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Equity, Diversity, And Inclusion: What Is In a Name?

Dr. LeAnne Salazar Montoya

From the gradual dismantling of Affirmative Action to the quiet proliferation of legislative efforts aimed at undermining Diversity, Equity, and Inclusion (DEI) initiatives nationwide, the subtle yet pervasive resistance to equitable progress in our institutions is far more widespread than commonly acknowledged. This alarming trend, marked by a series of covert and overt actions, poses a significant threat to the foundational principles of justice and inclusivity in educational and professional settings.

In the dynamic landscape of contemporary workplaces, the effective implementation of equity policies has become paramount in addressing historical disparities and present challenges. This article endeavors to provide a comprehensive overview of equity policies by delving into the intricacies of current legal issues surrounding them. Grounded Theory, a qualitative research method developed by sociologists Glaser and Strauss in the 1960s, has gained widespread recognition for its capacity to generate rich and comprehensive insights into complex phenomena.¹ Grounded Theory serves as the chosen methodological approach for this analysis as it offers a systematic and iterative framework to explore and understand the intricate dynamics surrounding the issues of DEI. First, this article aims to identify underlying and unexpected consequences of the Supreme Court ruling of *Students for Fair Admissions v. Harvard*.² Second, this article dissects the multifaceted aspects of equity initiatives, from the debates of

¹ BARNEY G. GLASER & ANSELM L. STRAUSS, THE DISCOVERY OF GROUNDED THEORY: STRATEGIES FOR QUALITATIVE RESEARCH (1967).

² *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

Affirmative Action to the evolving equity trends shaping organizational frameworks. Third, this article scrutinizes the potential pitfalls of DEI erasure and weakened support systems for marginalized identities, thus, spotlighting the dangers of tokenism and the consequences of DEI initiatives that inadvertently erase the very diversity sought to promote. Finally, this article aspires to provide valuable insights into fostering truly inclusive and equitable environments.

The silent sweep across the nation to introduce bills targeting DEI, effectively erasing Affirmative Action, is more prevalent than anyone thinks. As of late February 2024:

There are currently more than 30 bills across the country targeting DEI funding, practices, and promotion at schools. As of Jan. 31, seven have been signed into law by a governor: two in Florida, one in each of the Dakotas, one in Tennessee, one in Texas, and most recently, one in Utah. Only a few other bills have reached the final stages of approval while the majority are still moving through their state legislatures.³

To address the gradual decline of Affirmative Action and DEI initiatives, a robust call to action is essential, advocating for the seamless and organic integration of Diversity, Equity, Inclusion, and Accessibility (DEIA) competencies throughout all facets of academic and professional environments. This approach not only upholds justice but also cultivates a society where diversity is naturally celebrated and inclusion emerges as a genuine, shared commitment, rather than as a forced effort.⁴

³ Jessica Bryant & Chloe Appleby, *These States' Anti-DEI Legislation May Impact Higher Education*, BEST COLLEGES (Mar. 22, 2024), <https://www.bestcolleges.com/news/anti-dei-legislation-tracker/> [https://perma.cc/2MPT-YY3D].

⁴ JAMES PAUL GEE, TEACHING, LEARNING, LITERACY IN OUR HIGH-RISK HIGH-TECH WORLD: A FRAMEWORK FOR BECOMING HUMAN (2017).

I. METHODOLOGY

Grounded Theory, the methodology used in this content analysis, generates theory directly from data rather than testing pre-existing hypotheses; this exploratory nature of Grounded Theory aims to uncover patterns, themes, and relationships within the data related to diversity initiatives, legal protections, and the experiences of underrepresented communities.⁵ Additionally, because Grounded Theory allows novel perspectives, it ensures that the context of the findings is rooted in the participants' experiences.

The iterative nature of Grounded Theory is particularly advantageous in the evolving field of DEI. As data collection and analysis proceed concurrently, researchers continuously refine their understanding of the complex dynamics and emerging trends within these critical areas. This process enables researchers to adapt their focus and data collection strategies based on emerging insights, ensuring a comprehensive exploration of the multifaceted issues under investigation.

