



**Written Testimony of Jin Hee Lee  
Director of Strategic Initiatives  
NAACP Legal Defense and Educational Fund, Inc.**

**Submitted to the U.S. House of Representatives Education and Workforce  
Committee**

**Subcommittee on Higher Education and Workforce Development**

**In Connection with the March 7, 2024, Hearing**

**“Divisive, Excessive, Ineffective: The Real Impact of DEI on College Campuses”**

## I. Introduction

The success of our multiracial democracy depends upon creating pathways to opportunity that are open to all.<sup>1</sup> Yet, even as our country becomes more diverse,<sup>2</sup> we are experiencing a backlash against longstanding civil rights protections and programs that seek to ensure that every individual has an equal opportunity to succeed. In the face of these attacks, it is more important than ever that higher education institutions invest in programs that ensure equal access to educational opportunities, create inclusive learning environments, and promote the academic success of all students.

As a nation, we cannot afford to forfeit the benefits of the talents and gifts of every person in our country. Yet Black and other underrepresented students continue to experience unfair barriers and discrimination that limit their ability to access higher educational opportunities and succeed in those institutions. According to a 2022 McKinsey study, only “9 percent of four-year institutions [representing] 8 percent of enrolled students have both a representative student population and graduation rates for students from underrepresented populations that are the same as or higher than the national average.”<sup>3</sup> Students from other historically marginalized groups—including LGBTQ+ students and Jewish students—experience prejudice at unacceptable rates.

It is imperative that higher education institutions enroll talented students from all backgrounds and ensure that all students on campus succeed and feel welcome. Campuses that achieve these goals will be more diverse, inclusive, equitable, and accessible. Many higher educational institutions rely on a variety of programs—collectively referred to as “diversity, equity, inclusion, and accessibility,” or DEIA—to achieve these important goals. While higher education institutions would benefit from additional research identifying which of these programs have the most impact and how to implement them effectively, current social science literature demonstrates that many of these interventions can improve outcomes for Black students and expand employment opportunities for Black faculty.

Founded in 1940 by Thurgood Marshall, LDF is the nation’s oldest civil rights law organization.<sup>4</sup> LDF was launched at a time when America’s aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality. For more than eight decades, LDF has worked to dismantle racial segregation and ensure equal educational opportunity for all students, most prominently in the groundbreaking case, *Brown v. Board of Education*.<sup>5</sup> LDF also has represented Black students and applicants, as parties and *amici curiae*,

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<sup>1</sup> ANTHONY P. CARNEVALE ET AL., GEORGETOWN UNIVERSITY CENTER ON EDUCATION AND THE WORKFORCE, THE COST OF ECONOMIC AND RACIAL INJUSTICE IN POSTSECONDARY EDUCATION (2021), <https://files.eric.ed.gov/fulltext/ED612709.pdf>.

<sup>2</sup> By 2036, people of color will account for more than 50 percent of U.S. high school graduates. Peace Bransberger, et al., Western Interstate Commission for Higher Education, Knocking at the College Door (2020), <https://www.wiche.edu/wp-content/uploads/2020/12/Knocking-pdf-for-website.pdf>. Almost 1 in 4 people under the age of 30 identify as LGBTQ+, and our electorate will soon contain more people in that age group than any other. Anna Brown, *5 key findings about LGBTQ+ Americans*, PEW RESEARCH CTR. (Jun. 23, 2023), <https://www.pewresearch.org/short-reads/2023/06/23/5-key-findings-about-lgbtq-americans/>.

<sup>3</sup> DIANA ELLSWORTH, ET AL., MCKINSEY & CO., RACIAL AND ETHNIC EQUITY IN U.S. HIGHER EDUCATION 4 (2022), <https://www.mckinsey.com/~media/mckinsey/industries/education/our%20insights/racial%20and%20ethnic%20equity%20in%20us%20higher%20education/racial-and-ethnic-equity-in-us-higher-education.pdf>.

<sup>4</sup> LDF has been fully separate from the National Association for the Advancement of Colored People (NAACP) since 1957.

<sup>5</sup> 347 U.S. 483 (1954).

in numerous cases regarding educational access and opportunity in higher education.<sup>6</sup> Finally, LDF has a long history of fighting for economic justice and equal opportunity in the workforce, including in the seminal 1971 Supreme Court case *Griggs v. Duke Power Company*, which recognized the disparate impact theory of liability under Title VII.<sup>7</sup> Since then, LDF has continued to challenge public and private policies and practices that deny Black Americans employment.<sup>8</sup>

## II. Black Students and Faculty Continue to Experience Unfair Barriers to Equal Opportunity in Higher Education

Absent unfair barriers to access and opportunity, there is no reason why higher education institutions would not reflect the racial diversity of the nation at both the student and faculty level. However, severe racial disparities exist at every stage, from admissions to enrollment to graduation to faculty hiring. These racial disparities are not the result of students and faculty of color being less capable or qualified, but rather the failure of educational institutions to identify and eliminate discriminatory aspects of their admissions policies, support underrepresented students to prevent racial isolation, create learning environments that are free from prejudice, and create pathways for talented individuals who may be unfairly disadvantaged. As discussed further in Part IV, when higher education institutions provide Black students and faculty with the same opportunities that other students and faculty take for granted—such as the ability to build community and mentorship—these disparities diminish. Other historically marginalized groups, including LGBTQ+ students and Jewish students, unfortunately also experience harassment and prejudice on campus. Addressing disparities in opportunity and improving campus climate for all students not only benefits the entire university community, but also the nation as a whole.

Higher education institutions admit Black, Latinx, and Indigenous students at lower rates than white students. Due to ongoing segregation in K-12 schools and systematic underfunding of majority Black and Latinx schools,<sup>9</sup> these students have less access to experienced teachers,<sup>10</sup> high-quality instructional materials, adequate facilities,<sup>11</sup> and the kinds of courses that higher education institutions look to as traditional indicia of merit. For example, Black students have significantly less access to AP coursework<sup>12</sup> and a full range of math and science courses, including

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<sup>6</sup> See, e.g., *Students for Fair Admission v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230-31 (2023); *Fisher v. Univ. of Texas at Austin*, 579 U.S. 365 (2016); *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Gratz v. Bollinger*, 539 U.S. 244 (2003); *United States v. Fordice*, 505 U.S. 717 (1992); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978); *Sweatt v. Painter*, 339 U.S. 629 (1950); *Sipuel v. Bd. of Regents of Univ. of Okla.*, 332 U.S. 631 (1948); *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).

<sup>7</sup> 401 U.S. 424 (1971).

<sup>8</sup> *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971); *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975); *Pullman-Standard v. Swint*, 456 U.S. 273 (1982); *Anderson v. City of Bessemer City*, 470 U.S. 564 (1985); and *Lewis v. City of Chi.*, 560 U.S. 205 (2010).

<sup>9</sup> See, e.g., ED. TRUST, EQUAL IS NOT GOOD ENOUGH (2022), <https://edtrust.org/wp-content/uploads/2014/09/Equal-Is-Not-Good-Enough-December-2022.pdf>.

<sup>10</sup> Ed. Trust, As Districts Face Teacher Shortages, Black and Latino Students Are More Likely to Have Novice Teachers Than Their White Peers (Dec. 15, 2021), <https://edtrust.org/press-release/as-districts-face-teacher-shortages-black-and-latino-students-are-more-likely-to-have-novice-teachers-than-their-white-peers/#:~:text=Not%20only%20do%20Black%20students,5%25%20of%20first%20year%20teachers.>

<sup>11</sup> Chris Hacker, *Majority-Black school districts have far less money to invest in buildings — and students are feeling the impact*, CBS News (Sept. 14, 2023), <https://www.cbsnews.com/news/black-school-districts-funding-state-budgets-students-impact/>.

