats in each entering class constituted a racial quota, a majority (five justices) held that it did. However, on the question of whether race could be considered as a factor in university admissions at all, the Supreme Court was split. Four justices argued that the Constitution prohibited racial preferences, and four justices argued that the Constitution permitted them. Lewis Powell, the swing vote on the Court, decided to split the baby.[6]

While racial quotas are illegal, universities, he wrote in a plurality opinion, could consider an applicant's race as "one factor among many" in the admissions process because "the attainment of a diverse student body" is a "constitutionally permissible goal" for an institution of higher education, given the "educational benefits that flow from an ethnically diverse student body." Powell did not say what these "educational benefits" were, only contending that "a black student can usually bring something that a white person cannot offer." [7]

For the next 25 years, Powell's plurality opinion in *Bakke* was considered judicial dicta. Only in 2003, when the Supreme Court again considered the use of racial preferences in university admissions, did that change.

The case, *Grutter v. Bollinger*, involved the University of Michigan Law School's race-conscious admissions policy. At the time, the law school considered each applicant's race or ethnicity as one of several factors in the admissions process, due to its "longstanding commitment to 'one particular type of diversity,' that is 'racial and ethnic diversity with a special reference to the inclusion of students from groups which have been historically discriminated against, like African-Americans, Hispanics, and Native Americans, who without this commitment might not be enrolled in meaningful numbers.'" The petitioner, a white woman named Barbara Grutter, applied to the law school as a first-year student and, upon being rejected, sued. The admissions "tip" granted to underrepresented minorities in the application process, she stated, was unconstitutional.[8]

In a contentious 5-4 decision, the Supreme Court disagreed. In doing so, it endorsed Powell's view that student body diversity is a constitutionally permissible goal for a university, which justifies the use of race in admissions.[9]

But that was not all. The majority in *Grutter* took Powell's opinion one step further by describing what were among the "educational benefits that flow from an ethnically diverse student body." These alleged benefits included cross-racial understanding, the breaking down of

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[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] *Grutter v. Bollinger*, 539 U.S. 306 (2003).
[9] Ibid.

racial stereotypes, preparing students for an increasingly diverse workforce, and helping minority students feel comfortable; they were referenced in various amicus briefs, as well in testimony shared by administrators at the law school. For example, the law school's dean and director of admission testified that because "a critical mass of underrepresented students could not be enrolled if admissions decisions were based primarily on undergraduate GPAs and LSAT scores," racial preferences were necessary to ensure that the few black and Hispanic students who were admitted on the basis of merit "do not feel isolated or like spokespersons for their race" on campus.[10]

The notion that, for the sake of racial and ethnic diversity, underrepresented minorities should receive preferential treatment, while whites, Asian Americans, Jews, and all other supposedly "dominant" groups in the U.S. should be penalized, serves as a core tenet of DEI. This view is deeply pernicious, as is the belief that underrepresented minorities admitted to a university on account of their academic prowess will feel isolated if they are not surrounded by enough students who share similar levels of melanin, or the belief that, in 2025, "a black student can usually bring something that a white person cannot offer." [11]

Rather than serve as educational benefits that flow from an ethnically diverse student body, these beliefs are little more than racial stereotypes that flow from the "sordid business" of "divvying us up by race." [12] There is ample evidence to suggest that racial preferences and DEI pedagogy in higher education have been detrimental to students of all racial and ethnic backgrounds.

Most evidently, racial preferences and DEI have harmed students who belong to the groups that these policies seek to criticize: whites, Asian Americans, Jews, and anyone else perceived as "privileged" in society. A November 2024 study conducted jointly by the Network Contagion Research Institute and Rutgers University found, for instance, that rather than ease racial tensions among college students, the "anti-racism" and "anti-oppression" teachings of Ibram X. Kendi and Robin DiAngelo—two prominent DEI scholars—increased feelings of hostility and prejudice toward "dominant" groups on campus.[13]

Consider, next, the negative impact that racial preferences have had on Asian American students in particular, many of whom are well aware that they will be penalized in the college admissions process because of their race.

A psychology graduate student named Yi-Chen (Jenny) Wu argued as much in a 2012 essay published online by the American Psychological Association (APA). In the essay, Wu posited that the possibility of facing racial discrimination in the college admissions process might make American teenagers of Asian origin hesitant to identify as Asian, which could then negatively affect their racial and ethnic identity development and mental health. At the time, the

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[10] Ibid.

[11] In America today, the child of black investment bankers likely has more in common with the child of white investment bankers than with a black child who lives in the South Bronx.

[12] *League of United American Citizens et al. v. Perry, Governor of Texas et al.*, 548 U.S. 399 (2006).

[13] Network Contagion Research Institute and Rutgers University, "Instructing Animosity: How DEI Pedagogy Produces The Hostile Attribution Bias," November 2024.

APA described the subject of Wu's essay as a "relevant psychosocial and psychological health and well-being topic." [14]

Back then, education researchers, journalists, and even high school guidance counselors more readily acknowledged that Asian students experience racial stereotyping when applying to college because they are "overrepresented" in higher education. A 2006 *Inside Higher Ed* article reported that high school guidance counselors have tried to make Asian American students appear less stereotypically "Asian" when writing letters of recommendation.[15] Similarly, a 2015 *BuzzFeed News* article detailed how anti-Asian prejudice in university admissions has created an industry of consultants dedicated to helping Asian applicants hide their racial and ethnic identities and avoid Asian stereotypes, like aspiring to be a doctor or playing a stringed instrument.[16]

An alliance of 368 Asian American small businesses and parent groups referenced Wu's 2012 essay in an amicus brief submitted in *Students for Fair Admissions v. President and Fellows of Harvard College*, a 2023 Supreme Court decision that outlawed the use of racial preferences in university admissions after 45 years. "Only Asian American children have to hide that they want to be violinists or pianists, or doctors or scientists," wrote the organization. "Only they are told that it might be fatal to their college admission chances to provide a photograph that reveals their race. This cannot be right—it is horribly wrong." [17]

Racial preferences and DEI programming have had a negative impact on Jewish college students, too, especially in the aftermath of Hamas' October 7, 2023, terror attack on Israel. Since then, Jewish students across the nation have sounded the alarm on how DEI programs in higher education not only exclude Jews but also actively foment anti-Semitism on campus. A *New York Times* article from January 22 validated these concerns after reporting that a diversity administrator at the University of Michigan, upon being asked if the university's DEI office worked with Jewish students, replied that the university was "controlled by wealthy Jews." [18]

Underrepresented minorities have been harmed by racial preferences and DEI programming as well. This is because racial preferences and DEI stigmatize their purported

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[14] Yi-Chen (Jenny) Wu, "Admission Considerations in Higher Education Among Asian Americans," in American Psychological Association's "Students' Corner" (2012), https://www.apa.org/pi/oema/resources/ethnicity-health/asian-american/article-admission.

[15] Scott Jaschik, "Too Asian?" *Inside Higher Ed* (October 9, 2006), https://www.insidehighered.com/news/2006/10/10/too-asian.

[16] Molly Hensley-Clancy, "College Admissions Advisors Work To Make Asian Kids Less Asian," *BuzzFeed News* (May 28, 2015), https://www.buzzfeednews.com/article/mollyhensleyclancy/college-admissions-and-the-business-of-making-asian-kids-les.

[17] Brief of *Amici Curiae* The Asian American Coalition for Education and The Asian American Legal Foundation in Support of Petitioner in *Students for Fair Admissions v. President and Fellows of Harvard College* (May 2022), https://www.supremecourt.gov/DocketPDF/20/20-1199/222864/20220509170313641_20-1199%20and%2021-707%20Amicus%20Brief.pdf.

[18] Vimal Patel, "Does D.E.I. Help or Hurt Jewish Students?" *The New York Times* (January 22, 2025), https://www.nytimes.com/2025/01/22/us/dei-jewish-students-campus-protests.html. The administrator referenced here later denied making this comment. For further reading on how DEI foments anti-Semitism, please see Tabia Lee's "DEI Colleagues: Your Anti-Semitism is Showing" in the *Journal of Free Black Thought* (October 17, 2023), https://freeblackthought.substack.com/p/dei-colleagues-your-anti-semitism.

beneficiaries. Indeed, the possibility looms large that such programs might lead people to believe that underrepresented minorities are intellectually inferior, which is, of course, false and dangerous.[19] Worse still, underrepresented minorities might themselves internalize this belief.[20]

As previously mentioned, the Supreme Court banned the consideration of race in university admissions about two years ago. At issue in that case were Harvard and the University of North Carolina's undergraduate admissions policies, which gave a "tip" to black and Hispanic applicants due to their race but penalized those who were white or Asian American. Chief Justice John Roberts, in his majority opinion, observed that black applicants in the top four academic deciles were between four and ten times more likely to get into Harvard than Asian American applicants in those deciles—a clear violation of Title VI of the Civil Rights Act of 1964.[21]

One day after taking office, President Donald Trump signed Executive Order 14173, titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity."[22] Among other things, this executive order empowered the Department of Justice and Department of Education to enforce Students for Fair Admissions and the principles of colorblindness and equal opportunity articulated therein.[23]

Unfortunately, many universities have continued to engage in illegal race-based discrimination, defying both the nation's highest court and the President. A professor at the University of Chicago Law School found, for example, that more than two-thirds of the country's top 65 universities included a diversity-, identity-, or adversity-related question on their application in 2024, up from 42 percent in 2020 and 54 percent in 2022.[24] In a similar vein, an April 16 report from Parents Defending Education noted that 245 universities still have institution-wide DEI offices and/or programming and that 180 colleges or schools within universities (i.e., Stanford Law School, the University of California at Davis College of Engineering, etc.) do as well.[25] Some universities have merely renamed or rebranded their DEI offices; at Harvard, the Office for Equity, Diversity, Inclusion, and Belonging has become the Office of Community and Campus Life, headed by the university's former chief diversity officer, Sherri Ann Charleston.[26]

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[19] Renu Mukherjee, "Soft Bigotry," *City Journal* (July 13, 2023), https://www.city-journal.org/article/the-soft-bigotry-of-affirmative-action.

[20] Jason Riley, "The Tragedy of Affirmative Action," *Wall Street Journal* (May 2, 2025), https://www.wsj.com/opinion/the-tragedy-of-affirmative-action-black-mobility-racial-preferences-merit-b1ca70e3.

[21] *Students for Fair Admissions v. President and Fellows of Harvard College* (2023).

[22] President Donald J. Trump, Executive Order 14173 (January 21, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/.

[23] Craig Trainor, "SFFA Dear Colleague Letter" (February 14, 2025), https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf.

[24] Sonja B. Starr, "Admissions Essays After SFFA," *Indiana Law Journal*, April 25, 2024.

[25] Parents Defending Education, "University DEI: Status Quo and Rebrands," April 16, 2025.

[26] The Harvard Crimson Editorial Board, "Harvard's DEI Rebrand Will Serve It Well," *The Harvard Crimson*, May 2, 2025.

That said, several states, including Florida, Ohio, and Texas, have already passed legislation to rid their university systems of racial preferences and DEI.[27] Hopefully many more states will follow. As this written testimony has attempted to show, these policies are not only unlawful and wrong but also harmful to students of all racial and ethnic backgrounds.

Chief Justice Roberts, in his majority opinion in *Students for Fair Admissions*, stated the following: "Many universities have for too long wrongly concluded that the touchstone of an individual's identity is not challenges bested, skills built, or lessons learned, but the color of their skin. This Nation's constitutional history does not tolerate that choice." [28] Racial preferences and DEI should be rejected, full stop.

[27] Campus Reform's Anti-DEI Legislation Tracker (last updated March 4, 2025), https://www.campusreform.org/article/campus-reforms-anti-dei-legislation-tracker/27589.
[28] *Students for Fair Admissions v. President and Fellows of Harvard College* (2023).

Chairman OWENS. Thank you. I now recognize my last witness, Dr. Miceli, for your testimony.

STATEMENT OF DR. KURT MICELI, MEDICAL DIRECTOR, DO NO HARM, GLEN ALLEN, VIRGINIA

Mr. MICELI. Chairman Owens, Ranking Member Adams, and members of the Subcommittee. Thank you for the opportunity to speak with you today. My name is Kurt Miceli, and I am the Medical Director of Do No Harm, a membership organization dedicated to keeping identity politics out of healthcare.

As the son of an immigrant, and a physician, I have seen firsthand how America's promise, rooted in liberty, equality and opportunity is being compromised by the way diversity, equity and inclusion, or DEI is being implemented in medicine today. What began as well-intentioned effort to foster inclusion, has devolved into an ideology that prioritizes group identity over merit. It stifles open dialog, and encourages racial division.

It undermines professionalism. I have witnessed treatment teams fall apart, not due to clinical disagreements, but due to accusations rooted in DEI fueled interpretations of identity and bias. DEI has infiltrated every level of medicine, from student admissions, to guidance from prominent medical associations, to licensing and professional development.

Medical schools now emphasize political ideology, with less time dedicated to anatomy and physiology. Accreditation bodies impose DEI requirements that promote unlawful discrimination in admissions and hiring. State licensure boards are mandating implicit bias training, based on tools with no proven validity.

The shift away from merit-based education and evaluation risk producing physicians who are less prepared and equipped to serve patients. Pass failed rating systems, admission standards where merit plays a secondary role, and ideological mandates erode the high standards that once defined American medicine. Patients, regardless of race, deserve care from the most qualified doctors.

The false premise driving this DEI agenda is that racial disparities and health outcomes stem from structural racism. The evidence does not support this. Studies on so-called racial concordance, matching patients with doctors of the same race, have not proven the point. Rather, systematic reviews show no improvement in quality outcomes.

Other studies on racial concordance have been debunked, yet the narrative prevails, and it is the current climate. Fortunately, there is cause for optimism. Courts have ruled against racial discrimination at various levels. Accreditation agencies, like the Accreditation Counsel for Graduate Medical Education are rethinking DEI mandates.

Lawmakers across the country are taking action to protect medicine, but more must be done. We must protect medical education from ideological capture, demand excellence, and hold institutions accountable for upholding merit alongside patient-centered care.

This should not be a partisan issue. When ideology eclipses skill, the health of our Nation suffers. In medicine, the stakes are too high. Ensuring that medical education and practice prioritize competence over politics is essential. I thank the Subcommittee for its leadership in addressing this important issue. I am happy to answer questions you have. Thank you.

[The statement of Dr. Miceli follows:]

Do No Harm

Testimony of Kurt Miceli, MD

May 21, 2025

Chairman Owens, Ranking Member Wilson, and members of the Subcommittee on Higher Education and Workforce Development, thank you for the invitation and opportunity to speak with you about the cultural crisis that persists in American medicine due to the harmful effects of DEI.

My name is Kurt Miceli. I am the medical director for Do No Harm, a membership organization that seeks to protect medicine from identity politics. For more than a decade I have also taught at the collegiate level as an adjunct professor. I come before you on behalf of Do No Harm, not my university affiliations.