Furthermore, the flexible framework of Grounded Theory supports a variety of data collection methods, which in this analysis included: interviews with individuals facing diversity-related challenges, reviews of pertinent legal documents, and observations of organizational practices. These approaches were strategically employed to deepen the understanding of factors influencing DEI, contributing to a comprehensive analysis of the issues.

The concept of constant comparison, a key tenet of Grounded Theory, enhances the rigor of the analysis. By constantly comparing new data to existing data, categories, and codes, researchers can refine and validate emerging themes, and thus the findings more accurately represent the

⁵ BARNEY G. GLASER & ANSELM L. STRAUSS, *THE DISCOVERY OF GROUNDED THEORY: STRATEGIES FOR QUALITATIVE RESEARCH* (1967).

diverse perspectives within the scope of this analysis. This process of constant comparison fosters a robust and credible analytical process, contributing to the reliability and validity of the analysis outcomes.

Grounded Theory is particularly well-suited for unveiling the nuances of power dynamics and social processes inherent in diversity-related issues. Given the often sensitive and complex nature of the focus of this analysis, Grounded Theory provides a nuanced lens through which to explore how legal protections, diversity initiatives, and the experiences of underrepresented minorities intersect and shape one another.

Because of its powerful and apt approach, Grounded Theory was the best methodology for this analysis. Its capacity to generate theory directly from data, accommodate an iterative research process, and facilitate constant comparison aligns well with the analysis's objectives. By employing Grounded Theory, this research aims to unravel the intricate tapestry of DEI, ensuring that the insights gained are deeply rooted in the lived experiences of those directly impacted by these critical issues.

II. THE ANALYSIS

This comprehensive analysis endeavors to aggregate existing scholarship on DEI to contribute to the expanding discourse on these critical issues. By delving into current literature, the research not only seeks to broaden an understanding of DEI, but to conduct a thorough analysis of the cross-sectional nature of relevant studies. Diversity, equity, and inclusion are widely acknowledged and frequently advocated concepts in academia, but these inclusive terms are now being outlawed. Take, for example, the following law that went into effect in 2023 in Georgia:

Proposed rules for Georgia's public school teachers would remove the words "diversity," "equity," and "inclusion" from education program standards.

The Georgia Professional Standards Commission voted without discussion Thursday to delete those words and references to so-

called “ambiguous terms” from rules that guide colleges and programs that train educators. The latest changes, which go into effect July 1, are among a series of steps legislators and policymakers have taken in Georgia and beyond to rid schools of diversity, equity, and inclusion initiatives.⁶

Furthermore, this article conducts a nationwide examination of trends related to DEI, providing insights into the evolving landscape across all public institutions of higher education in states such as Utah, Tennessee, and Florida. Similar initiatives have been introduced in 19 other states across the United States but ultimately were not passed.⁷ The goal of this analysis is to document prevalent practices, identify emerging patterns, and highlight challenges in the pursuit of DEI.

The American Civil Liberties Union (ACLU) and various other social justice organizations are actively responding to the surge of legislative efforts aimed at restricting diversity, equity, and inclusion (DEI) initiatives, particularly in educational environments. These organizations view the wave of “DEI erasure” bills as part of a broader attempt to suppress discussion and education regarding systemic racism, sexism, and other critical social issues. By coming together, these groups aim to leverage their collective expertise, resources, and public influence to counteract these legislative moves. These legal actions argue that such laws violate the First Amendment rights of teachers and students to free speech and the Fourteenth Amendment’s equal protection clause. By bringing these issues to court, the ACLU seeks to overturn harmful legislation and set legal precedents that protect educational freedom. These campaigns aim to educate the public on how DEI programs contribute positively to educational and professional environments by fostering an inclusive culture

⁶ AP NEWS, *Words Like ‘Diversity,’ ‘Inclusion’ to be Removed from Georgia Teaching Program Standards* (Jun. 9, 2023, 3:49 PM), <https://apnews.com/article/georgia-education-standards-diversity-equity-inclusion-12f009205eb5fef5ae5dd135c8fde0dd> [<https://perma.cc/7ZM6-2EKS>].