<sup>12</sup> Roby Chatterji, *Closing Advanced Coursework Equity Gaps for All Students*, CTR. FOR AM. PROGRESS (Jun. 30, 2021), <https://www.americanprogress.org/article/closing-advanced-coursework-equity-gaps-students/>

calculus,<sup>13</sup> than their peers, putting them at a disadvantage during the college admissions process. This systemic inequality in accessing educational resources persists even when controlling for other variables, like socioeconomic status.<sup>14</sup> As a result, higher educational institutions, particularly selective public and private colleges and universities that often serve as gateways to leadership positions, continue to admit students of color at far lower rates compared to their proportion of the college-age population.<sup>15</sup>

Black, Latinx, and Indigenous students also enroll in college at lower rates compared to their white peers. After an exponential increase in enrollment through the 1960s, Black college enrollment rates fell at significantly higher rates between 2010-2020 and during the pandemic than white enrollment rates.<sup>16</sup> According to a 2020 report by the National Center for Education Statistics, only 37 percent of Black and 36 percent of Latinx people, aged 18-24, are enrolled as undergraduate or graduate students in two- or four-year degree programs, compared to 42 percent of white people.<sup>17</sup> Moreover, many elite public and private institutions enroll Black students at much lower rates compared to population demographics. According to a 2021 analysis by the Hechinger Report and the Washington Post, “fifteen state flagships had at least a 10-point gap between the percentage of Black public high school graduates in their states in 2019 and the Black share of freshmen they enrolled” due to unfair barriers that include exclusionary admissions criteria, inadequate financial aid, and poor campus climate.<sup>18</sup> These findings echo a similar study of 101 selective public colleges by the Education Trust, which found that only 9 percent enroll Black students at rates proportionate to their population within the state.<sup>19</sup>

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<sup>13</sup> For example, approximately 35 percent of high schools with large percentages of Black and Latinx students offered calculus, compared to 54 percent of high schools with small percentages of Black and Latinx students. Press Release, U.S. Education Department’s Office for Civil Rights Releases New Civil Rights Data on Students’ Access to Educational Opportunities During the Pandemic (Nov. 15, 2023), <https://www.ed.gov/news/press-releases/us-education-departments-office-civil-rights-releases-new-civil-rights-data-students%E2%80%99-access-educational-opportunities-during-pandemic>; RHONDA TSOI-A-FATT BRYANT, CLASP, COLLEGE PREPARATION FOR AFRICAN AMERICAN STUDENTS: GAPS IN THE HIGH SCHOOL EDUCATIONAL EXPERIENCE (2015), [https://uncf.org/wp-content/uploads/PDFs/College-readiness2-2.pdf?\\_ga=2.194578733.1485447541.1710261450-497969461.1710261450](https://uncf.org/wp-content/uploads/PDFs/College-readiness2-2.pdf?_ga=2.194578733.1485447541.1710261450-497969461.1710261450).

<sup>14</sup> NICHOLAS P. TRIPLETT & JAMES E. FORD, E(RACE)ING INEQUITIES: THE STATE OF RACIAL EQUITY IN NORTH CAROLINA PUBLIC SCHOOLS, CTR. FOR RACIAL EQUITY IN EDUC. (2019), [https://www.ednc.org/wpcontent/uploads/2019/08/EducationNC\\_Eraceing-Inequities.pdf](https://www.ednc.org/wpcontent/uploads/2019/08/EducationNC_Eraceing-Inequities.pdf).

<sup>15</sup> Jeremy Ashkenas, et al., *Even With Affirmative Action, Blacks and Hispanics Are More Underrepresented at Top Colleges Than 35 Years Ago*, N.Y. TIMES (Aug. 24, 2017), <https://www.nytimes.com/interactive/2017/08/24/us/affirmative-action.html>. The Supreme Court invalidated the University of North Carolina’s affirmative action policy even though that institution admitted underrepresented students of color, including Black, Latinx, Hawaiian/Pacific Islander, and Native students, “at lower rates than their white and Asian American counterparts, and those with the highest grades and SAT scores [we]re denied twice as often as their white and Asian American peers.” *Students for Fair Admissions v. University of North Carolina*, 567 F. Supp. 3d 580, 666-67 (M.D.N.C. 2021), *overruled by Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

<sup>16</sup> Oyin Adedoyin, *What Happened to Black Enrollment?*, CHRON. HIGHER ED. (Aug. 18, 2022), [https://www.chronicle.com/article/what-happened-to-black-enrollment?bc\\_nonce=n3ni9yfkj13tat6mhlzx4&cid=reg\\_wall\\_signup](https://www.chronicle.com/article/what-happened-to-black-enrollment?bc_nonce=n3ni9yfkj13tat6mhlzx4&cid=reg_wall_signup).

<sup>17</sup> INST. OF ED. SCI., NAT’L CTR. FOR ED. STATISTICS, THE CONDITION OF EDUCATION 2020: COLLEGE ENROLLMENT RATES (2020), [https://nces.ed.gov/programs/coe/pdf/coe\\_cpb.pdf](https://nces.ed.gov/programs/coe/pdf/coe_cpb.pdf).

<sup>18</sup> Laura Lumpkin, *Flagship universities say diversity is a priority. But Black enrollment in many states continues to lag*, WASH. POST (Apr. 18, 2021 7:00 AM ET), <https://www.washingtonpost.com/education/2021/04/18/flagship-universities-black-enrollment/>.

<sup>19</sup> ANDREW HOWARD NICHOLS, ED. TRUST, “SEGREGATION FOREVER”?: THE CONTINUED UNDERREPRESENTATION OF BLACK AND LATINO UNDERGRADUATES AT THE NATION’S 101 MOST SELECTIVE PUBLIC COLLEGES AND UNIVERSITIES (2014), <https://edtrust.org/wp-content/uploads/2014/09/Segregation-Forever-The-Continued-Underrepresentation-of-Black-and-Latino-Undergraduates-at-the-Nations-101-Most-Selective-Public-Colleges-and-Universities-July-21-2020.pdf>.

Numerous studies have documented the importance of students finding a community and developing a positive identity in order to succeed academically.<sup>20</sup> Yet, at many colleges, Black students struggle to do either. Black students often report experiences of exclusion ranging from faculty and peers questioning their abilities to campus staff challenging their presence.<sup>21</sup> At the University of North Carolina (UNC), for example, students of color are still “confronted with racial epithets, as well as feeling isolated, ostracized, stereotyped and viewed as tokens in a number of University spaces.”<sup>22</sup> A Gallup and Lumina Foundation study found that one in five Black students experience discrimination on college and university campuses and that Black students attending the least racially diverse schools experience discrimination most frequently.<sup>23</sup> The study also found that “the less diverse the student body is, the less safe and respected Black students report feeling: At the least racially diverse institutions, 31 percent of Black students felt discriminated against and 28 percent felt physically unsafe. In the most diverse programs, that number dropped to about 17 percent in both instances.”<sup>24</sup> These experiences with discrimination on college campuses, in turn, can decrease students’ feeling of “belonging” and increase their reports of stress and depressive symptoms.<sup>25</sup> Institutions have struggled to resolve these problems: in a series of 21 focus groups with Black staff, faculty, and students, 41 percent of the participants reported that their universities had insufficient and evasive responses to campus climate problems impacting Black people.<sup>26</sup>

The lack of faculty diversity compounds the racial isolation of Black, Latinx, and Indigenous students. While faculty diversity is positively correlated with completion rates for students from underrepresented populations,<sup>27</sup> as discussed further in Part IV, most higher education institutions do not have faculty that represent the full range of available talent in the United States. A 2022 McKinsey study found that, in 2020, only 12 percent of two- and four-year not-for-profit educational institutions had faculties that were representative of the U.S. population—and many of those were historically Black colleges and universities (HBCUs), Hispanic-serving institutions (HSIs), and other minority-serving institutions.<sup>28</sup>

These disparities have a profound effect on American society and the economy. Researchers at Georgetown University estimated in 2021 that gaps in postsecondary attainment cumulatively cost the U.S. economy nearly \$1 trillion per year.<sup>29</sup> This estimate does not include

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<sup>20</sup> See, e.g., Derrick R. Brooms & Arthur R. Davis, *Staying focused on the goal: Peer bonding and faculty mentors supporting Black males’ persistence in college*, 48 J. OF BLACK STUDIES 305 (2017), <https://doi.org/10.1177/0021934717692520>; Terrell L. Strayhorn, *The role of supportive relationships in facilitating African American males’ success in college*, 45 NASAP J. 26 (2008); Sharon L. Holmes, et al., *Validating African American Students at Predominantly White Institutions*, 4 JOURNAL OF COLLEGE STUDENT RETENTION: RESEARCH, THEORY & PRACTICE 41 (2000), <https://doi.org/10.2190/XPOF-KRQW-F547-Y2XM>.

