DEMOCRACY FORWARD

ONE YEAR AFTER THE SUPREME COURT'S ROLLBACK OF CONSIDERATIONS OF RACE IN COLLEGE ADMISSIONS:

Safeguarding and Strengthening Diversity, Equity and Inclusion (DEI) Initiatives

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Executive Summary

In June of 2023, the United States Supreme Court issued a decision in *Students for Fair Admissions, Inc. (SFFA) v. Harvard* and *SFFA v. University of North Carolia (UNC)*,[1] ruling that the admissions policies of Harvard and UNC that explicitly considered race during the admissions process were unconstitutional. Specifically, the Court held that UNC and Harvard's processes violated the Equal Protection Clause of the U.S. Constitution and Title VI of the Civil Rights Act.[2] This decision undermined long-standing precedent established in Supreme Court decisions, including *Grutter v. Bollinger*,[3] *Regents of the University of California v. Bakke*,[4] and *Fisher v. University of Texas*.[5] Notably, the Court confirmed that despite its decision, students could still include race while describing their lived experiences in college essays.

The *SFFA* decision was rendered in the specific context of higher education admissions, and does not necessarily alter other contexts of higher-learning admissions, including admissions at military academies.[6] Moreover, the ruling does not change the parameters for considering race or other protected categories in workplaces, grant programs, government boards, government programs, health care, or other educational settings, which are governed by different legal frameworks. Yet, one year later, the same group of actors behind *SFFA* and their allies have brought a range of threatening letters and cases attempting to incorrectly expand *SFFA*'s reasoning to other contexts and force abandonment of progress. As of this report's publication, Democracy Forward is tracking over 70 cases brought by our opponents that frequently cite *SFFA* in their attempts to dismantle equity-related initiatives across a host of contexts. In addition to the cases described here, several states have considered or passed legislative measures to weaken such initiatives, and some of those are also discussed herein.

Likewise, anti-equity actors are pushing federal legislation to weaken diversity measures as well.

DEI (diversity, equity, and inclusion) initiatives, and similarly named efforts,[7] refer to the range of programs across a host of contexts, from removing unnecessary barriers in job postings, engaging in broader outreach measures, providing anti-discrimination training, ensuring diversity across identities in governing bodies, tweaking program criteria to include accessibility to a broader applicant pool, and more. The legal attacks are being brought against initiatives designed to remove barriers and further racial and other forms of equity, including based on LGBTQ+ status, disability, and other identities. The attacks aim to threaten and punish entities involved in these crucial efforts. Some of these policies are race-specific and some are not, and a range of lawful programs are coming under assault. Despite the attacks, including the avalanche of lawsuits detailed in this report, the vast majority of DEI programs remain on solid legal footing, both before and after the Supreme Court's inapplicable *SFFA* decision.

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Note: This report uses the term "minority" to align with the language of some policies and programs that take identity into account.

THIS REPORT DETAILS THE LEGAL LANDSCAPE RELATED TO A RANGE OF CHALLENGES TO DEI INITIATIVES IN SIX OVERLAPPING CONTEXTS:

- People's Right to an Inclusive, Welcoming Workplace
- People's Right to More Inclusive Grant Programs
- People's Right to Government Boards That Represent Them
- People's Right to Equitable Government Programs
- People's Right to Health Care Equity
- People's Right to Inclusive School Environments

This report discusses the nature of the threats being posed, the actual state of the law despite these threats, and how we can collectively advance greater belonging, including through DEI measures.

The Post-*SFFA* Landscape:

- Despite the narrow context of the Court's ruling in the *SFFA* cases, there have been significant numbers of threatening letters and court complaints mistakenly citing this opinion to challenge a range of DEI measures.
- Far from being an organic movement of harmed people, these challenges and threats are predominately brought by similar organizations and related individuals to the ones that brought the *SFFA* cases.
- Regardless of the volume of actual and threatened litigation brought by these actors seeking to expand *SFFA* to broader contexts, courts have often rightly recognized that there is actually not a harmed individual in the majority of the cases. Instead, these cases are driven by anti-equity organizations seeking to dismantle DEI-related initiatives. Accordingly, many cases are correctly being thrown out on technical grounds.
- Threatening letters, including to federal agencies, neither carry the legal weight of charges of discrimination nor have resulted in agencies finding aspirational comments regarding a company's hopes around more inclusive hiring plans, promotions, or its support of DEI initiatives to be unlawful.
- Some cases are also being resolved through settlements, including ones that maintain consideration of candidates with lived experiences from a range of racial and other backgrounds, and prioritizing candidates who have, for example, dedicated efforts towards DEI-related missions.
- Courts have also affirmed that anti-discrimination, Equal Employment Opportunity (EEO), and diversity trainings are lawful, and the Equal Employment Opportunity Commission (EEOC) has detailed how such sessions are crucial and support greater compliance with civil rights laws.
- Programs that are race — or other identity — specific and also bar other applicants do require careful analysis, as their lawfulness depends on the particular histories of discrimination and circumstances including the facts on the ground surrounding the location, context, and programs.
- Finally, programs with race-neutral criteria that analyze how the decisions would affect people of color to ensure that there is less discriminatory impact, do not violate *SFFA*. In fact, data collection and analysis remains critically important in order to remove barriers and help ensure greater equality.

A VOCAL MINORITY OF EXTREMISTS

While their names may sound innocuous, many of these challenges are brought by a small number of well-connected organizations led by far-right founders and funders. Here are a few examples of the cases these groups have taken on.

Do No Harm
led by Dr. Stanley Goldfarb

Challenged race-conscious workplace fellowship programs and state boards.

America First Legal
led by Stephen Miller

Sued to stop a program helping Black-owned small businesses purchase cars.

American Alliance For Equal Rights
led by Edward Blum

Targeted law firm programs supporting law students underrepresented in the legal field.

Students For Fair Admissions
led by Edward Blum

Challenged the consideration of race as part of college admissions.

Pacific Legal Foundation
led by Steven D. Anderson

Represented AAER challenging representative state boards.

Stay Committed To DEI Post-*SFFA*

Despite the range of communities that support DEI measures, from the private sector to government to civil rights advocates, the avalanche of threatening letters and lawsuits has created a chilling effect. But even if an entity decides to settle a case, or tweak its DEI program, that does not mean that the original program was illegal. DEI initiatives must be reviewed carefully under applicable law, not under threatening letters mistakenly citing *SFFA*, to determine appropriate pathways forward. And most corporations and other entities are remaining steadfast in the work towards greater inclusion, including through DEI measures.[8]

Amidst this ever-changing landscape, this report recommends the following actions for advocates, organizations, corporations, and public entities seeking to advance the mission of DEI:

- Keep naming and promoting DEI measures as a value in your organization. Despite the range of threats, we are the pro-DEI majority and we know that programs that remove unnecessary barriers and provide additional pipelines for all of us to be more successful are popular, good for business, and the right thing to do.
- Entities should ensure their programs are aligned with laws applicable to the context, such as Title VII and analogous state and local laws that govern workplace civil rights, and remain dedicated to their commitment to DEI.
- Join the fight to create a nation with greater belonging for all of us through greater racial equity, and inclusion for women, LGBTQ+ individuals, people with disabilities and more, including through safeguarding and strengthening DEI initiatives across all of these contexts. Visit Democracy Forward's website[9] to learn more about what you can do.
- Seek out opportunities to engage in ongoing cases through intervening, filing supportive briefs, writing op-eds, or otherwise making clear your support for DEI initiatives against baseless attacks.

Note: Specific programs should be reviewed with counsel, and this report is not intended to, and should not be understood to, provide legal advice.

One Year Post-*SFFA*: Trends and Attacks on DEI-Related Initiatives

Our opponents have been relentless in using *SFFA* as the centerpiece of their host of strategies, from sending threatening letters to filing court cases. In this report, we provide a snapshot of several key categories, including sample cases in each sector. We must not be misled into believing that *SFFA* is a broader decision than it is. We cannot needlessly overcorrect and do our opponents' work for them.