America is a diverse and exceptional nation, founded on the fundamental values of individual liberty, equality, and opportunity. It has long stood as a beacon of hope and a welcoming home for people from all walks of life. As a first-generation American and native New Yorker, I grew up near the Statue of Liberty, which served as a constant reminder of hope and freedom, instilling in me a deep appreciation for this country's promise and vast opportunities. Each day, we strive, as a people, to fulfill that promise of a more perfect union, embracing the richness of our differences while upholding the principles that unite us through our hard work, dedication, and perseverance.

Unfortunately, the principles that have long made America exceptional are being undermined by the way diversity, equity, and inclusion (DEI) is practiced today. What was meant to foster mutual respect and celebrate differences has instead become a system that divides us by identity and completely disregards both our individuality and commonality as Americans. It values group identity over merit and views the world through the lens of conflict between oppressors and the oppressed. Rather than encouraging open dialogue and recognizing individual achievement, it uses discrimination in the name of equity and fosters exclusion in the name of inclusivity, silencing viewpoints that challenge its prevailing narrative. It is far from American and is wreaking havoc throughout medicine – the last place we need DEI driving us towards mediocrity.

Prior to joining Do No Harm, I spent two decades working as a physician and executive. I am board certified in psychiatry and internal medicine, and have worked in mental health crisis centers, drug and alcohol rehabilitation programs, and adolescent residential treatment facilities. I was most honored to work for a short period of time at West Point as a civilian psychiatrist serving soldiers in the Warrior Transition Unit. Most recently, I spent the past nine plus years in human services, working as a physician executive supporting individuals with intellectual and developmental disabilities as well as those with severe and persistent mental illness.

Within the past few years I witnessed firsthand how DEI, in practice, undermined collaboration and professionalism. A behavioral health treatment team fell into disarray when a clinical disagreement between the psychiatrist and psychologist escalated into accusations of microaggressions. As someone who had hired both professionals and had full confidence in their abilities, mediating the conflict was one of the most disheartening experiences of my career. Identity politics overshadowed the true purpose of their work. Instead of fostering rigorous discussion to ensure the best possible care for the patient – where differing perspectives can lead to stronger treatment decisions – disagreement was met with race-based allegations rather than constructive dialogue. Unfortunately, a Human Resources department beholden to DEI, and overly cautious of discrimination claims, only fueled the situation, prioritizing identity politics over proper resolution.

That was, unfortunately, only the tip of the iceberg when it came to DEI's influence. There were broader implications where quality continued to take a backseat, particularly as it related to payors. I recall, for instance, submitting a program description to a Medicaid managed care payor as they routinely requested. I expected a review focused on the quality of care provided. Instead, the feedback centered solely on our replacing "he" and "she" with "they/them/theirs." Later, I encountered another payor's language guide, where terms like "opposite sex," "heterosexual," and "homosexual" were deemed outdated.[i] These directives were reinforced by performance standards that mandated "all providers engage in affirmative treatment," shifting the focus from medical excellence to ideological compliance.[ii]

It soon became clear that, as an administrator, I had little influence against this growing ideological tide. The pattern was unmistakable: academia promoted an ideology with its vast research resources and educational centers, organized medicine blindly supported the idea as best practice, payors reinforced it through policies and purse strings, and ultimately, providers had no choice but to comply – or risk losing contracts. For a nonprofit committed to serving the most vulnerable of which nearly all had Medicaid as their insurance, there was no real option but to follow the directives of the Medicaid managed

care organizations, regardless of whether or not they prioritized ideology over patient care.

It is clear that this ideology has been and continues to be imposed onto the medical field top-down through its ostensibly prestigious institutions. These are (1) the medical schools themselves, as the academic purveyors of DEI ideology, (2) the accrediting bodies for medical education, who impose DEI requirements onto medical schools, and (3) the medical associations, specialty societies, and medical boards that license and certify physicians. Collectively, these institutions are most responsible for driving the spread of DEI in medicine and medical education. These bodies have either been outright champions of DEI ideology, actively working to inject it into various facets of healthcare, or have at the very least been remiss in their duty to uphold the integrity of this great and noble profession – one which aims to serve humanity with compassion, dedication, and excellence.

I want to stress that, while progress has been made to curb the influence of DEI in medicine and protect physicians and patients alike from racial discrimination, activism, and division, there is still much to do. DEI is ultimately a *political* ideology that has worked its way into the cogs and gears of healthcare, and ameliorating its harms is not an easy task. In some cases, it lives quite visibly, and in other cases it has been cloaked with new words such as belonging, accessibility, and inclusive excellence. Do No Harm has found that nearly half of medical schools in the United States, for example, still noticeably maintain a DEI office on their website, thereby perpetuating the bureaucracy supporting this ideology.[iii]

Medical schools along with teaching hospitals serve as the foundry of medical knowledge and the means by which future generations of physicians learn how to practice their profession. Unfortunately, many schools have invested significant sums in promoting DEI ideology, as well as building an expensive and expansive infrastructure to support it. With limited resources of time and talent, these choices come at the opportunity cost of medical education. Furthermore, these DEI efforts range from attempts to inculcate medical students and residents with radical political ideology to instances of racial discrimination by the schools themselves, such as racially discriminatory scholarships and discrimination in the admissions process.

This embrace of DEI ideology on the part of medical schools and teaching hospitals has regrettably allowed identity politics to encroach upon the profession in a way that compromises both its quality and integrity. Our medical schools have been the envy of the world because of their educational excellence and embodiment of merit – all for the

benefit of the patient. However, in recent years, we have strayed from our foundational Hippocratic pledge as physicians, allowing contemporary causes to overshadow our core principles and unwavering dedication to the patient in our care. Issues of social justice have become a rallying cry, and yet physicians have no agency in this domain; they are not meant to be social workers or political actors, but rather professionals trained in the art of healing.

As a high-level illustration of how politics and ideology have pervaded medical school curricula, in September 2024 Do No Harm published an analysis of the course catalogs of 20 leading medical schools to identify the relative emphasis given to radical political goals compared to traditional medical knowledge. Our analysis identified eight terms associated with DEI political ideology, and eight terms associated with the traditional practice of medicine. We then searched the course catalogs of these schools for the respective terms.[iv] We found that words like "diverse/diversity" appeared nearly as often as "anatomy." "Race/racism," "equity," and "inclusive/inclusion" appeared ten times more than words typically associated with medicine like "randomized," "placebo," or "Hippocratic."

To put it simply, the actual course offerings at medical schools are, at least outwardly, overly concerned with social and political issues compared to medical excellence. For example, in addition to teaching about the "kidney, endocrine, and reproductive endocrine system" in Integrated Human Pathophysiology III at Harvard, this course also integrates content exploring health equity and climate change.[v] Similarly, the Department of Medicine at Stanford University offers a course entitled, "Global Leaders and Innovators in Human and Planetary Health: Sustainable Societies Lab," which includes topics such as "social and environmental justice and equality."[vi] My alma mater, Drexel University College of Medicine, has an entire curriculum dedicated to "Antiracism in Healthcare" which, as a learning goal, has students "commit to being antiracist in [their] attitudes and behaviors."[vii] As we state in our report, this curricular trend towards social justice "is not an isolated development in a handful of atypical medical schools, but a broad change that is affecting the future of medical practice across the country." The emphasis on science has waned much to the detriment of the profession and the clinicians it trains.

The influence of DEI in medical education is even more acutely present in medical schools' mission, vision, and values – the very heart and soul of an organization. To demonstrate medical schools' institutional commitments to DEI, Do No Harm analyzed the mission statements of medical schools and looked for language that demonstrated an ideological commitment to the principles of diversity, equity, inclusion, and social justice, which we classified as "woke." We found that in 2024, 77 percent of medical school mission statements could be characterized as "woke," up significantly from just a few years ago.[viii]

This fundamental commitment to DEI at the core of a school's mission comes to serve as its North Star, leading the path for significant DEI activity. At the University of Washington's Psychiatry Residency Program, for example, DEI topics are "deliberately embedded throughout the four-year curriculum."[ix] Similarly, the Department of Obstetrics and Gynecology at The Ohio State University College of Medicine highlights its anti-racism strategies with implicit bias training, anti-racism grand rounds, and anti-racism journal club.[x] The HEAL competency at Indiana University School of Medicine references "systems of inequity" and enables students to become "agents for change who recognize societal problems impacting local communities and health care systems including health disparities, systemic racism, bias and microaggressions."[xi]

Well-meaning as some of these programs may superficially sound, the philosophy underlying them is anything but innocent. With its roots in neo-Marxist thought, Critical Social Justice is the guiding framework and theoretical foundation for DEI. It contends that inequality is woven into the fabric of society, necessitating deliberate actions to dismantle entrenched systems of power and privilege. It creates an oppressor-oppressed dyad, where the designation of each category is often based on an identity group's level of representation. Simply, if overrepresented, then such a group is likely the oppressor.

The result of this zero-sum game between opposing identity groups is anything but fair or just. Oppression must be overcome through illiberal actions, which necessitate oppression itself. It should be no surprise that under this construct, as Ibram Kendi has written, "The only remedy to racist discrimination is antiracist discrimination. The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination."[xii]

When such a solution is implemented in the admissions process, racial characteristics of the applicant get priority over merit. With over 50,000 medical school applicants competing for approximately 22,000 first-year spots in U.S. medical schools, the process is highly competitive. If a qualified candidate is not admitted in favor of an unqualified or lesser qualified one, that qualified applicant may lose his or her chance of becoming a physician. Fortunately, the Supreme Court ruled these race-conscious admissions practices to be unconstitutional. Yet, the evidence strongly suggests that many medical schools are continuing to weigh applicants' race when considering their admission.

Do No Harm's "Skirting SCOTUS" investigation reported on admissions to medical school relative to the average score on the MCAT, the achievement test for medical school entry. Based on 2024 data, one year after the Supreme Court's ruling in *Students for Fair*

Admissions v. Harvard (SFFA), matriculating Asian students had MCAT scores around the 89th percentile compared to the 84th percentile for white students, 68th percentile for black students, and 67th percentile for Hispanic students. With the exception of black students being in the 65th percentile in 2023, the data otherwise did not change from the year of *SFFA* to the year thereafter.[xiii] Should merit be the guiding factor, one would expect the percentiles of varying racial and ethnic groups to be much less disparate. Thus, if an 89th percentile score was the average for Asian matriculants one would expect matriculants of other races and ethnicities to be within a similar percentile. This data certainly points to admissions officials continuing to levy a racial penalty on certain groups, or a bonus to others, despite the Supreme Court's ruling.

Merit, however, does matter to patients as well as the quality of healthcare they receive. In medicine especially, the standards must remain high. Whether in a matter of life and death, or in the treatment of a chronic condition, we, as patients, are right to demand the very best. We know from the Association of American Medical Colleges (AAMC) that scores on the MCAT predict medical student performance.[xiv] We also know that performance in medical school is correlated to performance as a practicing physician.[xv] And we know certification exam scores on the internal medicine boards, for example, are associated with improved outcomes among hospitalized Medicare beneficiaries.[xvi] Excellence matters when it comes to results.

Yet, over time medical schools have moved further and further away from clearly measuring performance. We find ourselves with more and more schools that utilize pass/fail grades. Furthermore, Step 1 of the United States Medical Licensing Exam (USMLE), which is the first of three exams assessing competency in prospective doctors, has been pass/fail since January 2022. From my own medical school experience more than two decades ago, preclinical grades and the USMLE Step 1 exam were critical factors in helping residency programs assess the quality of students, and thus determine the future residents they were going to recruit to their teaching hospitals. Now, merit has become harder and harder to distinguish as metrics have become rather binary, leaving little room for distinction and little drive to excel. With less emphasis placed on merit, and the qualifications of medical students blurred by a lack of distinction, mediocrity triumphs for students of all races.

As some have recently noted, like Alexander Iyer and colleagues in the *New England Journal of Medicine*, "good enough" is simply not "good enough." While "P" for pass may ultimately equal "MD," we cannot have this minimum standard as our threshold. We must "[dispel] the notion that performance above the passing threshold signifies wasted effort."[xvii] It clearly does not. We must strive for excellence and motivate students to that

end. We must promote meritocracy rather than suffocating it. The future care of patients and innovations that come are at stake.

Outside the admissions suite, there are countless examples of medical schools operating discriminatory scholarships restricted to individuals of a certain racial or ethnic group. Johns Hopkins, for instance, hosts a "Plastic and Reconstructive Surgery Underrepresented in Medicine Visiting Elective."[xviii] Likewise, Duke University Health System offers a "Visiting Clinical Scholars Program" open to fourth year medical students who are "underrepresented minorities" or "socioeconomically disadvantaged."[xix] These scholarships are invariably justified on the grounds that diversity improves medical care, a statement for which evidence is sorely lacking, yet is stated over and over again.

However, medical schools and teaching hospitals are not alone in how they have embraced DEI, particularly through admissions, recruitment, and promotion. Accreditation agencies bear a significant responsibility. These bodies are powerful organizations that set educational guidelines and ultimately decide which schools can grant degrees. Students also need to go to an accredited school to take out student loans, and teaching hospitals need to be accredited so that they can receive graduate medical education funds.

Do No Harm's report, "Unethical Expectations: How Accreditors Inject Identity Politics into Medical and Healthcare Education," identifies a litany of standards and requirements imposed upon medical education programs by accreditors that force the programs to advance DEI initiatives.[xx] These include requirements to increase the racial diversity of the student body and faculty, which, in effect, is a requirement to racially discriminate. For the Liaison Committee on Medical Education (LCME), the accreditation agency for allopathic medical schools in the United States, Standard 3.3 requires schools to "[engage] in ongoing, systematic, and focused recruitment and retention activities, to achieve mission-appropriate diversity outcomes among its students." And the LCME is not alone. Our report shows DEI being imposed by other accreditors such as the Commission on Osteopathic College Accreditation, the Commission on Dental Accreditation, and the Commission on Accreditation in Physical Therapy Education.

These accreditors, whose DEI practices were recently the subject of an executive order by President Trump, obviously wield tremendous power.[xxi] But, there is also another wrinkle: DEI mandates from accreditors enable medical schools to "pass the buck" and absolve themselves of any responsibility for implementing racially discriminatory policies and practices. The accreditors nod to DEI and the schools accept it as a requirement to justify their own DEI programs, all coming at the expense of rigorous education and training for healthcare professionals.

There are some positive signs, however, that accreditors are ditching their DEI ways. Following President Trump's executive order, the Accreditation Council for Graduate Medical Education (ACGME), which is the accrediting body for medical residency programs, announced that it would be suspending enforcement of two key "diversity" recruiting and retention requirements.[xxii] Other accreditors should follow the ACGME's lead, and drop their discriminatory requirements. We must prioritize expertise over politics and restore a culture of meritocracy starting with accreditors who set the standards for education in the healthcare professions.

Still, considerable damage has already been done; medical schools are prime conduits for DEI ideology. The DEI problem thus starts in academia. Once rooted in rigorous scientific inquiry and clinical excellence, medical education has increasingly prioritized DEI initiatives, shaping the current landscape as well as the next generation of providers to embrace ideology as unquestionable doctrine rather than fostering open debate and critical thinking. The ripple effect is enormous, as I saw in my past work experiences.