<sup>21</sup> Kristal Brent Zook, *How Black Lives Matter came to the academy*, NEW YORKER (Jan. 30, 2021).

<sup>22</sup> *SFFA v. UNC*, 567 F. Supp. 3d 580, 666–67 (M.D.N.C. 2021).

<sup>23</sup> Camille Lloyd & Courtney Brown, *One in Five Black Students Report Discrimination Experiences*, GALLUP (Feb. 9, 2023), <https://news.gallup.com/poll/469292/one-five-black-students-report-discrimination-experiences.aspx>.

<sup>24</sup> *Id.*

<sup>25</sup> David S. Freire & Noelle M. Hurd, *Discrimination and Mental Health Outcomes Among Underrepresented College Students: The Role of Sense of Belonging at Predominantly White Institutions*, 11 EMERGING ADULTHOOD 654, <https://journals.sagepub.com/doi/10.1177/21676968231166967>.

<sup>26</sup> Serie McDougal, et al., *Black Campus Climate: Towards a Liberatory and Equitable Black Campus Experience*, 55 J. OF BLACK STUDIES 3, <https://doi.org/10.1177/00219347231207061>

<sup>27</sup> Rebecca Stout, et al., *The relationship between faculty diversity and graduation rates in higher education*, 29 INTERCULTURAL ED. 399 (2018), <https://www.tandfonline.com/doi/full/10.1080/14675986.2018.1437997>.

<sup>28</sup> DIANA ELLSWORTH, ET AL., MCKINSEY & CO., RACIAL AND ETHNIC EQUITY IN U.S. HIGHER EDUCATION 4 (2022), <https://www.mckinsey.com/~media/mckinsey/industries/education/our%20insights/racial%20and%20ethnic%20equity%20in%20us%20higher%20education/racial-and-ethnic-equity-in-us-higher-education.pdf>.

<sup>29</sup> *Id.*

economic losses that are harder to quantify, such as impacts on health, public safety, and civic engagement.<sup>30</sup> By contrast, another study concluded that more access to highly-skilled occupations for talented women and Black men accounted for approximately “two fifths of growth in U.S. market GDP per person between 1960 and 2010.”<sup>31</sup> For this reason, over 80 major corporations filed an *amicus* brief in the recent Supreme Court case *Students for Fair Admissions v. President and Fellows of Harvard College* and *Students for Fair Admissions v. University of North Carolina (SFFA)*, explaining why the admission of talented students of color in selective institutions of higher learning is essential to their businesses and the American economy at large.<sup>32</sup>

Students from other underrepresented groups—including LGBTQ+ students and Jewish students—unfortunately also experience prejudice on campus. According to a January 2024 FBI report, schools were the third most common location for a reported hate crime offense to occur between 2018 and 2022.<sup>33</sup> The most common offenses were anti-Black (1,690), anti-LGBTQ+ (901), and antisemitic (745) hate crimes.<sup>34</sup> Since the start of the Israel-Gaza War on October 7, 2023, students and faculty have reported a rise in both antisemitic and Islamophobic incidents reported on college campuses.<sup>35</sup> Higher educational institutions must do more to ensure that campus climates are welcoming to all students, while recognizing the unique obstacles faced by specific communities.

### **III. Programs That Increase Diversity, Equity, Inclusion, and Accessibility Are Necessary and Lawful**

Higher education institutions—including community colleges, universities, and professional graduate schools like medical schools—have a legal and moral duty to break down barriers that unfairly limit opportunities for historically marginalized and underrepresented students and faculty. In order to achieve this important goal, higher education institutions operate a variety of programs under the umbrella of DEIA. These programs are consistent with federal antidiscrimination laws and, in fact, can be instrumental in ensuring compliance.

DEIA programs come in a variety of forms such as: sexual harassment, antidiscrimination, and implicit bias trainings; affinity groups; targeted recruiting; and mentoring. DEIA offices may handle the administrative task of ensuring compliance with civil rights laws, including investigations of sexual harassment and/or bias allegations. DEIA programs often serve students of various backgrounds, including first-generation college students, students of color, Jewish

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<sup>30</sup> *Id.*

<sup>31</sup> Chang-Tai Hsieh et al., *The Allocation of Talent and U.S. Economic Growth*, 87 *Econometrica* 1439, 1441 (2019). See also Tyler Kepner, *Baseball Rights a Wrong by Adding Negro Leagues to Official Records*, *N.Y. Times* (Dec. 16, 2020), <https://www.nytimes.com/2020/12/16/sports/baseball/mlb-negroleagues.html> (“All of us who love baseball have long known that the Negro Leagues produced many of our game’s best players, innovations and triumphs against a backdrop of injustice.”).

<sup>32</sup> Br. for Major American Business Enterprises as Amici Curiae Supporting Respondents, *Students for Fair Admission v. President & Fellows of Harvard Coll.* and *Students for Fair Admissions v. Univ. of North Carolina*, Nos. 20-1199 & 21-707 (Aug. 1, 2022), <https://www.naacpldf.org/wp-content/uploads/Brief-for-Major-American-Business-Enterprises-Supporting-Respondents-FINAL.pdf>.

<sup>33</sup> U.S. DEP’T OF JUSTICE FED. BUREAU OF INVESTIGATION, *REPORTED HATE CRIME AT SCHOOLS: 2018-2022* (2024), <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/special-reports>.

<sup>34</sup> *Id.*

<sup>35</sup> Press Release, U.S. Dep’t of Ed., U.S. Department of Education’s Office for Civil Rights Announces List of Open Title VI Shared Ancestry Investigations of Institutions of Higher Education and K-12 Schools (Nov. 16, 2023), <https://www.ed.gov/news/press-releases/us-department-educations-office-civil-rights-announces-list-open-title-vi-shared-ancestry-investigations-institutions-higher-education-and-k-12-schools>.

students, veterans, students with disabilities, adult learners, LGBTQ+ students, women, students from rural communities, STEM students, international students, and students from low-income communities. DEIA programs may also include efforts to ensure that the educational institution creates equal employment opportunities for faculty, administrators, and other staff. Despite the wide variety of these programs, they all share the common goal of ensuring that talented and qualified students and faculty can thrive and perform at their best.

Many DEIA programs comply with—and, in fact, can help advance—civil rights laws. A recent guidance from the U.S. Department of Education explains that while “Title VI [of the Civil Rights Act of 1964] prohibits discrimination based on race, color, or national origin in the programs or activities of all recipients of Federal financial assistance,” “[a]ctivities intended to further objectives such as diversity, equity, accessibility, and inclusion are not generally or categorically prohibited under Title VI.”<sup>36</sup> As such, Title VI does not categorically prohibit diversity, equity, and inclusion training; instruction in or training on the impact of racism or systemic racism; cultural competency training or other nondiscriminatory trainings; or efforts to assess or improve school climate, including the use of community focus groups or climate surveys.<sup>37</sup> Similarly, as discussed in LDF’s report, *The Economic Imperative to Ensure Equal Opportunity: Guidance for Employers, Businesses, and Funders*, several courts have found—and U.S. Equal Employment Opportunity Commissioners<sup>38</sup> have<sup>39</sup> reaffirmed<sup>40</sup>—that many programs focused on increasing employment opportunities are consistent with Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination.<sup>41</sup> More importantly, many DEIA programs can help schools comply with these antidiscrimination laws by helping them identify and break down unfair barriers that impede student success, block equal employment opportunities, and create negative campus climates. According to the U.S. Department of Education, DEIA initiatives can help higher educational institutions comply with federal anti-discrimination laws by addressing harassing conduct, remedying prior racial discrimination, and fostering “a more positive and inclusive school climate.”<sup>42</sup>

The Supreme Court’s recent *SFFA* decision, which held that the race-conscious admissions programs at Harvard and UNC were unconstitutional, did not alter the legality of initiatives that advance racial diversity, equity, inclusion.<sup>43</sup> Importantly, the *SFFA* decision is limited to the explicit use of race, among a plethora of other factors, in the affirmative action policies at Harvard and UNC and does not apply beyond this narrow context. In fact, the Court in *SFFA* expressly recognized that race-conscious measures remain permissible where there is an interest in

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<sup>36</sup> U.S. DEP’T OF EDUCATION, OFF. FOR CIVIL RIGHTS, FACT SHEET: DIVERSITY & INCLUSION ACTIVITIES UNDER TITLE VI (Jan. 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tvi-dia-202301.pdf>.