For example, we know that in at least one city, local artists filed a civil rights complaint with the city's human rights commission after the city's own law department incorrectly took the position that simple awareness of the racial impact of grant decisions on people of color was now no longer allowed after *SFFA* without a disparity study. Fortunately, the city's human rights agency concluded that this was incorrect under well-settled law, and the parties have reached a conciliated resolution. While a disparity study can support the necessity and constitutionality of programs that explicitly use race as a criteria, such evidence is not necessary to support simply being aware of how a program affects people of color. The Supreme Court has long recognized that awareness of such data is legally permissible.[10] Having basic knowledge of how programs impact people of color is not only allowed, but necessary to determine if program criteria creates unnecessary barriers to opportunity for some communities.

Similarly, data collection based on race and other identities is not only helpful to ensure programs are working to create greater inclusion, but also required to complete EEO-1 reporting for larger companies.[11] Indeed, the EEOC recently filed suit against 15 employers for failing to report required data.[12] Our opponents seek to incorrectly expand the limited holding of the *SFFA* decision. We cannot fall for it.

Fact Check: People Want DEI-Related Initiatives

We *are* the Majority: There Remains Overwhelming Support for DEI Initiatives

Notwithstanding these attacks, it is important to remember that DEI initiatives have broad support. While the Supreme Court was hearing the *SFFA* matter, several organizations wrote amicus briefs in support of DEI programs illustrating their benefits in the various contexts.[13] Similarly, other business briefs emphasize the importance of diverse universities to train future employees and leaders [14] and highlight the benefit of diverse leaders in their workforces and communities.[15]

Additionally, the majority of people in America support DEI measures, recognizing that they foster a fair and just society. A national survey conducted by The Harris Poll for the Black Economic Alliance Foundation in August 2023 found that 81% of American adults agree that corporate America should reflect the diversity of the American population and that 78% of Americans support businesses taking active steps to make sure that companies reflect the diversity of the U.S. population.[16] Additionally, consumers have indicated that they would prefer to purchase from brands that are committed to diversity: "Consumers who perceive a brand as committed to diversity are 3.5 times more likely to purchase the brand's products or services compared to those who do not."[17] From the general public to consumers, to employers and employees as detailed below, we are the majority, and we are in favor of DEI measures to help create a more inclusive nation.

Employers Remain Committed to DEI Initiatives

Despite legal challenges and backlash toward corporate diversity programs, a recent Littler survey[18] finds most employers are committed to, or are even expanding, their efforts related to DEI. Employers remain committed to DEI with most (57%) even growing their efforts over the past year, despite the fact that nearly the same proportion (59%) say that backlash has increased since the Supreme Court's *SFFA* decision. The decision had minimal material impact on the C-suite executives surveyed, 91% of whom say the Court's opinion has not lessened their prioritization of DEI.

DEI initiatives are also good for business because they increase profit. Research from Deloitte,[19] McKinsey & Company,[20] the Harvard Business Review,[21] Forbes,[22] and more, all highlight the same thing: more diverse and inclusive companies are more innovative and therefore more profitable. For example, according to "Diversity wins: How inclusion matters"[23] by McKinsey & Company, which followed hundreds of companies in several countries, companies with gender diversity in their executive teams were 25% more likely to demonstrate financial outperformance. Companies with ethnic diversity were 36% more likely to experience financial outperformance. A research report by Deloitte[24] found that organizations that establish this kind of inclusive culture are twice as likely to meet or exceed financial targets, three times as likely to be high-performing, six times as likely to be innovative and agile, and eight times more likely to achieve better business outcomes. Similarly, the Harvard Business Review[25] found that companies in the top quartile for racial and ethnic diversity are 35% more likely to have financial returns above their respective national industry medians.

Employees Seek Workplaces Committed to DEI Initiatives

Employees prefer to work for entities that value diverse and inclusive workplaces. Thus, DEI initiatives are beneficial for employers to sustain an equitable and innovative workforce. Diverse and inclusive workplaces foster a sense of belonging and lead to increased employee satisfaction and engagement. A lack of these values can lead to high employee turnover. Indeed 81% of employees said they would leave their jobs if their employers lacked a commitment to DEI in the workplace, and 54% said they would take a pay cut to improve workplace DEI.[26] A recent study conducted by WebMD[27] found that nearly three-quarters of employees want to work for organizations that place a high value on diversity, equity, inclusion, and belonging.

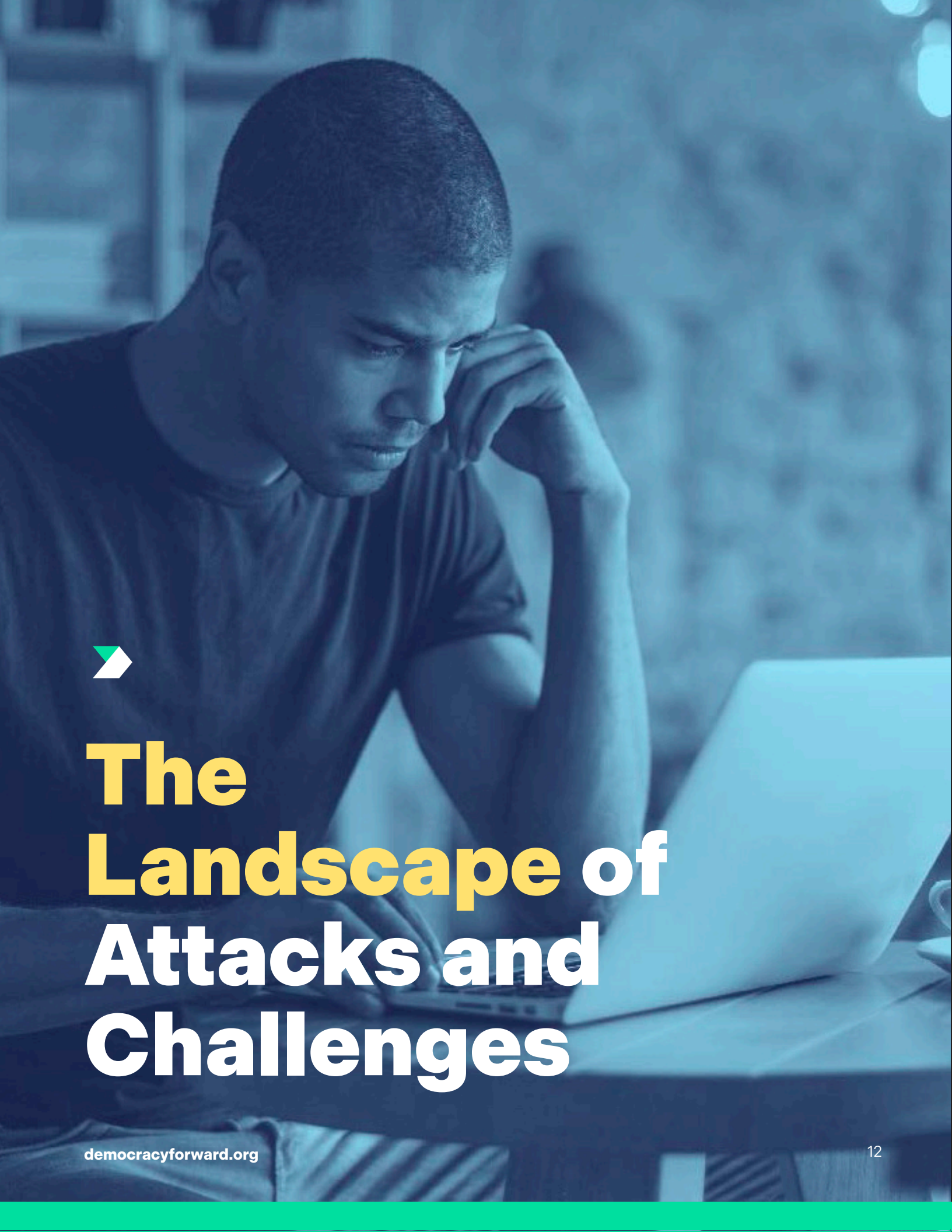
Additionally, a research report by Deloitte[28] found that when employees think their organization is committed to and supportive of diversity, they report better business performance in terms of their ability to innovate (83% uplift), responsiveness to changing customer needs (31% uplift) and team collaboration (42% uplift).