What then drives DEI in medicine is its attribution of racism as the driving cause of health disparities. While disparities do exist, and we must improve healthcare for all people, to attribute those disparities to racism or a system that is allegedly "structurally racist" is without proof and terribly divisive. Instead of looking to the true causes of such disparities, the prevailing narrative holds that the healthcare system is "systemically racist" and that "structural racism" is deeply embedded in medical practice. Physicians are told that their implicit biases contribute to this inequity, with particular emphasis on the privilege and responsibility of certain groups, such as white males, within this framework of oppression. The proposed solution is not merely reform but a deliberate, ideological correction – one that demands conscious, reactionary actions. In effect, only a new state of oppression can remedy the situation.

One example of this is the claim that black patients need black doctors. The logic is clear: if black patients have better health outcomes when treated by black physicians, then creating policies that may be facially discriminatory to recruit more black doctors could be morally justifiable and, in fact, saves lives. Yet, this claim is far from true. Patients need exceptional doctors regardless of demographics.

Nevertheless, the notion that racial concordance – in which patients are treated by physicians of the same racial group – improves health outcomes for racial minorities is omnipresent in medicine today, as both an often-unspoken premise justifying DEI initiatives and as an explicit rallying cry for racially discriminatory hiring practices. We

have seen this notion repeated by professors at prominent medical schools, by medical associations, and even by Supreme Court Justice Ketanji Brown Jackson.[xxiii]

One study often cited in support of racial concordance comes from the *Proceedings of the National Academy of Sciences* in August 2020 and is entitled, "Physician–patient racial concordance and disparities in birthing mortality for newborns." This study examined the effects of racial concordance on infant mortality and found that "newborn-physician racial concordance is associated with a significant improvement in mortality for Black infants."[xxiv] What has since followed has been over 790 scholarly citations, according to Google Scholar, including several prestigious journals, and numerous media reports.[xxv]

However, this study had a major flaw: it did not control for the effect of very low birth weight infants (<1,500 grams) on mortality. The racial concordance effect disappeared once this adjustment was made.[xxvi] Yet, the study debunking the original paper has only received three citations according to Google Scholar. Furthermore, earlier this year, Do No Harm obtained documents related to the original study showing that an early analysis found "racial concordance significantly reduces the fatality rate of white babies." In other words, white babies did better with white doctors. Writing in the study's margin, lead author Brad Greenwood stated, "I'd rather not focus on this. If we're telling the story from the perspective of saving black infants this undermines the narrative."[xxvii]

Whether this effect of racial concordance related to white babies would have been borne out by a final analysis of the data is immaterial. The idea of racial concordance is just wrong at face value. It echoes a call to segregation where black patients have black doctors and white patients have white doctors. This is not a chapter in our history we seek to revisit. It is quite clear that all patients want exceptional physicians, no matter their race.

Beyond this one pivotal study, which has since been discredited, the preponderance of the evidence does not favor racial concordance. Do No Harm's analysis of the evidence on racial concordance found that four out of five systematic reviews of racial concordance in medicine showed no improvement in outcomes.[xxviii] These large-scale reviews provide a rigorous, structured synthesis of existing research, aggregating many relevant studies to offer an assessment of the evidence. They are superior to looking at one study alone. And although one systematic review reported evidence of "better patient-physician communication," further analysis revealed it as an outlier due to the unexplained exclusion of contradictory studies and a skewed depiction of the studies it assessed. Additionally, a sixth systematic review published in late 2024, which examined addiction treatment, found that racial concordance did not improve health outcomes.[xxix]

The discourse surrounding racial concordance is just one example of how narratives that seek to explain health disparities as resulting from some unseen "racism" are marshaled to, in turn, argue for inherently discriminatory policies and practices. DEI, by its nature, demands a new regime of oppression to correct the purported effects of "systemic racism" that is painted as the villain behind all health disparities.

It is in this light that medical associations, for example, have largely accepted the tenets of DEI without question, and propagated cherry-picked studies without truly examining the totality of the evidence. It is near-impossible to peruse the websites of any major American medical association without finding examples of initiatives, policies, or public statements that do not in some way seek to advance DEI ideology. Many medical associations have likewise adopted the DEI framing of health disparities wholesale and seek to remedy these supposed injustices through racial discrimination.

The AAMC, for instance, has argued in favor of race-based college admissions, requesting the Supreme Court uphold affirmative action on the grounds that "racial and ethnic diversity" is critical to the practice of medicine. The association also encourages medical schools to use "holistic" admissions that devalue GPA and MCAT scores.[xxx] More so, the AAMC has recently launched the PREview Exam, which stresses factors other than academics and is aimed to "reflect examinees' understanding of effective and ineffective professional behavior."[xxxi] Less and less weight is being given to the hard sciences and clinical acumen necessary to be an exceptional physician or physician-scientist.

This embrace of DEI throughout organized medicine has coincided with a shift toward the increasing politicization of medical associations and societies, similar to the political shift in medical schools and teaching hospitals. Medical specialty societies, for instance, are increasingly issuing statements about political topics ranging from immigration to the Russia-Ukraine war to the Hamas attacks on Israel.[xxxii] They proudly go out of their lane, entering the realm of activism where they have little agency or expertise. This, unfortunately, wears on the trust the public gives physicians. In the summer of 2021 Gallup noted only 44% of respondents had confidence in the nation's medical system. These numbers, unfortunately, have been declining for decades.[xxxiii]

The consequences of medical associations, the supposed standard-bearers for how medicine should be practiced, adopting an ideology that is so divisive and counter to our American values is quite concerning. Organized medicine has looked more and more like a political actor rather than the profession it represents. If trust is to be restored to the House of Medicine, then it must move past identity politics and act with the integrity our

oath demands.

When caring for patients, doctors cannot be activists first, physicians second. DEI places primacy on advocacy over the individual. It teaches physicians to view their actions through the lens of racial equity, so that individual healthcare decisions are made according to larger "health equity" concerns. The individuality of the patient is completely lost in this framework.

This ideology is so embedded in medicine today that even medical boards are requiring adherence to it. Two of Do No Harm's Senior Fellows, Drs. Jared L. Ross and Aida Cerundolo, recently voiced their concerns with the American Board of Emergency Medicine's requirement that they pledge to confront "implicit bias" as a condition of certification.[xxxiv] This idea, popularized by the Implicit Association Test, claims to reveal unconscious bias by assessing reaction times to paired concepts, with quicker responses in one direction suggesting a more favorable perception. However, it is unclear what these reaction times are actually measuring, as the Implicit Association Test demonstrates both poor reliability and validity.[xxxv]

Despite the lack of validity, implicit bias training has nonetheless been mandated in a variety of states. In Michigan, for instance, it is a condition of licensure for over 400,000 healthcare professionals. Its aim is to eliminate health disparities under the assumption that these disparities are a result of unconscious bias. However, this is unproven. Regardless, the notion of implicit bias suggests physicians are otherwise acting in a racist manner, not even consciously known to themselves. Such an implication is more likely to engender enmity than resolve tension.

Ankita Jagdeep and colleagues in their report, "Instructing Animosity: How DEI Pedagogy Produces the Hostile Attribution Bias" noted the lack of rigorous research on the impact of DEI initiatives. They found that instead of reducing bias, reading "anti-oppressive DEI educational materials" prompted a "hostile attribution bias, amplifying perceptions of prejudicial hostility where none was present."[xxxvi]

Additionally, we have anecdotally heard from members who have chosen either not to renew their license or board certification because of these implicit bias training requirements. Five years ago, by the Executive Order of the Governor, Michigan mandated implicit bias training. In 2023, just a few years after the Executive Order, there were 2,000 fewer physicians in Michigan than in 2016.[xxxvii, xxxviii] While correlation does not imply causation, one needs to consider how various DEI mandates may unintentionally cause the departure of experienced healthcare professionals and exacerbate the shortage of

providers, nurses, and other professionals.

While DEI remains within the medical profession, and is very much entrenched in academia, DEI is not what it once was. Progress has been made to restoring merit. Brave individuals – physicians, educators, patients, and parents – are beginning to speak out against the harms of DEI ideology in medicine. Whistleblowers are coming forward, legal challenges are gaining ground, and policy shifts are starting to reflect a renewed commitment to fairness, merit, and excellence. At Do No Harm, for example, we have seen entities like Pfizer and the American Chemical Society end discriminatory actions.[xxxix, xl, xli, xlii]

We have also seen the impact of a new Administration, which has rolled back various equity and diversity-related policies that directly encourage harmful and discriminatory behavior, following the executive orders aimed at restricting DEI.[xliii] I am likewise encouraged by this subcommittee and its focus on restoring excellence to the practice of medicine. I look forward to future Congressional action that will further uphold merit-based standards, ensure medicine remains rooted in scientific rigor, and prioritize patient care over ideological agendas.

Reform is not a matter of politics; it is a moral imperative. The health of our nation depends on restoring integrity to medicine, beginning with education that values skill over ideological zeal, and care that prioritizes science over radical political agendas. Thank you, again, for reading my testimony. I look forward to further discussing this important matter with the subcommittee.

Kurt Miceli, MD
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Do No Harm

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Chairman OWENS. Thank you. A little echo here, okay. Under Committee Rule 9, we will now question witnesses under the 5-minute rule. I will recognize myself for the first 5 minutes. Dr. Miceli, I was shocked to hear that 77 percent of medical school mis-

sion statements could be characterized as supporting DEI, and even standardized tests, like the MCAT.

I have some questions with progressive buzz words, such as social justice or institutional racism. You might have covered this in your statement, but I just wanted to highlight it again. DEI medicine seems to be based on the idea of racial accordance. Medical treatment from one person of the same race is automatically better for the patient.

How does this research debunk this racist claim?

Dr. MICELI. Yes, thank you for the question. I think it is important to understand that the highest level of research we can look at are systematic reviews, but those are compilations of the evidence that is out there. I mean we look at this question of racial concordance, the idea that black patients do better with black doctors, or white patients do better with white doctors.

One of the things that we understand is that four out of five of systematic reviews that have looked at that question find that there is no difference in outcome based on racial concordance. There is no difference in the utilization of care. There is no difference in the quality. There is one study, one of those five, that does show there is some benefit to communication.

I will say I questioned some of the methodology that was done in that systematic review. It includes, or excludes, some studies that some of the other systematic reviews have not. Nonetheless, there are four out of five systematic reviews that showed racial concordance does not improve quality.

In fact, we also know this to be true in our hearts. We know that everybody wants the best possible care. Do No Harm actually did a survey of this and found that 88 percent of black individuals when surveyed, want highly competent physicians. That is what everyone wants. It makes sense.

The other thing is when we look at specific studies, when we look at there is a study on racial concordance that comes from 2020. I believe it was Brad Greenwood and Colleagues who had done that study. It looks at black doctors serving black patients, and this is in the case of babies being delivered in infant mortality.

It looks at white doctors caring for those black patients as well. The original publication of that study had claimed that black doctors did better for black babies than white doctors. It turned out in 2024, actually the colleagues of the Manhattan Institute had been able to get the data from the authors and reran it. They looked at one key element, and that is low birth weight babies. That was not taken into account in the 2020 publication of the study.

When you look at low birth weight babies, you find that that racial concordance difference goes away completely. There is no difference whether the doctor is black or white, and I think that is something that is really so critical to remember, and one of the challenges that we have seen in our literature in academia, is the first study that I mentioned from 2020 was cited almost 800 times.

That second study, that actually shows that you really need to look at low birth rate babies, was only cited less than ten times, and this is part of the challenge in academia where unfortunately, studies that make these claims that are just not based in the evi-

dence when you look at it, unfortunately propagate themselves throughout the halls of academia, throughout medical associations and the like.

Chairman OWENS. Thank you. I have to—I want to pass to one real quick before we run out of time here. Ms. Mukherjee, unfortunately we know many DEI offices just changed the title on the buildings but keep the same staff and ideology. What are some examples of strong anti-DEI reforms that could prevent this from happening?

Ms. MUKHERJEE. Thank you, Congressman. I would look to several examples of DEI legislation that many states have passed, because the key is not necessarily the name of the office as listed in State legislation in areas such as Texas or Iowa or Florida, but rather the function of the office.

The function matters much more than the names. The way to combat it is in legislation to say, for example, we are not just looking to eliminate diversity, equity and inclusion offices, but any office that engages in racially discriminatory practices, such as racial preferences in admissions or hiring. Mandatory diversity affiliated statements, segregated graduation ceremoneys, this was also something that President Trump took great care to do that I noticed in his executive orders.

I think any future legislation from this body, or wherever else in the states, geared toward eliminating diversity, equity and inclusion offices, should focus on the function of these offices, and less so exclusively on the name. Thank you.

Chairman OWENS. Thank you, thank you so much. I am now going to—let us see right here. I have a few seconds left. Mr. Morenoff, as supporters of DEI hide behind the vague, positive words of diversity, equity and inclusion, can you talk about how these vague, positive words have resulted in legal discrimination? We just have a few seconds left, but I hope you can.

Mr. MORENOFF. Of course. I do not terribly care what label is used. What I care is whether there are activities unfolding which violate our nondiscrimination laws. Are people being intentionally treated differently in violation of Title VI, or Title IX? Are people being hired or promoted on the basis of their demography in violation of Title VII?

Chairman OWENS. Thank you. Thank you so much. I now recognize Mr. Takano from California. I am sorry, Mrs. McBath from Georgia.

Mrs. MCBATH. Thank you, Mr. Chairman. I want to say to each of you that are our guests today, thank you so much for your testimony. I have read your testimoneys. I do not have any questions for you today, but I just want to make it abundantly clear to the American people that today's hearing is an attempt to distract the American people from republican plans to cut and gut Medicaid, nutrition benefits for hungry children, and student aid grants for working families across the country.

At a time when Americans are struggling to pay for basics like groceries, republicans are forcing them to pay more for everything, from healthcare to childcare, and everything in between.

Last Friday, mismanagement by congressional republicans and President Trump resulted in a decrease in America's credit rating,

pushing mortgages and the American dream even further out of reach for millions of Americans, and for their families.

Time and time again, republicans in Congress make things more expensive, and life more difficult for people in this country, and then they try to distract with issues that have no real impact on their quality of life. I encourage Americans to ask themselves why House republicans are consistently meeting in the middle of the night to debate their agenda, while they waste this Committee's and the American taxpayer's important time.

The answer is really simple. House republicans know that Americans do not want to lose their healthcare insurance, or be forced into debt, but they do not want to talk about it, at least not when most Americans are awake and paying attention. This is wrong. House republicans and President Trump are making it more difficult for everyday Americans to provide for themselves and for their families.

One of the greatest aspects of this country, one of the things that most people take real national pride in is our historic commitment to equality of opportunity. Our commitment that America is the land of opportunity. While we have not always been able to live up to that promise, it is a fact that we are always striving toward that ideal, that makes the promise of America truly great.