<sup>37</sup> *Id.*

<sup>38</sup> Jocelyn Samuels & Zain Shirazi, *The High Court Didn’t Kill DEI at Work. Employers Shouldn’t Waver*, BLOOMBERG LAW (Jul 11, 2023), <https://news.bloomberglaw.com/us-law-week/the-high-court-didnt-kill-dei-at-work-employers-shouldnt-waver>.

<sup>39</sup> Charlotte A. Burrows, U.S. Equal Emp. Opportunity Comm’n, *Statement from EEOC Chair Charlotte A. Burrows on Supreme Court Ruling on College Affirmative Action Programs* (Jun. 29, 2023), <https://www.eeoc.gov/newsroom/statement-eeoc-chair-charlotte-burrows-supreme-court-ruling-college-affirmative-action>.

<sup>40</sup> Riddhi Setty, *New EEOC Democrat Says Workplace Diversity Has Panel Backing*, BLOOMBERG LAW (Nov. 7, 2023 4:46 PM ET), <https://news.bloomberglaw.com/daily-labor-report/new-eeoc-democrat-says-workplace-diversity-has-panel-backing>.

<sup>41</sup> NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC., *THE ECONOMIC IMPERATIVE TO ENSURE EQUAL OPPORTUNITY: GUIDANCE FOR EMPLOYERS, BUSINESSES, AND FUNDERS* (2024), <https://www.naacpldf.org/wp-content/uploads/2024-02-01-Aff-Axn-Economic-Guidance-2.pdf>.

<sup>42</sup> U.S. DEP’T OF EDUCATION, *supra* note 38.

<sup>43</sup> *Students for Fair Admissions, Inc.*, 600 U.S. at 213, 230.

“remediating specific, identified instances of past discrimination that violated the Constitution or a statute.”<sup>44</sup> Moreover, race-neutral efforts to increase diversity are not only constitutional under *SFFA*, but were also specifically identified as valid alternatives to the explicit consideration of race in affirmative action programs. For example, in his concurring opinion in *SFFA*, Justice Brett M. Kavanaugh emphasized that “governments and universities still ‘can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race.’”<sup>45</sup> Justice Clarence Thomas likewise acknowledged the use of race-neutral policies in his concurrence, stating that “[r]ace-neutral policies may thus achieve the same benefits of racial harmony and equality.”<sup>46</sup> While each institution’s DEIA program may vary to some degree, most endeavor to correct discriminatory practices and remedy hostile environments. Other programs, such as targeted recruiting, increase the pool of applicants without making admissions or employment decisions based on race. Such programs remain lawful following *SFFA*.

Given the wide variety of programs that may fall within the rubric of “DEIA,” it would be naïve to suggest that all such programs are successful in advancing equal opportunity or ensuring compliance with civil rights obligations. There is, however, some evidence that the successful implementation of DEIA programs can produce improvements in student outcomes and campus climate, as discussed in more detail below. It is essential to collect data on DEIA programs so that higher education institutions can more effectively address the obstacles faced by different underrepresented groups. Programs that conflate or generalize the experiences of different groups or utilize generic, ill-conceived approaches to equalize opportunities for students from specific populations may not be successful.<sup>47</sup> Moreover, programs that solely advance overly broad definitions of diversity, such as viewpoint diversity, can evade the type of discrimination experienced by Black students and faculty and other protected groups on campus.<sup>48</sup> In order to effectively address problems of diversity, equity, and inclusion for all students, and especially those who are most vulnerable, higher education institutions must confront these issues directly and explicitly.

#### **IV. Expanding Access to the Medical Profession and Improving Cultural Competency Can Lead to Better Care for Patients**

In addition to the benefits to individual students and faculty in higher education institutions, increasing diversity, equity, inclusion, and accessibility benefits society as a whole. Contrary to claims made by opponents of DEIA, “diversity in the education of the Nation’s physicians and other healthcare professionals is a medical imperative,” so that physicians can serve the needs of all patients, including patients of color.<sup>49</sup> Yet, even though medical schools have been admitting and graduating more diverse classes,<sup>50</sup> the medical profession remains out of reach for large segments of our population. Only about 5.7 percent of active physicians are Black,

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<sup>44</sup> *Id.* at 207.

<sup>45</sup> *Id.* at 317.

<sup>46</sup> *Id.* at 284.

<sup>47</sup> See, e.g., Bianca Argueza, et al., *From Diversity and Inclusion to Antiracism in Medical Training Institutions*, 96 *ACADEMIC MED.* 6, <https://doi.org/10.1097/ACM.0000000000004017>.

<sup>48</sup> Kristen M. Glasener, *Framing diversity: Examining the place of race in institutional policy and practice post-affirmative action*, 12 *J. DIVERSITY IN HIGHER ED.* 3, <https://doi.org/10.1037/dhe0000086>.

<sup>49</sup> Br. for Amici Curiae Assoc. of Am. Med. Colleges, et al. in Support of Respondents, *Students For Fair Admissions, Inc. v. President & Fellows of Harvard College, Students For Fair Admissions, Inc. v. University Of North Carolina, et al.*, Nos. 20-1199 & 21-707 (Aug. 1, 2022), <https://www.aamc.org/media/61976/download?attachment>.

<sup>50</sup> *African Americans Are Making Progress in Medical School Enrollments*, *J. OF BLACKS IN HIGHER ED.* (Dec. 26, 2022), <https://jbhe.com/2022/12/african-americans-are-making-progress-in-medical-school-enrollments/>.

6.9 percent are Latinx, and 0.3 percent are American Indian or Alaska Native.<sup>51</sup> According to a 2023 study, more than 50 percent of U.S. counties did not have one Black doctor in the entire county, and none of the counties in the United States had Black primary care physicians proportionate to the Black population in the county.<sup>52</sup>

At the same time, Black people and other people of color in the United States suffer disproportionately from preventable disease and early death despite living in a country with one of the most advanced medical systems in the world.<sup>53</sup> Black people have higher rates of diabetes, hypertension, and heart disease than other groups.<sup>54</sup> Black infants die at a rate 2.3 times higher than white infants,<sup>55</sup> and Black children have a 500 percent higher death rate from asthma compared with white children.<sup>56</sup> In addition, Black women are three-to-four times more likely to die from pregnancy-related complications than white women,<sup>57</sup> and many of these deaths were preventable according to the CDC.<sup>58</sup> Black people and other people of color were also more likely to be hospitalized and die due to COVID-19.<sup>59</sup> Even before the pandemic, Black Americans' life expectancy was four years lower than that of white Americans.<sup>60</sup> Many of these racial disparities persist even when accounting for socioeconomic status, lifestyle, insurance coverage, and other risk factors.<sup>61</sup>

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<sup>51</sup> Patrick Boyle, What's your specialty? New data show the choices of America's doctors by gender, race, and age, *Am. Assoc. Med. Colleges* (Jan. 12, 2023), <https://www.aamc.org/news/what-s-your-specialty-new-data-show-choices-america-s-doctors-gender-race-and-age>. Similarly, people of color are underrepresented in the legal profession, making up 19 percent of the nation's lawyers despite being 40% of the U.S. population. Karen Sloan, *U.S. Supreme Court's affirmative action ruling a 'headwind' for lawyer diversity, experts say*, *REUTERS* (Jun. 29, 2023), <https://www.reuters.com/legal/government/us-supreme-courts-affirmative-action-ruling-headwind-lawyer-diversity-experts-2023-06-29/>.