Despite the recent attacks, DEI remains a high priority for all employees. A recent study by Benevity[29] found that three-quarters of employees (78%) agree they would not consider working for a company that fails to commit significant resources to prioritizing DEI initiatives; 95% of employees now weigh a prospective employer's DEI efforts when choosing between job offers with similar salary and benefits; and 87% of employees agree they would feel more loyal to a company with a proven track record of prioritizing DEI. DEI commitments foster a sense of belonging and inclusion, which enhances job satisfaction, leading to higher engagement and retention rates. Together, these studies demonstrate that employees will exit environments that fail to embrace and celebrate diversity.

The Vast Majority of DEI Programs are Legal

As discussed throughout the report, *SFFA* is limited to the unique context of college admissions in higher education, and does not even change the law regarding admissions to military academies. The Supreme Court did not decide any issues related to other aspects of education or other bodies of law. Thus, the range of precedents concerning other areas of law remains good law. Specifically, courts have rejected challenges to a host of DEI related measures, including diversity policies,[30] anti-bias trainings,[31] efforts to increased diversity in applicant pools,[32] and aspirational diversity goals.[33] The vast majority of DEI-related initiatives are legally on solid ground, and we must remain steadfast in safeguarding and securing such programs.

Some race-specific programs may be legally defensible when they meet various criteria. Thus, affirmative action programs in private employment remain lawful, and grants that are more akin to gifts than contracts may face fewer legal risks. Unlike in the education context, employers have long been generally prohibited from using race as the basis for an employment decision for the purpose of promoting diversity.[34] However, under a voluntary affirmative action program that meets certain criteria, an employer may consider race to remedy past discrimination, whether at a particular company or even within an industry more generally.[35]



The Landscape of Attacks and Challenges

People's Right to an Inclusive, Welcoming Workplace

The tragic murder of George Floyd in May 2020 and related activism acted as a catalyst for change in corporate America and other workplaces. In the wake of widespread protests and a global reckoning on racial inequality, companies across several industries recognized the urgency of addressing racism within their own structures and implemented more inclusive hiring practices, diversity trainings, and fellowships for underrepresented individuals. This moment prompted numerous businesses to initiate or expand DEI measures. For example, one approach was for companies to complete racial equity audits working with non-profits like Color of Change,[36] while another involved shareholder demands/activism.[37] Anti–equity groups have challenged these measures, including for efforts as mild as simple statements about desires to create more inclusive workplaces with greater representation of people of color or ensuring more women are considered for promotions. These kinds of attacks, while often rejected by courts as detailed below, are designed to undermine the entire spectrum of DEI initiatives that are legally permissible under our civil rights laws.

Title VII of the Civil Rights Act of 1964 ("Title VII") is the federal law that governs workplace civil rights for employers with 15 or more employees. In order to comply with workplace civil rights laws, employers are encouraged to have anti-discrimination training and policies. Critically, Title VII allows employers to create voluntary affirmative action programs when certain criteria are met.[38] Despite the range of lawsuits and letters detailed below, *SFFA* did not change the law when it comes to workplace civil rights protections or employment law. Notably, on June 29, 2023, shortly after the *SFFA* decision was issued, EEOC Chair Charlotte Burrows issued an EEOC press release,[39] stating that the Court's decision does "not address employer efforts to foster diverse and inclusive workforces," and that "[i]t remains lawful for employers to implement diversity, equity, inclusion, and accessibility programs that seek to ensure workers of all backgrounds are afforded equal opportunity in the workplace."[40]

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Current Landscape of Legal Challenges

Fellowships for Minorities and Underrepresented Students

One area of attack post-*SFFA* was in the context of fellowships for minorities and underrepresented students. While one case is ongoing, at least four of these cases have been resolved, though no court determination was made regarding the programs. Fortunately, most programs were tweaked in ways that kept the ability of employers to focus on hiring applicants from a range of racial and other backgrounds.

In September 2022, Do No Harm filed suit against two health care-focused entities, Pfizer and *Health Affairs* magazine, claiming that their fellowship programs discriminated on the basis of race[41] (both cases are discussed further in the below health care section). Additionally, the American Alliance for Equal Rights filed suit against three law firms — *Perkins Coie*,[42] *Morrison Foerster*,[43] *and Winston & Strawn*[44] — challenging their diversity fellowship programs. All three law firm cases settled after the parties agreed on updated criteria that still promote a commitment to advance DEI. In the *Perkins Coie* case, the revised criteria still require candidates to submit a personal statement describing life experiences and "identifying connections between those experiences and the broader goal of advancing diversity, equity, and inclusion." In the *Morrison Foerster* case, the eligibility criteria still includes a "[d]emonstrated commitment to promoting diversity, inclusion, and accessibility." The *Winston & Strawn* case is perhaps the most remarkable, as the same anti-equity group that brought *SFFA* challenged Winston & Strawn's [45] program that was focused on hiring law students underrepresented in the practice of law—even though the fellowship did not limit applicants by race or any other legally protected characteristic. The case was resolved through a negotiated resolution and thankfully, the revised application still asks that applicants have a "[d]emonstrated commitment to promoting . . . diversity, equity, and inclusion" and an "[a]bility to bring a unique perspective to the Firm based on . . . experiences as an individual."

Diversity Trainings in the Workplace

Although anti-equity actors have challenged DEI trainings, citing *SFFA*, courts have rejected the notion that *SFFA* changed any of the parameters of anti-discrimination or other diversity-related training. For example, a federal appeals court in *Young v. Colorado Department of Corrections*[46] affirmed that mandatory diversity training does not create a hostile work environment or violate employment law or the federal Constitution. Likewise, in *Chislett v. New York City Department of Education*,[47] the court rejected plaintiff's argument that she "suffered a hostile work environment fostered by mandatory implicit bias trainings" and anti-racism trainings. To be sure, if there is a steady drumbeat of harassment based on race or any other protected identity during a training, that could create a hostile work environment. However, cases like *De Piero v. Pennsylvania State University*,[48] where hostile work environment claims are allowed to proceed, are outliers in the context of DEI trainings. The mere existence of a diversity training does not create a hostile work environment.

Furthermore, anti-discrimination training and policies are frequently part of EEOC consent decrees. They help employees to know their rights, and employers to know their obligations and avoid liability for civil rights claims.

In *Vavra v. Honeywell*, the EEOC filed an *amicus brief*[49] confirming that "anti-discrimination trainings, including unconscious bias trainings, are not per se discriminatory and may serve

as vital measures to prevent or remediate workplace discrimination." The district court dismissed the case and the Seventh Circuit affirmed. A company's measures to prevent discrimination and ensure a diverse, equitable, and inclusive workplace are typically not illegal, but rather help employers to comply with workplace civil rights laws. Additionally, such programs encourage employees to use internal avenues to bring complaints and thus may ultimately help employers to avoid liability, as detailed by the *EEOC in its anti-harassment enforcement guidance*.[50] The vast majority of anti-discrimination and diversity trainings are legal, helpful, and critical for compliance.

Additionally, the EEOC has recently confirmed in a *federal sector opinion*[51] that employers do not need to provide religious accommodations for employees to skip anti-discrimination trainings.[52] Employers should continue to conduct anti-discrimination trainings that inform workers of their rights and help to protect companies from civil rights liability.

"...anti-discrimination trainings, including unconscious bias trainings, are not per se discriminatory and may serve as vital measures to prevent or remediate workplace discrimination."

Corporate Diversity Programs

Anti-equity actors have also targeted additional kinds of DEI initiatives in both the private and public sectors. In the private sector, multiple challenges targeting some of the country's most prominent companies have failed in court either because the plaintiffs have not demonstrated that they are injured, because they failed to follow the requisite procedures, or because courts have determined that their claims lack merit. For example, American Express [53], Starbucks,[54] Amazon,[55] and Pfizer [56] have all defeated attacks on initiatives aimed at promoting racial equity that included a range of components related to training, leadership development, technical support, workplace culture, team building, advertising, fiscal priorities and policies, and more. In *National Center for Public Policy Research v. Schultz*,[57] the district court dismissed a challenge to Starbucks' DEI policies, finding that the shareholder plaintiff did not "fairly and adequately" represent shareholder interests. Similarly, the district court in *Netzel v. American Express Company*[58] dismissed a challenge to American Express's anti-racism initiative and DEI policies — the plaintiff appealed and that case is currently pending in the Ninth Circuit.