⁷ Bryant & Appleby, *supra* note 3.

that benefits everyone. Recognizing the strength in numbers, organizations are forming coalitions that cross sectors and industries. These coalitions work to unify the messaging against DEI erasure and increase the effectiveness of their advocacy efforts. By combining forces, these groups can pool resources, share best practices, and coordinate actions on a national scale, making it more difficult for divisive policies to take root. Through legal action, advocacy, direct support, and coalition building, these organizations are committed to ensuring that the progress made in understanding and addressing systemic inequalities is not undone. Their collective action highlights the crucial role that organized resistance plays in safeguarding educational freedom and social progress.

This article aims to bring heightened awareness and actionable insights to DEI matters within Pre-K–16 institutions. Since colleges and universities prepare the next generation of school leaders, limiting the use of DEI in post-secondary institutions of higher education has a direct effect on the leadership of tomorrow in Pre-K–16 schools. By highlighting this discrepancy, the research recognizes that performative measures fall short of meeting the genuine needs of diverse communities within educational institutions; through this research, this article aims to catalyze discussions and actions that go beyond symbolic gestures to foster a more inclusive and equitable environment for all leaders in the Pre-K–16 education continuum.

III. OVERVIEW OF AFFIRMATIVE ACTION POLICIES

Affirmative Action, a policy implemented to address historical inequalities and systemic discrimination, has played a pivotal role in reshaping the landscape of college admissions.⁸ Beyond its direct impact on student demographics, Affirmative Action initiatives contribute

⁸ Peter Arcidiacono & Michael Lovenheim, *Affirmative Action and the Quality-Fit Trade-Off*, 54 J. ECON. LIT. 3 (2016).

significantly to fostering diversity in education.⁹ Specifically, colleges that employ Affirmative Action policies not only create a more inclusive student body but also indirectly influence the composition of professionals in fields that are desperately in need of diversity.

Common understandings of meritocracy often uphold White Privilege, and because these ideals are so deeply ingrained in society, individuals across various racial identities tend to accept them. It's important to note, however, that while parents of racially minoritized students recognize how societal structures contribute to inequalities, they may still strongly adhere to meritocratic beliefs. This phenomenon, known as "dual consciousness," acknowledges the complex acceptance of both the systemic barriers and the merit-based ideals that individuals navigate.

In the realm of college education, Affirmative Action catalyzes broadening access to higher learning opportunities for historically marginalized groups. Colleges actively seek to enroll students from diverse backgrounds, and the ripple effect of this effort extends beyond graduation. Graduates from diverse backgrounds are better positioned to fill much-needed positions in education, particularly in school leadership and teaching roles. These positions play a crucial role in shaping the educational experience for students nationwide.

By diversifying the pool of educators and leaders, Affirmative Action contributes to breaking down stereotypes and providing students with relatable role models. The indirect impact of this is fundamental in addressing the underrepresentation of individuals from different races, genders, and ethnic groups. The impact must be addressed equally to argue that colorism, ageism, and body type are additional factors to be considered during diversity hiring, leadership, and representation within schools. This is especially important for frontline positions like teachers and school

⁹ CLIFTON CONRAD & MARYBETH GASMAN, *EDUCATION A DIVERSE NATION: LESSONS FROM MINORITY-SERVING INSTITUTIONS* (2015).

administrators. When students see individuals who share their backgrounds and identities in both leadership and teaching roles, they are more likely to envision themselves pursuing similar paths.¹⁰

The indirect effects of Affirmative Action transcend individual aspirations and have the potential to reshape the culture of educational institutions, creating environments that are more inclusive, culturally aware, and responsive to the diverse needs of students. The impact of diverse representation in education goes beyond the classroom, both influencing broader societal perceptions and fostering a more equitable as well as harmonious future.¹¹

Affirmative Action not only fulfills individual aspirations but also plays a crucial role in transforming the culture of educational institutions. It fosters environments that are inherently more inclusive, culturally aware, and adept at responding to the diverse needs of students, thereby enriching the educational landscape. The result is a positive feedback loop, where increased diversity in colleges contributes to a more diverse and inclusive educational landscape across the nation, ultimately shaping the aspirations and achievements of future generations.

