THE ASSAULT ON DIVERSITY: HOW THE SUPREME COURT GREENLIT THE CONSTITUTIONAL ATTACK ON EQUAL PROTECTION

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PROLOGUE

When I began this Comment, it was on the heels of the U.S. Supreme Court *Students for Fair Admissions, Inc. (SFFA)* decision. Immediately after, conservative states began applying the decision not only to college admissions but also to scholarships. While I initially knew there would be wider implications evolving from the decision, I never could have imagined the all-out war and vilification of the concept of diversity, equity, and inclusion. As I watched numerous events unfold—that are likely to have generational impacts—this Comment evolved from focusing on how to argue against the over-application of the decision and strategies to progress forward to also include a stark reminder to white America of why these programs were created in the first place.

I am a white woman who experienced the unambiguous contrast of diverse environments and white America. As I researched the history of slavery, segregation, the fight for civil rights, and the ongoing racial divide in communities for this Comment, I often reflected, emotionally, of being in elementary school in the early 1980s. I attended an "inner-city" school with, what I guess at the time, was a relatively high Black student population. Yet, all the neighborhoods that the school population came from were still typically divided as almost exclusively white or Black. I do not recall my exact age, but if I had to guess I was likely around seven years old, when we woke up to a cross being burned in the front yard of the first Black family to move onto our block. My seven-year-old brain and heart could not comprehend why it was happening and certainly could not appreciate the devastation it likely caused. It may have been the first time I unconsciously realized that while I attended school with Black children, whom I adored and with whom I had strong friendships, at home there was an expectation

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to uphold the status quo of "voluntary" segregation within our neighborhood and other parts of our lives.

It was not until I was much older and began to question the rationale that I realized nothing is voluntary. The system was created from racism and bigotry; and even as our country evolved, that evolution was sure to maintain the hierarchy which demands the limitations of rights, power, and political influence.

Understanding this now, as I reflected back to a decision my parents made when I was in eighth grade, I was confronted with the realization of the role my own family played in this system. When my parents realized I would attend a predominantly Black high school, they chose to move out of the city to a rural community. While I am sure they would not have considered themselves "prejudice" or "racist," their beliefs that their three white daughters "deserved better" revealed the reality. That year, I went from a very diverse educational environment, to literally, a lily-white rural school where there were two, maybe three, Black students my entire time there. The experience completely shaped my life. Most of those I attended high school with had never really met anyone Black and certainly had not become friends with nor cared about anyone Black. There was absolutely no understanding of racism because to them—having never witnessed nor experienced it—racism did not exist. But of course, there was no racism—there were no Black people in the community! None ever giving thought to why exactly that might be. While I am hopeful that many of my peers were eventually exposed to some form of diversity, I am sure many never understood the irony.

I hope, if nothing else, our history serves as a reminder why equal protection was—and still is—very necessary. To all who have never had to have their rights in this country be granted by an amendment, legislation, or a court; and to those of us who have never had to worry—nor even consider—how we will be treated or what rights we will have because of the color of our skin, or the god we worship (or do not worship), or who we love, or who we believe we were born to be—***It is because of us that equal protection was ever necessary.***

I encourage those who can to speak up. Use your voice, your talent, your skills, and your influence to shatter the hierarchy in such a way that it can never be reestablished.

INTRODUCTION

On June 29, 2023, the U.S. Supreme Court issued a ruling in Students for Fair Admissions, Inc. (SFFA) v. President & Fellows of Harvard College (Harvard) and SFFA v. University of North Carolina, et al. (UNC), which essentially ended the practice of race-conscious admission programs.[1] In reversing the judgment of the lower courts,[2] the majority opinion concluded the Harvard and UNC admission programs lacked "focused and measurable objectives" which may allow for race consideration and used race negatively including "racial stereotyping" with no

1. *See* Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 231 (2023) (Thomas J., concurring).

2. *Id.*

predictable end.[3] As such, the Court reversed decades of pre-cedent[4] and held that the programs violated the Equal Protection Clause of the Fourteenth Amendment.[5]

Although the decision to eliminate race consideration in college admissions is still relatively new and the full impact is yet to be known, it has already empowered SFFA (the organization) to further pursue other avenues to eliminate race consideration by sending demand letters to 150 colleges regarding recruiting, financial aid, and scholarships.[6] Additionally, it has already ignited a larger scope of legal attacks against other initiatives, including corporate diversity, equity, and inclusion (DEI) programs.[7]

Initially, the decision was used as a tool by some states, including Ohio,[8] to immediately review or even eliminate race as a consideration in college scholarships.[9] Now, the *SFFA* decision is proving to be the exact catalyst opponents to diversity needed. As President Trump issued multiple executive orders with the focus of completely eliminating DEI, some states responded quickly with proposed laws restricting or banning DEI programs on college campuses.[10] Further, many school administrators have eliminated programs and any reference to DEI.[11] Inevitably, higher education will likely absorb the brunt of the initial impact. However, this ruling has already signified aggressive litigation nationwide against not only the narrowed use of race consideration, but also all DEI well beyond the college classroom.[12]

Race-conscious admission programs have been considered one of many possible "affirmative actions"—that is, actions intending to help repair effects of past discrimination, eliminate current discrimination, and create a system to

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3. *Id.* at 228.

4. Nina Totenberg, *Supreme Court Guts Affirmative Action, Effectively Ending Race-Conscious Admissions*, NPR (June 29, 2023, at 19:52 ET), https://www.npr.org/2023/06/29/1181138066/affirmative-action-supreme-court-decision.

5. U.S. CONST. amend. XIV, § 1.

6. Liam Knox, *Reading Between the Lines on Affirmative Action*, INSIDE HIGHER ED (July 17, 2023), https://www.insidehighered.com/news/admissions/traditional-age/2023/07/17/what-affirmative-action-decision-means-beyond-admissions.

7. Kenneth Sharperson & Lucy Dollens, *The Fallout of SFFA v. Harvard: Implications for Diversity, Equity, and Inclusion in Law Firms and Corporations,* DEF. COUNS. J., Winter 2024, at 1, 11-12.

8. Sarah Donaldson, *Ohio Reviewing Race-Based Scholarships After Supreme Court Affirmative Action Ruling*, NPR (May 18, 2024, at 09:06 ET), https://www.npr.org/2024/05/18/1252172578/ohio-affirmative-action-diversity-university-scholarships.

9. Meredith Kolodner & Joanna Hou, *Cutting Race-Based Scholarships Blocks Path to College, Students Say,* THE HECHINGER REP. (Aug. 28, 2024), https://hechingerreport.org/cutting-race-based-scholarships-blocks-path-to-college-students-say/.

10. Laura Spitalniak, *A Surge of DEI Cuts Hits Colleges Across the US*, HIGHER ED DIVE (Feb. 27, 2025), https://www.highereddive.com/news/surge-dei-cuts-wave-colleges-ohio-state-upenn-iowa/741191/.

11. *Id.*

12. Nino C. Monea, *Next on the Chopping Block: The Litigation Campaign Against Race-Conscious Policies Beyond Affirmative Action in University Admissions*, 33 B.U. PUB. INT. L.J. 1, 5 (2024); *see also* Sharperson & Dollens, *supra* note 7, at 16 (noting that while legislative efforts to restrict DEI programs have been initially focused on colleges and universities, it is recommended employers also need to be aware of the trend as efforts are likely to expand in the workplace).

prevent future discrimination.[13] There may be debate as to when "affirmative action" began in the U.S.,[14] yet this nation saw a resurgence in the aftermath of the horrific murder of George Floyd by officer Derek Chauvin in May 2020 with a nationwide movement demanding all, including businesses, to reflect and publicly commit to standing against racism.[15] Companies chose to *affirmatively act* by creating DEI leadership positions designed to move beyond simply the minimum mandatory training and to proactively work to promote antiracism.[16]

Now, in *SFFA*, the Supreme Court insists colorblindness is the new mandate which, by itself, has all the potential to undermine the "value of diversity."[17] But even more importantly and possibly devastating, the question becomes: how do we possibly ensure equal protection for all as required by the Constitution[18] when this Court refuses to allow even consideration of the very issue *which required* the establishment of Equal Protection Clause?

With the return of President Trump, the *SFFA* decision is likely to continue having additional implications with new policies and executive orders being issued every day. Much of which is beyond the scope of this Comment (i.e., immigration, due process for non-citizens, birthright citizenship, transgender discrimination). This Comment will focus on the history and necessity of the Equal Protection Clause of the Fourteenth Amendment and how it has been used to both support and refute the use of race consideration in almost all facets of American life. In Part II, this Comment will address the potential impact of the *SFFA* decision on various areas, including higher education and employment initiatives, and will provide an overview of other relevant cases currently being litigated around affirmative action and DEI initiatives.[19] Finally, Part III will address how to continue to work towards equality.

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13. *Affirmative Action*, BLACK'S LAW DICTIONARY (12th ed. 2024).

14. Monea, *supra* note 12, at 4.

15. Shelby A. D. Moore, *Moving Forward While Reaching Back: How Private Law Schools Can Help Public Law Schools Navigate Diversity, Equity, Inclusion, and Access in Challenging Times*, 55 U. TOL. L. REV. 241, 242-43 (2024).

16. *Id.* at 243.

17. Monea, *supra* note 12, at 5.

18. U.S. CONST. amend. XIV, § 1 ("No State shall…deny to any person within its jurisdiction the equal protection of the laws.").

19. For the purpose of this Comment, affirmative action policies and DEI initiatives may be used interchangeably. Additionally, while I recognize and appreciate that affirmative action and DEI programs were/are necessary and created because of historical and current discrimination and exclusion for many—including those of a different race, religion, ancestry, gender, and/or sexual orientation—I will focus primarily on Black Americans, as their plight has inarguably been like no other in this nation's history. If our country is to ever succeed in equal protection and equality, we (the straight, white citizen) must first truthfully address why any amendment, law, policy, or program was even necessary to begin with.

I. THE FIGHT FOR FREEDOM: ABOLISHING SLAVERY ALONE DID NOT GUARANTEE FREEDOM OR EQUALITY

Although the Declaration of Independence declared "all men are created equal,"[20] the United States Constitution clearly held otherwise; allowing for the apportionment consideration of "whole number of free persons" and "three fifths of all other persons."[21] It also prevented Congress from banning the importation of slaves [22] and mandated the return of any person who escaped and was "held to service or labour" be returned.[23] It further ensured Congress could not independently alter such clauses by requiring a constitutional amendment to be ratified by the states.[24] Even before the nation was formed, race routinely prompted laws to prohibit rights of Black people, such as the right to bear arms, assemble in large numbers, own property, or even travel without a permit.[25] The South's economic success relied on slavery, as it required a labor force it could control to accomplish the intense work necessary to maintain the lucrative cotton, tobacco, and sugar cane crops.[26] White southerners viewed slavery not as exploitation but as an act of charity they "reluctantly, but valiantly, undertook."[27] With statutes giving all control to slave owners over their slaves, they were subjected to unsafe working conditions and violent punishment.[28] To further establish the "southern racial caste system" and to keep Black people subordinate, it was routine to enact legislation making it illegal for any Black person, whether free or enslaved, to learn to read or write, which also inevitably assisted to produce the myth Black people were intellectually inferior.[29]

In *Dred Scott v. Sanford*, Chief Justice Taney acknowledged the Declaration of Independence contained the words "all men are created equal," yet stated unequivocally, "it is too clear for dispute that the enslaved African race were not intended to be included."[30] For a country founded on the ideal of all men being created equal, the foundation that was established was in fact, the exact opposite.

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20. *Declaration of Independence: A Transcription*, NAT'L ARCHIVES: AM.'S FOUNDING DOCUMENTS (Aug. 7, 2025), https://www.archives.gov/founding-docs/declaration-transcript.

21. U.S. CONST. art. I, § 2, cl. 3.

22. *See* U.S. CONST. art. I, § 9, cl. 1; *see also* Gordon Lloyd & Jenny S. Martinez, *The Slave Trade Clause*, NAT'L CONST. CTR., https://constitutioncenter.org/the-constitution/articles/article-i/clauses/761 (last visited Dec. 18, 2025) (discussing the origination of the clauses and historical reminder of the "discourse of the morality and profitability of the international trade in human beings").

23. *See* U.S. CONST. art. IV, § 2, cl. 3.

24. U.S. CONST. art. V.

25. Robin Walker Sterling, *Through a Glass Darkly: Systematic Racism, Affirmative Action, and Disproportionate Minority, Contact*, 120 MICH. L. REV. 451, 463-64 (2021).

26. *Id.* at 463.

27. *Id.* at 464.

28. *Id.* at 470.