Similarly, there have been attacks on other diversity efforts in the public sector. For instance, *Diemert v. City of Seattle* involves a challenge to Seattle's Racial and Social Justice Initiative, a program that encourages affinity groups and other practices for city government employees that the plaintiff alleges are racially discriminatory.[59] That case is ongoing. Other programs, like mandated training and other guidance for doctors,[60] lawyers,[61] and educators,[62] often in connection with licensing, have similarly come under attack, with courts often recognizing either that the government has a right to mandate these trainings, or that the plaintiffs had not adequately established standing or failed for other technical reasons. These cases demonstrate the range of attacks on various programs and policies in the public sector.

Other Employment Practices

As the government arts program mentioned in the introduction and the education cases below make clear, tracking race-related data is essential. Such data needs to be collected and reviewed even when it is not permitted to be part of the criteria for decision-making. This data is required by the EEOC in the collection of EEO-1 reports, which require all private sector employers with 100 or more employees to submit workforce demographic data. The data also helps employers ensure that their practices are not having a disparate impact based on race. For example, the Eleventh Circuit confirmed in *Ossmann v. Meredith Corporation* that tracking racial data in the context of terminating someone engaged in sexual harassment was not illegal and it helped ensure decisions did not have a disparate impact on employees based on race.[63]

Courts have also largely rejected the notion that an employer simply mentioning diversity in the workplace means that an employer is or will be engaging in any form of discrimination—even though individual judges have gotten it wrong, as in *Price v. Valvoline, LLC*.[64]

Boards of Private Companies

Another area that has come under attack is the ability to collect data on and otherwise promote board diversity. The Alliance for Fair Board Recruitment challenged a California law[65] that requires public corporations headquartered in California to have a minimum number of directors from underrepresented identities, alleging that the law discriminates based on race. Although the district court held that the law is unconstitutional on its face, the State appealed and the case remains pending. Similarly, the same anti-equity group sued the Securities and Exchange Commission (SEC),[66] seeking review of the SEC's approval of Nasdaq's Board Diversity Disclosure Rule. This rule requires Nasdaq-listed companies to annually report aggregated statistical information about a company board's self-identified gender and racial characteristics, and also requires companies that don't have at least two such directors to explain why. Democracy Forward filed an amicus brief[67] in the Fifth Circuit Court of Appeals in this case representing academic experts in business, management, and economics, arguing that the administrative record held ample evidence of the benefits of board diversity to support the SEC's decision to approve Nasdaq's disclosure requirement.

For example, a study conducted by BCG[68] reported that companies with above-average diversity at the management level generate 19% higher innovation revenues than companies with below-average diversity. A 2020 report by McKinsey & Company[69] found that companies in the top quartile for gender diversity on their boards were 25% more likely to be more profitable than companies in the bottom quartile. A 2023 McKinsey report[70] also found that companies in the top quartile for both gender and ethnic diversity in executive teams are 9% more likely to outperform their peers. Just as having a more diverse workplace is good for business, as cited by numerous companies in their amicus briefs in *SFFA*,[71] more diverse boards also lead to positive results, including for the bottom line.

Using Intimidation Tactics Against Corporate Diversity Programs

Short of bringing formal legal challenges, anti-equity actors routinely send letters, both directly to companies and to government entities, threatening legal consequences if DEI programs continue. Since *SFFA* was issued, anti-equity actors have sent dozens of demand letters to private corporations, bar associations, sports leagues, public entities, and others, claiming that any effort to promote DEI violates the law.

America First Legal ("AFL") has sent more than a dozen letters to the EEOC asking the commissioners to investigate particular DEI-related initiatives, including those at Disney, Kellogg, Major League Baseball, McDonald's, NASCAR & Rev Racing, Macy's, IBM, and the National Football League. Similarly, AFL has asked the Office of Federal Contract Compliance Programs ("OFCCP"), which oversees federal contractors' compliance with various anti-discrimination requirements, to investigate DEI-related policies and practices at companies including Sanofi, United Airlines, Southwest Airlines, and American Airlines.[72]

AFL has used these demand letters to challenge anything related to promoting DEI, from announcing plans to improve gender parity in leadership to voicing desires to increase racially underrepresented talent at the management level.

Unfortunately, these misleading letters have chilled some efforts to maintain and openly announce support for DEI initiatives. The chilling effect is intentional: anti-equity actors have deliberately mischaracterized their letters, which typically have no legal effect, as federal complaints in their press announcements. Making these kinds of statements about DEI-related aspirations continues to be permissible under workplace civil rights laws.

The Bottom Line

The Supreme Court's decision in *SFFA* did not change the law in the context of workplace civil rights. Although anti-equity actors cite *SFFA* in their lawsuits and letters, the EEOC has confirmed[73] that their reliance on *SFFA* is misplaced. While workplace race-specific programs must meet certain criteria and are often harder to legally defend, they remain permissible under Title VII,[74] as outlined in a recent EEOC amicus brief.[75] Workplace-related DEI programs that remove needless barriers to employment, create pipeline programs or affinity groups, or provide EEO training also remain lawful.

People's Right to More Inclusive Grant Programs

Following the *SFFA* decision, anti-equity actors have also targeted grant programs, including those focused on race or gender. They have sued private entities that created such programs to reduce the barriers that minorities face when seeking to start businesses, with a range of outcomes. While race-specific programs must meet stringent criteria and may face legal risk, there are also many ways to create more inclusive criteria, even if they are not race-specific. For example, organizations can focus grants on newer entities, or those with smaller budgets, as ways to support groups that continue to face significant systemic barriers.

Current Landscape of Legal Challenges

Despite these attacks, multiple challenges targeting some of the country's most prominent companies have failed in court, either because the plaintiffs have not demonstrated that they are injured or failed to follow the requisite procedures, or because the courts have determined that their claims lack merit. For instance, in three different cases, Amazon has prevailed against individuals claiming that programs aimed at providing business opportunities for minorities have a discriminatory effect. In *Correll v. Amazon*,[76] the court dismissed a challenge to Amazon's alleged practice of highlighting minority business sellers and providing financial assistance to Black-owned businesses under a law prohibiting discrimination in contracting. The court concluded that the plaintiff had failed to plead the necessary facts to support a racial discrimination claim. Meanwhile, the court in *Bolduc v. Amazon*[77] dismissed a challenge under the same law to Amazon's Black Business Accelerator Program because the plaintiff who claimed discrimination had not actually applied to the program. The plaintiff appealed and the case is now pending in the Fifth Circuit. In *Alexandre v. Amazon*,[78] the court—on two occasions—dismissed a challenge to the same program, finding that the plaintiff failed to demonstrate an injury in the form of a loss of contract. This case is now on appeal in the Ninth Circuit. Other large companies, including American Express,[79] Starbucks,[80] and Pfizer,[81] have similarly defeated attacks on programs aimed at promoting racial equity.

At the time of this report, at least one important grant case is still pending on appeal. Last year, AAER filed suit against Fearless Fund Management,[82] a company focused on grants for Black women, alleging that the program is racially discriminatory. On June 3, 2024, the Eleventh Circuit Court of Appeals decided that the grant program is likely illegal since it created a contract and was limited to Black women applicants.[83] Even though, as the dissent noted, Black women "are grossly underrepresented as business owners,"[84] the majority ruled that a grant program limited to Black female business owners likely violates the law. Remarkably, the law at issue, Section 1981, was created to ensure that formerly enslaved Black people in this country would not be discriminated against in the making of contracts, but is now being weaponized to try to upend DEI programs.[85] This tactic is at odds with the spirit of this law, which was intended to ensure that Black individuals can participate in the economy.[86]

At the same time, courts considering similar programs have rejected legal challenges. For instance, an Ohio judge dismissed a case filed by America First Legal against Progressive Insurance and Hello Alice,[87] a Houston-based fintech platform whose grant program with Progressive helps Black-owned small businesses purchase commercial vehicles. The court dismissed the case because the plaintiffs failed to allege an injury necessary to support their claims, and the case is now on appeal. Courts should continue to dismiss claims where the harms alleged by anti-equity plaintiffs are baseless.