Republicans are making it more difficult to keep that promise, and more expensive for people to provide for themselves and for their families. We often hear from the majority that they believe in a country where hard work and merit are rewarded. These efforts today move us further from that ideal.

Representative Barbara Jordan, one of my personal heroes, once said that what the people want is very, very simple. They want an America as good as its promise. With efforts like today's hearing and the budget bill republicans scheduled for debate in the middle of the night to hide that they are ripping away healthcare from 14 million people, we only get further and further away from the promise that this country offers.

The American people are frustrated, and rightfully so. They are frustrated that they keep doing everything right, sometimes working multiple jobs, but still feel that they are falling behind. Now is the time for everyone who cares about equality of opportunity, for everyone who cares about how expensive everyday life has become in this country, to let republicans in Congress know that you think their priorities are all wrong.

We need just four members, just four members of the majority, to stand up against these dangerous cuts that will put lives in this country at risk. The American people do not support cuts to these vital programs and will not let republicans get away with it. I urge everyone that is in this room today, and everyone that is watching on C-SPAN and across the Nation, do not be deceived.

Do not be deceived by what is happening here today. The democrats will continue to stand and fight for equity and equality for everyone in this country. Everyone deserves to have access to a wonderful quality education, and on our watch the democrats will not stand by and let this happen, and I yield back.

Chairman OWENS. Thank you. Now, I would like to recognize the Chairman of the Full Committee, my good friend from Michigan, Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman. Let me just say in response to my good friend and colleague from Georgia, having just come through that long Rules Committee markup, it was very clear that when the truth comes out, 77 million people asked us to do what we were doing in that very one big, beautiful bill.

When it is seen in its totality, I think that group of 77 million people will say thank you, and I think that goes along with what we are talking about today as well, with DEI. Dr. Miceli, thank you for being here, and thank you for your position in promoting quality medicine regardless.

I am very concerned about the role accreditation plays in promoting DEI in medicine, given that accreditors are supposed to measure program quality, how do DEI accreditation standards run counter to the proper role of accreditation?

Dr. MICELI. Thank you for the question. Accreditation is so important. It helps set a standard throughout our medical schools, and we have nearly 200 or so medical schools in our country, two different accrediting bodies, one for the MD schools, one for the DO schools, and it is absolutely essential that those accreditors maintain standards.

It is important. Standards in making sure that body systems are taught appropriately, and physiology, and all those basic sciences. The challenge becomes when DEI becomes part of those accreditation standards, and we have seen that with the Liaison Committee on Medical Education, which is the accrediting body for the MD schools.

We have seen that in terms of one of the standards that they have, and I will just sort of read it here, and it is Standard 3.3, which requires schools to engage in ongoing systematic and focused recruitment and retention activities to achieve mission appropriate diversity outcomes among its students. We see where that has led. It is the accreditation agency that is nodding to this notion of DEI, and it is the schools that then accept it, and then these DEI programs get propagated and such.

I think there is, fortunately, some light. The ACGME, the Accreditation Counsel for Graduate Medical Education, which is the accreditor for our hospitals that train residents and such, they have actually paused their enforcement of similar type standards, recognizing that it is essential for merit to be part and parcel to the education of our resident physicians who will become attending physicians, who will be caring for all of us after they finish their training.

It is essential that these accrediting bodies, all of our medical schools in this country are accredited bodies. Residents go to accredited programs. It is essential that the standards are based on merit and only merit, so that we make sure that we have exceptional physicians that are out there and nothing else.

Mr. WALBERG. Thank you. Followup, many of my democrat colleagues have complained about the cancellation of certain Federal medical research grants with DEI in them. Can you share how so-

called DEI research funded by the Federal Government does more harm than good?

Dr. MICELI. Thank you for the question. I think it is important to recognize what is the role of research. The role of research really is to move us to a better tomorrow. To engage in understanding those things that we wouldn't otherwise know. When DEI becomes part of that, it really changes the conversation. It creates an opportunity cost, I would argue, as folks sort of look to DEI as opposed to looking to the nature of the research itself.

The research should be focused on merit. It should focus on being transparent. It should focus on the evidence. It should move us forward and propel us into the future. The NIH has such an important role in this aspect, just as one example. When you look at the billions of dollars of research that are out there, I think all of us want the benefits of research on cancer.

All of us want the benefits of research on Alzheimer's Disease, or whatever that ailment is. I think when you start putting a political spin on it, you change the outcome that you get, and that is detrimental to the outcome that we wish for Americans. We wish for a high-quality system that promotes excellence, and we want our research to reflect that, and not be beholden to ideology.

Mr. WALBERG. Absolutely, thank you. Mr. Morenoff, you mentioned how the narrow exception to discrimination in Gruder has been misread to apply to a range of illegal discrimination. Why has Gruder been misapplied so often?

Mr. MORENOFF. To be charitable, I think that those overreading Gruder believed that what they wanted to do was really important, and if they could find a fig leaf to justify it, they were going to. They grabbed language that the Supreme Court had mouthed in a very particular setting, and simply pretended that it applied more broadly than it conceivably could have done.

Mr. WALBERG. Thank you, I yield back.

Chairman OWENS. Thank you. I would like to now recognize my friend from Oregon, Ms. Bonamici.

Ms. BONAMICI. Thank you, Mr. Chairman. Thank you to the Ranking Member, and thank you to the witnesses. I agree with Representative McBath, with the question why is this Committee focusing today on attacking diversity, equity and inclusion when there is so many issues in higher education and other fields that need urgent attention?

As you heard, starting at 1 o'clock this morning, in the dark of night, the House Rules Committee met to push forward not a big, beautiful reconciliation bill, but a big, bad, reconciliation bill. The headline was, "Wealthy Gain, Low Income People Lose from GOP Mega Bill." That was the news this morning.

Here we are in the Higher Ed Subcommittee. This Reconciliation Bill will also strip Federal aid opportunities from millions of students, so maybe we should be having a hearing that convenes students and parents. Let us talk about what cutting Pell eligibility and eliminating subsidized loan programs will mean for their futures.

Right now, Secretary McMahon is testifying in front of the Appropriation's Committee, Labor HHS Education Subcommittee. Perhaps she should come over here and talk to this Committee

about how the mass layoffs and grant terminations she is leading are harming students and institutes of higher education across the country.

Why are they proposing to eliminate the Department of Education? Let us ask her how the Small Businesses Administration is going to manage a 1.6 trillion dollar student loan portfolio when, No. 1, that is not the SBA's mission, and more than 40 percent of the SBA staff has been laid off. That would be a good thing to talk about today.

Instead, the Committee majority is continuing to villainize DEI policies and programs to advance a fundamentally misguided and hypocritical narrative. I do want to point out, this is a Higher Education Subcommittee, but there are similar threats at the K–12 level as well, as we know.

This administration is trying to ban what they call DEI programs, which is essentially dictating what the schools can and cannot teach, which is as we on this Committee know, not the job of the Federal Government. It is not within our jurisdiction, and it also infringes on State and local rights.

Also, DEI is a vague term. As we know, that has been recognized in this building and in the Courts. Schools would struggle to comply with the Federal Government mandate to ban it, and so far, after many debates on this Committee about the issue, we still do not have a clear definition of what constitutes diversity, equity and inclusion that they are trying to ban.

If my colleagues who are complaining about DEI truly cared about equality of opportunity and students' civil rights, they would support the Office for Civil Rights within the Department of Education, but they have already cut the OCR staff, and many want to defund and dismantle the Department entirely.

Finally, I want to add that we all took an oath here in Congress to uphold the Constitution, and the U.S. Supreme Court has repeatedly held that academic freedom is a right protected by the First Amendment. Colleges and universities are places where there should be robust debate, and to muzzle topics dealing with diversity, equity and inclusion is a ludicrous and narrow-minded restraint on free speech.

Dr. Harper, I want to ask you, we know that neither Congress, nor the administration has offered a clear and consistent definition of what constitutes DEI, so how might this ambiguity and uncertainty affect campus life at colleges and universities, but also who would be most hurt if the Federal Government withholds Federal funding from public institutions that are allegedly not in compliance with this misguided guidance?

Mr. HARPER. I appreciate your question. Regarding the ambiguity, it has created such a frenzy on many campuses. Institutions that were doing honest, law-abiding work to make campuses safe, equitable and inclusive for all students, and all employees.

Now folks are scrambling to figure out how to continue to do that work without exacerbating existing inequities, and being complicit in the creation of new inequities in the absence of those policies, programs and protocols.

There is a lot at stake for low-income Americans from rural environments, including poor white students, as the very programs that

aim to provide college access and opportunity and success for them, are sort of thrown into the DEI dumpster that is under attack, right?

It is not just—DEI programs are not just about students of color, they are also about veterans. They are also about equitably serving students with disabilities. You know, really, all of those populations that make campuses diverse are at risk of being even further underserved by those institutions.

Ms. BONAMICI. Who would be most hurt?

Mr. HARPER. Honestly?

Ms. BONAMICI. If funding was blocked?

Mr. HARPER. Honestly, our entire democracy will be most hurt.

Ms. BONAMICI. I appreciate that. I yield back. I just want to note sometimes it feels like somebody is going through all these things with some kind of AI or Google search for the words diversity, equity and inclusion. I actually walked into a school recently, and they had this big exhibit for the kids called Biodiversity. I said is that okay? I do not know.

The ambiguity and this approach is completely unacceptable, and I yield back the balance of my time.

Chairman OWENS. Thank you. I now recognize my friend from North Carolina, Mr. Harris.

Mr. HARRIS. Thank you, Mr. Chairman. Thank you to all of you on the panel. I apologize, several of us popping in and out, but I was involved in the Judiciary markup at the same time, so but listen, I thank the Chairman for having this hearing today. This is something that I think is of great interest to a lot of people, and it certainly has been front and center in the news.

I did have the privilege, even though I did not hear all of the opening testimoneys, to read your written testimoneys that were submitted ahead of time, and Mr. Morenoff, in your written testimony, you mentioned how many institutions were continuing race-based scholarship.

I want to ask you does Title VI of the Civil Rights Act allow institutions to maintain scholarships or other programs explicitly based on race?

Mr. MORENOFF. No.

Mr. HARRIS. Would you agree that Congress has not only the authority, but also the responsibility to ensure that our public institutions receiving Federal funds are not engaged in activities that violate Civil Rights law, or constitutional protections?

Mr. MORENOFF. Yes.

Mr. HARRIS. You see, I think it is clear that we need to take a long, hard look at the use of Federal funds at these schools to make sure that Civil Rights laws are being upheld. Ms. Mukherjee, did I pronounce that correctly? Proponents of DEI say that a range of educational benefits can only come from a "diverse" student body. Do you agree with that statement?

Ms. MUKHERJEE. Thank you for the question, Congressman. I would like to first point out that the educational benefits of diversity that have over time been cited in Supreme Court cases that deal with this issue, such as cross-racial understanding, the breaking down of stereotypes.

The Supreme Court, that was in the Gruder decision, the Supreme Court, much more recently in Students for Fair Admissions has said that such benefits can be considered broadly in the context of higher education overall as amorphous, and because they are amorphous, it is not easy to measure them.

They are not measurable or subjected to judicial scrutiny. When you are engaging in something as pernicious as discriminating on the basis of race, either in favor of certain races, or in opposition to certain races, such as whites and Asians, as the Supreme Court litigation has borne out, you need to make sure that these supposed benefits of diversity are specifically tied through your use of race-based discrimination, the means, and are specific to the university at hand.

For example, Harvard, Yale, UNC, Princeton, would have to do their own studies showing specifically that somehow penalizing Asian American and white students in admissions has led to, for example, something like increased test scores, and they have not done so. There are these amorphous benefits of diversity, but in order for them to be within the bounds of what is legal and viewed as legal by the Supreme Court, they have to be very specific and tied to a specific institution. Thank you.

Mr. HARRIS. Well, thank you. In fact, you answered my second question about DEI policies that did not actually provide these benefits. In fact, recently we have seen the tide begin to turn on DEI policies, as schools figure out that they are not helpful, or popular. For example, just a year ago, the UNC system made the decision to save 17 million dollars by eliminating 59 DEI positions.

We need to see more schools follow suit I believe. Mr. Chairman, with that I yield back my time.

Chairman OWENS. Thank you. I now would like to recognize my friend from Virginia, Ranking Member—I mean I am sorry, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. Dr. Miceli, I am sorry, I came in late. We were at another meeting. You were indicating that you did not think DEI in research was appropriate. Is that what I got from your testimony?

Dr. MICELI. I believe it is important for research to really focus on generating a hypothesis, and certainly in the realm of healthcare, it is essential that we look at healthcare matters, and we look at the importance of what we can do to advance care in that regard. I think the priority really should——

Mr. SCOTT. Is it not important to have a diverse sample of people?

Dr. MICELI. In terms of pharmaceutical research, in terms of research that looks at populations, I mean absolutely. You want to look at America to understand that, but I think when we look at DEI, that is something that is very different than what you might be saying there.

Mr. SCOTT. Well, I am trying to figure out what you are saying there.

Dr. MICELI. Right. I would say that when you look at research that is focused specifically on driving researchers and placing them based on identity politics as opposed to merit, and we have seen that through NIH programming, whereby identity politics and look-

ing at the research population, based on their identity is prioritized. We also see that research in——

Mr. SCOTT. Is it important to have the research population, is it important to have that diverse?

Dr. MICELI. I believe it is essential to have that research population intellectually diverse, so that there are multiple theories and multiple thoughts that come about. It is important for us to test our hypotheses. It is important for us to make sure that there is merit, there is transparency, there is evidence that really guides the——

Mr. SCOTT. It is not important to consider DEI in research?

Dr. MICELI. When DEI is a destructive and divisive ideology that splits people off, and that puts people into camps, I think that aspect is really unacceptable in research. It places an ideology within the research as opposed to looking at the research itself.

Mr. SCOTT. All right. Dr. Harper, can you say something about the benefits of diversity on campus, and who benefits with the diversity?

Mr. HARPER. Sure. If I might, I first want to address a fundamental misunderstanding and mischaracterization of what DEI is. It keeps being mischaracterized as this divisive thing, this divisive concept. DEI is so much more than that.

It is exactly what you were just calling for, a consideration of the diversity of Americans in clinical trials, and in research studies and so on, to ensure that medical breakthroughs do not unintentionally have disparate effects on Americans who make America diverse. I just think that is really important.

In terms of the educational benefits of diversity and inclusion initiatives, I stand on more than 50 years of evidence. Highly, credible research published in my field, and in others, that consistently shows that all students, not just students of color, not just women, not just queer students, but all students benefit from being educated in a diverse and inclusive educational environment.

Mr. SCOTT. If you—can you have a diverse student body, and also a merit based student body?

Mr. HARPER. Absolutely. You most certainly can, right? One other fundamental misunderstanding about diversity and inclusion is that it is either or. Millions of students who make campuses diverse help us understand that both, are indeed achievable, right? Not hypothetically, but actually. We actually see this on campuses where let us take Ivy League universities and our Nation's most highly selective postsecondary institutions.