29. *Id.* at 466-68 (explaining that legislation largely took root as a result of state legislatures suspecting rebellious slaves had been communicating which may result in "great inconveniences").

30. Dred Scott v. Sandford, 60 U.S. 393, 410 (1857) (enslaved party), *superseded by constitutional amendment*, U.S. CONST. amend. XIV.

In 1865, as the Civil War ended, Congress drafted and the states ratified the Thirteenth Amendment to prohibit slavery.[31] However, even as slavery became illegal, the Thirteenth Amendment offered no rights or protection for the four million Black men, women, and children who gained their freedom.[32] With President Andrew Johnson's commitment to states' rights without interference from the federal government, many southern states enacted "black codes" designed to control the labor opportunities and behavior of former slaves.[33] Nearly all southern states enacted black codes with some states limiting the type of property Black people could own, limiting occupations they could hold, and enforcing strict labor contract laws with threat of severe punishment if broken.[34]

In 1866, realizing that the Thirteenth Amendment had not produced the impact intended for Black people and additional constitutional protections were necessary, Congress drafted the Fourteenth Amendment.[35] This new amendment, which Congress required all states to ratify before rejoining the union, established citizenship and included the Equal Protection Clause.[36]

Even with these new amendments, Black Americans were being denied the right to vote. Concluding both amendments together were still inadequate to provide protection and rights to Black Americans, Congress drafted the Fifteenth Amendment to ensure the right of a citizen to vote regardless of race.[37]

A. The Equal Protection Myth

Despite three Constitutional Amendments to guarantee Black Americans freedom and rights, including an explicit Equal Protection Clause, for the next fifty plus years, it would be difficult to understand exactly what rights they had or what protection it offered. In 1880, the Court acknowledged the protection of the Fourteenth Amendment was not limited solely to U.S. citizens and held that a facially neutral law that is applied in a discriminatory manner on the basis of race violated the Equal Protection Clause.[38] Yet, just three years later in the *Civil Rights Cases*, the Court declared the Civil Rights Act of 1875—which prohibited

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31. U.S. CONST. amend. XIII.

32. Julian Mark et al., *Affirmative Action Is Under Attack. How Did We Get Here?,* WASH. POST (Mar. 9, 2024, at 08:00 ET), https://www.washingtonpost.com/technology/interactive/2024/dei-history-affirmative-action-timeline/.

33. *Reconstruction*, HIST. (May 28, 2025), https://www.history.com/topics/american-civil-war/reconstruction.

34. *Black Codes*, HIST. (May 28, 2025), https://www.history.com/topics/black-history/black-codes.

35. U.S. CONST. amend. XIV.

36. *Id.*; *see also* Slaughter-House Cases, 83 U.S. 36, 66-71 (1873) (the Court discusses at length the "unity of purpose" of the thirteenth, fourteenth, and fifteenth amendments, noting each was a result of some states refusal to provide Black citizens newly acquire rights after slavery ended).

37. *Slaughter-House Cases*, 83 U.S. at 71.

38. *See* Yick Wo v. Hopkins, 118 U.S. 356, 369, 373-74 (1886) (declaring the imprisonment of Chinese immigrant petitioner's illegal, the Court held the Fourteenth Amendment is not limited to solely protecting citizens and a facially neutral law that is applied unequally because of nationality is unconstitutional).

discrimination based on race in public places—unconstitutional.[39] In these historic cases, the Court determined the Fourteenth Amendment only gave Congress the power to correct state laws, not the authority to impose laws that would regulate private rights.[40] The Court also concluded that, although the Thirteenth Amendment prohibition of slavery did apply to individuals, it did not extend to other forms of discrimination.[41] Further, the Court stated "[m]ere discriminations on account of race or color were not considered as badges of slavery," and thus did not violate the Thirteenth Amendment; therefore, the act must be void.[42]

To continue to disparage Black people, the South established "Jim Crow" laws which demanded racial segregation by making interracial marriage illegal, prevented Black people from using the same public facilities, living in the same communities, and attending the same public schools as white people.[43] Voter literacy laws were also passed which prevented many Black citizens from voting.[44] Although the North did not adopt Jim Crow laws, Black people still endured widespread discrimination in employment, housing, and education opportunities.[45]

In 1896, the Court itself established the "separate but equal" doctrine in *Plessy v. Ferguson*,[46] which would allow purposeful legal discrimination in the form of segregation for the next sixty years. In *Plessy*, the Court held that once the government has provided equal rights and opportunities for all, legislation has no power to abolish any distinctions based on race.[47] Even as Justice Harlan dissented, saying the Constitution "is color-blind, and neither knows nor tolerates classes among citizens," he declared "[t]he white race deems itself to be the dominant race…. I doubt not, it will continue to be for all time."[48]

As Black Americans sought new economic opportunities, many went to industrialized areas in the North, Midwest, and West after World War I started when the need for industrial laborers grew. This period, known as the Great Migration, saw the relocation of more than six million Black Americans out of the South.[49] While segregation was not legal in the North, as it still was in the South, racism was still prevalent.[50] Black Americans who sought housing in white neighborhoods were often met with violence, burning crosses, and bombings.[51] In

39. The Civil Right Cases, 109 U.S. 3, 9, 25 (1883).

40. *Id.* at 23.

41. *Id.* at 24.

42. *Id.* at 25.

43. *Civil Rights Movement*, HIST. (July 2, 2025), https://www.history.com/topics/black-history/civil-rights-movement.

44. *Id.*

45. *Id.*

46. *See* Plessy v. Ferguson, 163 U.S. 537, 544, 546-52 (1896) (holding the Louisiana law which provided equal accommodations on a railway but required the separation of races was not unreasonable nor inconsistent with the Fourteenth Amendment).

47. *Id.* at 551.

48. *Id.* at 589 (Harlan, J., dissenting).

49. *The Great Migration*, HIST. (May 28, 2025), https://www.history.com/topics/black-history/great-migration.

50. *Id.*

51. Douglas S. Massey, *The Legacy of the 1968 Fair Housing Act*, 30 SOCIO. F. 571, 572 (2015).

1910, this prompted Baltimore to pass racially based housing ordinances in an effort to maintain peace, as similar legislation mandating segregated neighborhoods quickly spread throughout the nation.[52] While the Supreme Court ruled these racially-based housing ordinances unconstitutional in 1917, they did so in part because they *denied white property owners the right* to dispose of their property as they wished.[53] As cities became increasingly crowded, rent also increased in segregated areas, and the Ku Klux Klan (KKK) reemerged, creating a period of profound interracial conflict and race riots. The Chicago Race Riot of 1919, which lasted thirteen days, was responsible for 537 injuries, 38 deaths, and 1,000 Black families losing their homes.[54]

In response to the riots and so much destruction, the real estate industry developed restrictive private covenants for private neighborhood organizations to use throughout the nation which required white property owners to agree not to sell or rent their home to Black people.[55] These covenants would remain legal until 1948 when the Court recognized that, although the Equal Protection Clause did not apply to private covenants, when they were enforced by the judiciary, it became a state action and therefore violated the Fourteenth Amendment.[56] This recognition of state action would later be extended to invalidate the enforcement of breach of contract for such a restrictive covenant.[57]

Black Americans were forced to continue seeking avenues to acquire all the benefits that freedom was supposed to offer—yet which they had been denied for so long. The Court would play a critical role in interpreting when and how the Equal Protection Clause should apply. In many cases, it would be the Court ultimately deciding constitutional rights.

1. Correcting a Historical Error, Separate Is Not Equal: The Desegregation War

As the United States prepared for World War II in early 1941 and millions of jobs were being created, Black Americans continued to be met with violence and discrimination as they sought employment in the defense industry.[58] After Black leaders threatened to bring thousands to march in Washington, President Roosevelt issued Executive Order 8802 which demanded the elimination of employment discrimination in the defense industry and government.[59] Even after being discouraged to join the military, Black men and women honorably served in World War II while still enduring segregation and discrimination during deployment. The

52. *Id.*

53. Buchanan v. Warley, 245 U.S. 60, 78, 82 (1917).

54. *The Great Migration*, *supra* note 49.

55. Massey, *supra* note 51, at 573.

56. Shelley v. Kraemer, 334 U.S. 1, 10-11, 13-14, 19-20 (1948).

57. Barrows v. Jackson, 346 U.S. 249, 260 (1952).

58. *Executive Order 8802: Prohibition of Discrimination in the Defense Industry (1941)*, NAT'L ARCHIVES (Feb. 8, 2022), https://www.archives.gov/milestone-documents/executive-order-8802.

59. *Id.*

Tuskegee Airmen became the first Black military aviators in the U.S. Army.[60] Although these Black veterans served their country valiantly, they were still met with prejudice once they returned home. In 1948, President Truman issued Executive Order 9981 to finally eliminate discrimination in the military.[61]

In 1950, while the Court held that the Equal Protection Clause required that a Black student be admitted to the University of Texas Law School, they declined to reexamine *Plessy*, with their conclusion resting on the state's failure to prove an equivalent alternative for Black students.[62] Finally in the 1954 landmark case, *Brown v. The Board of Education*, the illusion of separate but equal was overruled as the Court declared it unconstitutional,[63] thus attempting to end *de jure* segregation.[64] Shortly after *Brown*, in *Bolling v. Sharpe*, the Court explained that although the Fourteenth Amendment's Equal Protection Clause only applies to the states, and as such, does not apply to the District of Columbia, "it would be unthinkable that the same Constitution would impose a lesser duty of the Federal Government."[65] With the Court holding racial segregation to be a violation of the due process guaranteed by the Fifth Amendment of the Constitution, this became the first decision to incorporate equal protection, allowing it to apply to the federal government with broader applications.[66]

Although the Supreme Court held segregation unconstitutional, a large population of the country, mainly in the South, did not believe children of both races should attend the same schools.[67] States like Virginia actively resisted, while elsewhere many schools only permitted Black students under a court order.[68] In Tennessee, the governor had to call in the National Guard in response to white mobs.[69] In New Orleans, federal marshals had to shield four students from angry crowds.[70] Black college students who enrolled in some southern universities were met with riots and angry mobs of white people.[71]

Between 1955 and 1960, federal judges would hold more than 200 desegregation hearings, with one of importance eventually landing before the Supreme Court.[72] Arkansas was a state which actively resisted desegregation. In Little Rock, a group of nine students registered to be the first Black Americans to

60. *Tuskegee Airmen*, SMITHSONIAN NAT'L AIR & SPACE MUSEUM, https://airandspace.si.edu/explore/stories/tuskegee-airmen (last visited Dec. 18, 2025).

61. *Civil Rights Movement*, *supra* note 43.

62. Sweatt v. Painter, 339 U.S. 629, 635-36 (1950).

63. Brown v. Bd. of Educ., 347 U.S. 483, 495 (1954).

64. Freeman v. Pitts, 503 U.S. 467, 485 (1992) (explaining this was the rationale and objective in *Brown*).

65. Bolling v. Sharpe, 347 U.S. 497, 499-500 (1954).

66. *Id.* at 500.

67. *Brown v. Board: Timeline of School Integration in the U.S.,* S. POVERTY L. CTR.: LEARNING FOR JUST. (Spring 2004), https://www.learningforjustice.org/magazine/spring-2004/brown-v-board-timeline-of-school-integration-in-the-us.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

attend Central High School. These students, who would become famously known as the Little Rock Nine, received intense counseling sessions prior to starting class in anticipation of a hostile environment.[73] On their first day, they were met with an angry mob screaming at them. The *Governor of Arkansas* ordered the Arkansas National Guard *to prevent the students* from entering the school. Weeks later the Guard was finally removed after a judge issued a court order. As police attempted to escort the students through a mob of protestors, they ultimately had to remove them because of rioting. Finally, President Eisenhower had to intervene with *1,200 federal troops to escort the students safely*.[74]

As a result, the school board sought a petition to postpone desegregation in a case which finally reached the Supreme Court.[75] In *Cooper v. Aaron*, the Court ruled that constitutional rights cannot be denied as a result of violence and fear brought on by the actions of the governor and legislature.[76] Again emphasizing that separate is no longer equal, the Court also specifically addressed the belief that the governor and legislature were not bound by the Court's holding in *Brown,* reminding them that the Constitution is the "Supreme Law of the Land."[77] In response, the *governor closed down all the schools the following year to prevent desegregation*.[78]

After nearly a century of the Fourteenth Amendment establishing equal protection, minorities—in particular Black Americans—were still fighting for access to constitutional rights and protections. As a result, a nationwide Civil Rights movement began with Black Americans and allies actively protesting discrimination and demanding equal treatment.[79] Students in Greensboro, North Carolina, protesting segregation inspired the Greensboro sit-ins by refusing to leave a lunch counter without being served.[80] In an effort to test the 1960 Supreme Court decision declaring segregation of interstate transportation facilities unconstitutional,[81] the Freedom Riders (seven Black and six white activists) went on a bus tour of the South to protest segregated bus terminals. They were continually met with violence and endured beatings from protestors with little to no police protection. Eventually, the U.S. Attorney General sent federal marshals to assist them.[82]

Although President Kennedy in 1961 signed Executive Order 10925, which required federal contractors to take affirmative steps ensuring fair treatment without regard to "race, creed, color, or national origin,"[83] as of 1963, the Civil

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73. *Little Rock Nine*, HIST. (May 28, 2025), https://www.history.com/topics/black-history/central-high-school-integration.