The Bottom Line

While the Supreme Court's *SFFA* decision has emboldened anti-equity actors to challenge programs that seek to redress and address historical and ongoing racial discrimination, the decision does not extend to grant making or other forms of philanthropic giving.[88] Grant programs, particularly in the context of private foundations and non-profit organizations, operate under different legal frameworks than college admissions. These frameworks may allow for flexibility in considering various factors, including race or gender, to address historical and continued inequities. Organizations geared towards serving marginalized communities should assess the risks and implications of their programs alongside legal counsel and remain committed to creating greater inclusion and equity. For example, if an entity wants to create a race-specific grants program, it could structure grants as gifts, instead of as contracts; try race-neutral methods to create a diverse pool of applicants; and provide a range of opportunities, including some that are open to all.

People's Right to Government Boards That Represent Them

State and local governments have a range of boards that govern various industries and aspects of life, such as health care, real estate, and civil rights commissions. Some of these boards are governed by rules regarding racial or other identity-related composition ranging from requirements for inclusion to suggestions to help ensure boards are representative of the broader community. These government boards are another area that have come under attack in the courts by anti-equity actors.

Current Landscape of Legal Challenges

In February 2024, AAER sued Alabma's Governor, alleging that a law about the Alabama Real Estate Appraisers Board (AREAB) violates equal protection. The law requires that at least two of nine board members be racial minorities, and that the board should generally reflect the community. The Alabama Association of Real Estate Brokers, represented by Democracy Forward, was allowed to intervene in May 2024 when it became apparent the Governor was not fully defending the law.[89] In July 2024, the Association defeated AAER's attempt to prematurely end the case when the Court dismissed the challenge to the general diversity language and allowed the case to proceed.[90] The Alabama law plays an important role in addressing ongoing and historical racial discrimination, including against Black Alabamians, in appraisals and related fields. This case is in progress.

Other challenges to public board composition provisions are being litigated across the country. Do No Harm, an organization that has fervently worked against legislation and policies that protect underserved and underrepresented communities in the context of health care, filed suit against Louisiana,[91] Montana,[92] and Tennessee.[93] Other actors have filed similar challenges to health care related boards in Arkansas[94] and Minnesota.[95] The lawsuits challenge provisions that aim to ensure that government boards include representation from diverse communities.
Diverse health care boards are essential for addressing the complex and varied needs of diverse patient populations. When boards are racially and otherwise diverse, they are better equipped to innovate and implement equitable policies that can reduce disparities in health care access, treatment, and outcomes, ultimately leading to a more effective and just health care system. *(These cases are discussed further in the health care section.)*

Likewise, in Asheville, North Carolina, there is a challenge to the Human Relations Commission,[96] alleging that its policy stating that "the consideration of appointment of members shall provide equal access and opportunity to serve upon the Commission to all historically disadvantaged groups" is racially discriminatory. The case is currently pending in federal district court.

The Bottom Line

Governments must continue to create more inclusive environments that genuinely reflect and serve their diverse constituencies.
Diversity on government boards is essential for bringing together a wide range of perspectives, experiences, and ideas fostering innovation and creativity. By embracing greater inclusion, our state and local government boards can better understand and serve their communities on everything from health care to real estate to local civil rights enforcement.

People's Right to Equitable Government Programs

Anti-equity actors have also been filing suit against government programs, claiming that programs intended to remedy discrimination and promote equity are unconstitutional. These cases have been filed in a variety of areas, including against policies that seek to avoid excluding companies owned by socially and economically disadvantaged individuals from important government benefits and opportunities. These cases have been brought against all levels of government. Many have been dismissed on standing grounds, but a small number of courts have issued opinions that reverse decades of law.

Current Landscape of Legal Challenges

In *Mueller v. Gramian*,[97] a white female business owner sued the federal and Pennsylvania transportation departments, alleging that the federal Disadvantaged Business Enterprise (DBE) program is unconstitutional because it seeks to ensure that companies owned and controlled by socially and economically disadvantaged individuals are not left out of federal transportation contracting. The court dismissed the case in September 2023 because the business owner did not show that her claims were redressable and because she did not demonstrate standing. This case underscores that fact the entities challenging these programs have often not suffered any harm, but are rather anti-equity actors seeking to eliminate all kinds of programs intended to remedy discrimination. Another case was filed by Mid-America Milling Company against the federal Department of Transportation[98] in October 2023, challenging the same federal DBE program. That case is still ongoing.

As with the U.S. Department of Transportation, the U.S. Department of Agriculture (USDA) aims to ensure that businesses owned by "socially and economically disadvantaged individuals," who are defined as "those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities," are not excluded from federal contracting and support.[99] In March 2020, Ultima Services filed suit against the USDA alleging that this program is unconstitutional. This case has yet to be finally decided, but the court enjoined the program in the interim, finding that it likely does not pass legal muster. Similar to the *Mid-America Milling Company* case, this decision places at risk the federal government's ability to create and implement grant programs designed to remedy race discrimination.

In *Strickland v. USDA*,[100] a group of farmers and farms challenged eight other USDA programs targeted at emergency relief. The plaintiffs allege that they were racially discriminated against by elements of the programs intended to aid new farmers, limited resource farmers, and socially disadvantaged farmers. Although the case remains ongoing, the district court ordered the USDA to halt a portion of one program based on the socially disadvantaged farmer designation.

Cases have also been filed against federal government policies that provide services to minority business enterprises. For example, in *Nuziard v. Minority Business Development Agency*,[101] three white business owners sued the Minority Business Development Agency (MBDA), alleging that certain MBDA centers engage in racial discrimination by limiting access to services to only minority business enterprises, statutorily defined as those owned and operated by socially or economically disadvantaged individuals, presumptively including certain groups.

The court ruled in favor of the business owners, declaring that these provisions were unconstitutional and permanently enjoined the MBDA from imposing racial and ethnic presumptions regarding the Agency's scope of service.

The Bottom Line

These legal actions serve as a stark reminder that government efforts to promote a more inclusive and equitable society are met with significant resistance. The persistence of these challenges highlights the need for continued advocacy and vigilance to defend and advance civil rights goals to ensure that policies aimed at redressing historical and systemic injustices are not dismantled, but rather strengthened and effectively implemented.

People's Right to Health Care Equity

Anti-DEI actors, including the misleadingly named Do No Harm organization, are also trying to dismantle initiatives designed to address health disparities. Cases filed in this context include challenges to racially and otherwise inclusive policies on health boards,[102] implicit bias trainings for health professionals, and the federal government's support for anti-racism plans. These coordinated attacks threaten to undermine progress made in addressing systemic health disparities and ensuring equitable health care access for all populations.

Current Landscape of Legal Challenges

Training Related to Licensing

In *Khatibi v. Lawson*,[103] Do No Harm and two physicians sued the Medical Board of California over AB24, a state law that requires physicians to complete implicit bias training, arguing that it violates the First Amendment. Studies have shown that health care providers often have negative biases towards Black and other minority patients, and that these biases are correlated with poorer communication and lower quality of care, likely contributing to existing health care inequities.[104] The California law was passed in an effort to rectify these inequities, but was challenged on the grounds that it allegedly violates the First Amendment's ban on compelled speech, amounts to viewpoint discrimination, and places an unconstitutional condition on free speech. The court has twice dismissed this case, finding that the government can in fact require people to take certain training tied to professional licenses. The case is on appeal. Although not addressed in this case, anti-discrimination training is not only legal, it can be required in some jurisdictions;[105] is helpful for defending against civil rights claims, as recognized by the Supreme Court;[106] and helps to promote a more equitable workplace, as outlined recently by the EEOC, including in an amicus brief.[107]

Programs and Fellowships for Minorities and Underrepresented People

Do No Harm filed suit against Vituity, challenging the legality of an incentive program that provides a bonus to Black physicians who apply. The parties both stipulated to dismiss the case and expressly agreed that in future applications Vituity "may only take into consideration how race affected a physician's life, be it through discrimination, inspiration, or otherwise."[108] This language change underscores that entities can still maintain programs that account for life experiences relating to race without limiting applicants to those of any particular racial backgrounds. Title VII allows employers to consider race through voluntary affirmative action programs if they meet particular criteria.[109] The *SFFA* decision did not change the fact that the changes Vituity made are not required by law, but may make programs easier to defend.