There are students there who have proven that they absolutely can do the work. Simultaneously, they are diversifying those institutions that historically and in fact, contemporarily, have often excluded them.

Mr. SCOTT. Some admission standards have a discriminatory impact, whether intentional or not, like standard—some standardized tests. How fair is it to keep inflicting this discriminatory admissions standard on people?

Mr. HARPER. One of the things that I find incredibly promising. I am a person who values evidence. During the pandemic, many colleges and universities were forced, really, to put aside the stand-

ardized admissions tests requirements because of all sorts of logistics throughout the pandemic.

One of the things that we found is that, you know, the quality of the student body did not decrease. Students were still able to be admitted without such a heavy reliance, an over-reliance, really, on standardized test scores, be admitted and succeed academically.

I do not know why we keep going back to standardized test scores as really a single measure of deservingness for a slot in an incoming class at a highly selective institution.

Mr. SCOTT. Have those tests been shown to have discriminatory impact?

Mr. HARPER. They have.

Chairman OWENS. Thank you. I would like to now recognize my friend from Wisconsin, Mr. Grothman.

Mr. GROTHMAN. Thank you. I read a book by Christopher Ruffo recently, America's Cultural Revolution, and they talked about the hard Left thinking of DEI in the early 70's, as a way to divide America. I think prior to that time the hard Left that wants to bring down our country, tried to set Americans against each other by income level, and create hatred for the wealthier people.

This was the fallback position. They want to divide America by race, which seems completely absurd when you look at people coming here from all around the globe, from Cuba, from Kenya, from Philippines, from Korea, all these—and my district has a lot among, all these people from different backgrounds succeeding beyond what the European descendants succeed here.

The evidence—there has probably never been a less racist country in the history of the world than the United States right now, so you are left to think the only reason they pushed this DEI stuff is because they intentionally want to divide Americans. Now, I will give you an anecdote, a member of the Board of Regents told me in Wisconsin, the University of Wisconsin, that they had let in some people of color in the medical school who did not do well on the MCATs.

I felt so sorry for them because apparently three or 4 years into medical school you have got to take a test, and these people all flunked the test. I am sure their parents were so proud of them when they told them they were getting into medical school, and my son is going to be a doctor, and they really did not have a chance.

Is this a common result of when you try to let people into colleges and universities other than merit? Is this something you hear in other places? I will give either one of you a chance.

Dr. MICELI. Thank you for the question. Applying to medical school is say a big decision. You know, after you certainly apply, wow, as you go through the course work, 4 years later you will be a physician. You will be the one who at midnight will get the pager ringing in the hospital system and answering the call to help that patient.

It is just really so critical that quality is what reigns supreme. Now, granted, there are many qualified people of all different stripes in this country. I mean this is a beautiful country with wonderful folks, and I have worked with folks of all different——

Mr. GROTHMAN. Have you seen this thing, not just in medical school, other places in which you let in people of apparently dif-

ferent qualifications, and then some of the people of lower qualifications wind up not making it through the graduate school, or medical school, or whatever?

Dr. MICELI. Well, I think what we see is we know that performance on the MCAT, the test for admissions does actually correlate with performance during one's time as a student. That performance as a student does correlate to how well you will be as a physician.

That performance as a physician on standardized tests, like the American Board of Internal Medicine, does correlate with actually care delivered to Medicare beneficiaries in the hospital. I mean there is a correlation to the merit one achieves, and so we do see that it is absolutely important for folks to be qualified, so that we can have the very best of quality when folks are in those hospitals and outpatient world.

Mr. GROTHMAN. Okay. Thank you. Ms. Mukherjee, I will ask you a question. I guess you are what my democrat friends would refer to a person of color. Have you experienced prejudice, or could you comment? Like I said, I think that there are people all around the globe and succeeding here.

Do you feel you have a different viewpoint if you say you applied to medical school because your ancestors, I take it were from somewhere other than Europe, a whole different? Where did your ancestors come from?

Ms. MUKHERJEE. India.

Mr. GROTHMAN. India. Do you feel that the Indian viewpoint to medicine, or Indian viewpoint to architecture, creates genuine diversity, or do you kind of feel like everybody else—were you raised in America?

Ms. MUKHERJEE. Yes. I was born and raised here.

Mr. GROTHMAN. Do you feel like just a regular American kid, or do you really feel that you bring a different whole viewpoint to things because your ancestors were from India?

Ms. MUKHERJEE. I really appreciate the question, Congressman. To answer it frankly, no I do not. I do not want anyone to look at me or my mother or father, who both immigrated to the U.S. from India, as did my grandparents, to find opportunity here because they knew there would be much more.

I do not want anyone to look at me or my story, or where I am today and think that it is a result of my skin color, or my family's skin color. First and foremost, I am a proud American citizen, as are my parents, my siblings, and my other relatives that are here, so yes.

Mr. GROTHMAN. The people who are trying to destroy America, I think that is what they are trying to do, they would argue that because your ancestors come from India, that therefore you will bring a different viewpoint to the architecture firm, or law firm, or whatever, do you feel you bring a different viewpoint because of where your long dead ancestors are from?

Ms. MUKHERJEE. No. I do not feel as though my race or my ethnicity dictates my viewpoints, and that is one of the many reasons I think racial preferences and race conscious admissions, and the diversity rationale are so fundamentally dangerous, thank you.

Mr. GROTHMAN. Thank you being here.

Chairman OWENS. Thank you, my friend from California, Mr. Takano.

Mr. TAKANO. Thank you, Mr. Chairman. I want to thank all of the witnesses for being here today, and I want to ask Dr. Harper, do students and faculty benefit when an institution of higher education is socioeconomically and racially diverse?

Mr. HARPER. Absolutely.

Mr. TAKANO. How so?

Mr. HARPER. Well, for one, let us talk about research. When there is diversity represented among the researchers, people are able to bring different points of view for sure, but they are also able to bring, you know, different considerations for groups that otherwise would not be top of mind for researchers, and ultimately really good researchers might produce research that ultimately has negative impacts on the forgotten about populations.

It is really important to have people at the table to hold us accountable for thinking about Americans who make institutions diverse. That is one. Second, this whole notion of prejudice reduction, one of the things that is irrefutable is that each of us has implicit bias.

We all have it, right? That implicit bias is reduced as we have more sustained, meaningful interactions with people from different groups. You know, that helps us to not go into, say students, right , if students do not go into the professions, then reproducing sexism, racism, homophobia, transphobia, and so on, because they have had the benefit of interacting with people from those various groups when they were undergraduate students.

That ultimately has positive effects, not just on the campuses themselves, but also on our economy and on our democracy.

Mr. TAKANO. That is another way of saying that conversations that happen in a classroom can change pre-judgments, prejudice, fixed notions we might have had about certain types of people?

Mr. HARPER. They have to be repeated, sustained and high-quality.

Mr. TAKANO. Do only racial minorities benefit from a diverse institution?

Mr. HARPER. Absolutely not. In fact, multiple research studies have repeatedly confirmed that white students actually benefit even more from their interactions in a diverse learning environment.

Mr. TAKANO. Wonderful. Why might an institution want to cultivate a student body, faculty and curriculum that intentionally includes diverse perspectives?

Mr. HARPER. That institution would not want to be responsible, in sending college graduates into the world underprepared to live, learn and work and lead diverse teams, right? I think higher education institutions really have a responsibility to ensure that students are prepared.

Mr. TAKANO. Well, great. The university in my district, the University of California Riverside, UCR, is one of the most racially, and ethnically diverse universities in the Nation. I am proud to say it was ranked No. 1 in the United States for social mobility of its graduates.

A large portion of UCR students are low-income, first-generation college students, student veterans, transfer students, and/or racial minorities. University California Riverside's success is in part due to the robust support that these students get as they navigate college, including through the campus ethnic and gender centers, the Veterans Resource Center, and funding programs and more.

Dr. Harper, what does research show about the retention, success and graduation rates for students who have access to these types of resources?

Mr. HARPER. Yes. I am so glad you asked this question. This is one of the strongest areas of research that make again, irrefutably clear that when campuses have those kinds of resources, that they enrich the college experience. They make the campuses safer for students who are more susceptible to violence, discrimination, harassment and abuse.

They become spaces where students can go for affirmation, they could go for a sense of belonging, so on and so forth. Those kinds of centers and spaces are critically important to the retention and success of highly qualified academically capable college students who make campuses diverse.

Mr. TAKANO. I was going to ask you why is it important to make those resources available for students, but you pretty much answered that question. As a followup, I wonder if you would not mind citing some of your resources for that research before the Committee right now, since we seem to be equating a lot of anecdotal evidence from the right with robust longitudinal peer reviewed study today?

Mr. HARPER. Sure. In the 2-seconds that we have remaining, I will just say that there are three books that are about this big, titled How College Affects Students, Pascarella and Terenzini were the original authors, and Matthew Mayhew at Ohio State and his colleagues produced the third volume.

These are compendiums of research, peer reviewed studies that consistently and increasingly show the educational benefits associated with diversity, equity and inclusion in higher education.

Mr. TAKANO. Thank you, Mr. Chairman. I yield back, and I appreciate your forbearance.

Chairman OWENS. Thank you so much. I would like to now recognize my friend from Missouri, Mr. Onder.

Mr. ONDER. Thank you, Mr. Chairman, and thank you to all the witnesses for being here today. You know, I would like to echo something that Congressman Grothman said earlier. I truly believe that the United States is one of the most fair, most equitable, least racist societies ever to exist on this earth.

The progress that we have made, although that we are not there perfectly in 250 years, is just overwhelming. I heard earlier from one of the democrat members of this Committee, DEI efforts level the playing field. I would submit that in many times pernicious discrimination on race, even if you label it some sanitary condition, like DEI, it is still pernicious discrimination based on race.

Mr. Harper, let me ask you, is it fair to discriminate against Asian students?

Mr. HARPER. No.

Mr. ONDER. Is it fair to admit a patient, a student of different ethnicity over an Asian student who is more qualified and has better test scores?

Mr. HARPER. The answer categorically is no, but I will also say what do you mean by more qualified? Are we talking just test scores?

Mr. ONDER. Better grades, better ACT scores, better SAT scores.

Mr. HARPER. You see, the research makes again, irrefutably clear that holistic admissions that consider factors inclusive of high school GPA and test scores are——

Mr. ONDER. Let me ask you, Mr. Harper, have you ever heard of a Supreme Court decision called Students for *Fair Admissions* v. *Harvard*?

Mr. HARPER. Of course I have.

Mr. ONDER. Your employer is USC?

Mr. HARPER. Of course it is.

Mr. ONDER. Are you abiding by that decision?

Mr. HARPER. As I mentioned in my opening remarks, I am representing myself. I am not a spokesperson for the University of Southern California.

Mr. ONDER. Do you draw a paycheck from the University of Southern California?

Mr. HARPER. I am not here as a representative.

Mr. ONDER. I know that. Do you, yes or no, draw a paycheck from the University of Southern California?

Mr. HARPER. Of course I do.

Mr. ONDER. What is your position at the University of Southern California?

Mr. HARPER. I am a tenured professor in three schools there.

Mr. ONDER. Okay. Do you have any administration position?

Mr. HARPER. I do not.

Mr. ONDER. You do not. Is USC abiding by Students for Fair Admission v. Harvard, or do people who have your opinion about these issues, are they looking for ways to get around the laws annunciated by the Harvard case?

Mr. HARPER. Two things. I have come in here standing on 50 years of research. I have not brought my opinion to this hearing.

Mr. ONDER. Thank you.

Mr. HARPER. Second, for maybe the fifth time, I am here representing myself. I am not here as a spokesperson of USC.

Mr. ONDER. Let me read to you a quote you may have heard of. Maybe you have not. It goes something like this, "I have a dream. I have a dream that someday my little children will be judged not by the color of their skin, but by the content of their character." Do you agree with that quote?

Mr. HARPER. I absolutely agree with that quote for those who understand what Martin Luther King actually meant by it. Martin Luther King was staunchly opposed to racism. He was staunchly opposed to poverty. He was staunchly opposed to discrimination.

Mr. ONDER. When Asian students are discriminated against, and not admitted to Harvard, even though by traditional criteria, including grades, test scores, extracurricular activities, is that discrimination? The Supreme Court decided it was. You disagree, it seems.

Mr. HARPER. I do not disagree. What I am saying to you as a person who has worked professionally in college admissions, I understand from my professional standpoint, that admissions is not just about standardized test scores.

Mr. ONDER. You said that. Do you believe standardized tests are discriminatory?

Mr. HARPER. Some research——

Mr. ONDER. Do they have any use at all? There is abundant research that they correlate very well with student performance, with grades, and with graduation rates. Should they be—should standardized tests be discarded?

Mr. HARPER. For the record, it should be noted that that evidence is indeed mixed.

Mr. ONDER. That is mixed, so someone with a perfect ACT score is no more likely to graduate from Harvard or any place, community college, than someone who has a lower SAT, standardized test score?

Mr. HARPER. Yes, no, I think this is a really important question as I attempt, once again, to help us all understand what the research shows about holistic admissions. It is not just high school grades and test scores that determines who ultimately succeeds at America's colleges and universities.

Mr. ONDER. Pernicious discrimination on the basis of race is pernicious discrimination on the basis of race. Thank you, I yield back.

Chairman OWENS. Thank you. I would like now to recognize my friend from California, Mr. DeSaulnier.

Mr. DESAULNIER. Thank you, Mr. Chairman. Many thoughts come to mind listening to this. George Santayana, a Harvard professor, his famous quote, "For those people who forget. For those of us who forget history, we're condemned to repeat it." We keep doing this in this country.

My perspective is this country is based on diversity, and also on merit, but I am reminded of work by a Princeton professor, I think it was James Bloodworth, wrote the Myths of Meritocracy, and about how the founders of this country did not want to replicate the British system of castes, but they did like the higher education system.

That we inherited that, and they built that into it. The founders all believed in higher education. The Virginians and the Northerners. His work is, as you can imagine by the title, is very connected to higher education. There is a myth that people who get there get there based on merit.

Yes, there is a principle to that, but I think we delude ourselves when we think those of us who are fortunate enough to go to college, that there is not a reality for many Americans that not because of their merit, but because of their background, they cannot get into it.

There is another book that is very steep study on who gets into Harvard and Harvard Law School and Harvard Business School called The Chosen, and clearly, 67—60 to 70 percent, 80 percent of the people who are chosen are based on various forms of legacy. I do not think George W. Bush would have got accepted to the MBA program or undergraduate if it were not for his father and his grandfather.

Just to add to Santayana observation, those people who think that that was all merit, and having said that, what America attempts to do is very hard to do. We are the largest attempt in human existence of trying to mold people from very divergent cultures and experiences into one country, which leads to our national model, E pluribus unum, out of many, one.

To me that accepts diversity, embraces it, and inclusivity and equity. I do not understand why anyone would not be for that. The experiences we all bring when they are respected and honored, create this wonderful gestalt when it works of us all being together, and out of many, one voice.