74. *Id.* (emphasis added).

75. Cooper v. Aaron, 358 U.S. 1, 12 (1958).

76. *Id.* at 16.

77. *Id.* at 17-19.

78. *Little Rock Nine*, *supra* note 73 (emphasis added).

79. Moore, *supra* note 15, at 250.

80. *Civil Rights Movement*, *supra* note 43.

81. Boynton v. Virginia, 364 U.S. 454, 463-64 (1960).

82. *Civil Rights Movement*, *supra* note 43.

83. Exec. Ord. No. 10925, 26 Fed. Reg. 44, 1977 (Mar. 8, 1961).

Rights Act was still stalled in Congress.[84] Advocating for the passage of this act was one of the principal purposes motivating the March on Washington. The event brought over 200,000 people of all races together for a peaceful march to promote equality and advocate for civil rights.[85] President Kennedy, fearful of the potential for violence, reluctantly endorsed the march.[86] It was there that Dr. Martin Luther King Jr. inspired the nation with his "I Have a Dream" speech.[87] President Kennedy would continue to push efforts to ensure passage of the Civil Rights Act until he was assassinated in 1963.[88]

The following year, Congress passed the Civil Rights Act of 1964 which ensured voting rights, prohibited discrimination, banned segregation in public places and education, and allowed the government to withhold federal funding to schools that did not comply with the *Brown* decision.[89] Additionally, Title VI prohibited discrimination in all federally assisted programs.[90] In 1965, President Johnson signed Executive Order 11246 that not only prohibited discrimination but *required* federal contractors to take affirmative action to promote equal opportunity for minorities.[91]

2. White America's Retaliation to Civil Rights Protections

While the President and Congress appeared poised to aggressively work to end discrimination, the United States as a whole moved much slower, and in many instances, actively rejected this new version of America. Despite federal statutes designed to not only discourage discrimination but in many cases making it illegal, those opposed to this change actively pursued additional legislation in an effort to maintain historical power and influence. As the nationwide landscape began to change and anti-discrimination policies began to emerge and take effect, the Court would be tasked with deciding many significant discrimination cases that would determine Black American rights and further define how the Equal Protection Clause applied.

In Louisiana, a statute was created to encourage voters to discriminate based on race.[92] The statute required each candidate's race to be printed on the voting ballot.[93] Finding the statute violated the Equal Protection Clause, the Court astutely noted that by directing voter attention to race, the state indicated its importance and allowed prejudice to influence voting decisions.[94]

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84. *March on Washington*, HIST. (Mar. 5, 2025), https://www.history.com/topics/black-history/march-on-washington.

85. *Id.*

86. *Id.*

87. *Id.*

88. Moore, *supra* note 15, at 250.

89. C. R. Act of 1964, Pub. L. 88-352, 78 Stat. 241 (1964).

90. *See id.*

91. Exec. Ord. No. 11246, 30 Fed. Reg. 187, 12320 (Sep. 28, 1965).

92. Anderson v. Martin, 375 U.S. 399, 402 (1964).

93. *Id.* at 401.

94. *Id.* at 401-02.

In Ohio, after a fair housing ordinance enacted by Akron City Council was passed in 1964, voters then passed city charter amendment Section 137, which essentially voided that ordinance.[95] Amendment Section 137 required any proposed real property regulations which prohibited housing discrimination on racial bias to be approved by a majority of citizen voters; however, all other proposed real property regulations remained subject to the general rule requiring only city council approval.[96] Although Section 137 was written to appear facially neutral—that is, all racial and religious groups treated the same within the text of the amendment—the Court determined that by differentiating racial housing regulations from others there was an explicit racial classification without appropriate justification and therefore violated the Equal Protection Clause.[97] This case would establish what would later be labeled the "political-process doctrine," which says strict scrutiny is applied when the political process is restructured by the majority in a manner that only burdens the minority.[98] This doctrine would be later reaffirmed by a 5-4 split Court in *Washington v. Seattle School District,* which struck down an initiative that once again restricted the decision making process to place special burdens on the minority.[99]

Even with the passage of the Civil Rights of 1964, discriminatory practices such as literacy tests and poll taxes were prevalent in the South and were used to prevent Black Americans from voting.[100] At times, Black people attempting to vote were even required to recite the Constitution, explain state law, or were simply told they had gotten the time, polling place, or date wrong.[101] Black Americans made up more than half the population in Dallas County, Alabama, yet were only about two percent of overall registered voters.[102] Efforts to register Black voters and peaceful demonstrations led to arrests and violence.

In March of 1965, about 600 advocates participated in a 54-mile march in Alabama from Selma to Montgomery.[103] As they reached the Edmund Pettus Bridge, state police sent by Governor Wallace, knocked them to the ground, beat them with sticks, clubs, and rubber tubes wrapped in barbed wire, and sprayed them with tear gas.[104] The entire assault was captured and televised and became known as "Bloody Sunday."[105] As a result, President Johnson called for, and then signed, the Voting Rights Act of 1965, which banned literacy tests, provided

95. Hunter v. Erickson, 393 U.S. 385, 385, 387 (1969).

96. *Id.* at 389-90.

97. *Id.* at 389-93.

98. Schuette v. Coal. to Def. Affirmative Action, 572 U.S. 291, 337-38 (2014) (Sotomayor, J., dissenting).

99. Washington v. Seattle Sch. Dist., 458 U.S. 457, 485-86 (1982).

100. *Voting Rights Act of 1965*, HIST. (Feb. 27, 2025), https://www.history.com/topics/black-history/voting-rights-act.

101. *Id.*

102. Christopher Klein, *How Selma's 'Bloody Sunday' Became a Turning Point in the Civil Rights Movement,* HIST. (May 28, 2025), https://www.history.com/news/selma-bloody-sunday-attack-civil-rights-movement.

103. *Id.*

104. *Id.*

105. *Id.*

federal oversight for minority voter registration, and authorized investigations into the use of poll taxes in state and local elections.[106] Even after the act passed, in areas in the South or where there was potential for the Black vote to disrupt power, local enforcement was weak or just outright ignored.[107]

While segregation was no longer legally permitted, in 1967, sixteen states still prohibited and punished interracial marriages.[108] In the landmark case of *Loving v. Virginia*, the Court made the historical decision that recognized marriage as a fundamental right, and in doing so, declared state law that banned interracial marriage as unconstitutional.[109]

Additionally, there were still significant efforts and practices to keep housing racially segregated. Federal mortgage programs often used the practice of "redlining" to automatically eliminate Black neighborhoods or areas being "perceived to be in danger of becoming Black" from accessing credit.[110] In other areas where the Black population had the potential to threaten white investments, urban renewal and public housing programs either blocked accessibility or gained control through eminent domain.[111] This resulted in Black residents being displaced and generally moved to public housing in other "[B]lack neighborhoods."[112]

Even as President Johnson encouraged fair housing legislation along with a commissioned report on urban riots which identified "segregation as a leading cause of racial tensions and [B]lack poverty," it appeared Congress would reject any such proposals as they adjourned on an April afternoon in 1968.[113] Just a few hours later, Martin Luther King Jr. was assassinated, which significantly impacted enough of the opposition to pass the legislation. The Fair Housing Act became law on April 11, 1968.[114] "In the end, it took a martyr's blood to finally outlaw discrimination in housing."[115]

B. Affirmative Action Cases: The Supreme Court, Like America, Was Split

As cases emerged to either enforce affirmative action policies or allege discrimination *in favor* of minorities as a result of affirmative action policies, the Court began to vacillate between appropriate standards for analysis. In *Washington v. Davis*, two rejected Black American police officer applicants argued a test used in recruitment was racially discriminatory.[116] The Court acknowledged a different standard was established under Title VII of the Civil Rights Act in which the focus

106. *Voting Rights Act of 1965*, *supra* note 100.
107. *Id.*
108. Loving v. Virginia, 388 U.S. 1, 6 (1967).
109. *Id.* at 12.
110. Massey, *supra* note 51, at 573-74.
111. *Id.* at 574.
112. *Id.*
113. *Id.* at 574-75.
114. *Id.* at 575.
115. *Id.*
116. Washington v. Davis, 426 U.S. 229, 232 (1976).

on disproportional racial impact is enough without consideration of discriminatory purpose, yet they specifically rejected this heightened standard for due process challenges under the Constitution.[117] Citing a history of cases, the Court explained that disproportionate racial impact alone was not the sole consideration and alone, without a discriminatory purpose, would not trigger heightened scrutiny.[118]

In 1978, the Court first considered the use of race in college admissions. In *Regents of University of California v. Baake,* the University of California Davis Medical School had a special admissions program for certain groups minority students.[119] This program aimed to establish "minority representation in the Medical School."[120] Allan Bakke, a white male applicant, was rejected by the school despite having higher scores than some of the minority applicants admitted under the program.[121] Bakke sued, claiming the program violated the Equal Protection Clause of the Fourteenth Amendment and Title VI.[122] In a fragmented decision, Justice Powell with four Justices concurring, concluded the special admissions program used by Davis was unconstitutional.[123] However, Justice Powell also concluded, with a different four Justices joining him, that the lower court's judgment which prohibited any race consideration in the admissions process should be reversed,[124] recognizing the "State has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin."[125] Justice Powell's opinion emphasized the importance of diversity in education but stated the Davis program's explicit quota system went too far in its racial classification and needed to consider each applicant's unique contribution to diversity.[126]

Justices Brennan, White, Marshall, and Blackmun dissented in part, arguing the program was not unlawful, as affirmative action programs aimed at remedying past societal discrimination are permissible under the Fourteenth Amendment[127] and concluding racial classifications created for this purpose should be subject to intermediate scrutiny.[128] Additionally, they asserted race-conscious admissions policies may be necessary to address the historical underrepresentation of minorities in higher education and professional fields, provided they do not stigmatize or unduly harm members of non-minority groups.[129]

In 1980 the Court first considered the constitutionality of a federal affirmative action program. In *Fullilove v. Klutznick*, the Court was tasked with deciding a constitutional challenge to the Minority Business Enterprise (MBE) provision of

117. *Id.* at 238-39.
118. *Id.* at 241-42.
119. Regents of Univ. Cal. v. Bakke, 438 U.S. 265, 269-70 (1978) (Powell, J., plurality opinion).
120. *Id.* at 288.
121. *Id.* at 277.
122. *Id.* at 277-78.
123. *Id.* at 271.
124. *Id.* at 272.
125. *Id.* at 320.
126. *Id.* at 317-18.
127. *Id.* at 328 (opinion of Brennan, J.).
128. *Id.* at 359.
129. *Id.* at 372-74.

the Public Works Employment Act of 1977, which required ten percent of federal grants received for public work projects to be allocated to utilizing services of minority owned businesses.[130] In determining the MBE provision did not violate the Constitution, the Court concluded the objective of the MBE to ensure minority businesses had opportunity to public contracting projects was within the power of Congress and gave deference to Congress for the means to achieve such an objective.[131] Justice Powell, while concurring in judgment, declared racial classifications to be "fundamentally at odds" with the Constitution.[132] However, in his deference to Congress's conclusion that minority contractors were discriminated against, he emphasized the power and role of Congress to enforce "post-Civil War Amendments."[133] Justices Marshall, Brennan, and Blackmun also concurred in the judgment, reiterating their position in *Bakke*—that racial classifications for remedial purpose should not be subject to strict scrutiny.[134]

Justices Stewart and Rehnquist dissented, declaring "racial discrimination is by definition invidious discrimination," and the rule cannot change regardless of a law's purpose.[135] They also rejected law as an appropriate method to remedy discrimination, arguing Congress is not a court of equity and lacked the skills necessary in determining an appropriate remedy.[136] Separately, Justice Stevens dissented, finding it was not "narrowly tailored" with too many questions not addressed by Congress.[137]

In 1989, the Court considered whether the city of Richmond's Minority Business Utilization plan which required primary contractors to subcontract a minimum of thirty percent of the contract to a minority owned business was constitutional under the Equal Protection Clause.[138] In relying on *Fullilove*, Richmond argued a city government should be held to the same standard as the federal government. Justice O'Connor, writing for the Court, rejected this argument citing the constitutional mandate for Congress to enforce the Fourteenth Amendment and further clarifying that, while Congress may attempt to remedy past societal discrimination, that does not extend to the states or local government.[139] For the first time, the majority of the Court applied strict scrutiny to "race-conscious remedial measures" under the Equal Protection Clause.[140] Holding the city failed to demonstrate a compelling interest nor finding the program narrowly tailored, the Court declared the process violated the Equal Protection Clause.[141]

130. Fullilove v. Klutznick, 448 U.S. 448, 453-54 (1980).
131. *Id.* at 478, 490.
132. *Id.* at 516 (Powell, J., concurring).
133. *Id.*
134. *Id.* at 519 (Marshall, J., concurring).
135. *Id.* at 526 (Stewart, J., dissenting).
136. *Id.* at 527.
137. *Id.* at 552.
138. City of Richmond v. J.A. Croson Co., 488 U.S. 469, 476-77 (1989).
139. *Id.* at 489-90.
140. *Id.* at 551.
141. *Id.* at 505, 508, 511.