Do No Harm also filed suit against *Health Affairs*,[110] alleging that the journal's fellowship program for minority and underrepresented groups in the field of health policy and services research was unlawful because it discriminates based on race. Do No Harm voluntarily dismissed the case after the journal agreed to change its application but notably, still preserved its right to prioritize people with a commitment to racial equity. Do No Harm also filed suit against Pfizer,[111] alleging that the company's fellowship program was unlawful—which, in 2022, included as one of its eligibility requirements "meet[ing] the program's goals of increasing the pipeline for Black/African American, Latino/Hispanic and Native Americans at Pfizer"[112]—because it discriminates against white and Asian American people. The case against Pfizer is still pending, despite being dismissed by both the district court and the appellate court because Do No Harm had not established standing.[113] Both of these cases serve as examples of anti-equity actors attempting to undermine racial equity programs in the context of health care.

Action Plans for Addressing Racism in the Medical System

At the federal level, a coalition of red states sued the U.S. Department of Health and Human Services and its secretary, the Centers for Medicare and Medicaid Services and its administrator, and the United States[114] alleging that the defendants' effort to incentivize health care providers to create anti-racism plans is unconstitutional. This case has yet to be decided, but serves as yet another instance of the attacks on DEI in the health care arena. Black, Latinx,

and Indigenous physicians currently account for 5.0%, 5.8%, and 0.3% of physicians[115] respectively, despite accounting for 13.6%, 19.1%, and 1.3% of the general population.[116] Black patients are more likely to have positive health outcomes when they share the same race as their provider. They are more likely to follow health care provider guidance,[117] and to report receiving preventive care[118] and needed care. Resulting benefits include a reduction in infant mortality.[119] In counties where there are more Black physicians, Black people live longer.[120] Black, Latinx, and Asian American physicians are more likely to provide health care in communities most impacted by health inequities.[121] In light of the above evidence, it is incontrovertible that we need more and not fewer programs ensuring greater health equity.

The Bottom Line

Competent care for minority and marginalized communities requires a health care system that allows providers to learn about bias. It also requires providers to reflect the communities they care for because a racially and otherwise diverse health care field is essential to address the acute health inequities in the United States.

People's Right to Inclusive School Environments

Educational institutions—including K-12 schools, libraries, and colleges and universities—are being targeted by anti-equity actors. K-12 programs that use race-neutral criteria for admissions programs that result in more inclusive school environments have come under attack in the courts. Some states have also introduced legislation that limits discussions on race, gender, and other aspects of identity, on the grounds that these topics are allegedly divisive. They have banned books and materials they claim are controversial. Libraries, traditionally seen as bastions of free information, are also under pressure, with increased book challenges and efforts to censor content related to certain identities. At the collegiate level, universities are being pressured to scale back or eliminate initiatives aimed at fostering inclusive environments.

Current Landscape of Legal Challenges

K-12 Education

Courts have confirmed that changing admissions criteria in race-neutral ways that increase the pool of minority candidates is permissible. But some schools that have sought to remove barriers to admissions have come under attack. In 2020, the Coalition For TJ sued the Fairfax County School Board after the admissions process for the competitive magnet school was revised in a way that would bring more racial diversity to the student body. Because the Supreme Court declined to hear this case, the ruling by the appeals court permitting the policy in line with longstanding legal precedent still stands.[122] Similarly, as the First Circuit affirmed in *Boston Parent Coalition for Academic Excellence Corporation v. School Committee for City of Boston*, "[t]here is nothing constitutionally impermissible about a school district including racial diversity as a consideration and goal in the enactment of a facially neutral plan."[123]

Other cases have also been filed challenging admissions policies in K-12 schools. In *Ibanez v. Albemarle County,*[124] parents and students challenged a Virginia county school board's anti-racism policy under the state constitution and a state statute. In *Smith v. The School Board of Concordia Parish*,[125] a public charter school in Louisiana challenged a consent decree requiring race-specific admissions practices, arguing that such practices discriminate based on race. The Fifth Circuit rejected its claim on procedural grounds.

Courts ruled against the anti-equity actors in these cases. Schools should continue to focus on removing unnecessary barriers by revising their admissions policies in ways that will help ensure greater racial and other diversity in their student bodies.

Attacks on school diversity are not new. Anti-equity actors previously targeted critical race theory in the same way they now target DEI. In 2020, then-President Trump signed an executive order forbidding federal employees from receiving training on a number of "divisive concepts," including the idea that any race was inherently superior to another, or that individuals should bear guilt for things that happened in the past.[126] Following that order, over 15 states have signed into law [127] or otherwise approved restricting critical race theory in schools.

There has also been an accompanying movement to ban certain books and educational materials in classrooms and libraries. New efforts seek to remove and restrict access to materials that explore race, gender, and sexuality under the guise of protecting students from content that is controversial or "divisive."[128] 21 states have banned books[129] in their classrooms related to these topics.

Students, parents, and advocates around the country are fighting back. In Florida, parents, authors, and publishers have challenged numerous school district decisions across the state. In one case brought by parents, students, authors, Penguin Random House, and Pen America, the court found that the plaintiffs had "plausibly allege[d]" that the book removals were based on ideological objections or disagreements with the underlying messages.[130] Similarly, a federal court in Florida has allowed a case about access to the book *And Tango Makes Three* to proceed. The court found that the authors of the book and a student had alleged enough about the school district's motivation for removing the book.[131] The authors, along with three students and two parents, filed a similar challenge to a different county's decision to remove the book.[132] All three cases are ongoing.

In Prattville, Alabama, a number of parents, a grassroots organization supporting the freedom to read, and a state library association (all represented by Democracy Forward),[133] are challenging a public library board policy that prohibits the library from acquiring books and other materials that include sexual orientation or gender identity, among other categories.[134] The Prattville families litigating this case seek to ensure that parents, not politicians, decide what books their children read. They want to make sure that all families have access to books with characters that look like them.

Parents who oppose removing books from schools and public libraries are working to ensure that they are not shut out of the process entirely. For example, Democracy Forward and other organizations are representing parents challenging a Florida process for State review of school board decisions on book objections that is only available to parents who want to remove books.[135]

Finally, a Virginia state appellate court affirmed dismissal of Alliance Defending Freedom's challenge to a school board's anti-racism policy, training, and regulations in *Ibanez v. Albemarle County School Board*.[136] The court rejected the argument that the school board was treating people differently on the basis of race or religion.[137]

Higher Education

In response to the Court's *SFFA* decision, the U.S. Department of Justice issued guidance that "nothing in [the Court's] opinion should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise."[138] Colleges and universities can and should continue to assess how applicants' individual backgrounds and attributes—including those related to their race, experiences of racial discrimination, or the racial composition of their neighborhoods and schools, for example—position them to contribute to campus in unique ways.[139]

Significantly, in the year since *SFFA*, the courts that have considered admissions programs in the context of military academies have uniformly allowed the practice of considering race to remain in effect. In a challenge to the U.S. Naval Academy's admissions practices, the same anti-equity actors who brought *SFFA* suggested that the June 2023 decision should automatically render the Naval Academy's practice unconstitutional. The district court rejected that claim, noting that the case presented different facts and potentially different interests.[141] Likewise, a district court allowed West Point's admissions practices to remain in place, denying the request for preliminary injunction, finding that the questions were sufficiently distinct that the court needed a full understanding of the compelling interests, narrow tailoring, and other factors in order to consider the constitutional questions.[141] The Supreme Court implicitly agreed,

rejecting a request to hear the case, noting that the record was underdeveloped.[142]

Educational institutions may continue to pursue targeted outreach, expanded recruitment efforts, and pipeline or pathway programs that focus on certain groups to achieve a diverse student applicant pool. These programs allow schools to connect with a broad range of prospective students—including those who might otherwise not learn about these institutions and their educational programs, or who might not envision themselves as potential candidates for admission.[143]

Despite the narrow ruling of *SFFA*, over 30 bills[144] in the U.S. seek to restrict DEI initiatives in higher education. As of June 2024, Tennessee, Texas, Alabama, Idaho, Iowa, Florida, Utah, and the Dakotas have all signed such bills into law. Together, these bills can impact a wide range of initiatives, from eliminating DEI offices and programs to prohibiting colleges and universities from requiring employees to complete DEI training. Advocates are considering possible legal action.

The Bottom Line

It is imperative for educational institutions to remain proactive and vigilant in their commitment to fostering more inclusive and equitable environments. We must steadfastly continue implementing, supporting, and uplifting policies that support DEI to counteract regressive forces and ensure that these institutions remain strongholds for these values. Schools should continue to decrease barriers to admissions at all levels, including through race-neutral criteria that allow for greater access and by considering essays that detail applicants' lived experiences.