<sup>52</sup> Monica E. Peek, *Increasing Representation of Black Primary Care Physicians—A Critical Strategy to Advance Racial Health Equity*, *JAMA NETWORK OPEN.* vol. 6, no. 4 (2023), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2803903>.

<sup>53</sup> See, e.g., Bruce G. Link, *Epidemiological Sociology and the Social Shaping of Population Health*, 49 *J. HEALTH & SOC. BEHAV.* 367, 372-75 (2008).

<sup>54</sup> Risa Lavizzo-Mourey & David Williams, *Being Black Is Bad for Your Health*, *U.S. NEWS* (Apr. 14, 2016), <https://www.usnews.com/opinion/blogs/policy-dose/articles/2016-04-14/theres-a-huge-health-equity-gap-between-whites-and-minorities>.

<sup>55</sup> U.S. Dep't of Health & Human Svcs. Office of Minority Health, *Infant Mortality and African Americans*, <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlid=23#:~:text=Non%2DHispanic%20blacks%2FAfrican%20Americans,to%20non%2DHispanic%20white%20infants> (last visited Sept. 23, 2022).

<sup>56</sup> Lavizzo-Mourey & Williams, *supra* note 56.

<sup>57</sup> DONNA L. HOYERT, CENTERS FOR DISEASE CONTROL, *MATERNAL MORTALITY RATES IN THE UNITED STATES, 2020*, <https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2020/maternal-mortality-rates-2020.htm>.

<sup>58</sup> Nada Hassanein, *'Staggering' and 'sobering': More than 80% of US maternal deaths are preventable, CDC study shows*, *USA TODAY* (Sept. 19, 2022 1:53 PM), <https://www.usatoday.com/story/news/health/2022/09/19/cdc-us-maternal-deaths-preventable/10425271002/>.

<sup>59</sup> Centers for Disease Control, *Risk for COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity*, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (last visited Sept. 23, 2022).

<sup>60</sup> Centers for Disease Control, *Life expectancy at birth, age 65, and age 75, by sex, race, and Hispanic origin: United States, selected years 1900–2018 (2019)*, <https://www.cdc.gov/nchs/data/hus/2019/004-508.pdf>.

<sup>61</sup> See Virginia Tangel et al., *Racial and Ethnic Disparities in Maternal Outcomes and the Disadvantage of Peripartum Black Women: A Multistate Analysis, 2007-2014*, 36 *AM. J. PERINATOLOGY* 835, 835, 843 (2019).

While gaps in access to care<sup>62</sup> and disproportionate exposure to environmental hazards,<sup>63</sup> among other factors, contribute to these disparities, racial bias in the medical profession is also a driving force. While some may inaccurately frame medicine as an objective, rational, and scientific discipline, the reality is that the medical profession is no less at risk of human flaws, including racial bias. A 2003 literature review by the National Academy of Medicine found that people of color were less likely than white people to receive appropriate cardiac care; kidney dialysis or transplants; and are often denied the most successful treatments for stroke, cancer, or AIDS.<sup>64</sup> The literature review concluded that “provider and institutional bias are significant contributors” to health inequities.<sup>65</sup> A 2016 study similarly found that some medical students and medical residents hold false beliefs about biological differences between Black people and white people, leading them to discount Black patients’ pain and make less accurate treatment recommendations.<sup>66</sup> Unsurprisingly, Black doctors were more likely than others to accurately assess Black patients’ pain tolerance and prescribe the correct amount of pain medication as a result.<sup>67</sup> This racially disparate treatment by medical professionals is persistent and pervasive, as demonstrated in the HHS’ 2021 National Health Care Quality and Disparities Report, which found that Black people received worse care than white people across 43 percent of 195 quality measures.<sup>68</sup>

In light of the well-documented racial bias in the practice of medicine, efforts to ensure equal opportunity for medical students of color “literally saves lives by ensuring that the Nation’s increasingly diverse population will be served by healthcare professionals competent to meet its needs.”<sup>69</sup> Black and Latinx “health professionals are more likely to serve in areas with high rates of uninsured and areas of underrepresented racial and ethnic groups;” thus, expanding opportunities for medical professionals from these backgrounds can help close gaps in care.<sup>70</sup> Moreover, patients benefit from being treated by providers who were trained and work in a racially-diverse environment. As the American Academy of Medical Colleges and other physicians groups have explained, “diversity in medical education yields better health outcomes . . . because

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<sup>62</sup> Predominantly Black, racially-isolated neighborhoods are more likely to be in primary care deserts and “offer fewer ambulatory facilities, more limited access to physicians, and a lower supply of surgeons.” Mariana C. Arcaya & Alina Schnake-Mahl, *Health in the Segregated City*, NYU FURMAN CTR. (Oct. 2017), <https://furmancenter.org/research/iri/essay/health-in-the-segregated-city>

<sup>63</sup> Laura Wamsley, *Even many decades later, redlined areas see higher levels of air pollution*, NPR (Mar. 10, 2022), <https://www.npr.org/2022/03/10/1085882933/redlining-pollution-racism>; Daniel Cusick, *Past Racist “Redlining” Practices Increased Climate Burden on Minority Neighborhoods*, SCIENTIFIC AM. (Jan. 21, 2020), <https://www.scientificamerican.com/article/past-racist-redlining-practices-increased-climate-burden-on-minority-neighborhoods/>; OM SHAPIRO ET AL., LDF THURGOOD MARSHALL INST. & INST. ON ASSETS AND SOC. POL’Y AT BRANDEIS UNIV. THE BLACK-WHITE RACIAL WEALTH GAP 5 (2019), <https://tminstituteldf.org/wp-content/uploads/2019/11/FINAL-RWG-Brief-v1.pdf>.

<sup>64</sup> H. Jack Geiger, *Racial and Ethnic Disparities in Diagnosis and Treatment: A Review of the Evidence and a Consideration of Causes*, INSTITUTE OF MEDICINE COMMITTEE ON UNDERSTANDING AND ELIMINATING RACIAL AND ETHNIC DISPARITIES IN HEALTH CARE, UNEQUAL TREATMENT: CONFRONTING RACIAL AND ETHNIC DISPARITIES IN HEALTH CARE. WASHINGTON (DC): NATIONAL ACADEMIES PRESS (Brian D. Smedley, et al., eds. 2003), available at <https://www.ncbi.nlm.nih.gov/books/NBK220337/>.

<sup>65</sup> *Id.*

<sup>66</sup> Kelly M. Hoffman et al., *Racial Bias in Pain Assessment and Treatment Recommendations, and False Beliefs About Biological Differences Between Blacks and Whites*, 113 PROC. OF THE NAT’L ACAD. OF SCI. 4296, 4301 (2016), <https://www.pnas.org/doi/10.1073/pnas.1516047113>. *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> U.S. DEP’T OF HEALTH & HUMAN SERVS., AGENCY FOR HEALTHCARE RES. & QUALITY, 2021 NATIONAL HEALTHCARE QUALITY & DISPARITIES REPORT EXECUTIVE SUMMARY (2020), at ES-3, D-3-D-51, <https://www.ahrq.gov/sites/default/files/wysiwyg/research/findings/nhqdr/2021qdr.pdf>.

<sup>69</sup> Br. for Amici Curiae Assoc. of Am. Med. Colleges et al., *supra* note 51.