Justice Stevens, while concurring in the judgment, rejected the notion that a racial classification policy was only permissible as remedy for a past wrong.[142] In this case however, he argued the approach taken relied on stereotypes which ultimately can reinforce the perception that those receiving special preference solely because of race are less qualified.[143]

The dissent, led by Justice Marshall, argued the Court failed to respect Richmond's judgment in dealing with documented industry-wide discrimination.[144] Additionally, he underscored the significance of Richmond's actions in trying to prevent the perpetuation of past discrimination[145] and called for a less stringent standard than strict scrutiny for remedial race-conscious measures.[146]

In 1990, in *Metro Broadcasting, Inc. v. FCC*, the Court was tasked again with deciding the constitutionality of a federal affirmative action program. Metro Broadcasting challenged two minority ownership policies created by the Federal Communications Commission (FCC).[147] Realizing the minority population was substantially underserved, the FCC had previously reviewed past efforts to expand diversity and concluded those efforts failed to adequately increase representtation.[148] Additionally, the FCC acknowledged the value of diverse programming and therefore created the two minority ownership policies to further encourage and assist in growing minority ownership.[149]

The Court determined the two policies being challenged did not violate the Equal Protection Clause.[150] The Court noted that although analyzed differently, the majority did not apply strict scrutiny to the racial classification at issue in *Fullilove*.[151] Opting to apply the standard articulated in *Fullilove,* the Court held that "benign race-conscious measures" made by Congress that "serves important governmental objectives…and are substantially related to achievement of those objectives" are permissible, even if they are not designed as a remedy to past discrimination.[152] The Court differentiated this decision from their decision in *Croson,* explaining a local minority "set-aside program" does not receive the same level of scrutiny as applied here.[153] The Court further clarified; Congress may adopt racial classifications to remedy effects of societal discrimination without the need to identify specific incidents.[154]

Justice O'Connor, joined by Justices Rehnquist, Scalia, and Kennedy dissented, arguing racial classifications like those in the challenged policies promote racial division, stereotypes, and conflict, therefore requiring strict scrutiny

142. *Id.* at 511 (Stevens, J., concurring).
143. *Id.* at 516-17.
144. *Id.* at 528-29 (Marshall, J., dissenting).
145. *Id.* at 538-39.
146. *Id.* at 554-55.
147. Metro Broad., Inc. v. FCC, 497 U.S. 547, 552, 558 (1990).
148. *Id.* at 553-56.
149. *Id.* at 554, 556-57.
150. *Id.* at 552.
151. *Id.* at 563-64.
152. *Id.* at 564-65.
153. *Id.* at 565.
154. *Id.*

regardless of whether it is the federal government or the states.[155] Additionally, they argued *Fullilove* does not support intermediate scrutiny to "benign" racial classifications, emphasizing it was the remedial powers of Congress under § 5 of the Fourteenth Amendment that allowed the Court to apply different level of scrutiny.[156]

In 1995, in *Adarand Constructors, Inc. v. Pena*, the Court concluded a different standard of review should have been applied by the Court of Appeals when analyzing the constitutionality of the federal government's use of racial consideration in awarding business contracts.[157] Adarand Constructors challenged the government practice of providing financial incentives for the prime general contractors to hire subcontractors certified as disadvantaged businesses, which predominantly included minority-owned businesses.[158] Adarand had submitted a low bid, but was not certified as disadvantaged, and therefore claimed these clauses violated the equal protection component of the Fifth Amendment's Due Process Clause.[159] Here, the Court addressed the standard of review for federal racial classifications for the final time, confirming that strict scrutiny should be applied, necessitating a compelling interest that is narrowly tailored to that interest, and thereby vacated the judgment of the Court of Appeals and remanded for further proceedings.[160] Justice Thomas concurring in part and concurring in judgment wrote separately to express his belief that government cannot create equality, it can only protect each person equally before the law.[161] He further declared that remedial racial preferences reinforce attitudes of superiority, provoke resentment among those who believe the government has favored others because of race, and teach that "minorities cannot compete with them without their patronizing indulgence."[162]

Justice Stevens, joined by Justice Ginsburg, dissented, arguing that the decision falsely equates remedial racial preferences with invidious discrimination.[163] They contended that there is a moral and constitutional difference between programs designed to oppress a minority and those aimed at remedying past discrimination.[164] They also argued for greater deference to Congress's authority and competence in addressing historic racial subjugation.[165]

Additionally, Justice Souter, joined by Justices Ginsburg and Breyer, separately dissented, focusing on the continued relevance of *Fullilove* and the premise of stare decisis requiring its application in the circumstances of this case.[166] He emphasized that programs designed to eliminate lingering effects of

155. *Id.* at 603-04 (O'Connor, J., dissenting).
156. *Id.* at 606-07.
157. Adarand Constructors v. Pena, 515 U.S. 200, 204 (1995).
158. *Id.*
159. *Id.* at 205-06.
160. *Id.* at 235.
161. *Id.* at 240 (Thomas, J., concurring).
162. *Id.* at 241.
163. *Id.* at 243 (Stevens, J., dissenting).
164. *Id.*
165. *Id.* at 255.
166. *Id.* at 265-67 (Souter, J., dissenting).

past discrimination have long been accepted by the Court as constitutional and may require racial preferential status.[167] He further explained that although this could possibly result in some members of the "historically favored race" being harmed, it was temporary; and the preference will last only as long as necessary.[168]

C. Race Conscious Admissions: Diversity as a Compelling Interest or Simply Discrimination?

At a time when government seemed to be taking affirmative actions to ensure equal opportunities for Black Americans and other minorities, diminish discrimination, and enact legislation to assist in remedying past discrimination, the Court often halted the initiatives. It was evident from these early cases that the Court was divided in its interpretation of how equal protection should be applied and what judicial standard was appropriate. Generally, the more conservative Justices held the "colorblind" Constitution view, taking the position that equal protection cannot mean one thing to one group and something else to another group. In contrast, the more liberal Justices often referenced the history and purpose behind the Equal Protection Clause, reminding the Court who the clause was originally created to protect. Over the next two decades, the Court continued to disagree when considering to what capacity race consideration could constitutionally be used in higher education.

In 2003, two different cases were brought before the Court involving the University of Michigan's use of race in admissions. In *Gratz v. Bollinger*, students alleged the university's use of racial preference in undergraduate admissions violated the Fourteenth Amendment Equal Protection Clause.[169] In *Grutter v. Bollinger*, students alleged the same violation in the university's use of racial preference in law school admissions.[170]

In *Gratz*, the Court ruled that the university's use of race in its current freshman admissions policy was not narrowly tailored to achieve the diversity interest claimed.[171] The Court emphasized that a policy must consider each applicant's unique contributions to diversity, as described by Justice Powell in *Bakke.*[172] Here, the Court determined the current policy, which automatically distributed twenty points to all underrepresented minority applicants, lacked any individualized consideration, and effectively made race a deciding factor for most.[173] Justice Thomas concurred, however, he additionally argued that any use of "racial discrimination in higher education admissions is categorically prohibited by the Equal Protection Clause.[174] Justice Breyer while concurring in judgment, did not join the opinion and expressed his support of the view that there is a

167. *Id.* at 269.
168. *Id.* at 270.
169. Gratz v. Bollinger, 539 U.S. 244, 252 (2003).
170. Grutter v. Bollinger, 539 U.S. 306, 317 (2003).
171. *Gratz*, 539 U.S. at 270.
172. *Id.* at 270-71.
173. *Id.* at 270-72.
174. *Id.* at 281 (Thomas, J., concurring).

difference between policies of inclusion versus exclusion and that those of inclusion are more likely to be consistent with the obligation to establish equality.[175] Justice Souter and Justice Ginsburg dissented, arguing that it is impossible to determine that the additional twenty points made race a deciding factor.[176] Justice Ginsburg emphasized that measures designed to achieve equality should not be equated with discriminatory policies.[177] She suggested that transparent affirmative action policies are preferable to those that hide the consideration of race.[178]

In *Grutter,* however, the Court endorsed Justice Powell's view from *Bakke* and held that the law school had a compelling interest in achieving student diversity.[179] The Court explained the school's commitment to enrolling a "critical mass" of minority students was not used to reach a predetermined percentage, which *would be* unconstitutional, but instead was designed to achieve "educational benefits that diversity is designed to produce."[180] The Court further added these policies assist in the removal of racial stereotypes, promote cultural awareness and understanding, and prepare students for diversity in the world.[181] Additionally, the Court found the program was narrowly tailored, as it allowed for individualized consideration, was flexible, and did not operate as a quota.[182]

Although the majority ruled the admissions policy did not violate the Equal Protection Clause, the decision was split 5-4 with Chief Justice Rehnquist dissenting, joined by Justices Scalia, Kennedy, and Thomas.[183] They found the law school's argument for achieving critical mass inadequate, emphasizing the significant disparities among different minority groups admitted with no rationale for how or why the concept is applied differently among the different groups.[184] Additionally, they contended that without an estimated timeframe for the policy, it does not satisfy strict scrutiny.[185]

Justice Thomas's disdain for any use of racial classification was evident throughout his dissenting opinion—calling it demeaning for all.[186] He similarly expressed his contempt for the word "diversity" labeling it a "fashionable catchphrase" and equating the law school's interest in diversity to simply "classroom aesthetics," that is, to obtain a certain look of the students within the program.[187] He concluded the compelling interest is actually the educational benefits being sought—not diversity—and challenged that if the school believed its own argument, then altering the overall admission standards would not concede

175. *Id.* at 281-82 (Breyer, J., concurring in the judgment).
176. *Id.* at 295 (Souter, J., dissenting).
177. *Id.* at 301 (Ginsburg, J., dissenting).
178. *Id.* at 305.
179. Grutter v. Bollinger, 539 U.S. 306, 325, 328 (2003).
180. *Id.* at 329-30.
181. *Id.* at 330.
182. *Id.* at 334-35.
183. *Id.* at 378.
184. *Id.* at 380-82 (Rehnquist, C.J., dissenting).
185. *Id.* at 386.
186. *Id.* at 353 (Thomas, J., opinion).
187. *Id.* at 354, 357.

an elite status.[188] Declaring that the school only seeks a "façade," he admonished it for pursuing a certain classroom look, even if the students cannot perform, calling it a "mismatch crisis" with no evidence the students receive a better education.[189] Additionally, he argued that "Michigan has no compelling interest in having a law school at all, much less an *elite* one," pointing out the law school "does precious little training of those attorneys who will serve the citizens of Michigan."[190] He further argued these types of discriminatory programs reinforce the stigma that minorities are inferior, as all who are accepted under the program are viewed in question as to whether or not they were admitted under (what he viewed as) a discriminatory policy.[191]

In 2013, in *Fisher v. University of Texas (Fisher I)*, the Court ruled that the Fifth Circuit Court of Appeals did not apply the correct strict scrutiny standard as required by previous cases when considering whether the University of Texas at Austin violated the Equal Protection Clause in their use of considering race in the admissions process.[192] The Court explained that while *Grutter* allows for some deference to the university's conclusion that diversity is necessary for their educational goals, the Court must still determine that the use of race is necessary by analyzing the process and concluding there are no appropriate race-neutral alternatives sufficient to achieve their goals.[193] The case was vacated and remanded for further proceedings, requiring a more rigorous examination of the university's admissions process under strict scrutiny.[194]