Parents should continue to advocate for their children to have access to books that discuss the histories and experiences of people of color and other marginalized groups. They should resist efforts to curtail conversations about systemic inequities and social justice. These efforts reflect a broader ideological push to redefine educational narratives and exclude perspectives that highlight diversity and equity issues.
Advocates should counter bills in states that seek to prevent DEI-related initiatives in educational settings, and continue to be vocal about the need for programs that foster greater inclusion.

"It is imperative for educational institutions to remain proactive and vigilant in their commitment to fostering more inclusive and equitable environments. We must steadfastly continue implementing, supporting, and uplifting policies that support DEI to counteract regressive forces and ensure that these institutions remain strongholds for these values. "

What's Next?

What's Next?

The attacks on DEI will not end anytime soon. Neither will our work to respond to them alongside our partner organizations. DEI initiatives are both lawful and necessary, and Democracy Forward will continue to support and uplift such programs. We will not let extremist actors further polarize our society.

Democracy Forward has closely reviewed "Project 2025," which is a well-funded effort to enable a future anti-democratic administration to take swift, regressive action. The Project proposes cutting wages for working people, dismantling social safety net programs, redefining the way our society operates, undermining our economy, and—of particular relevance here—rolling back core civil rights protections.

Threatened by decades of progress in advancing greater equality for all, the authors of Project 2025 want to eliminate protections against discrimination, including all DEI-related initiatives. Their playbook removes equity from a range of contexts including not just race, but also LGBTQ+ rights. Make no mistake, no matter the outcome of this fall's election, our work is far from finished.

Despite the range of legal attacks across the fronts detailed in this report, many of the challenges have not survived judicial scrutiny at the early stages of litigation. We cannot do our opponents' work for them and over-correct. We cannot be deterred because we are the majority. We must instead come together to defend, preserve, promote, and affirm DEI initiatives.

Please join us in the generational fight for democracy. If you would like to receive updates on this landscape, head to Democracy Forward's website and contact us to learn more.[145] Together, we will protect DEI principles as part of the bold and necessary work to build our multi-racial democracy.

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to visit Democracy Forward's website to learn more about what you can do.

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41. The Health Affairs case was voluntarily dismissed after Health Affairs removed the challenged language but maintained language that says applicants should be "engaged in health services research that advances racial

health equity among historically marginalized populations." The Pfizer case has been twice dismissed on standing grounds and is now pending once again.

42. *Am. All. for Equal Rts. v. Perkins Coie,* No. 3:23-cv-01877 (N.D. Tex. *Joint Stipulation of Dismissal filed* Oct. 11, 2023)
43. *Am. All. For Equal Rts. v. Morrison Foerster,* No.1:23-cv-23189 (S.D. Fla. *dismissed* Oct. 11, 2023)
44. *Am. All. for Equal Rts. v. Winston & Strawn LLP,* No. 4:23-cv-04113 (S.D. Tex. *dismissed* Dec. 11, 2023)
45. Roe, D. (2023, October 30). Winston & Strawn Sued by Blum-Led Group Over 1L Diversity Scholarship. *American Lawyer*. Retrieved from https://www.law.com/americanlawyer/2023/10/30/winston-strawn-sued-by-blum-led-group-over-1l-diversity-scholarship/
46. *Young v. Colorado Dep't of Corr.,* 94 F.4th 1242 (10th Cir. 2024)
47. *Chislett v. New York City Dep't of Educ.,* No. 1:2021-cv-09650, 2024 WL 1118852 at *6 (S.D.N.Y. 2024)
48. *De Piero v. Pennsylvania State Univ.,* No. 23-2281, 2024 WL 128209 (E.D. Pa. 2024)
49. Br. of the Equal Emp. Opportunity Commission as Amicus Curiae at 14, *Vavra v. Honeywell Int'l Inc.*, No. 23-2823 (7th Cir. 2023) No. 19
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52. *Id.*
53. *Netzel v. Am, Express Co.,* No. 2:2022-cv-01423, 2023 WL 4959587 (D. Ariz. 2023)
54. *Nat'l Ctr. for Pub. Pol'y Rsch. v. Schultz,* 2:22-cv-00267, 2023 WL 5945958 (E.D. Wash. 2023)
55. Discussed in the grant programs section of the report in *Correll v. Amazon,* No. 3:21-cv-01833, 2023 WL 6131080 (S.D. Cal. 2023) , *Bolduc v. Amazon,* No. 4:22-CV-00615, 2024 WL 1808616 (E.D. Tex. 2024), and *Alexandre v. Amazon,* No. 22-cv-1459, 2024 WL 2445705 (S.D. Cal. 2024)
56. Discussed in the health care section of the report in *Do No Harm v. Pfizer,* 96 F.4th 106 (2d Cir. 2024).
57. *Schultz,* 2023 WL 5945958 at *4
58. *Netzel,* 2023 WL 4959587
59. *Diemert v. City of Seattle,* No. 2:22-cv-1640, 2023 WL 5530009 (W.D. Wash. 2023)
60. *Khatibi v. Lawson,* No. 2:23-cv-06195 (C.D. Cal. 2024) (further discussed below)
61. The district court dismissed *Cerame v. Bowler,* No. 3:21-cv-1502, 2022 WL 3716422 (D. Conn. 2022), appeal docketed, No. 22-3106 (2d Cir. Dec. 8, 2022), a challenge to Connecticut's bar requirements, for lack of standing. The case is currently on appeal to the Second Circuit.
62. Challenges to guidelines that apply to educators in California's community college system have come under attack and are pending in *Palsgaard v. Christian,* 23-cv-01228, 2023 WL 8767516 (E.D. Cal. 2023), and *Johnson v. Watkin,* 23-cv-00848, 2023 WL 7624024 (E.D. Cal. 2023).
63. *Paul Ossmann v. Meredith Corp.,* No. 22-11462 at 17-18 (11th Cir. 2023)
64. *Price v. Valvoline,* 88 F.4th 1062 (5th Cir. 2023) (Ho, J., concurring)
65. *All. for Fair Bd. Recruitment v. Weber,* No. 2:21-cv-01951-JAM-AC, 2023 WL 3481146 (E.D. Cal. 2023)
66. *All. for Fair Bd. Recruitment v. SEC,* 85 F.4th 226 (5th Cir. 2023) (en banc)
67. Br. of Academic Experts as Amicus Curiae in Supp. SEC, *All. for Fair Bd. Recruitment v. SEC*, 85 F.4th 226 (5th Cir. 2023) (En Banc) No. 445
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71. Br. for Major American Business Enterprises Supp. Resp'ts, *Students for Fair Admissions v. President and Fellows of Harvard Coll.*, 600 U.S. 181 (2024) (Nos. 20-1199, 21-707), available at https://www.supremecourt.gov/DocketPDF/20/20-1199/232357/20220801135424028_Nos.%=2020-1199%2021-707%20-%20Brief%20for%20Major%20American%20Business%20Enterprises%20Supporting%20Respondents.pdf; Erskine, E., Gou, A., & Snyder, E. (2022, October). A guide to the amicus briefs in the affirmative action cases. *SCOTUSblog*. https://www.scotusblog.com/2022/10/a-guide-to-the-amicus-briefs-in-the-affirmative-action-cases/; See also briefs written by the Biden administration, the National Women's Law Center, The NAACP Legal Defense and Educational Fund and the NAACP, The Massachusetts Institute of Technology, Stanford, and Microsoft fifteen Democratic senators and former senators, the American Psychological Association and other groups, the American Educational Research Association and other research organizations, Amherst and 32 other highly selective residential colleges, College Board, sixty-five members of Congress, the American Association for Access, Equity and Diversity and Fund for Leadership, Equity, Access and Diversity, the American Bar Association, and the Association of American Medical Colleges.
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73. Br. of the Equal Emp. Opportunity Comm'n as Amicus Curiae, *Roberts v. Progressive Preferred Ins. Co.*, No. 23-cv-01597 (N.D. Oh. Feb. 22, 2024) No. 38-1, *appeal docketed*, No. 24-3454 (6th Cir. May 29, 2024)
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76. *Correll v. Amazon.com, Inc.*, No. 2021-cv-01833, 2023 WL 6131080 (S.D. Cal. Sept. 19, 2023)
77. *Bolduc v. Amazon.com Inc.*, No. 2022-cv-00615, 2024 WL 1808616 (E.D. Tex. Apr. 25, 2024)
78. *Alexandre v. Amazon.com, Inc.*, No. 2022-cv-01459, 2024 WL 2445705 (S.D. Cal. May 23, 2024)
79. The district court in *Netzel v. Am. Express Co.*, No. 2022-cv-01423, 2023 WL 4959587 (D. Ariz. 2023), dismissed a challenge to American Express's anti-racism initiative and DEI policies, finding that the plaintiff failed to abide by the terms of a mandatory arbitration agreement. The case is currently pending on appeal at the 9th Circuit.
80. In *Nat'l Ctr. for Pub. Pol'y Rsch v. Schultz*, 22-cv-00267, 2023 WL 5945958 (E.D. Wash. 2023), the district court dismissed a challenge to Starbucks' DEI policies, finding that the shareholder plaintiff did not "fairly and adequately" represent shareholder interests.
81. Discussed in the health care section of the report in *Do No Harm v. Pfizer*, 96 F.4th 106 (2nd Cir. 2023)
82. *Am. All. for Equal Rts. v. Fearless Fund Mgmt.*, No. 23-13138, 2023 WL 6520763 (11th Cir. 2023)
83. *Am. All. for Equal Rts. v. Fearless Fund Mgmt.*, 103 F.4th 765 (11th Cir. 2024). Retrieved from https://www.dailyjournal.com/articles/377324-anti-dei-advocacy-groups-have-a-new-target-minority-focused-grant-programs
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85. Amicus Curiae Br. of Laws.' Comm. for Civ. Rts. Under L. in Supp. Pet'rs, *Comcast Corp. v. Nat'l Assoc. of African Am.-Owned Media*, No. 18-1171, 2019 WL 4897098 (2019)
86. *Id.*
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89. Order Granting Mot. to Intervene, *Am. All. for Equal Rts. v. Ivey*, No. 2:2024-cv-00104, 2024 WL 2034703 (M.D. Ala. May 7, 2024), No. 54; Democracy Forward. (2024, May 8). Democracy Forward. (2024, May 8). Court Rules Alabama Association of Real Estate Brokers May Intervene to Defend Representation on Alabama's State Board in AAER v. Ivey [Press release]. Retrieved from https://democracyforward.org/updates/court-rules-alabama-association-of-real-estate-brokers-may-intervene-to-defend-representation-on-alabamas-state-board-in-aaer-v-ivey/
90. Order Denying Judgment on the Pleadings, *Am. All. for Equal Rts. v. Ivey*, No. 2:2024-cv-00104, 2024 WL 3463347 (M.D. Ala. July 17, 2024) No. 71; Judge Rejects Efforts To Immediately End Alabama's Law Ensuring Racial Diversity On A State Board and Instead Allows Case to Continue to Next Stage [Press release]. Retrieved from https://democracyforward.org/updates/judge-rejects-efforts-to-immediately-end-alabamas-law-ensuring-racial-diversity-on-a-state-board-and-instead-allows-case-to-continue-to-next-stage/