<sup>70</sup> *E.g.* S. Rep. No. 114-74, at 42 (2015).

all physicians become better practitioners overall as a result of a diverse working and learning environment.”<sup>71</sup> Training alongside people with diverse backgrounds improve patient-physician communication—a critical component of care.<sup>72</sup> Once in practice, members of diverse healthcare teams are less likely to make the types of mistakes they might make in a more racially and culturally homogenous environment.<sup>73</sup> Expanding access to the medical profession can thus improve health outcomes for all patients.

## V. Increasing Diversity, Equity, Inclusion, and Accessibility on College Campuses Can Improve Student Outcomes

Social science research suggests that certain activities that increase diversity, equity, inclusion, and accessibility can improve outcomes for underrepresented students, including on predominantly white college campuses,<sup>74</sup> as well as increase employment opportunities for faculty and staff of color. In general, social science research has found that DEIA initiatives work best when designed to fit a specific organizational context and when a specific manager is responsible for implementing the intervention.<sup>75</sup> The following interventions have proven to be successful and should be considered in a variety of contexts:

- **Full-Time DEIA Positions and Taskforces:** Appointing a full-time DEIA manager or creating a DEIA taskforce can help promote diversity. An analysis of data on more than 800 employers between 1971 and 2002 revealed that hiring an equal employment opportunity specialist (DEIA staff position) has significant positive effects on increasing the share of women and people of color in management, leading to a 10 percent increase in the proportion of white women in management and a 15 percent increase in the proportions of Black men and women within a five- to seven-year timespan.<sup>76</sup> Diversity taskforces can similarly lead to significant increases in the numbers of Black, Latinx, and Asian American men and women and white women in managerial positions<sup>77</sup> because they help pinpoint specific barriers that unfairly prevent advancement and identify solutions to those barriers.<sup>78</sup>
- **Affinity Groups and Other Support Systems:** Programs that help students develop their racial and ethnic identities have cognitive and noncognitive benefits, including an increase

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<sup>71</sup> *Id.* at 5.

<sup>72</sup> Cf. Jonathan M. Metzl & Helena Hansen, *Structural Competency: Theorizing A New Medical Engagement With Stigma and Inequality*, 103 SOC. SCI. & MED. 126, 128-32 (1982).

<sup>73</sup> L.E. Gomez & Patrick Bernet, *Diversity Improves Performance and Outcomes*, 111 J. NAT'L. MED. ASS'N, 383, 384-89 (2019). See also, e.g., Roland A. Owens, *The Carter Lab at NIH: A Model of Inclusive Excellence in Biomedical Research*, 31 HUM. GENE THERAPY 512, 512-17 (2020) (describing the benefits of diverse team of researchers in the development of gene therapy vectors).

<sup>74</sup> E.g. Momoh Sekou Dudu, *Impact of Targeted Diversity, Equity, and Inclusion (DEI) Initiatives on the Retention and Graduation Rates of Students of Color at Community Colleges*, Hamline University Sch. of Business Student Theses and Dissertations (2023), [https://digitalcommons.hamline.edu/hsb\\_all/26](https://digitalcommons.hamline.edu/hsb_all/26).

<sup>75</sup> Social science research on DEIA programs is a new and growing field. Moreover, as discussed above, DEIA programs at higher education institutions may address the needs of both students and staff. For the purposes of this analysis, we include research on DEIA initiatives at higher education institutions and private employers.

<sup>76</sup> Alexandra Kalev, et al., *Best practices or best guesses? Diversity management and the remediation of inequality*, 71 AM. SOC. REV. 589 (2006).

<sup>77</sup> Frank Dobbin, et al., *Diversity management in corporate America*, CONTEXTS vol. 6, no. 4, p. 21–28 (2007); Emilio Castilla, *Social networks and employee performance in a call center*, 110 AM. J. OF SOC. 1243 (2005).

<sup>78</sup> Frank Dobbin & Alexandra Kalev, *The origins and effects of corporate diversity programs*, in THE OXFORD HANDBOOK OF DIVERSITY AND WORK (Quinetta M. Roberson, ed.) (2013).

in their sense of competence, sense of belonging, interpersonal relationships, and commitments.<sup>79</sup> As a result, programs that validate students' identities and culture during recruitment, orientation, in and outside of classes, and through student exit interviews can improve Black students' retention rates.<sup>80</sup> A 2018 study of urban public universities found that schools that provide access, support systems, and close connections with communities can help young Black men successfully graduate from these institutions, which was especially promising given how this particular demographic faces some of the lowest retention and graduation rates in higher education.<sup>81</sup> Participation in affinity groups can similarly increase retention,<sup>82</sup> while targeted retention programs for Black students on campuses of predominantly white institutions can increase academic and social engagement.<sup>83</sup> Research has found that campus support programs and organizations have resulted in improved resilience and engagement among Indigenous students<sup>84</sup> and students of color across a variety of contexts.<sup>85</sup> Finally, campus experiences in both class and extracurricular activities focused on learning and developing a positive racial identity can improve academic support and performance among students of color.<sup>86</sup>

- Ensuring Equal Opportunities for Faculty of Color: Fostering faculty diversity by equalizing access to employment opportunities can improve student graduation rates and other outcomes.<sup>87</sup> Faculty of color often serve as mentors and role models for students on campus. Several studies highlight the importance of interactions with Black and Latinx

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<sup>79</sup> Dina C. Maramba & Patrick Velasquez, *Influences of the Campus Experience on the Ethnic Identity Development of Students of Color*, 44 ED. & URBAN SOCIETY 294 (2014), <https://doi.org/10.1177/0013124510393239>; see also Aygul N. Batyrshina, et al., *How Does Ethnic Identity Relate to Adjustment for Minoritized Students? A Two-Site Comparison of Large Public Universities*, 25 J. OF COLLEGE STUDENT RETENTION: RESEARCH, THEORY & PRACTICE 768, <https://doi.org/10.1177/15210251211022649>.

<sup>80</sup> Holmes, et al., *supra* note 20.

<sup>81</sup> Terrell L. Strayhorn, *Factors That Influence the Persistence and Success of Black Men in Urban Public Universities*, 52 URBAN ED. 1106 (2016), <https://doi.org/10.1177/0042085915623347>.

<sup>82</sup> Brooms and Davis, *supra* note 20.

<sup>83</sup> Lakitta Johnson, *The Benefits of a Comprehensive Retention Program for African American Students at a Predominately White University*, 3 INTERDISCIPLINARY J. OF TEACHING & LEARNING 38 (2013).

<sup>84</sup> Adrian A. Rodriguez & Brent Mallinckrodt, *Native American-Identified Students' Transition to College: A Theoretical Model of Coping Challenges and Resources*, 23 J. OF COLLEGE STUDENT RETENTION: RESEARCH, THEORY & PRACTICE 96 (2018), <https://doi.org/10.1177/1521025118799747>.

<sup>85</sup> Batyrshina, et al., *supra* note 81.

<sup>86</sup> Laurie A Schreiner, *Different Pathways to Thriving among Students of Color: An Untapped Opportunity for Success*, ABOUT CAMPUS, vol. 15, no. 9, pp.10-19 (2014), <https://doi.org/10.1002/abc.21169>; Dina C. Maramba & Patrick Velasquez, *Influences of the Campus Experience on the Ethnic Identity Development of Students of Color*, 44 ED. & URB. SOC. 294, <https://doi.org/10.1177/0013124510393239>.