I am reminded my dear, dear, profoundly impactful deceased Irish Catholic Boston mother, who used to tell us about her parents' generation seeing signs in the windows, "Job available, Irish need not apply." Ms. Mukherjee, I see that you and I went to the same undergraduate Jesuit college in Worchester, Massachusetts. Yes, Holy Cross.

Clarence Thomas was a senior when I was a freshman, so a lot of diversity. My mom used to tell us these stories about how the anti-Irish Italian Eastern European, it is just another history repeating itself. When she got older, and she had moved to San Francisco where I had moved to, and I would go take care of her.

She would complain about her caregivers, God bless her, and she did not like the way they looked, or where they came from. I would say, Mom, you know this sounds a lot like the stories you used to tell about Irish need not apply.

I say that anecdotally as my own life experience. It is one that when Americans talk about this honestly, they embrace it, and there is a certain joy to that. To your comment, to be honest about your background, I think it is wonderful, your background, I mean, having gone to Holy Cross when there were not many people who were not Irish Catholics going there.

I say that just as an observation, and then Mr. Harper, I think we all want the one thing, but we approach it from different biases, and perspectives. As you said, Mr. Harper, another great book, Bias, by a Stanford professor, just talks about police bias. As somebody who represents a district just east of Oakland, when there was a lot of problems in Oakland, a lot of Black Lives Matter started there.

In response to the historical inequality if you ask me, and as a white male of somewhat privilege, I feel like what us wrong with diversity? I actually embrace it. I think it is better for the country. I want to talk about one particular population that is dear to my heart briefly, the disabled community.

The Medicaid cuts are going to devaState them. Three prominent republican Presidents led legislation, Nixon, Reagan, and Gerald Ford. We have talked in this Committee about IDEA, that Gerald Ford signed, the Individuals with Disability Educations Act to make sure that there was accessibility.

When you talk about diversity and equality, and equity, what about the disabled community? Can you speak to what is happening to them? I am wrapping up my time, so you will have to be succinct.

Mr. HARPER. Yes. I will just simply say for the record that services and offices for students with disabilities are indeed a part of what we call DEI programs and services at colleges and universities. As those things are eliminated, the wellness and safety of those students is placed at risk.

Mr. DESAULNIER. Thank you, Doctor.

Chairman OWENS. Thank you. I would like to now recognize my friend from California, Mr. Kiley.

Mr. KILEY. Thank you, Mr. Chair, and I am glad the democrat minority member of the Committee had chosen a witness from my home State of California because California has actually led the way in a sense when it comes to the principles of equality before the law, and nondiscrimination that this hearing seeks to advance.

California does not always lead in the best ways, but in this way it actually did. In 1996, California voters passed Proposition 209, enshrining the principles of equality before the law, and nondiscrimination into our Constitution. Now, of course, these principles are deeply rooted in our national identity, that are famously articulated in our Declaration of Independence.

At the most important moments of our history when our country has been propelled forward, we have reaffirmed our commitment to those principles as with passage of the 14th Amendment, the Civil Rights Movement, and other important moments in our history.

California had a moment of that nature in 1996, as Prop 209, which states simply as follows, "The states shall not discriminate against, or grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, public education, or public contracting.

Now, that became part of our Constitution in 1996, and yet, just a few years ago in 2020, the California supermajority legislature decided that it was time to overthrow these principles of equal opportunity, quality before the law, and nondiscrimination. They voted to place a—to overturn that constitutional provision, to place a proposition on the ballot to simply reverse this provision that had been in place for over 20 years.

The vote in the legislature was 60 to 14, saying we want to reverse the principles of equality before the law and nondiscrimination. It then needed to be voted on by the people of California.

Even though it passed the legislature with, you know, over 75 percent of the vote, when it went to the voters, voters said something—they had rendered a very different verdict.

By a vote of 57.2 percent to 42.8 percent in a very blue State of California, the voters said no. We want to keep Prop 209. We want to keep the principles of equality before the law, and nondiscrimination as part of our Constitution, and as part of our state's character.

By the way, the spending advantage in that race was 13 to 1, it was 24 million to 1.8 million in favor of those who wanted to overturn these principles, in favor of the Yes Campaign, and despite that massive spending advantage, despite California being an overwhelmingly blue State, decided the legislature voting 3 to 1 to reverse this, the voters of California overwhelmingly had other ideas.

Ms. Mukherjee, what does it tell you that there is this enormous disconnect between the people of this country and the politicians, and perhaps those who are in charge at universities?

Ms. MUKHERJEE. Thank you, Congressman. Decades of public opinion published by outlets such as Gallop, has shown, and that I have documented in my own research, show that consistently Americans in their totality as a group, and individual racial groups, oppose the use of racial preference, especially in university admissions.

When Pew Research Center conducted a pole in the aftermath of Students for Fair Admissions, a majority again, of Americans, and a majority of Asians, whites, Latinos and black Americans all said that they oppose the consideration of race in university admissions. It is extremely unpopular.

It has been, consistently. To your point about how there seems to be a discrepancy between politicians and elites in our society, and with what the American people want, I actually conducted a study where I looked at all of the amicus briefs submitted in the Students for Fair Admissions case.

I found that while every single legacy Asian American group submitted a brief in support of affirmative action, a policy that has been shown to penalize Asians, and their constituents, before grass roots parent organizations said no. We do not support affirmative action.

You are absolutely right that the American public opposes this policy, and that there is a disconnect between our elites and what the people actually want. Thank you.

Mr. KILEY. Thanks very much. I agree, but I think that the will of the people is ascendant, and we are at a moment where we have a chance to really vindicate those founding principles once again that have been so vital to us becoming the greatest country in the world. Thank you, Mr. Chair, I appreciate you calling this hearing, and I yield back.

Chairman OWENS. Thank you so much. I would now like to recognize the Ranking Member from North Carolina, Ms. Adams.

Ms. ADAMS. Thank you, Mr. Chairman, and let me thank the witnesses, but it has been a little frustrating for me listening to a number of the things that have been said. Let me just—I hope I did not hear references made to the fact that if you are a member of a diverse group, whether it is African American, or Asian, Hispanic, et cetera, that you do not represent excellence. I really resent that.

Let me begin by saying that the pursuit of excellence and the pursuit of equity are not mutually exclusive. In fact, I would argue that they are inseparable, because DEI for me, and as it should be for all of us, represents diversity, excellence and inclusion.

As I have been a college professor for 40 years, I will tell you I have seen firsthand that talent is everywhere, but opportunity is not. DEI exists to close that gap. Now, earlier this week I heard from STEM educators who reminded me that holistic student support DEI included is not just about fairness. It is about building a workforce that reflects the country that we live in, and the world that we lead.

We are in a global race, whether it is AI, or biotechnology, or clean energy, and yet this conversation today feels more like focused on politics than preparedness. We should be asking are our students ready for the world ahead? Are our institutions creating pathways for all of them to succeed?

Let me just turn to you, Dr. Harper, today's hearing is titled, "Restoring Excellence," but it implies that previous systems before DEI were somehow more effective or fairer, so I would like to explore that with you. Yes, or no, have students across all communities historically received the same access to high-quality educational opportunities regardless of Zip Code?

Mr. HARPER. No. They have not.

Ms. ADAMS. All right. Yes or no, have all educators had the same level of training and resources to deliver those opportunities?

Mr. HARPER. No, they have not.

Ms. ADAMS. All right. Finally, do traditional markers like GPAs and resumes, always predict who becomes the strongest leader in the workforce, or have you seen individuals from non-traditional backgrounds like mine, outperform, once given the opportunity?

Mr. HARPER. No, to the first part, and absolutely to the second.

Ms. ADAMS. Okay. This Committee hears a lot about workforce readiness, but what we often do not hear is what employers are demanding, especially the Fortune 500. More than 90 percent of Fortune 500 companies have some form of DEI strategy. They do it not because it is trendy, but because it works.

My question Dr. Harper, is how do DEI programs align with what the modern workforce is demanding from our higher education institutions?

Mr. HARPER. I especially appreciate this question because in addition to my work in higher education, I also work with hundreds of corporations, agencies, and other organizations, spanning a multitude of industries. One of the things that I consistently find is that leaders want workers who appreciate diversity, who are able to work on diverse teams, and lead diverse teams.

They recognize that it is good for global business when people understand what their implicit biases are, and they have had an opportunity to address those implicit biases. Employers understand that high-quality professional learning equips leaders, managers and workers with the skills.

Ms. ADAMS. Let me move on and ask how do DEI practices help ensure that students from all backgrounds, rural, urban, low-income, how are they prepared not just to keep jobs, but to lead?

Mr. HARPER. Yes. You know, I appreciate that you raised earlier that, and I am paraphrasing, but homogeneity is the opposite of diversity. Inequity is the opposite of equity, and exclusion is the opposite of inclusion. Those opposites are—they are bad for our workforces, for our workforce, and for our democracy.

We need college students who become college graduates to really appreciate equity, diversity and inclusion, and to lead from those standpoints when they transition into their lives after college.

Ms. ADAMS. Finally, you know, DEI efforts, some people claim are no longer necessary, that we have evolved past the need for intentional inclusion. I disagree with that. I have spent a lifetime in

education, and I know that students today still face barriers that data alone cannot explain, and I yield back.

Chairman OWENS. Thank you. Thank you so much. Okay. Well, we are now—we will move on to our closing remarks. I would like to recognize Ms. Adams for her closing remarks.

Ms. ADAMS. Thank you, Mr. Chairman, thank you once again to our witnesses for speaking with us today. As we conclude today's hearing, I want to leave this Committee with this one message. Diversity, equity, inclusion and accessibility, DEIA, are not partisan talking points, they are pillars of just and equitable education systems.

We have heard today about the devastating impact that the rollback of DEI initiative has had, especially on institutions like historically black colleges and universities HBCUs, but these schools are not just academic institutions, they are lifelines for communities that have been denied equal opportunity for far too long.

They nurture talent, they uplift communities, and they empower generations of students who might otherwise be overlooked or forgotten. When we cut DEI funding, when we politicize inclusion, we are not preserving merit, we are narrowing opportunity.

We are telling first generation college students, as I was, we are telling veterans and students of color, parents, students with disabilities, and students from low-income communities that their future is less important, and that is unacceptable because DEI is not about pre-preferences, it is about fairness, it is about recognizing that students from all walks of life can succeed on campus, and making sure that there are not roadblocks that are visible to some, but not all.

It is about ensuring that every student has a real shot at success, regardless of your Zip Code that you grew up in, or the color of your skin. It is not just the right thing to do. It is the smart thing to do. A diverse, inclusive and equitable educational system produces better outcomes for all students.

Diversity is our strength, and so it fosters innovation, strengthens our workforce, and builds a more competitive and compassionate nation. The future of our country depend on how we invest in the next generation, and that includes standing by our institutions, protecting DEI programs, and pushing back, pushing back against efforts that will drag us backward.

I thank you, and Mr. Chairman, I yield back.

Chairman OWENS. Thank you so much. I have been really looking forward to this opportunity because I have seen our country come so far. I am going to make sure we never go back. Ms. Mukherjee, you made a statement. I felt like standing up and applauding.

When talking about your parents, yourself, that you never want to be looked at because of your color to get respect for what you have done in life. That was my parent's generation. They would fight you if you considered them a victim. They worked too hard to get respect from across this country. At the time I was growing up in the 60's, my first exposure, by the way, to America was when I was 6 years old—until I was 16 years old.

I grew up in a community that was so proud of what they were doing, and they were going to command respect by winning, by

competing, by working hard, and never being looked at as victims. Well, we have come to the day it is a afront to that generation.

We are now saying instead of us going out and competing, because of my color I want to get a 10 yard head start, or a 100 yard head start. That is not America. It is about excellence; it is about merit. Our race can do it just as well as anybody else.

For those that do not know the history of the black community, here is something I want you to take home and just understand how powerful it is when any communities in this country decides they want to be proud Americans, and be respected as such.

The black community, the 40's, 50's and 60's, led our country in the growth of the middle class. Led our country, men matriculating from college, HBCUs were going to make sure our men went out and competed and won the battle of intelligence. We led our country in the commitment to marriage.

The highest percentage of marriage was in the black community. The highest percentage of entrepreneurs, because we did not go outside our community. We had our business owners building within. Not only do they have a legacy of business ownership, taking risks, but they understood what it was to make sure that the next generation was better than theirs.

We now have people in our community telling our people we cannot compete. We do not have the intelligence. That we need to lower the bar. No one else. We have all this other—we are going to lower the bar so we can get into college, and then we fail in college, and what do we do?

Then we get angry because we did not make it because we have been lied to. This is an opportunity. I am so thankful that our country is finally coming back to the old promise of we will become a more perfect union, and we do that by looking at character, what we have inside, about tenacity, about our dream power, overcoming and becoming a better people.

That is what is always made our country what it is, and that is not a color line by the way. You look at every community that has that same grit, that same passion, you find successful people growing through the process, and reaching back and gives us a message America.

It is not about the struggle. It is what we do with the struggle. The message is if I can do it, you can do it. The message is not you cannot do it because you are black. You cannot do it because you had slavery in your background. America is a place of promises of hope, and if we cannot as adults give our kids hope, we are failing them big time.

I am so thankful that we are getting rid of this racist, racist DEIness. I do not want to be judged by my color guys. Somebody comes in and they say oh, by the way, that happened in my lifetime. I was the third black to go to the University of Miami. I was the fourth black to go in high school to this school, today Rigger's High School.

I know what it is to be told that I cannot become a biologist because of my color. I was told that. They had no idea what my grades were. They had no idea what my background was. I was told I could not succeed because I was black. It is time for us to start this process of putting our race down intellectually.

By the way, when is the last time DEI was put on the sports field? When is the last time we ever had a football team or basketball saying you're going to do DEI here. We do not do that because blacks have always been looked at being very physical—had physical prowess, but yet was not doing intellectually.

The last little thought, when you ever go back to see Martin Luther King's demonstration days—by the way I participated in one when I was 12 years old. Check this out. Notice the white shirt, the dark tie, the dress shoes. Notice the articulation of the speakers.

Notice that no matter what they said, or what they did, they held tight through principle of non-violence because they wanted to show Americans that we are confident, we are articulate, and we control our emotions, and we deserved, and we commanded respect. That was what Martin Luther King was all about.

It was yes, it was Jim Crow laws, but it is also respect as equals that black Americans had to other people. We have come so far, and we are not going back. Last thought, I grew up in the 60's, as I mentioned. My family today represents black, Hispanic, American Indian, Trinidadian.

My grandkids call each other cousins. If we ever found in my family DEI's thought process, I know that somebody is feeling it big time, it will not be at their appearance. They looked at each other, and they loved each other because they are family. That is what the American concept is all about.

Let us continue to get this cancer, racist cancer out of our system. Thankful to President Trump and his team, they are doing what they are doing, getting rid of those guys. Let us get back to merit. Man up, stand up, women up, do your very best, compete, win, and then tell other people if I can do it, you could do it.

With that, I would like to thank our witnesses again for taking the time to testify before the Subcommittee today. Without objection, there is no further business, the Subcommittee stands adjourned. Thank you so much.