91. *Do No Harm v. Edwards,* No. 2024-cv-00016 (W.D. La. 2024)
92. *Do No Harm v. Gianforte,* No. 24-cv-00024 (D. Mont. Mar. 29, 2024)
93. *Do No Harm v. Lee,* No. 2023-cv-01175 (M.D. Tenn. 2023)
94. *Haile v. Sanders,* No. 23-cv-0005 (E.D. Ark. 2023)
95. *Am. All. for Equal Rts. v. Walz,* No. 0:24-cv-01748 (D. Minn. 2024)
96. *Miall v. City of Asheville,* No. 23-cv-00259, 2024 WL 171950 at *3 (W.D. N.C, Jan. 16 2024) (internal quotations omitted)
97. *Mueller v. Gramian,* No. 2022-cv-01576 (M.D. Pa. 2022)
98. *Mid-America Milling Co. v. U.S. Dep't of Transp.,* No. 2023-cv-00072, 2024 WL 1911899 (E.D. Ky. 2023)
99. *Ultima Servs. Corp. v. U.S. Dep't of Agric.,* 683 F.Supp.3d 745, 755-56 (E.D. Tenn. 2023)
100. *Strickland v. U.S. Dep't of Agric.,* No. 24-cv-00060, 2024 WL 2886574 (N.D. Tex. 2024)
101. *Nuziard v. Minority Bus. Dev. Agency,* No. 4:23-cv-00278-P, 2024 WL 965299 at *1 (N.D. Tex. 2024)
102. As discussed above, lawsuits have also been filed in Tennessee, Louisiana, Arkansas, Minnesota and Montana against medical boards challenging the legality of policies promoting ensuring representation of people from minority groups. These requirements were put in place to help remediate current and past discrimination, ensure that their policymaking considers marginalized communities' perspectives and reduce barriers to licensure for health professionals from these communities.
103. *Khatibi v. Lawson,* No. 2023-cv-06195 (C.D. Cal. 2023)
104. FitzGerald, C. (2017, Mar 1). Implicit bias in healthcare professionals: a systemic review. PMC. Retrieved June 29, 2024, from DOI (10.1186/s12910-017-0179-8.)
105. *Vavra v. Honeywell Int'l Inc.*, No. 21-cv-06847, 2023 WL 5348764 (N.D. Ill. 2023); Br. of the Equal Emp. Opportunity Comm'n as Amicus Curiae, *Roberts v. Progressive Preferred Ins. Co.*, No. 23-cv-01597 (N.D. Oh. Feb. 22, 2024) No. 38-1, appeal docketed, No. 24-3454 (6th Cir. May 29, 2024)
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107. *Id.*
108. *Do No Harm v. Vituity,* No 3:23-cv-24746 (N.D. Fla. 2023) No. 23 at 1.
109. Br. of the Equal Emp. Opportunity Comm'n as Amicus Curiae, *Roberts v. Progressive Preferred Ins. Co.,* No. 23-cv-01597 (N.D. Oh. Feb. 22, 2024) No. 38-1, appeal docketed, No. 24-3454 (6th Cir. May 29, 2024)
110. *Do No Harm v. Health Affairs,* No. 22-cv-02670 (D.D.C. 2022)
111. *Do No Harm v. Pfizer Inc.,* 96 F.4th 106 (2d. Cir. 2024)
112. *Id*. at 110
113. *Id*.; *Do No Harm v. Pfizer Inc.*, 646 F.Supp.3d 490 (S.D.N.Y. 2022)
114. *Mississippi et al. v. Becerra et al.*, No. 1:22cv113, 2023 WL 5668024 (S.D. Miss. 2023); Democracy Forward. (n.d.). *Leading professional associations of physicians defend anti-racism health care plans in court.* Retrieved from https://democracyforward.org/work/ms-v-becerra/
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123. *Boston Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Boston,* 89 F.4th 46, 62 (1st Cir. 2023)
124. *Ibanez v. Albemarle Cnty. Sch. Bd.,* 897 S.E.2d 300 (Va. App. 2024)
125. *Smith v. Sch. Bd. of Concordia Parish,* 88 F.4th 588 (5th Cir. 2023)
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130. *PEN Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd.,* No. 3:23-cv-10385-TKW-ZCB, 2024 WL 133213 (N.D. Fla. 2024)
131. *Parnell v. Sch. Bd. of Lake Cnty.,* No. 23-cv-414-AW-MAF, 2024 WL 2703762 (N.D. Fla. 2024)
132. *Parnell v. Nassau Cnty. Sch. Bd.,* 3:24-cv-00492-WWB-MCR (M.D. Fla. 2024)
133. *Read Freely Alabama v. Autauga-Prattville Pub. Libr. Bd. of Trs.,* No. 2024-cv-00276 (M.D. Ala. 2024)
134. *Id*.
135. *Tray v. Florida State Bd. of Educ.,* No. 2024-cv-00238 (N.D. Fla. 2024); Democracy Forward. (2024, June 6). Parents assert parental rights in challenge to Florida's discriminatory book ban policy [Press release]. Retrieved June 18, 2024, from https://democracyforward.org/work/parents-assert-parental-rights-in-challenge-to-floridas-discriminatory-book-ban-policy/
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