<sup>87</sup> Stout, et al., *supra* note 27; James David Cross & Carol A. Carman, *The Relationship between Faculty Diversity and Student Success in Public Community Colleges*, 46 COMMUNITY COLLEGE J. OF RESEARCH & PRACTICE 855 (2022), <https://www.tandfonline.com/doi/full/10.1080/10668926.2021.1910595>.

faculty for improved student retention, graduation, and graduate school aspiration among Black<sup>88</sup> and Latinx students.<sup>89</sup>

- **Mentoring:** Mentoring programs can also reduce barriers that prevent people of color from achieving success.<sup>90</sup> A 2015 study found that leaders of color identified mentoring (31 percent) and networking (20 percent), in addition to education (33 percent), as the most useful activities for their success, with younger respondents reporting that mentoring had a more significant impact than education.<sup>91</sup> A 2005 study similarly found that personal guidance and support by mentors is the most effective at facilitating career development.<sup>92</sup>
- **Targeted Recruitment:** Active recruitment of people of color, women, and other underrepresented groups can help reach people who might otherwise not learn about opportunities. Several studies have shown that these outreach programs can increase the diversity of the workforce<sup>93</sup> and higher education institutions. For example, the pediatric residency program at Children's National Hospital addressed the underrepresentation of residents of color by creating an enhanced applicant recruitment process and programs like a diversity dinner series to help underrepresented residents find the support they needed to succeed.<sup>94</sup> The hospital's recruitment efforts increased the percentage of underrepresented interns from 5 percent in 2014 to 51 percent in 2021.<sup>95</sup>

In addition to breaking down barriers to opportunity for students and faculty of color, programs that increase diversity, equity, inclusion, and accessibility can improve critical thinking skills for all students. Teams that bring together people with different backgrounds and experiences engage in more rigorous and thoughtful decision-making, making them better

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<sup>88</sup> Lamont D. Simmons, *Beyond Matriculation: Examining Factors That Contribute to African American Male Persistence at a Predominantly White Institution*, 21 J. OF COLLEGE STUDENT RETENTION: RESEARCH, THEORY & PRACTICE 358 (2017), <https://doi.org/10.1177/1521025117714163>; Brooms & Davis, *supra* note 20; Arianna Jackson, et al., *Managing Intersectional Invisibility and Hypervisibility During the Transition to College Among First-Generation Women of Color*, 46 PSYCH. OF WOMEN Q. 354 (2022), <https://journals.sagepub.com/doi/full/10.1177/03616843221106087>; Bridget Turner Kelly, et al., *Critical Validation: Black Women's Retention at Predominantly White Institutions*, 23 J. OF COLLEGE STUDENT RETENTION: RESEARCH, THEORY & PRACTICE 434 (2021), <https://doi.org/10.1177/1521025119841030>.

<sup>89</sup> Marcella Cuellar and Amber M. Gonzalez, *Beyond the Baccalaureate: Factors Shaping Latina/o Graduate Degree Aspirations*, 20 J. OF HISPANIC HIGHER EDUCATION 59 (2021), <https://doi.org/10.1177/1538192719830082>; Desiree D. Zerquera & Jacob P.K. Gross, *Context Matters: A Critical Consideration of Latina/o Student Success Outcomes Within Different Institutional Contexts*, 16 J. OF HISPANIC HIGHER ED. 209 (2015), <https://doi.org/10.1177/1538192715612915>; Robert Wassmer & Meredith Galloway, *Evidence That a Greater Presence of Latinx Faculty or Administrators Raises the Completion Rates of Various Cohorts of Community College Students*, 37 ED. POL'Y 1380 (2022), <https://doi.org/10.1177/08959048221090152>.

<sup>90</sup> Dobbins, et al., *supra* note 79; Castilla, *supra* note 79.

<sup>91</sup> Ryan Smith, *Contributions and barriers to developing black and Latino leadership in the public and nonprofit sectors of the economy* 15, in HOW GLOBAL MIGRATION CHANGES THE WORKFORCE DIVERSITY EQUATION (PM. Pilati, et al., eds.) (2015).

<sup>92</sup> Castilla, *supra* note 79.

<sup>93</sup> Harry Holzer & David Neumark, *What does affirmative action do?*, 53 INT'L LABOR RELATIONS REV. 240 (2000), <https://journals.sagepub.com/doi/10.1177/001979390005300204>; Lauren Edelman & Stephen Petterson, *Symbols and substance in organizations' response to civil rights law*, 17 RES. IN SOC. STRATIFICATION & MOBILITY 107 (1999); Alison Konrad & Frank Linnehan, *Formalized HRM structures—coordinating equal-employment opportunity or concealing organizational practices*, 38 ACAD. OF MGMT. J. 787 (1999).

<sup>94</sup> Sanford Roberts, *Impact of Mentoring on Diversity and Inclusion in Surgery*, 87 THE AM. SURGEON 1739 (2021), [https://doi.org/10.1177\\_00031348211047486](https://doi.org/10.1177_00031348211047486).

<sup>95</sup> *Id.*

equipped to find innovative solutions.<sup>96</sup> For example, a 2018 study found that companies were more likely to have a larger “number of new product announcements per R&D dollar spent by a firm” if they had more diverse managers; hiring policies that opened up employment for people with disabilities; and personnel policies that included LGBTQ+ employees, among other measures.<sup>97</sup> Other research has similarly found that diverse learning environments help build critical thinking, problem-solving ability, and intellectual self-confidence.<sup>98</sup> For example, “[r]esearch shows that diverse teams working together and capitalizing on innovative ideas and distinct perspectives outperform homogenous teams. Scientists and trainees from diverse backgrounds and life experiences bring different perspectives, creativity, and individual enterprise to address complex scientific problems.”<sup>99</sup> Cross-racial interactions can also reduce prejudice and stereotypes, increase empathy, and open minds.<sup>100</sup>

Programs that allow students to learn with and from peers and faculty from all backgrounds can also prepare these students to thrive in our increasingly global economy. Although the overall U.S. consumer base is already “barely 50 percent white,” that “number is likely to continue shrinking.”<sup>101</sup> Between 2010 and 2020, the buying power of Asian Americans grew by 111 percent, Latinx people by 87 percent, Indigenous people by 67 percent, and Black people by 61 percent.<sup>102</sup> In comparison, the total U.S. buying power increased 55 percent between 2010 and 2020.<sup>103</sup> Moreover, as corporate growth increasingly comes from expansion to foreign markets, companies will seek out employees who can effectively communicate and work with international colleagues and customers.<sup>104</sup> These changes, combined with larger demographic shifts within the country, will put a premium on prospective employees who have the experience

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<sup>96</sup> David Rock & Heidi Grant, *Why Diverse Teams are Smarter*, HARV. BUS. REV. (Nov. 4, 2016). See also William J. Holstein, *Diversity is Even More Important in Hard Times*, N.Y. TIMES (Feb. 13, 2009) (“[I]t’s difficult, if not impossible, for [a] homogenous board[] to challenge and offer different perspectives, unique experiences and the broad-based wisdom that makes the board, and therefore the company, as effective as they can be.”).

<sup>97</sup> Roger C. Mayer et al., *Do Pro-Diversity Policies Improve Corporate Innovation?*, 47 FIN. MGMT. 617 (2018).

<sup>98</sup> Br. for Amici Curiae Am. Psych. Assoc., Mass. Psych. Assoc., & North Carolina Psych. Assoc. in Support of Respondents, *Students for Fair Admission v. President & Fellows of Harvard Coll. and Students for Fair Admissions v. Univ. of North Carolina*, Nos. 20-1199 & 21-707 (Aug. 1, 2022), [https://www.supremecourt.gov/DocketPDF/20/20-1199/232429/20220801152225681\\_2022-08-01%20Nos.%2020-1199%20and%2021-707%20%20American%20Psychological%20Assn%20Amici%20Brief.pdf](https://www.supremecourt.gov/DocketPDF/20/20-1199/232429/20220801152225681_2022-08-01%20Nos.%2020-1199%20and%2021-707%20%20American%20Psychological%20Assn%20Amici%20Brief.pdf); Br. for Amici Curiae American Educational Research Association, et al., *Students for Fair Admission v. President & Fellows of Harvard Coll. and Students for Fair Admissions v. Univ. of North Carolina*, Nos. 20-1199 & 21-707 (Aug. 1, 2022), [https://www.supremecourt.gov/DocketPDF/20/20-1199/232329/20220801131706384\\_AERA%20SFFA%20Brief%20-%20Revised%20Final.pdf](https://www.supremecourt.gov/DocketPDF/20/20-1199/232329/20220801131706384_AERA%20SFFA%20Brief%20-%20Revised%20Final.pdf); M. J. Chang, “Does Racial Diversity Matter?: The Educational Impact of a Racially Diverse Undergraduate Population,” *Journal of College Student Development* 40, no. 4 (July 1999): 377–95, [https://www.researchgate.net/publication/232547545\\_Does\\_Racial\\_Diversity\\_Matter\\_The\\_Educational\\_Impact\\_of\\_a\\_Racially\\_Diverse\\_Undergraduate\\_Population](https://www.researchgate.net/publication/232547545_Does_Racial_Diversity_Matter_The_Educational_Impact_of_a_Racially_Diverse_Undergraduate_Population).