Affirmative Action, as a policy designed to address historical and systemic disparities, has been a key driver in diversifying college campuses; however, recent policy changes and legal challenges have altered—and will continue to alter—the educational landscape, raising pertinent questions about the future of DEI in our schools.

Exploring how the removal of Affirmative Action affects the composition of school leadership. Beyond the immediate impact on college admissions, the article explores how these changes resonate in the

¹⁰ Julie López Figueroa & Gloria M. Rodriguez, *Critical Mentoring Practices to Support Diverse Students in Higher Education: Chicana/Latina Faculty Perspectives*, 2015 NEW DIRECTIONS FOR HIGHER EDUC. 23 (2015); WILLIAM AYERS, *TRANSFORMING EDUCATIONAL PATHWAYS FOR CHICANA/O STUDENTS: A CRITICAL RACE FEMINISTA PRACTICE* (2016).

¹¹ *Id.*

recruitment, promotion, and representation of diverse professionals in leadership roles across educational institutions nationwide. Without the mechanisms provided by Affirmative Action to ensure a broad representation of backgrounds, there is a concern that educational leadership may become less reflective of the diverse populations they serve. The article also considers the broader implications of these changes, analyzing how the altered dynamics in leadership representation might influence policy decisions, school culture, and ultimately, student outcomes. Through this comprehensive exploration, the article sheds light on the cascading effects that the removal of Affirmative Action could have on the entire ecosystem of education.

IV. LEARNING FROM EXISTING WORKS

To foster a truly inclusive and accessible campus environment, institutions must take proactive measures to engage all leaders in meaningful cultural exchange while advocating for their unique needs. A crucial prerequisite for this endeavor is the collection of data concerning the current state of campus DEI climates. This process enables institutions to comprehend the specific requirements of students—particularly those from historically marginalized groups, thus laying the foundation for tailored and effective initiatives.

The importance of data collection in understanding the needs of diverse student populations is underscored by insights from Hanover Research:

From an academic perspective, these relationships can motivate students to engage more deeply in their learning. When students feel that their teachers genuinely care about their success, they are more likely to take risks, ask questions, and strive for excellence.

This can lead to improved academic outcomes, including higher grades, better test scores, and increased graduation rates.¹²

Hanover Research emphasizes the significance of informed decision-making in creating a campus culture that not only reflects diversity but actively supports and addresses the unique challenges faced by different groups. Hanover ascertained, “There is a pressing need for schools to provide educators with the necessary training and resources to effectively engage families. This should include professional development focused on communication skills, cultural competency, and strategies for building strong relationships with families.”¹³

Moreover, the implications of laws, policies, and actions undertaken by colleges and universities are pivotal in shaping the landscape of professional workspaces. These institutions serve as crucibles for preparing individuals for the workforce and influencing the values, practices, and expectations that define professional environments. By aligning their policies with principles of equity and inclusion, higher education institutions contribute to the creation of a future workforce that values diversity and embraces inclusivity. This transformative impact extends beyond campus boundaries, shaping the broader societal landscape and reinforcing the imperative for inclusive practices in both educational and professional spheres. Therefore, a deliberate and data-driven approach to fostering DEI on campus becomes not just a campus initiative, but a catalyst for positive societal change.

V. EQUITY TRENDS

Rudine Bishop and Bell Hooks, prominent scholars in the field of Critical Race Theory and feminist studies, respectively, offer significant insights

¹² SUSAN GROUNDWATER ET AL., STATE OF DIVERSITY, EQUITY, INCLUSION, & BELONGING (Hanover Research ed., 2023).