[Whereupon, at 11:55 a.m., the Subcommittee on Higher Education and Workforce Development was adjourned.]

[Additional submissions from Ranking Member Adams follows:]

The Leadership Conference
Education Fund

Affinity Graduations:
A Mosaic of Educational Achievement

What is an affinity graduation?

Affinity college graduations are a meaningful way for institutions of higher education to value, honor, and celebrate the educational journeys and perseverance of their students. Affinity graduations inspire people of all backgrounds to envision themselves as future students and successful graduates and are of particular importance to communities of students who have historically been denied access to higher education because of who they are. A college or university may create space to celebrate the graduation of Asian American, Black, Latino, Native American, or disabled students, or those who are the first in their family to graduate college, women, Jewish, former foster youth, or identified with any other community. Open to all students, these graduations demonstrate an institution's commitment to equal educational opportunity and desire to remove barriers limiting students' attainment based on who they are.

Affinity graduations are a representation of the nation's robust, multiracial democracy.

Colleges that create space for meaningful affinity graduations and take into account students' full life experiences, including their race and ethnicity, offer their campus community an experience that will be cherished for a lifetime. For a significant time in our nation's history, people of color, women, and some people of faith were systematically excluded from achieving a higher education. Civil rights leaders, such as James Howard Meredith, dreamed and fought fiercely for the inclusion and belonging of all people in higher education.[1] Today, colleges and universities continue to hold a responsibility in achieving the national imperative of racial equity.[2] Institutions of higher education can foster a deep sense of belonging and inclusivity on their campuses by creating space for affinity graduations that celebrate the extraordinary milestones and achievements of their students.

Affinity graduations are aspirational and a reflection of students' dedication to achieve their dreams.

At some institutions, affinity graduations are a long-standing tradition that have opened the doors for students of color to honor their heritage and cultures. These ceremonies bring together families, community members, faculty, staff, student groups, businesses, and policymakers committed to celebrating diversity and equity in higher education. Students who participate in affinity graduations often wear regalia with cultural and historical significance or receive stoles or cords that represent a cultural identity. Graduation speakers are thoughtfully selected, and programs are curated to empower graduates as they transition beyond postsecondary education.

As opponents of racial equity in higher education seek to divide us, affinity graduations bring us together.

Our country thrives when we benefit from the talents of students from all backgrounds and build respect for everyone. Affinity graduations offer all students the opportunity to be in community with their entire campus and honor each other's accomplishments. While creating the opportunity to celebrate specific communities, cultures, and traditions, these events underscore the value of every student to the school community — no matter their background.

Participation is open to all students who choose to take part in an affinity graduation.

While it would be unlawful to deny students the opportunity to participate or attend an affinity graduation (or any school event) based on their race, color, national origin, sex, or disability, federal civil rights laws allow for cultural celebrations and observances.[3] Affinity graduations open to all students are not race-conscious decision-making and therefore not subject to the heightened level of scrutiny that applies when decisions are made that account for an individual's race.

Did the *SFFA* decisions say anything about affinity graduations?

No, the *Students for Fair Admissions (SFFA) v. Harvard* and *Students for Fair Admissions (SFFA) v. University of North Carolina (UNC)* decisions held that those two schools could not use race as a tip in admissions in order to increase diversity. There is no reference to affinity graduations in the case, and the decision does not prevent a college or university from creating space for an affinity graduation that is open to all.

But what about the Office for Civil Rights' Dear Colleague letter from February 14?

On February 14, 2025, the Office for Civil Rights at the U.S. Department of Education published a "Dear Colleague letter" about race in education.[4] Usually, Dear Colleague letters provide information to students, families, and educators about what laws mean and how they will be applied and enforced, although they never have the force or effect of law or have the ability to change the law. In this instance, the letter did not accurately reflect what the Trump administration wished the law would mean.[5] There are specific references in both that document and a subsequent FAQ released on February 28, 2025 to "segregation by race at graduation ceremonies."[6] While this may be an effort to mischaracterize affinity graduations, these documents issued by the Office for Civil Rights have no effect on the continued lawfulness of affinity graduations and the continued prohibition on excluding students based on their race, color, national origin, sex, or disability.

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[1] On September 10, 1962, in *Meredith v. Fair*, the U.S. Supreme Court upheld James Howard Meredith's right to attend the University of Mississippi. Even after the ruling, additional federal intervention was needed to enable Meredith to enroll and attend. See: James Meredith Civil Rights Activist and Writer and Meredith v. Fair: Seeking Equal Education Through the Court System).
[2] Visit WeShallNotBeMoved.org for a list of 100 policy recommendations for institutional, state, and federal policymakers to achieve racial equity and diversity in higher education.
[3] For additional information about race, school programming, and the law, see here.
[4] Letter from Craig Trainor, Acting Assistant Secretary for Civil Rights, U.S. Department of Education, to Colleagues (February 14, 2025).
[5] For more information about the February 14 document, see the fact sheet here.
[6] U.S. Department of Education, Office for Civil Rights, Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act (February 28, 2025).

Written Statement of
Southern Poverty Law Center

Submitted to the U.S. House of Representatives Education and Workforce Committee
Subcommittee on Higher Education and Workforce Development
in connection with hearing on May 21, 2025, entitled
"Restoring Excellence: The Case Against DEI"

I. Introduction

On behalf of the Southern Poverty Law Center ("SPLC"), we write to share our perspective on the May 21, 2025, hearing held by the U.S. House Subcommittee on Higher Education and Workforce Development, titled *"Restoring Excellence: The Case Against DEI."* We appreciate the opportunity to contribute our expertise on the critical role that anti-discrimination laws—and broader diversity efforts—have played, and continue to play, in expanding opportunity in this country. We also feel compelled to address the hearing's framing, which, in our view, reflects a gross distortion of Diversity, Equity, Inclusion, and Accessibility (DEIA) initiatives. While the acronym DEIA may be relatively new, the principles underlying it are not. DEIA initiatives are firmly grounded in long-standing civil rights law and decades of work to build a fairer, more inclusive America.

Founded in the Deep South in 1971, SPLC was established to make real the promise of the Civil Rights Movement—serving as a bulwark against efforts to roll back hard-won progress. For over 50 years, SPLC has worked alongside communities of color to dismantle white supremacy, combat hate and inequality, and advance human rights across the South and beyond. We believe everyone deserves to live free from discrimination, and that government has a duty to protect those who have been systematically marginalized throughout our nation's history. Policies such as DEIA are essential tools for ensuring that the rights guaranteed by the Constitution are truly accessible to all—particularly in education and employment.

America's ability to live up to its promise as an inclusive, multiracial democracy rests on ensuring that *all* people—regardless of race, identity, or background—have real and equal access to opportunity. Talent exists in every neighborhood and community across the nation. Yet too often, hardworking and gifted individuals are shut out by structural barriers and discriminatory practices. Closing this gap requires more than good intentions; it demands focused, deliberate efforts to find and nurture talent wherever it exists: in other words, diversity, equity, inclusion, and accessibility (DEIA).[1] In higher education and the workplace, these initiatives help uncover diverse talent, enhance academic achievement, and foster environments where everyone can thrive. Far from undermining excellence, these initiatives broaden its reach—helping transform the ideal of equal opportunity into a reality for all Americans.

Yet, despite the promise and impact of DEIA initiatives—or, more precisely, because of them—the Trump administration has launched an aggressive and deceptive campaign to dismantle such initiatives. In January 2025, President Trump signed a series of executive orders terminating all federal DEIA offices, rescinding long-standing anti-discrimination protections for federal contractors, and directing agencies to eliminate any equity-related programs or grants.[2] The Department of Education followed with guidance threatening to withhold funding from K-12 schools and universities that engage in lawful efforts to advance equal opportunity.[3] Although these measures were temporarily

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[1] Throughout this document, we use DEIA—"diversity, equity, inclusion, and accessibility"—because accessibility is a vital part of equity and inclusion. Many attacks from the Trump Administration and its allies target programs under the broad label of "DEI," but these attacks often affect accessibility too.

[2] See e.g., White House, Executive Order, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, (Jan. 21, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/; White House, Executive Order, *Ending Radical and Wasteful Government DEI Programs and Preferencing*, (Jan. 21, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/

[3] U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter (Feb. 14, 2025), https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf; U.S. Department of Education, Office for Civil Rights, Reminder of Legal Obligations Undertaken in Exchange for Receiving Federal Financial

blocked in court,[4] their true aim was to intimidate institutions into compliance—a strategy that, in some cases, has unfortunately succeeded.[5] To the president, DEI is not only unnecessary; it is harmful—an "illegal and immoral" endeavor that, in his framing, exists only to elevate people he claims are "unqualified."[6]

However, the president's view—echoed by several witnesses at the recent subcommittee hearing—does not withstand serious scrutiny. The empirical evidence is clear: racial disparities remain entrenched across nearly every stage of education and employment, particularly in the Deep South.[7] These disparities are not the result of inherent differences in ability but rather of persistent and unequal access to opportunity.[8] Moreover, the impact of these inequities is not confined to Black and Latino communities. They hinder overall outcomes for all Americans, including white students, and weaken the broader economy.[9] Importantly, no federal court—not even the current Supreme Court—has found DEIA programs to be inherently unlawful. On the contrary, the Court has affirmed that the promotion of diversity is a "worthy" and "commendable" goal.[10]

What is unfolding is not merely a backlash against DEIA initiatives—it represents a broader effort to unravel decades of civil rights progress. President Trump has gone so far as to blame DEIA for incidents as implausible as plane crashes and wildfires.[11] Such rhetoric is not only unfounded; it is profoundly dangerous. It revives a long-standing and damaging myth: that when a woman or person of color attains a position of authority, it is the result of "preferences" rather than merit. But this campaign goes far beyond incendiary rhetoric. It aims to weaponize civil rights laws—originally designed to dismantle barriers—to erect new ones. As many observers have pointed out, the current administration appears to be mounting the most sweeping attack on civil rights protections since Reconstruction. These actions must be firmly and unequivocally rejected.

Assistance and Request for Certification under Title VI and SFFA v. Harvard (Apr. 3, 2025), https://www.ed.gov/media/document/reminder-of-legal-obligations-undertaken-exchange-receiving-federalfinancial-assistance-and-request-certification-under-title-vi-and-sffa-v-harvard-april-3.pdf.

[4] See *National Association for the Advancement of Colored People v. U.S. Department of Education*, No. 25-cv-1120 (D.D.C. 2025), https://storage.courtlistener.com/recap/gov.uscourts.dcd.279521/gov.uscourts.dcd.279521.30.0.pdf; *American Federation of Teachers v. U.S. Department of Education*, No. 1:25-cv-00628 (D. Mary. 2025), https://storage.courtlistener.com/recap/gov.uscourts.mdd.577437/gov.uscourts.mdd.577437.60.0.pdf; and *National Education Association v. U.S. Department of Education*, No. 1:25-cv-00091 (D. New Hamp. 2025), https://storage.courtlistener.com/recap/gov.uscourts.nhd.65138/gov.uscourts.nhd.65138.74.0_1.pdf.

[5] Andy Rose, et al, *From Scholarships to Housing, College Students Struggle with the Effects of Trump Orders*, CNN (Mar. 8, 2025), https://edition.cnn.com/2025/03/07/us/university-dei-housing-scholarships-college/index.html

[6] White House, Executive Order, *Ending Radical and Wasteful Government DEI Programs and Preferencing*, (Jan. 21, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/ ("The Biden Administration forced illegal and immoral discrimination programs, going by the name "diversity, equity, and inclusion" (DEI), into virtually all aspects of the Federal Government,")

[7] See, Southern Education Association, *Miles to Go: the State of Education in Black America,* (Oct. 30 2024) https://southerneducation.org/wp-content/uploads/miles-to-go-report-final.pdf; Chandra Childers, *Rooted in Racism and Economic Exploitation: The Failed Southern Economic Development Model*, Economic Policy Institute, (Oct.11, 2023), https://www.epi.org/publication/rooted-in-racism/ - full-report

[8] *Id.,*

[9] Georgetown University Center for Education and the Workforce, *The Cost of Economic Injustice in Postsecondary Education* (2021), https://files.eric.ed.gov/fulltext/ED612709.pdf (" Our simulation found that the US economy misses out on $956 billion per year, along with numerous nonmonetary benefits, as a result of postsecondary attainment gaps by economic status and race/ethnicity"

[10] 600 U.S. 181 (2023), at 213-214.

[11] David Sanger, *Trump Blames D.E.I. and Biden for Crash Under His Watch,* New York Times, (Jan. 30, 2025), https://www.nytimes.com/2025/01/30/us/politics/trump-plane-crash-dei-faa-diversity.html

II. Black Americans Face Persistent, Unfair Barriers to Opportunity in Higher Education and Employment

More than 70 years after *Brown v. Board of Education*, America's schools are still profoundly unequal—especially for Black students. In 2020–2021, over a third of students—about 18.5 million—attended schools where most students shared their race or ethnicity.[12] Inside those segregated schools, the gaps are glaring. Black and Latino students have less access to advanced classes, fewer counselors, and a shortage of certified teachers.[13] They're twice as likely as white students to attend school in underfunded districts—and 3.5 times more likely to be in districts starved for resources year after year.[14] These disparities hold true even when one controls for income.[15] SPLC has spotlighted how these inequities hit hardest in the Deep South—where entrenched poverty, chronic underfunding, and proliferation of private segregation academies compound the problem.[16] Moreover, as we have previously documented, Black students are disproportionately suspended or expelled for similar infractions compared to White students across the South, including in Alabama and Georgia.[17]

These persistent disparities in K–12 education ripple upward, shaping who gets to access one of the most powerful engines of economic mobility: higher education. According to a 2024 report from the National Center for Education Statistics, just 36% of Black Americans and 33% of Latino Americans aged 18 to 24 are enrolled in college—compared to 42% of white Americans.[18] That gap holds even when you control for family income and parental education.[19] A recent analysis by the *Hechinger Report* highlights the structural depth of the problem. In 14 states, public universities enroll Black students at rates more than 10 percentage points below their share of public high school graduates.[20] The gaps are widest in the South. In Mississippi, Black students made up 48% of the state's high school graduates in 2021—but only 8% of first-year students at Ole Miss.[21] At the University of Georgia, the enrollment gap has grown to 31 points, and just 2% of incoming freshmen in 2021 were Black.[22] The gap remains at selective colleges, where Black students are admitted at lower rates than their peers.[23]