<sup>99</sup> See, e.g., Lu Hong & Scott E. Page, *Groups of Diverse Problem Solvers Can Outperform Groups of High-Ability Problem Solvers*, 101 PROC. NAT’L ACAD. SCIS. 16385 (2004) (finding that diverse groups perform more productively and creatively than nondiverse ones).

<sup>100</sup> *Id.*

<sup>101</sup> Kasey Lobaugh et al., *The consumer is changing, but perhaps not how you think: A swirl of economic and marketplace dynamics is influencing consumer behavior*, DELOITTE INSIGHTS (May 29, 2019), <https://tinyurl.com/5au9zv7t>.

<sup>102</sup> J. Merritt Melancon, *Consumer Buying Power Is More Diverse Than Ever*, UGA TODAY (Aug. 11, 2021), <https://news.uga.edu/selig-multicultural-economy-report-2021/>.

<sup>103</sup> *Id.*

<sup>104</sup> Rebecca Doherty, et al., *The growth code: Go global if you can beat local*, MCKINSEY & CO. (Jun. 23, 2023), <https://www.mckinsey.com/capabilities/strategy-and-corporate-finance/our-insights/the-strategy-and-corporate-finance-blog/the-growth-code-go-global-if-you-can-beat-local>.

and skills to interact effectively with people from a variety of backgrounds. Programs that ensure equal access to higher education to foster greater diversity can prepare students for this future.<sup>105</sup>

## VI. Programs That Support Diversity, Equity, Inclusion, and Accessibility Have the Potential to Improve Campus Climate and Reduce Prejudice

Multiple studies have found that antidiscrimination trainings focusing on racial or LGBTQ+ bias can lead participants to self-report lower levels of prejudice.<sup>106</sup> However, additional work needs to be done to examine whether such trainings can reduce the prevalence of discrimination and improve campus climate long-term. In general, sexual harassment and racial discrimination trainings that incorporate an intersectional framework,<sup>107</sup> focus on similarities and shared experiences rather than differences, and frame the training as an opportunity for learning and growth may be more effective at changing discriminatory behaviors.<sup>108</sup> Higher education institutions can improve the effectiveness of these trainings by combining them with additional interventions, such as leadership socialization, changes to organizational culture and climate, increases in professional competence, and integration with social responsibility and performance.<sup>109</sup> In focus groups with Black students, faculty, and staff, more than half (54 percent) of Black respondents reported that race/ethnic themed initiatives helped to create a positive campus climate by addressing their specific interests, needs, and concerns while connecting them with others who shared a common interest or identity.<sup>110</sup>

Contrary to what many critics falsely claim, there is no evidence that DEIA programs foster antisemitism or other forms of bias. According to the U.S. Department of Education, DEIA initiatives do not presumptively create hostile environments.<sup>111</sup> In fact, even before October 7, 2023, several colleges and universities included trainings on antisemitism as part of DEIA

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<sup>105</sup> Gretchen Guiton et al., *Student Body Diversity: Relationship to Medical Students' Experiences and Attitudes*, 82 ACAD. MED. S85, S87 (Supp. 2007); see also, e.g., Somnath Saha et al., *Student Body Racial and Ethnic Composition and Diversity-Related Outcomes in US Medical Schools*, 300 JAMA 1135, 1135 (2008) (finding that non-minority students attending more racially diverse medical schools exhibited greater preparedness to care for minority patients and stronger attitudes about equitable access to healthcare).

<sup>106</sup> Daragh T. McDermott, et al. *Ameliorating transnegativity: assessing the immediate and extended efficacy of a pedagogic prejudice reduction intervention*, 9 PSYCHOL. SEX 69–85 (2018), <https://www.tandfonline.com/doi/abs/10.1080/19419899.2018.1429487>; Heather D. Hussey, *Reducing student prejudice in diversity-infused core psychology classes*, COLL. TEACH. vol. 58, no. 3, pp. 85–92 (2010), <https://www.jstor.org/stable/41305090>; Angie Colvin-Burque, et al., *Can cultural competence be taught? Evaluating the impact of the soap model*, 43 J. SOC. WORK EDUC. 223 (2007), <https://www.tandfonline.com/doi/citedby/10.5175/JSWE.2007.200500528?scroll=top&needAccess=true>; Mitchell J. Chang, *The impact of undergraduate diversity course requirement on students' racial views and attitudes*, 15 J. OF GEN. ED. 21 (2002), <https://www.jstor.org/stable/27797900>.

<sup>107</sup> Gabrielle C. Danna, et al., *Who else besides (White) women? The need for representation in harassment training*, 13 INDUSTRIAL & ORG. PSYCH.: PERSPECTIVES ON SCI. & PRACTICE 208 (2020), <https://doi.org/10.1017/iop.2020.38>.

<sup>108</sup> Salter, N., & Roman, J.-L. R. (2020). Receptivity to sexual harassment and racial discrimination training: You can't learn what you won't hear. *Industrial and Organizational Psychology: Perspectives on Science and Practice*, 13(2), 213–215. <https://pdfs.semanticscholar.org/b964/e33df32beb4887ad65cbb6726eb46a1bfeco.pdf>

<sup>109</sup> Theodore L. Hayes, et al., *Coffee and controversy: How applied psychology can revitalize sexual harassment and racial discrimination training*, 13 INDUSTRIAL & ORG. PSYCH.: PERSPECTIVES ON SCI. & PRACTICE 117–136 (2020), <https://doi.org/10.1017/iop.2019.84>.

<sup>110</sup> Serie McDougal, et al., *Black Campus Climate: Towards a Liberatory and Equitable Black Campus Experience*, 55 J. OF BLACK STUDIES 3 (2023), <https://doi.org/10.1177/00219347231207061>.

<sup>111</sup> U.S. DEP'T OF EDUCATION, *supra* note 38.

trainings.<sup>112</sup> Nor do DEIA programs inherently disparage members of majority groups or diminish their contributions to the campus community.

Rather, DEIA is intended to ensure that schools and workplaces reflect the talent that exists in people of all backgrounds. These programs force decision-makers to interrogate why disparities exist and grapple with prejudice to ensure that civil rights are protected, opportunity is equally available to everyone, and all are welcome. DEIA programs can and should also acknowledge the experiences of all historically marginalized communities.

Finally, campus climate could be further improved by strengthening Title VI enforcement. This effort should include increasing the capacity of the Department of Education to investigate discrimination claims on campus, and restoring private individuals' right to challenge university policies that disparately harm students who are members of protected categories.

## **VII. Conclusion**

While talent and potential are found in students and workers of all backgrounds, opportunities to fulfill that potential are not equally accessible. As the United States becomes increasingly more diverse, it is imperative that institutions of higher learning equalize opportunities and foster an equitable and inclusive climate in which everyone can succeed. Yet, DEIA programs aiming to achieve these goals currently face attacks from extremists who are spreading disinformation with the intentional goal of chilling racial equity efforts and hindering the realization of a truly equitable and inclusive educational environment. In this moment of crisis, we as a nation must fully commit to the success of our multiracial democracy, where the contributions of all Americans are valued. Otherwise, we risk losing the valuable contributions of a generation of talented young people to the detriment of us all.

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<sup>112</sup> Universities Selected to Combat Anti-Semitism in Higher Education, INSIGHT INTO DIVERSITY (Sept. 27, 2022), <https://www.insightintodiversity.com/universities-selected-to-combat-anti-semitism-in-higher-education/>.