¹³ *Id.*

into the complexities of DEI.¹⁴ When considering their works in the context of performative Affirmative Action policies and hirings, a precise understanding of the potential dangers emerges.¹⁵ Performative Affirmative Action refers to actions taken by organizations to appear diverse without addressing the deeper systemic issues. While these policies may meet surface-level diversity quotas, Bishop and Hooks argue that they often fall short of achieving true equity.¹⁶

Performative Affirmative Action risks tokenizing individuals from underrepresented groups, reducing them to symbolic gestures rather than addressing the structural inequalities that persist. Bishop's 2015 work, such as *Free Within Ourselves: The Development of African American Children's Literature*, emphasizes the importance of authentic representation and the dangers of reducing diversity to a mere performance.¹⁷ Similarly, works like *Ain't I a Woman: Black Women and Feminism*, critique superficial gestures that perpetuate oppressive power structures.¹⁸ Both scholars caution against a mere cosmetic approach to diversity, emphasizing the need for substantive changes to achieve true equity.

Equity, in essence, goes beyond numerical representation; it encompasses both creating fair opportunities as well as dismantling systemic barriers. Equity involves acknowledging both historical and systemic injustices as well as actively working to rectify them. Laws and policies intended to support equity serve as crucial tools in this endeavor. The implementation of equity-focused policies reflects a commitment to addressing the root

¹⁴ See BELL HOOKS, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* (1981); see also R.S. BISHOP, *FREE WITHIN OURSELVES: THE DEVELOPMENT OF AFRICAN AMERICAN CHILDREN'S LITERATURE* 150 (2013).

¹⁵ Tara J. Yosso, *Whose culture has capital? A critical race theory discussion of community cultural wealth*, 8 RACE, ETHNICITY, EDUC. 69 (2005).

¹⁶ See HOOKS, *supra* note 14; see also BISHOP, *supra* note 14.

¹⁷ R.S. BISHOP, *FREE WITHIN OURSELVES: THE DEVELOPMENT OF AFRICAN AMERICAN CHILDREN'S LITERATURE* 150 (2007).

¹⁸ HOOKS, *supra* note 14.

causes of inequality. For instance, Affirmative Action policies, when designed to be comprehensive and holistic, aim to level the playing field by considering both historical disadvantages and systemic biases.

Referencing the works of these scholars within the context of equity policies underscores the importance of moving beyond performative actions. To ensure genuine equity, laws, and policies must be grounded in an understanding of the historical and structural factors that contribute to such disparities. This perspective aligns with Hooks' call for transformative education and Bishop's emphasis on fostering a positive racial identity in literature for young readers. By incorporating these principles into policies, institutions can address the root causes of inequity and contribute to meaningful, lasting change.

Thus, the insights provided by Rudine Bishop and Bell Hooks shed light on the potential pitfalls of performative Affirmative Action policies and the importance of authentic, substantive efforts toward equity. Equity, as a concept, demands a comprehensive approach that acknowledges historical injustices and actively works to dismantle systemic barriers. Laws and policies designed to support equity play a pivotal role in this process, serving as vehicles for institutional change that goes beyond surface-level diversity. By heeding the warnings and recommendations of scholars like Bishop and Hooks, society can move towards a more genuinely equitable future, where diversity is not just a performance, but a lived reality that transforms institutions and fosters inclusivity.

Analyzing enrollment trends and the subsequent trajectory of individuals entering the education sector sheds light on the indirect consequences of these policy shifts. This analysis is crucial for understanding how the demographic makeup of our schools' workforce influences the pool of potential leaders. As policies evolve, so does the landscape of who enters and advances within educational careers, raising important questions about representation and inclusivity at leadership levels. What challenges and opportunities arise in fostering a more inclusive and representative group of

individuals in school leadership positions? These questions are not merely rhetorical but are pivotal in examining the long-term impact of diversity policies on the educational sector. By exploring these queries, this article aims to uncover the mechanisms through which demographic shifts in the workforce contribute to, or hinder, the development of diverse leadership. This in turn affects the policy-making and educational strategies that define the future of schooling, making it imperative to address these concerns comprehensively.