In 2016, the *Fisher* case returned (*Fisher II*), and again a split Court held that the university's race-conscious admissions program lawful.[195] Finding that the university demonstrated efforts to attain diversity through race-neutral alternatives before implementing its current policy, it therefore satisfied the strict scrutiny obligation.[196] The Court rejected the petitioner's argument that critical mass needed to be better defined, explaining that increasing minority enrollment may be necessary to establish educational benefits from diversity, but the university is prohibited from establishing a specific number or quota.[197] Additionally, the university offered data demonstrating their use of race-neutral alternative methods were insufficient.[198]

Justices Thomas and Alito dissented, arguing that the policy does not meet strict scrutiny standards.[199] Justice Alito criticized the broader definition of compelling interest without precise goals and the vague application of "critical

188. *Id.* at 355-56.
189. *Id.* at 372.
190. *Id.* at 358-59.
191. *Id.* at 373.
192. Fisher v. Univ. of Tex., 570 U.S. 297, 314 (2013).
193. *Id.* at 312.
194. *Id.* at 315.
195. Fisher v. Univ. of Tex., 579 U.S. 365, 388-89 (2016).
196. *Id.* at 387-88.
197. *Id.* at 380-81.
198. *Id.* at 382.
199. *Id.* at 392-93 (Alito, J., dissenting).

mass."[200] Justice Thomas wrote a separate dissent to reaffirm his contention that the use of race in admissions is prohibited by the Equal Protection Clause.[201]

D. Societal Backlash: States Decide Race-Conscious Admissions Is Discrimination

As the Court ruled the use of race in narrowly tailored situations to achieve diversity was permissible, some states chose to proactively ban race consideration at public colleges and universities. California became the first to enact legislation in 1996, when voters approved Proposition 209, which banned affirmative action admissions in California's public universities.[202] Since then, eight other states have enacted legislation to ban race consideration often through voter approved ballot initiatives.[203] However, in Florida in 2000, then Governor Jeb Bush, signed an executive order banning race considerations in state-operated universities in Florida.[204]

In 2006 Michigan voters passed Proposal 2, which amended the state constitution to prohibit the use of race in public institutions.[205] The proposal, which became Article I, Section 26, of the Michigan Constitution, was challenged in a case that went before the Supreme Court. In *Schuette v. Coalition to Defend Affirmative Action,* the Court was tasked with determining if and how voters of a state may prohibit race consideration in government decisions.[206] The decision did not contest the constitutionality or merits of race-conscious admissions policies per se, but rather focused on the voters' power to prohibit such policies.[207] Justice Kennedy writing for the Court held that the Michigan amendment did not impose harm on racial minorities as a result of the law, and as such does not require any remedy by the Court; therefore, relying on voters' policy determination on sensitive issues is permissible.[208]

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200. *Id.* at 401-03.

201. *Id.* at 389 (Thomas, J., dissenting).

202. *Examining the Impact of California's Ban on Affirmative Action in Public Schools*, NPR (June 27, 2023, at 05:10 ET), https://www.npr.org/2023/06/27/1184461214/examining-the-impact-of-californias-ban-on-affirmative-action-in-public-schools.

203. Edwin Rios*, 'A Cautionary Tale': Colleges in States with Affirmative Action Bans Report Racial Disparities*, THE GUARDIAN (June 30, 2023, at 06:00 ET), https://www.theguardian.com/law/2023/jun/30/affirmative-action-ban-state-colleges-racial-disparities-supreme-court.

204. *How State Bans on Race-Sensitive Admissions Have Damaged Black Enrollments in Professional Schools*, THE J. OF BLACKS IN HIGHER EDUC., https://www.jbhe.com/features/51_professional_schools.html (last visited Dec. 18, 2025).

205. Kate Weiland & Emily Blumberg, *Sixteen Years Ago, Affirmative Actions was Banned in Michigan. With Upcoming Supreme Court Lawsuit, It May Be Banned Nationwide*, THE MICH. DAILY (Sep. 21, 2022), https://www.michigandaily.com/news/administration/sixteen-years-ago-affirmative-action-was-banned-in-michigan-with-upcoming-supreme-court-lawsuit-it-may-be-banned-nationwide/.

206. Schuette v. Coal. to Def. Affirmative Action, 572 U.S. 291, 300, 301 (2014).

207. *Id.* at 314.

208. *Id.* at 313-14.

Several concurring opinions were filed with each addressing different facets of the ruling.[209] Justice Scalia, joined by Justice Thomas, criticized the political-process doctrine created from prior cases, arguing it should be overruled.[210]

Justice Sotomayor, joined by Justice Ginsburg, dissented, emphasizing the Court's historical role in identifying and invalidating the various mechanisms the majority have tried to use to prevent minorities' participation in the political process and argued that this Michigan amendment constitutes the same effect.[211] Additionally, she concluded the political-process doctrine resolved this case, highlighting it as essential to equal protection.[212]

II. THE *SFFA* DECISION: IGNITING THE RETURN OF OVERT WHITE SUPREMACY

Since abolishing slavery, this country has passed a series of laws and enforced policies in an effort to not only dismantle the racial caste that allowed our own version of legal apartheid through Jim Crow laws, public segregation, and housing ordinances, but to also assist in remedying the historical and devastating harm. These laws evolved through hard-fought political and cultural battles, often coming after times of violent revolution such as the Civil War and the Civil Rights Movement. Yet, public education has grown significantly more segregated—not only by race, but also resources—with Black students more likely to have fewer resources and higher needs.[213] Discriminatory practices such as racial profiling, over-policing in communities of color, and enforcing mandatory minimums for certain drug possessions that are more likely among the poor, have resulted in yet another form of systemic racism.[214] The Black to white wage gap was larger in 2020 than it was over fifty years ago.[215] Regardless of continual and pervasive discrimination and inequality, the Court has demonstrated its inability or unwillingness to solidify under a true purpose or application of the Equal Protection Clause—*yet has soundly rejected* remedial efforts to assuage past pervasive discrimination.[216] As a result, whether intended or not, the *SFFA* decision has ignited an all-out assault on any concept, activity, or policy that might

209. *See id.* at 315-16, 316-32. 332-37.

210. *Id.* at 318, 322 (Scalia, J., concurring) (noting he would reaffirm standard cited in *Davis*, that a facially neutral act requires intent *and* racial disparity to prove an Equal Protection Violation and *Hunter* and *Seattle* should be overruled).

211. *Id.* at 337-38 (Sotomayor, J., dissenting).

212. *Id.* at 351, 365.

213. Yasmin Cader, *Supreme Court Signals That Institutions Can Keep Designing Programs to Foster Diversity, After Affirmative Action Ruling*, ACLU: NEWS & COMMENT (Mar. 6, 2024), https://www.aclu.org/news/racial-justice/supreme-court-signals-that-institutions-can-keep-designing-programs-to-foster-diversity-after-affirmative-action-ruling.

214. Sterling, *supra* note 25, at 483.

215. Cader, *supra* note 213.

216. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 259-60 (2023).

offer support or resources for any person other than a straight, white man, and possibly a woman.[217]

A. SFFA Used to Eliminate Perceived Racial Discrimination Against White People in College Admissions and Scholarship Opportunities

With the Court affirming that "equality and racial discrimination cannot coexist" under the Fourteenth Amendment, they have declared skin color is "irrelevant to…equal status a citizen of this Nation."[218] Yet declaring irrelevance does not make it fact. History has shown that eliminating race consideration in college admissions is likely to have a dramatic impact on admissions for minorities.

Since voters in Michigan and California eliminated the use of race in admissions, the number of Black students has plummeted for the University of Michigan, UC Berkely, and UCLA, despite various strategies to prevent such an outcome.[219] Since 1996, the University of California system has used a "holistic review process" which uses thirteen factors, in addition to grades and test scores, and has invested more than $500 million in outreach without substantially increasing the racial diversity of students admitted.[220] The University of Michigan has had a similar experience trying to regain the diverse admissions numbers pre-ban.[221] Even after establishing a Center for Educational Outreach, Black student enrollment has fallen forty-four percent.[222] In addition to a decrease in enrollment, it was noted by a professor studying the impact of California's ban that "[t]he gains for white and Asian students were measurably very small, compared to the losses for Black and Hispanic students."[223]

Immediately upon announcement of the *SFFA* decision, states began to review the ruling with some legislators interpreting the decision to extend the restriction to scholarships as well.[224] Some states have already determined they will no longer consider race in determining scholarship awards,[225] others have ordered schools to change scholarship language to not consider race, and some universities on their own are preemptively making the changes for fear of litigation.[226]

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217. *See generally* Jessica Guynn, *Trump Message to Corporate America: Stop 'Illegal' DEI or Face Investigations*, USA TODAY (Jan. 23, 2025, at 15:10 ET), https://www.usatoday.com/story/money/2025/01/22/trump-to-corporations-stop-dei/77882451007/ (explaining the rhetoric being used by the Trump administration to "cast DEI as illegal discrimination against white Americans").

218. *Students for Fair Admissions, Inc.*, 600 U.S. at 263.

219. Rios*, supra* note 203.

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. Douglas Belkin & Megan Tagami, *Affirmative Action Battle Moves to Race-Based College Scholarships*, WALL ST. J. (July 6, 2023, at 09:00 ET), https://www.wsj.com/articles/affirmative-action-battle-moves-to-race-based-college-scholarships-6b1789e1.

225. *Id.*

226. Kolodner & Hou, *supra* note 9.

Eliminating race consideration in scholarships as well as admissions could have an even more significant impact for schools affecting both enrollment and funding. It is estimated public colleges have cancelled race consideration scholarships worth at least $60 million, with the total likely to be even higher.[227] In Ohio, hundreds of millions of dollars in scholarship money was put on hold after university administrators were told race consideration in scholarships may be unconstitutional.[228] With drastically less scholarship money available for under-represented racial groups, the potential for increased educational disparity and financial inequalities is significant. It is estimated that about forty-two percent of white adults have a college degree; in contrast, college degrees are held by about twenty-eight percent of Black adults.[229] Furthermore, Black adults graduate owing on average thirty percent more in student loans, while earning twenty-five percent less than white adults.[230]

While campus leaders have some guidance on how schools can promote diversity without using race in the admissions process, there is not much guidance around the area of scholarships. Although some legal scholars interpret the decision to mean the ruling bans the use of race in scholarships as well as admissions, it is not truly clear and continues to get further clouded with other questions lurking around the use of race in programs from outside a university such as fellowships.[231] Groups like the Equal Protection Project, who claim success in either cancelling or altering more than a dozen scholarship programs, filed a complaint in July of 2024 against private gifts that consider race in scholarships promoted by Indiana University.[232] The group insists that if a scholarship is promoted by a school to their students, the source of funding is irrelevant and it must adhere to the law, or more accurately, the law as they interpret it.[233]

Further implications are now being felt even internationally with the Trump administration's involvement in the selection of Fulbright scholars.[234] Traditionally, the review process for the prestigious academic exchange program sponsored by the U.S. State Department consists of an initial project review by the Institute of International Educational, and a review by a panel in the host country, with the final approval coming from the Fulbright Foreign Scholarship Board.[235] In 2025, Marco Rubio, U.S. Secretary of State, sent an internal memo saying State

227. *Id.*

228. Jeffrey C. Sun & Charles J. Russo, *Are Race-Conscious Scholarships on Their Way Out?*, THE CHRON. OF PHILANTHROPY (Apr. 23, 2024), https://www.philanthropy.com/article/are-race-conscious-scholarships-on-their-way-out.

229. Kolodner & Hou, *supra* note 9.

230. *Id.* (this statistic is between the ages of twenty-five to thirty-four).

231. Sun & Russo, *supra* note 228.

232. Kolodner & Hou, *supra* note 9; Letter from Ronald D. Coleman, Equal Prot. Project, to Adele Rapport, U.S. Dep't of Educ. (July 15, 2024), https://equalprotect.org/wp-content/uploads/2024/07/OCR-Complaint-Indiana-U.-Equal-Protection-Project.pdf (on file with author).

233. *Id.*

234. Liam Knox, *For Fulbright Applicants, a DEI Disqualifier*, INSIDE HIGHER ED (May 29, 2025), https://www.insidehighered.com/news/global/us-colleges-world/2025/05/29/fulbright-applicants-rejected-over-dei-research-proposals.