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[12] U.S. Gov't Accountability Off., GAO-22-104737, *Student Population Has Significantly Diversified, but Many Schools Remain Divided Along Racial, Ethnic, and Economic Lines* (June 2022), https://www.gao.gov/assets/gao-22-104737.pdf.
[13] Collin Binkley, et al, *Black and Latino Students Lack Access to Certified Teachers and Advanced Classes, US Data Shows* (Nov. 15, 2023), https://apnews.com/article/black-latino-students-civil-rights-school-7203f99c430a71c90388cfcd330b5f1c
[14] Bruce Baker, et al, *The Adequacy and Fairness of State School Finance Systems*, Albert Shanker Institute, (Jan. 2024), https://www.schoolfinancedata.org/wp-content/uploads/2024/02/SFID2024_annualreport.pdf
[15] *Id.*
[16] Southern Poverty Law Center, *Inequity in School Funding: Southern States Must Prioritize Fair Public School Spending* (2021), https://edlawcenter.org/assets/files/pdfs/publications/leg_cr_school_funding_inequities_report_2021_final.pdf;
[17] See, Southern Poverty Law Center, *Only Young Once: Alabama's Overreliance on School Pushout and For-Profit Youth Incarceration*, (Sept. 2024) https://www.learningforjustice.org/sites/default/files/2024-09/only-young-once-alabama-report.pdf; Southern Poverty Law Center, *Only Young Once: Dismantling Georgia's Punitive Youth Incarceration System* (Dec. 2024), https://www.splcenter.org/resources/reports/georgia-juvenile-justice-system-reform/
[18] National Center for Education Statistics, *The Condition of Education 2024* (2024), https://nces.ed.gov/programs/coe/pdf/2024/cpb_508c.pdf
[19] Hechinger Report, *Many Flagship Universities Don't Reflect Their State's Black or Latino High School Graduates* (June 15, 2023), https://hechingerreport.org/many-flagship-universities-dont-reflect-their-states-black-or-latino-high-school-graduates/
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] Jeremy Ashkenas et al., *Even With Affirmative Action, Blacks and Hispanics Are More Underrepresented at Top Colleges Than 35 Years Ago*, *New York Times* (Aug. 24, 2017), https://www.nytimes.com/interactive/2017/08/24/us/affirmative-action.html

Even those with top grades and SAT scores have been denied admission at twice the rate of similarly qualified White and Asian American applicants.[24]

In the labor market, Black Americans continue to face persistent and systemic barriers. The most striking example is the stubborn 2-to-1 unemployment gap between Black and White workers—a disparity that holds true across education levels, ages, and genders.[25] This indicates that the issue is not simply about skills or experience, but rather the effects of discrimination and structural racism. Hiring bias only deepens the problem. A University of Chicago study found that applicants with white-sounding names are 24% more likely to receive callbacks than those with Black-sounding names.[26] Even when employed, Black workers face entrenched wage disparities: in 2019, the median Black worker earned nearly 25% less per hour than the median White worker—a gap that has actually widened since 1979.[27] Black women experience even larger disparities.[28] Put simply, Black workers get less return on the same investments in education and experience, which erodes wealth and economic opportunity over time. Yet, despite all this evidence, many act as if the playing field is level today. Ignoring these disparities doesn't solve inequality—it only ensures it persists.

III. Diversity, Equity, Inclusion, and Accessibility Initiatives Are Both Legal and Essential

Contrary to the claims in the president's recent executive order—and to the testimony offered by several witnesses at the hearing—DEIA initiatives do not "violate the letter or spirit of longstanding federal civil rights laws". Nor are these initiatives "immoral" or "illegal discrimination."[29] In fact, the opposite is true. Colleges and universities—whether community colleges, public institutions, or graduate schools—carry both a legal and moral obligation to eliminate unfair barriers that limit opportunity for historically marginalized and underrepresented communities. DEIA programs are not just aligned with civil rights law; they are a direct means of ensuring compliance with it. In some cases, they are not merely permissible—they are necessary to meet antidiscrimination obligations.[30]

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[24] In *Students for Fair Admissions v. University of North Carolina*, the University of North Carolina admitted that Black and Latino students were underrepresented and that "those with the highest grades and SAT scores were denied twice as often as their white and Asian American peers." Students for Fair Admissions v. University of North Carolina, 567 U.S F. Supp. 3d 680, 666-67 (M.D.N.C. 2021)

[25] William Darity Jr., et al. Understanding Black–White Disparities in Labor Market Outcomes Requires Models That Account for Persistent Discrimination and Unequal Bargaining Power, Economic Policy Institute, (Mar. 15, 2022), https://www.epi.org/unequalpower/publications/understanding-black-white-disparities-in-labor-market-outcomes/

[26] Patrick Kline, et al, *A Discrimination Report Card,* BFI Working Paper No. 2024-40, Becker Friedman Institute for Economics at the University of Chicago, (April 2024) https://bfi.uchicago.edu/working-paper/a-discrimination-report-card/

[27] William Darity Jr., et al. Understanding Black–White Disparities in Labor Market Outcomes Requires Models That Account for Persistent Discrimination and Unequal Bargaining Power, Economic Policy Institute, (Mar. 15, 2022), https://www.epi.org/unequalpower/publications/understanding-black-white-disparities-in-labor-market-outcomes/

[28] Institute for Women's Policy Research. *Black Women Wage Gap Fact Sheet 2024*. (July 2024). https://iwpr.org/wp-content/uploads/2024/07/Black-Women-Wage-Gap-Fact-Sheet-2024.pdf.

[29] White House, Executive Order, *Ending Radical and Wasteful Government DEI Programs and Preferencing*, (Jan. 21, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/

[30] Federal laws require institutions to take active steps toward diversity and inclusion—such as reporting student body diversity (20 U.S.C. § 1092(a)(1)(Q)), appointing a Title IX Coordinator (34 C.F.R. § 106.8(a) (2020)), developing IEPs with parents of students with disabilities (20 U.S.C. § 1401(9)), and including English learners in assessments (20 U.S.C. § 6311(b)(2)(B)(vii)(III)). Similarly, employers must accommodate religious practices and disabilities, even when it requires altering neutral policies.

A particularly troubling theme that emerged during the hearing—echoed by the White House—was the claim that the Supreme Court's decision in *Students for Fair Admissions v. Harvard/UNC* prohibits institutions from advancing diversity, equity, inclusion, and accessibility (DEIA). This interpretation is, at best, a profound misreading of the ruling—and at worst, a willful distortion of law.

No federal court has ever held that race-neutral measures designed to achieve race-conscious goals—such as promoting racial diversity—are prohibited under Title VI. To the contrary, courts have upheld such measures. And when opponents have attempted to challenge them before the Supreme Court, the Court has declined to review those cases.[31] *SFFA* considered only the explicit use of race in college admissions—a 'zero-sum' environment where admitting one applicant necessarily requires rejecting another. The ruling was limited to higher education admissions practices that used race in this specific way. Importantly, the Court recognized that the promotion of diversity is a "worthy" and "commendable" goal.[32] It also made clear that the decision does "not prohibit universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise."[33] *SFFA* thus explicitly rejects the idea of absolute colorblindness in college admissions—let alone in every aspect of school programs. Indeed, even the current Department of Education acknowledges that the Court has recognized the consideration of race can be appropriate to remedy past discrimination that violated the Constitution.[34]

DEIA programs and practices—which vary by college—are not quotas or set-asides; those have long been illegal for decades.[35] Instead, these lawful DEIA initiatives ensure that every student — regardless of race, background or socioeconomic status — has the opportunity to succeed. DEIA initiatives expand access through mentorship, scholarships and outreach, providing crucial resources for women, veterans, people with disabilities, students of color, and LGBTQ+ individuals. Further, studies have consistently shown that diversity in education enhances critical thinking, creativity, and problem-solving skills for all students by exposing them to a wider range of perspectives and experiences.[36] Research also indicates that diverse learning environments help prepare all students for a global workforce and promote greater empathy and cultural understanding.[37] Moreover, companies with diverse leadership teams consistently outperform more homogeneous organizations, achieving higher financial returns as well as greater social and environmental impact.[38]

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[31] See, e.g., *Coalition for TJ v. Fairfax County School Board*, 68 F.4th 864, 891 (4th Cir. 2023), cert. denied, 218 L. Ed. 2d 71 (Feb. 20, 2024) and *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos., 89 F.4th 46, 61* (1st Cir. 2023), cert. denied, 145 S. Ct. 15 (2024). In reaching its decision, the Fourth Circuit specifically noted that "[t]he Supreme Court has repeatedly blessed seeking to increase racial diversity in government programs through race-neutral means." Similarly, the First Circuit concluded that "we find no reason to conclude that [SFFA] changed the law governing the constitutionality of facially neutral, valid secondary education admissions policies."

[32] 600 U.S. 181 (2023), at 213-214.

[33] *Id.,* at 230.

[34] U.S. Dep't of Educ., Reminder of Legal Obligations, supra note 3; In concurrence, Justice Thomas supported race-neutral programs, referencing the Freedmen's Bureau as a case in point. Although its benefits were largely directed to Black Americans, he characterized it as a race-neutral initiative consistent with federal law. SFFA, 600 U.S. at 247 (Thomas, J., concurring) ("Importantly, however, the [Freedmen's Bureau] Acts applied to freedmen (and refugees), a formally race-neutral category, not blacks writ large.")

[35] See, 438 U.S. 265 (1978)

[36] Amy Stuart Wells, et al, *How Racially Diverse Schools and Classrooms Can Benefit All Students*, The Century Foundation (Feb. 9, 2016) https://tcf.org/content/report/how-racially-diverse-schools-and-classrooms-can-benefit-all-students/

[37] *Id.*

[38] Kratz, Julie *The Little Known History of DEI and Why It's Critical to Its Survival*, Forbes (Dec. 29, 2024), https://www.forbes.com/sites/juliekratz/2024/12/29/history-of-dei-why-it-matters-for-the-future/; Charles, J. Brian, The Evolution of DEI, Chron. Higher Ed. (June 23, 2023) https://www.chronicle.com/article/the-evolution-of-dei

IV. Civil Rights Laws Were Created to Address Disparities, Not Ignore Them

Our nation's civil rights laws did not arise in a vacuum. They were a response—urgent, deliberate—to centuries of discrimination that denied millions of Americans equal access to education, employment, housing, and public life. These laws were not designed to deny the role of racial disparities They were created to confront it and other forms of discrimination. To reinterpret them now through the lens of strict "colorblindness" is a profound distortion—one that risks hollowing out the very commitments to equity and justice those laws were built to uphold.

Civil rights laws—such as the Civil Rights Act of 1964 and the Fair Housing Act of 1968—were passed because Congress recognized that discrimination wasn't theoretical; it was daily, lived, and systemic. Lawmakers understood that access to jobs, schools, housing, and public life was being denied not by accident, but by design—through policies, practices, and institutions that upheld racial hierarchies. These laws were meant to intervene in that reality. They were crafted to dismantle barriers, to actively promote inclusion, and to create a more equitable society by addressing discrimination where it actually existed.

Opponents of DEIA initiatives, in embracing a doctrine of colorblindness, would have us believe that after more than 250 years of slavery and nearly a century of Jim Crow and legal segregation, we now all stand on a level playing field.[39] That somehow, with the stroke of a pen, centuries of inequality dissolved. But disparities—and their lingering effects—did not vanish. They've reappeared in subtler forms or persisted beneath the surface. And yet, in this colorblind framework, the very laws designed to tear down barriers are now being weaponized to build new ones—especially for Black and brown communities. This turns the mission of civil rights on its head.

At the recent hearing, and in broader public discourse, opponents of DEIA efforts frequently invoked Dr. Martin Luther King Jr. to justify a colorblind approach.[40] But this invocation fundamentally misrepresents King's vision and legacy. While Dr. King aspired to a world in which individuals would be judged by the content of their character rather than the color of their skin, he was equally clear that such a world could not be achieved through passivity or pretense. It required deliberate, race-conscious efforts to dismantle the structures of discrimination and inequality. He was an unambiguous supporter of policies designed to confront disparities in education, employment, and housing.[41] To cite King while rejecting the very tools he championed is not only an ignoble distortion of history—it is an abdication of the responsibility his legacy demands.

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[39] See, e.g., Lukas Althoff, et al. *Jim Crow and Black Economic Progress after Slavery, The Quarterly Journal of Economics*, Volume 139, Issue 4, November 2024, Pages 2279–2330, https://doi.org/10.1093/qje/qjae023; Aaron Gottlieb, et al. The *Legacy of Slavery and Mass Incarceration: Evidence from Felony Case Outcomes. Social Service Review* Volume 95, Number 1 March 2021 https://doi.org/10.1086/713922.

[40] See, e.g., Nikole Hannah Jones, The Colorblindness Trap: How A Civil Rights Ideals Got Hijacked. (March 3, 2024), https://www.nytimes.com/2024/03/13/magazine/civil-rights-affirmative-action-colorblind.html

[41] David B. Oppenheimer, *Dr. King's Dream Of Affirmative Action,* Harvard Latinx Law Review, https://lawcat.berkeley.edu/record/1128669/files/fulltext.pdf (" While Dr. King dreamed of a time when racism – and thus race – would be irrelevant, he was an active supporter of both kinds of affirmative action – race-based and class-based. As a supporter of race-conscious affirmative action, he spent much of the last six years of his life actively promoting it.").

V. Conclusion

Across our country, talent and potential can be found in students and workers from every background. But for far too long, the opportunity to nurture that potential hasn't been shared equally. The legacy of segregation, the resistance to desegregation, and ongoing discriminatory policies have denied many Americans—Black and Brown communities, women, LGBTQIA+ individuals, people with disabilities, veterans, and others— access to higher education and workforce opportunities, which remain critical engines of upward economic mobility.

Our civil rights laws, along with efforts to advance DEIA are lawful tools designed to close these gaps and help ensure America is a place where every individual, regardless of background, has a fair shot at success. As our nation becomes more diverse, it is not only a moral imperative and legal obligation—but an economic necessity—that institutions create equitable environments where everyone can if we want to compete in a global economy and remain a vibrant, multiracial democracy, we have no choice but to ensure all qualified people are given a real opportunity to succeed. That is the choice before Congress today: the choice about the kind of America we want to be and the future we want to build together.

But opponents of DEIA envision a different future—one where opportunity is reserved for the elites, not shared by all. Their movement to dismantle these initiatives isn't about restoring excellence; it's about preserving power. It's a politics rooted in zero-sum thinking, using racial dog whistles to divide Americans and roll back the hard-won progress we've made together. They've turned the federal government into a roadblock to equal opportunity—stalling progress, restricting access, and undermining the foundational promise that every American deserves a fair chance to succeed. And make no mistake—this harms us Americans.

The truth is polling shows a strong majority of Americans—across race, class, and background—support diversity, equity, and inclusion.[42] This moment demands a full and unapologetic commitment to the future of our multiracial democracy. Congress must stand firm. The cost of retreat is too high. We cannot afford to squander the brilliance, talent, and promise of a rising generation. If we are to build an America that truly delivers on its promise, the principles of diversity, equity, inclusion, and accessibility must be part of that future.

We look forward to working with subcommittee members to build that future, uphold our nation's civil rights laws, and ensure an America that advances equal opportunity for all. For any questions or follow-up, please do not hesitate to contact Sakira Cook, Federal Policy Director, at Sakira.Cook@splcenter.org. We welcome the opportunity to work with you.

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[42] Bellwether Research and Hart Research, *August 2024 Qualitive Research Report* (2024), https://www.resourceimpactdc.org/copy-of-june-2024-qualitative-research.

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