235. *Id.*

Department officials would give final approval after eliminating any projects that would violate President Trump's orders banning DEI.[236] Several advisors shared that the number of applicants selected this year was significantly lower than in previous years.[237] The unprecedented process has been called "unusual and disruptive" and may even violate Fulbright policies.[238]

B. SFFA Ignites Nationwide Pursuit to Eliminate Widespread and Historical Discrimination Against White People in Corporations, Government and Everywhere Else White People Have Ever Been Held Back Through DEI Initiatives

In July 2023, one month after the Court's *SFFA* decision, thirteen Republican state attorneys general sent letters to all Fortune 100 CEO's, warning of serious legal consequences for companies that engage in racial consideration, even for "benign purposes" or done under the label of "diversity, equity, and inclusion."[239] They alleged racial discrimination was commonplace, referring to many of the programs that were established in 2020, presumably in the wake of recognizing the vast disparities in racial equality on heels of George Floyd's death.[240]

Yet data has shown DEI initiatives have helped white men, not disadvantaged them.[241] Today, there is still a significant economic racial gap. Since 2010, the wealth disparity between Black and white households has continually grown.[242] In 2022, for every $100 in white households, that only equated to $15 for every Black household.[243] While housing equity has helped Black Americans with wealth accumulation, the number of home ownership at forty-four percent is still significantly less than the near seventy-three percent for white Americans.[244]

Stock equity, one of the largest advantages of obtaining generational wealth, also likely exacerbates the largest difference in accumulating additional wealth. Stocks made up nearly thirty percent of wealth for white families but only four percent for Black families, thus adding to the growing concentration of wealth for those who have already had access to stocks.[245] For white Americans, whose income grew the most between 2019 to 2022, fifty-three percent came from

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236. *Id.*

237. *See id.*

238. *Id.*

239. Letter from Kris W. Kobach et al., State of Kan. Att'y Gen. & State of Tenn. Off. of the Att'y Gen., to Fortune 100 CEOs (July 13, 2023), https://s.wsj.net/public/resources/documents/AG LetterFortune100713.pdf.

240. *See id.*

241. Solange Charas, *DEI Under Threat: The Workforce Risks of Project 2025's Policies*, FORBES (Jan. 20, 2025, at 09:53 ET), https://www.forbes.com/sites/solangecharas/2025/01/19/dei-under-threat-the-workforce-risks-of-project-2025s-policies/.

242. Andre M. Perry et al., *Black Wealth Is Increasing, but So Is the Racial Wealth Gap*, BROOKINGS (Jan. 9, 2024), https://www.brookings.edu/articles/black-wealth-is-increasing-but-so-is-the-racial-wealth-gap.

243. *Id.*

244. *Id.*

245. *Id.*

investments (with eight and a half percent growth) and thirty-eight percent from salaries (with just over six percent growth).[246] During that same period, Black Americans did not experience any growth in salaries and actually decreased retirement and social security funds with the only growth coming from business revenue and government transfers during the COVID-19 pandemic.[247]

In 2024, six states passed new anti-DEI laws, with an additional ten having proposed legislation.[248] This has been a strategical tactic away from previous attempts to prevent teaching structural racism concepts as legislators are finding DEI a much easier target. By attacking the DEI infrastructure of offices, positions, and programs that ultimately carry out diversity work, lawmakers stress the amount of tax dollars being used, describing the programs as "frivolous at best and discriminatory at worst."[249]

Governor Ron DeSantis spent two years fighting to enforce provisions of his "Stop Woke Act" that was passed in Florida in 2022.[250] The "anti-woke" policies targeted, and made illegal, any trainings in businesses or schools that could make someone feel guilt or psychological distress due to their race, color, sex, or national origin.[251] A group of businesses challenged the law on the basis of censorship and the loss of the ability to engage robustly with employees.[252] The law was initially temporarily blocked, with the judge criticizing the policies as "bordering on unintelligible."[253] While the ruling was upheld by the 11th U.S. Circuit Court of Appeals, and attorneys for the state are not opposing a motion by the businesses for a permanent injunction, the DeSantis administration may still appeal to the Supreme Court.[254]

Although Florida was not successful in applying and enforcing the "anti-woke" policies to businesses, it, along with other states, has made a significant impact on eroding DEI programs in colleges and universities. Several have had to eliminate offices, cultural centers, and lay off staff.[255] In what may be a preview of what is yet to come, the Western Association Schools and Colleges' Senior College and University Commission, an accrediting body, is considering removing "diversity, equity, and inclusion" and replacing with "success for all students" in their standards.[256] Claiming the potential change is due to how contentious the

246. *Id.*

247. *Id.*

248. *See* Johanna Alonso, *DEI Bans Flourished in 2024. Politicians Aren't Finished*, INSIDE HIGHER ED. (Dec. 16, 2024), https://www.insidehighered.com/news/faculty-issues/diversity-equity/2024/12/16/how-battle-over-dei-shook-out-2024-and-whats-come#.

249. *Id.*

250. Andrew Atterbury, *Federal Courts Spike Piece of DeSantis 'Stop Woke' Law*, POLITICO (July 26, 2024, at 17:10 ET), https://www.politico.com/news/2024/07/26/federal-courts-florida-stop-woke-law-00171451.

251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.*

255. Alonso, *supra* note 248.

256. *Id.*

words have become, some fear it is "an attempt to appease President Trump, who has repeatedly criticized and threatened to 'fire' accreditors."[257]

In Ohio, legislators recently passed Senate Bill 1,[258] even as Ohio State University students protested the bill saying it would "dumbify" Ohio colleges and universities with anti-intellectual rules.[259] The final bill passed prohibits DEI offices and mandates universities to create policies to prohibit any training or orientation courses around DEI.[260] The bill also bans universities from taking positions on policies deemed controversial such as climate or political policies, DEI, immigration, or abortion.[261]

In addition to states acting to pass anti-DEI legislation, there are lawsuits occurring across the country targeting various programs, schools, and businesses.[262] Possibly one of the most well-known activists behind many of these lawsuits is Edward Blum, a conservative activist and founder of SFFA. He was also the driving force in the anti-affirmative action *Fisher* case in 2012.[263] While he may often be perceived as a one-man warrior taking on large universities and corporations, he is actually the founder of several "non-profits" which have received over $11.2 million in donations and drawing more than $900,000 in personal pay.[264] His organizations take names depicting equality, such as Students for Fair Admissions and American Alliance for Equal Rights, yet all aggressively pursue the elimination of the very policies that were created to ensure equality.[265]

As Blum and other organizations continue to make the argument defining diversity as merely physical traits and that their demand for eliminating any DEI policy is to ensure fair treatment for all without consideration for race, their targeted lawsuits highlight exactly how many inequalities exist. While there is only an estimated five percent of Black practicing attorneys, law firms and law schools became the first target of American Alliance for Equal Rights, one of Edward Blum's organizations, as they sued several multinational law firms to stop diversity

257. *Id.*

258. Tom Hodson, *Senate Bill 1 Guts Academic Freedom and Reshapes Ohio's Public Universities*, OHIO CAP. J. (Mar. 20, 2025, at 04:30 ET), https://ohiocapitaljournal.com/2025/03/20/senate-bill-1-guts-academic-freedom-and-reshapes-ohios-public-universities/.

259. Amelia Robinson, *Ohio State Student Fight Against 'Dumbification' Teaches Lesson About Freezing*, The COLUMBUS DISPATCH (Jan. 23, 2025, at 08:35 ET), https://www.dispatch.com/story/opinion/columns/2025/01/23/ohio-state-university-senate-bill-1-higher-education-jerry-cirino-senate-bill-83/77881330007/#.

260. Hodson, *supra* note 258.

261. *Id.*

262. MELTZER CTR.: ADVANCING DEI INITIATIVE, https://advancingdei.meltzercenter.org/ (last visited Dec. 18, 2025).

263. Jeannie Park & Kristin Penner, *The Absurd, Enduring Myth of the "One-Man" Campaign to Abolish Affirmative Action*, SLATE (Oct. 25, 2022, at 14:48 ET), https://slate.com/news-and-politics/2022/10/supreme-court-edward-blum-unc-harvard-myth.html.

264. *Id.*

265. Nikole Hannah-Jones, *The 'Colorblindness' Trap: How a Civil Rights Ideal Got Hijacked*, N.Y. TIMES (Mar. 13, 2024), https://www.nytimes.com/2024/03/13/magazine/civil-rights-affirmative-action-colorblind.html.

fellowships. [266] The lawsuits resulted in public scrutiny over scholarships offered and recruitment efforts.[267]

In *American Alliance for Equal Rights v. Fearless Fund Management*, the Eleventh Circuit addressed whether a private foundation which only considered minority owned businesses for grant opportunities, violated 42 U.S.C § 1981, which prohibits race discrimination "when making or enforcing contracts."[268] Fearless Fund is a venture-capital firm founded by two Black women who provide small grants to businesses which are at least fifty-one percent owned by Black Women.[269] Blum filed his complaint alleging racial discrimination even though Black women receive less than one percent of venture-capital funds in the U.S.[270]

Sometimes the mere threat of litigation is enough to alter or even eliminate diversity efforts. Pfizer changed their application requirements for their "Breakthrough Fellowship Program" after being sued for alleged discrimination against white and Asian applicants.[271] As conservative activists have targeted companies in court and social media, other large corporate giants like Ford, McDonald's, Walmart, Lowe's, John Deere, and Tractor Supply have made the decision to eliminate diversity goals, no longer sponsor social or cultural awareness events, and no longer submit data to the Human Rights Campaign benchmark index which measures workplace inclusion for LGBTQ+ employees.[272] Even Target, whose DEI efforts predate the surge around 2020, have announced they will end their diversity goals and no longer participate in surveys.[273] While the decision of these companies to reverse course on DEI initiatives appears to follow the *SFFA* decision along with pressure from conservative activists, others believe it may also coincide with the return of President Trump.[274]

Initially after the *SFFA* ruling was announced, then U.S. Equal Employment Opportunity Commission (EEOC) Chair, Charlotte Burrows, responded that, though the ruling departs from longstanding precedent and may hinder efforts to

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266. *Id.*

267. Barbara E. Hoey & Patrick D. Soundy, *The Future of DEI and Reverse Discrimination Suits*, KELLEY DRYE (Dec. 11, 2023), https://www.kelleydrye.com/viewpoints/blogs/labor-days/the-future-of-dei-reverse-discrimination-suits.

268. Am. All. for Equal Rts. v. Fearless Fund Mgmt., LLC, 103 F.4th 765, 769 (11th Cir. 2024); *see* 42 U.S.C. § 1981 (a)-(b) (2025).

269. Hannah-Jones, *supra* note 265.

270. *Id.*

271. Brittany Bernstein, *Pfizer Quietly Changes Requirements for Fellowship Applicants After Discrimination Lawsuit*, NAT'L REV. (Feb. 17, 2023, at 19:37 ET), https://www.nationalreview.com/news/pfizer-quietly-changes-requirements-for-fellowship-applicants-after-discrimination-lawsuit/.

272. *Which U.S. Companies, Are Pulling Back on Diversity Initiatives?,* THE ASSOCIATED PRESS (Jan. 6, 2025, at 19:15 ET), https://apnews.com/article/diversity-dei-goals-companies-lawsuits-eb052e0b420824485041263b7df1f715.

273. Anne D'Innocenzio, *Target Is Ending Its Diversity Goals as a Strong DEI Opponent Occupies the White House*, THE ASSOCIATED PRESS (Jan. 24, 2025, at 14:29 ET), https://apnews.com/article/target-dei-supreme-court-diversity-7f068dfee61a68a9a1f82b94e135b323.

274. Kate Gibson & Emmet Lyons, *Meta Ends Diversity Programs, Joining McDonald's, Walmart and Other Major Companies to Back Off DEI*, CBS NEWS: MONEYWATCH (Jan. 16, 2025, at 14:56 ET), https://www.cbsnews.com/news/meta-dei-programs-mcdonalds-walmart-ford-diversity/.

ensure diverse student bodies in higher education, the Court's decision does not address employer efforts to foster diversity in the workplace under Title VII.[275] Employers can continue to pursue DEI initiatives without violating this ruling, signaling the position that workplace diversity programs differ from the race-conscious programs invalidated in the *SFFA* decision.[276] However, under the Trump administration, the U.S. Department of Justice (DOJ) and EEOC have issued guidance in which they refer to "Unlawful DEI-Related Discrimination."[277] Under these new guidelines, even DEI training may create a credible hostile work environment which highlights the drastic shift in ideology.[278]

Despite the legal pressures, DEI programs remain lawful for now. Employers should proactively review and ensure their DEI initiatives comply with current laws to mitigate risks. The rise in "reverse discrimination" claims, although not yet widespread, underscores the need for proper preemptive measures.[279] It is recommended companies should avoid explicit statements or policies favoring certain groups and exercise caution in linking diversity goals with financial incentives. Additionally, recommended opportunities like scholarships and training programs should be inclusive of applicants from all backgrounds.[280] The long-term implications of the ruling for employers remain uncertain; but with an increase in challenges to practices involving any protected trait likely inevitable, employers are encouraged to reassess their DEI initiatives and affirmative action plans to mitigate risks.[281]

While some corporations are preemptively dissolving or eliminating DEI efforts, other corporate giants like Apple and Costco continue to defend their DEI policies and initiatives even after being aggressively targeted.[282] Costco recently received a shareholder proposal alleging its DEI initiatives leave the company vulnerable to financial and litigation threats as well as harming their reputation.[283] Costco's board of directors unanimously dismissed the proposal's demands of

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275. *U.S. Supreme Court Ends Affirmative Action in Higher Education: An Overview and Practical Next Steps for Employers,* SIDLEY (Aug. 2, 2023), https://www.sidley.com/en/insights/newsupdates/2023/08/us-supreme-court-ends-affirmative-action-in-higher-education--an-overview-and-practical-next-steps.

276. *Id.*

277. Ruth Zadikany et al., *DOJ and EEOC Issue Guidance Regarding "Unlawful DEI-Related Discrimination,*" MAYER | BROWN 2 (Apr. 2, 2025), https://1npdf11.onenorth.com/pdfrenderer.svc/v1/ABCpdf11/GetRenderedPdfByUrl/doj-and-eeoc-issue-guidance-regarding-unlawful-dei-related-discrimination.pdf/?url=https://www.mayerbrown.com/en/pdf/insights/publications/2025/04/doj-and-eeoc-issue-guidance-regarding-unlawful-dei-related-discrimination?pdf-options=countrycode%3AUS.

278. *Id.*

279. Hoey & Soundy, *supra* note 267.

280. *Id.*

281. *U.S. Supreme Court Ends Affirmative Action in Higher Education: An Overview and Practical Next Steps for Employers, supra* note 275.

282. Gibson & Lyons, *supra* note 274.

283. Corrine Post, *In Costco's Defense of DEI Efforts, Lessons for Business Leaders*, FORBES (Jan. 2, 2025, at 12:37 ET), https://www.forbes.com/sites/corinnepost/2025/01/02/in-costcos-defense-of-dei-efforts-lessons-for-business-leaders/.

public disclosure for any risks associated with Costco DEI policies and goals.[284] As board members defended the commitment, more than ninety-eight percent of Costco's shareholders also voted against the proposal and elected to maintain DEI policies.[285] Yet Costco is still actively being targeted and pursued with demands to eliminate policies from nineteen attorneys general, including Dave Yost of Ohio.[286]

Some recommend companies simply stop justifying or explaining their commitment to diversity and simply include it in their corporate values. They point out that companies do not need to explain why they value "innovation, resilience, or integrity" so why should diversity be different?[287] This may be a beneficial method in the current political climate, especially in organizations that realize diverse representation is an asset and want to build a team culture of acceptance and inclusiveness.

In an effort to track the many discrimination and anti-DEI lawsuits emerging around the country, the Meltzer Center at the NYU School of Law has created an Advancing DEI initiative website.[288] The website tracks different types of cases, states where they are occurring, provides significant legal issues being raised, and the current status of each. As of the publication date for this Comment, there are 225 lawsuits listed on their website tracker.[289]

C. President Trump's Bold Move to Eliminate Historical Racial Discrimination Against White Men

Almost immediately upon taking office, President Trump signed executive orders to eliminate all DEI programs within the federal government.[290] Offices were ordered closed, employees put on leave, and contracts which focused on women and minorities that have been in effect for decades were suspended.[291] President Trump went even further and revoked historic affirmative action orders signed by President Johnson which were created to foster racial equality and prohibit discrimination.[292] Additionally, he ordered lists to be compiled of public companies, universities, and foundations to potentially investigate their DEI

284. *Id.*

285. Lydia Taylor, *Ohio's Dave Yost Among 19 Attorneys General Pushing Costco to Ditch DEI Efforts*, SPECTRUM NEWS 1 (Jan. 30, 2025, at 08:30 ET), https://spectrumnews1.com/oh/columbus/news/2025/01/30/dave-yost-attorneys-general-dei-costco.

286. *Id.*

287. Oriane Georgeac & Aneeta Rattan, *Stop Making the Business Case for Diversity*, HARV. BUS. REV. (June 15, 2022), https://hbr.org/2022/06/stop-making-the-business-case-for-diversity.

288. MELTZER CTR.: ADVANCING DEI INITIATIVE, *supra* note 262.

289. *Cases*, MELTZER CTR.: ADVANCING DEI INITIATIVE, https://advancingdei.meltzercenter.org/cases/ (last visited Dec. 18, 2025).

290. Julian Mark et al., *In First Days, Trump Deals 'Death Blow' to DEI and Affirmative Action*, THE WASH. POST (Jan. 23, 2025), https://www.washingtonpost.com/business/2025/01/23/trump-dei-affirmative-action/.

291. *Id.*

292. Megan Lebowitz, *Federal Employees Are Told to Name Colleagues Who Work in DEI Roles or Risk 'Adverse Consequences'*, NBC NEWS (Jan. 22, 2025, at 20:53 ET), https://www.nbcnews.com/politics/white-house/federal-workers-told-name-dei-colleagues-risk-adverse-consequences-rcna188871.

policies and bring civil action.[293] The order declares DEI policies illegal discrimination, a threat to the safety of Americans, and "immense public waste."[294]

Federal employees were also issued a memo which directed them to report any co-workers that may work in diversity, equity, inclusion, or accessibility programs or face repercussions.[295] The memo stated the policies "divided Americans by race, wasted taxpayer dollars, and resulted in shameful discrimination."[296] It also cited the administration's belief that some within the government had made efforts to disguise such initiatives, giving firm instruction to report within ten days of any awareness of such occurrences, or there could be adverse consequences.[297]

In an effort to comply with the order, even programs designed to honor historical Black servicemen and women were immediately pulled when they were flagged for review due to the diversity order.[298] The Air Force initially halted lessons relating to the Tuskegee Airmen and Women's Airforce Service Pilots (WASPs) in an effort to comply with the directive causing immediate backlash.[299] After "fierce public and military condemnation," the material was reinstated.[300] However, to adhere to the order, the Air Force still quickly gutted women and minority groups that had been dedicated to making improvements for service members, such as lactation rooms for nursing mothers, beard policy modifications for Black airmen, and better fitting body armor for women.[301]

The attacks on DEI have become synonymous with the superiority myth that anyone with a job that is not a white male is somehow less qualified and undeserving.[302] Increasingly, white Americans, specifically white republican males, believe they are discriminated against because of diversity practices.[303] It was 1965 when President Johnson signed the executive order which established

293. Russell Contreras & Emily Peck, *Trump Rolls Back Bedrock Civil Rights Measure in Sweeping Anti-DEI Push*, AXIOS (Jan. 22, 2025), https://www.axios.com/2025/01/22/trump-dei-lbj-rollback.

294. Elie Mystal, *Trump's Attacks on DEI Are a Green Light for the Government to Discriminate*, THE NATION (Jan. 24, 2025), https://www.thenation.com/article/politics/trump-executive-orders-dei/.

295. Lebowitz, *supra* note 292.

296. *Id.*

297. *Id.*

298. *See* Thomas Novelly, *Tuskegee Airmen, WASP History Will Stay in Air Force Boot Camp Curriculum Following Outcry*, MILITARY.COM (Jan. 27, 2025, at 17:27 ET), https://www.military.com/daily-news/2025/01/27/tuskegee-airmen-wasp-history-will-stay-air-force-boot-camp-curriculum-following-outcry.html.

299. *Id.*

300. *Id.*

301. *Id.*

302. Mystal, *supra* note 294.

303. Philip Bump, *Trump's DEI Push Doesn't Level the Playing Field. It Digs Trenches*., WASH. POST (Jan. 24, 2025), https://www.washingtonpost.com/opinions/2025/01/24/trump-dei-rollback-inequality/.

equal opportunities for Black Americans among federal contractors.[304]And yet, the 2020 data shows that within the workforce of federal contractors (which employ about twenty percent of American workers), white men dominated executive positions (holding fifty-nine percent).[305] Some fifty-plus years later, *after* federal affirmative action, *white men still dominate*.

Additionally, some recruiters and hiring managers have suggested to rejected candidates that they were victims of demographics, rather than having an honest conversation around why they really were not chosen.[306] Still, they are more likely to subscribe to the notion that while the vast majority of leadership may be white, it is because of merit, and the lack of advancement on the part of Black Americans is simply due to lack of motivation.[307] "That upending affirmative action programs would entrench the advantages of White men is not a countervailing argument. It is very much the point."[308]

III. THE NEW FIGHT FOR EQUALITY

While some argue that *Grutter* has not completely been overruled,[309] Justice Thomas declared in *SFFA* that "for all intents and purposes" *Grutter* is no longer, essentially eliminating race consideration completely.[310] Chief Justice Roberts summarized hundreds of years of history that made the Equal Protection Clause necessary with a brief acknowledgment of segregation; he declared "[e]liminating racial discrimination means eliminating all of it,"[311] without ever giving credence to the inarguable fact that overwhelmingly this racial discrimination was historically and is currently still directed towards Black Americans.[312]

Justice Thomas continued to trivialize diversity efforts, calling admissions policies "rudderless, race-based preferences designed to ensure a particular racial mix."[313] He dismissed Justice Jackson's opinions and experiences, his words exuding arrogance and superiority, giving weight to bigoted stereotypes as he reinforced the very stigmatizing perception he claims to abhor.[314]

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304. Jessica Guynn et al., *People of Color Were Promised Equal Opportunity. Federal Contractors Are Failing.*, REVEAL (Apr. 28, 2023), https://revealnews.org/article/diversity-data-top-federal-jobs/.

305. *Id.*

306. Callum Borchers, *You Blamed DEI for Hurting Your Career. Now What?*, WALL ST. J. (Jan. 15, 2025, at 21:00 ET), https://www.wsj.com/lifestyle/careers/you-blamed-dei-for-hurting-your-career-now-what-6150c575.

307. Bump, *supra* note 303.

308. *Id.*

309. Jeffrey S. Lehman, *Don't Misread SFFA v. Harvard*, INSIDE HIGHER ED (July 17, 2023), https://www.insidehighered.com/opinion/views/2023/07/17/dont-misread-sffa-v-harvard-opinion#.

310. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 287 (2023) (Thomas, J., concurring).

311. *Id.* at 206 (majority opinion).

312. Hannah-Jones, *supra* note 265.

313. *Students for Fair Admissions, Inc.*, 600 U.S. at 287 (Thomas, J., concurring).

314. *Id.* at 278-83.

If the message was ambiguous before, the *SFFA* opinion has made it resoundingly clear. Racial justice and equality will never occur through the Court. Nor through legislation. Even if laws are passed in effort to promote equality, those laws only exist as long as those with power allow. The *SFFA* decision has also further sparked a mass assault on the mere mentioning of any type of cultural differences. For those of us that seek out and value diversity (much to Justice Thomas's disdain), we are forced to not only defend those values, but to create new vehicles by which to ensure equal protection and equality so that we can build a world *that is not colorblind*—but instead clearly sees and appreciates all the differences that each contributes.

A. When Someone Shows You Who They Are, Believe Them the First Time[315]

The history of this country has proven that white people will not give up the system enforcing racial hierarchy willingly. For every major step toward equality, white America was there to yank back any progress, reminding everyone who truly has the power. After slavery was abolished, it took *three constitutional amendments* to even begin to lay the foundation for Black Americans to have rights. Black Codes and Jim Crow laws were immediately implemented to ensure white dominance did not falter. After years of horrific discrimination, harassment, and violence, Civil Rights Acts were passed to eliminate segregation and discrimination, provide equal employment opportunities, and ensure voting rights. Once again white America responds, emerging with a plethora of tools to ensure white neighborhoods would stay white, Black Americans would not get too influential, and any affirmative action policies would be very limited and severely narrowed. After the election of this nation's first Black President, this country turned around and elected arguably one of the *most corrupt and divisive men in recent history, Donald Trump*.[316] *Twice.*

An explanation for this phenomenon may be understood in Professor Derrick Bell's article, *The Unintended Lessons in Brown v. Board of Education*. He explains racial remedies occur during "interest convergence," that is when "the

315. Maya Angelou, *Maya Angelou Quotes*, BRAINY QUOTE, https://www.brainyquote.com/authors/maya-angelou-quotes (last visited Dec. 18, 2025).

316. *See* Lisa Mascaro et al., *Donald Trump Becomes the First U.S. President to Be Impeached Twice*, PBS NEWS (Jan. 13, 2021, at 16:33 ET), https://www.pbs.org/newshour/politics/majority-of-house-members-vote-for-2nd-impeachment-of-trum; German Lopez, *Donald Trump's Long History of Racism, From the 1970s to 2020,* VOX (Aug. 13, 2020, at 19:00 ET), https://www.vox.com/2016/7/25/12270880/donald-trump-racist-racism-history; Larry Neumeister et al., *Jury Finds Trump Liable for Sexual Abuse, Awards Accuser $5M*, THE ASSOCIATED PRESS (May 9, 2023, at 20:00 ET), https://apnews.com/article/trump-rape-carroll-trial-fe68259a4b98bb3947d42af9ec83d7db; Jake Offenhartz & Larry Neumeister, *Trump Ordered to Pay Additional $83.3 Million to E. Jean Carroll in Defamation Case*, PBS NEWS (Jan. 26, 2024, at 17:17 ET), https://www.pbs.org/newshour/nation/trump-must-pay-additional-83-million-to-e-jean-carroll-in-defamation-case-jury-decides; Michael R. Sisak et al., *Guilty: Trump Becomes First Former US President Convicted of Felony Crimes*, THE ASSOCIATED PRESS (May 31, 2024, at 04:40 ET), https://apnews.com/article/trump-trial-deliberations-jury-testimony-verdict-85558c6d08efb434d05b694364470aa0; Amy O'Kruk & Curt Merrill, *Donald Trump's Criminal Cases, in One Place*, CNN: CNN POLITICS (Jan. 10, 2025), https://www.cnn.com/interactive/2023/07/politics/trump-indictments-criminal-cases/?cid=ios_app.

interest of [B]lacks achieving racial justice is accommodated only when and for so long as policymakers find that the interest of [B]lacks converges with the political and economic interests of whites."[317] He reflects on the history of the Civil War, noting President Lincoln realized freeing the slaves would improve the Union's chances and open the way to enlist former slaves in battle.[318] He points out that in the era of the *Brown* decision, the United States was attacked in the foreign press over segregation and discrimination.[319] And once again, during the Civil Rights era, there were televised images of violent attacks by police on protestors which in turn generated mass support for change.[320] He shares one of the lessons to learn from *Brown*, which is for advocates of racial justice and equality to rely less on the Court.[321] Advocates must challenge the assumption and acceptance of white dominance. A better understanding of systemic deficiencies is necessary to build an effective strategy that addresses the root cause, allowing structural reformation based on new enlightenment and commitment instead of court ordered action.[322]

Even as anti-discrimination legislation has been in place for years, there are legitimate questions about how effective it truly is. Companies receiving federal contracts have been subject to audits by the Labor Department to ensure contractors provide equal employment opportunities.[323] While federal contractors clearly cannot legally discriminate, until recently, they were also required to develop affirmative action plans to provide opportunities for women, minorities, people with disabilities, and veterans.[324] Yet, more than twenty percent of contractors (more than 4,000 companies) do not supply data detailing employee diversity because they object to the release.[325] An analysis of data from companies that did not object found white men dominated executive ranks.[326] With President Trump's executive order revoking affirmative action policy, if there was ever any protection available, it is now eliminated.[327]

President Trump has also made clear race is not the only target for repealing rights. Shortly after taking office, he issued an executive order regarding transgender service members, claiming their sexual identity was in conflict with a "soldier's commitment to an honorable, truthful, and disciplined, lifestyle."[328] As

317. Derrick A. Bell Jr., *The Unintended Lessons in Brown v. Board of Education*, 49 N.Y.L. SCH. L. REV. 1053, 1056-57 (2004).

318. *Id.* at 1057.

319. *Id.* at 1056.

320. *Id.* at 1057.

321. *Id.* at 1064.

322. *Id.* at 1066.

323. Will Evans & Jayme Fraser, *After History of Discrimination, These Federal Contractors Fought to Hide Diversity Data*, REVEAL NEWS (May 5, 2023), https://revealnews.org/article/diversity-data-contractor-discrimination/.

324. Guynn et al., *supra* note 304.

325. Evans & Fraser, *supra* note 323.

326. *Id.*

327. Mark et al., *supra* note 290.

328. Mark Sherman, *Supreme Court Allows Trump's Transgender Military Ban to Take Effect, for Now*, PBS NEWS (May 6, 2025, at 14:22 ET), https://www.pbs.org/newshour/politics/supreme-court-allows-trumps-transgender-military-ban-to-take-effect-for-now.

of May 6, 2025, a new policy gives military services thirty days to determine how they will identify and remove transgender service members.[329] Even as lower federal court judges ruled against the ban, the Supreme Court allowed enforcement while legal challenges proceed.[330]

As this President and his supporters continually move to eliminate DEI not only in the U.S., but also internationally,[331] once again we may need to call on world allies to hold our nation accountable for our shameful behavior.

Throughout history, this country, its leaders, and people have repeatedly demonstrated what they stand for. Advocates need to believe this is who we are.[332] Equal protection will not come from white men in power making legislation, running companies, or sitting on judicial benches. It must and will result from working together and making commitments to structural change without assistance from those historically responsible for creating the rules. The only way to achieve equality for all is to create a system built on humanity and liberty which removes the ability of those in power to dismantle that system at any given time.

B. Speak Your Mind, Even if Your Voice Shakes[333]

Programs and policies created to promote equality, eliminate racism, and prohibit discrimination now have a large swath of the population labeling anyone with a job that looks or lives differently as a DEI hire with the implication being they are unqualified. Today, the political right uses this language, very successfully, to provoke racial hypersensitivity among white people.[334] DEI has become a racist dog whistle—that is, coded language allowing someone to express an idea that would be too offensive if done outright.[335] DEI is being used to weaponize race in a way to justify non-white people getting jobs, reject activism, and place blame for doors falling off airplanes and bridges collapsing.[336] As people use DEI to misplace blame, "they are really blaming Black people without saying so explicitly."[337]

Within the first two weeks of taking office for the second time, President Trump speculated the reason for a fatal air collision was due to lower hiring

329. *Id.*

330. *Id.*

331. Tanaya Macheel, *Trump Administration Reportedly Warns European Companies to Comply with Anti-DEI Order*, CNBC (Apr. 2, 2025, at 11:48 ET), https://www.cnbc.com/2025/03/29/trump-administration-warns-european-companies-to-comply-with-anti-dei-order.html.

332. John Stoehr, *Don't Overestimate the Goodness of the American People*, THE ED. BD. (Apr. 9, 2025), https://www.editorialboard.com/dont-overestimate-the-goodness-of-the-american-people/.

333. *Maggie Kuhn*, NAT'L WOMEN'S HALL OF FAME, https://www.womenofthehall.org/inductee/maggie-kuhn/ (last visited Dec. 18, 2025).

334. Hannah-Jones, *supra* note 265.

335. Jennifer Saul, *Why the Term 'DEI' Is Being Weaponized as a Racist Dog Whistle*, THE CONVERSATION (Apr. 23, 2024, at 15:42 ET), https://theconversation.com/why-the-term-dei-is-being-weaponized-as-a-racist-dog-whistle-228074.

336. *See id.*

337. *Id.*

standards of previous administrations.[338] When asked later by a reporter how he could blame diversity without any investigation, President Trump replied "[b]ecause I have common sense."[339]

We cannot progress towards equality while allowing this continual derogatory possession and weaponization over language referring to racial justice. Those attacking DEI have become even more emboldened and energized with the return of President Trump, as he pushes forward essentially a white agenda.[340] He has even gone so far as to issue an executive order to abolish birthright citizenship, which has been called out as "unambiguously and profoundly racist."[341] Those that are appalled by the decision of this country to reelect him can use our voice to call out the stupidity and racism as it happens and reject the "proud ignorance" that has flourished.[342]

While it may be impossible to completely eliminate the level of racism being reintroduced so explicitly and loudly, advocates need to actively call out this dangerous rhetoric and challenge the ignorance and bigotry behind the coded language. As Baltimore Mayor, Brandon Scott, said, "We know what these folks really want to say when they say DEI mayor…. They really want to say the N-word."[343] They need to be challenged to do so. Make them say it out loud, explicitly each and every time. Maybe, eventually, when they immediately want to default to "DEI hire," they will think twice if there is a potential threat to being challenged openly.

Those taking on the fight for equality must be willing to stand up to and speak out against fear tactics taking advantage of the current political environment. Senate Bill 1, which was proposed by Ohio Republicans, was meant to chill the freedom of speech in colleges and universities, create an atmosphere of "paranoia over subject matter'' among faculty, and ban not only diversity efforts, but any diversity courses.[344] As elected officials, they should be challenged to provide legitimate rationale, clearly defined goals, articulate any benefits, and not be permitted to waste taxpayer time and money on ill-conceived proposals based on racist rhetoric. Let us stop tolerating stupidity along with "politicians who have embraced a reality disconnected from actual reality."[345]

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338. Anthony Zurcher, *Combative Trump Blames Diversity Policies After Air Tragedy*, BBC (Jan. 31, 2025), https://www.bbc.com/news/articles/cpvmdm1m7m9o.

339. *Id.*

340. Amanda Marcotte*, Donald Trump's War on DEI Is Not About "Merit,"* SALON: COMMENT. (Jan. 23, 2025, at 06:00 ET), https://www.salon.com/2025/01/23/donald-on-dei-is-not-about-merit/.

341. Eugene Robinson, *The Real Reason Trump Wants to End Birthright Citizenship*, WASH. POST (Jan. 23, 2025), https://www.washingtonpost.com/opinions/2025/01/23/trump-birthright-citizenship/.

342. Rex Huppke, *As Trump's Election Is Certified, Americans Should Declare War on Stupidity*, USA TODAY (Jan. 5, 2025, at 05:09 ET), https://www.usatoday.com/story/opinion/columnist/2025/01/05/trump-presidential-election-certification-embrace-stupidity/77409672007/.

343. Saul, *supra* note 335.

344. David Dewitt, *America's Love Affair with Confident Stupidity Has Reached Awful New Heights*, OHIO CAP. J. (Jan. 24, 2025, at 04:30 ET), https://ohiocapitaljournal.com/2025/01/24/americas-love-affair-with-confident-stupidity-has-reached-awful-new-heights/.

345. Huppke, *supra* note 342.

Find unique ways to disrupt and challenge these backward policies. Law students from Georgetown initially began creating a small spreadsheet to track which law firms were giving in to President Trump's demands.[346] What began with a few students texting, turned into students turning down six figure salaries and a google spreadsheet of more than 800 firms being assigned to categories such as "Caved to Administration," "Complying in Advance," and "Stood Up Against Administration's Attacks."[347] Firms are now lobbying the students to get their rankings changed.[348]

Start a nationwide conversation on the origin and history behind the Equal Protection Clause, why it was ever necessary, and who it was designed to protect. Advocates must continually fight to give voice to the original purpose of affirmative action and DEI—reminding all those willing to forget, or rather ignore, that these policies developed out of necessity from decades of discrimination by those in positions of power and with the authority to hire, fire, promote, and legislate. The Constitution does not require these policies, it "just wants whites with hiring authority to stop being racist assholes; it doesn't care how they do it."[349]

CONCLUSION: *FORTIS FORTUNA ADIUVAT* ("FORTUNE FAVORS THE BOLD")

Race conscious policies and programs are essentially over. However, the fight for racial justice and equality for all continues. This fight can no longer rely on the Court or legislation to create a diverse and inclusive society. It now rests on the shoulders of those willing to use their voice, their privilege, and their power to systematically and organically build a new system of equality that is indestructible under even the vilest racist attacks. This is still America, and regardless of the current political and cultural environment, this is a nation of diversity—and that is never going to change. If anything, as history has also shown, this country will continue to become more diverse. Corporations and universities are still permitted to determine the values that reflect their leadership, workforce, consumers, and community. We need to encourage them to be bold and stand firm against the upcoming inevitable challenges. We can lend our voice, our talent, and build a community of support to bolster their efforts and help actively fight against those seeking to diminish the value of the vulnerable.

Diversity is not illegal. Equity is not illegal. Inclusivity is not illegal. We cannot shirk the responsibility of remaining committed to equality. We are at a pivotal time in history, and we need to be bold. Historical changes have come when people broke out of their comfortable ways of responding to those in power.[350] Stop simply accepting this is who we are and begin leading to become who we

346. Adam Klasfeld, *Law Students Organize to Give Trump-Caving Firms a Recruitment Problem*, ALL RISE NEWS (Apr. 24, 2025), https://www.allrisenews.com/p/skadden-students-georgetown.

347. *Id.*

348. *Id.*

349. Mystal, *supra* note 294.

350. Bell, *supra* note 316, at 1066.

want and need to be. "Working toward racial justice is not just the moral thing to do, but it may also be the only means of preserving our democracy."[351]

351. Hannah-Jones, *supra* note 265.