VI. TOKENISM

Tokenism, the superficial practice of making only a minimal effort towards inclusivity, often by recruiting a small number of people from underrepresented groups to appear equitable, stands as a critical concern in the discourse on DEI. This article delves into the issue of tokenism within academic and professional environments, exploring how such practices not only fail to address the underlying systemic inequities but also how they can undermine genuine efforts towards creating a truly inclusive culture. By examining the implications of tokenism, this article aims to highlight the difference between mere representation and meaningful participation, thereby underscoring the need for substantive change in the implementation of DEI initiatives.

By understanding the intricacies of Affirmative Action's removal and its far-reaching effects, the path toward equitable and diverse educational leadership can be effectively navigated. Dissecting the implications, confronting the challenges, and fostering open dialogue collectively present the opportunity to envision a future where school leadership mirrors the rich diversity of the students they serve. This comprehensive approach is essential for cultivating an environment where inclusivity is not just an ideal, but a reality.

Affirmative Action policies, which were initially designed to address historical inequalities and promote diversity, can inadvertently lead to

tokenization, wherein individuals from underrepresented groups are treated as mere symbols of diversity without receiving genuine support or advancement.¹⁹ While the intentions behind Affirmative Action are often noble, the risks and dangers associated with tokenization underscore the need for a comprehensive and careful approach to diversity initiatives.

Tokenization occurs when organizations implement Affirmative Action policies for appearance rather than substance.²⁰ Individuals from underrepresented groups may be hired or promoted solely to meet diversity quotas, thus creating the illusion of inclusivity while perpetuating deeper systemic issues. This superficial approach poses several risks, including the devaluation of merit, the reinforcement of stereotypes, and the hindrance of professional as well as educational development for those who are tokenized, each of which is discussed further below.

As mentioned above, one significant risk of tokenization is the devaluation of merit and competence. When individuals are chosen primarily based on their demographic characteristics rather than their qualifications and abilities, the principles of meritocracy are undermined. This can lead to skepticism and criticism from both within as well as outside of the organization, with doubts arising about the competence of those perceived as beneficiaries of Affirmative Action. Tokenized individuals may face increased scrutiny, thus contributing to a hostile work or educational environment that undermines their professional and educational growth.

In a meritocratic system, the role of education in determining social status is profoundly significant. Moore emphasizes that an individual's social standing is increasingly contingent upon their educational

¹⁹ *Definition of Tokenism*, THE BRITANNICA DICTIONARY, <https://www.britannica.com/dictionary/tokenism> [<https://perma.cc/CMH2-L42E>].

²⁰ *Id.*; See also Meghan S. Stroshine & Steven G. Brandl, *Race, Gender, and Tokenism in Policing: An Empirical Elaboration*, 14 POLICE QUARTERLY 344 (2011).

achievements.²¹ This trend underlines the critical function of educational institutions in shaping societal hierarchies. As highlighted by Bell, the historical role of colleges and universities has evolved from merely mirroring the existing societal class structure to actively influencing and controlling it.²² These institutions have become pivotal “gatekeepers” of class position, with access to higher education playing a decisive role in determining an individual’s future opportunities and their place within the broader social stratification. This shift has significant implications, suggesting that the landscape of social mobility and class dynamics is now largely governed by the accessibility and quality of educational opportunities available to individuals.²³

Additionally, as previously discussed, tokenization reinforces harmful stereotypes and perpetuates biases. When individuals from underrepresented groups are treated as tokens, stereotypes are inadvertently reinforced rather than challenged.²⁴ Consequently, the accomplishments and capabilities of those who are tokenized are undermined, further marginalizing them within their professional or educational settings.

Moreover, as indicated above, tokenization poses a significant barrier to the professional and educational development of individuals from underrepresented groups. Instead of receiving genuine support and mentorship, tokenized individuals may find themselves isolated or burdened with unrealistic expectations.²⁵ The pressure to represent an entire demographic group can be overwhelming and distract from their professional or educational goals, thus hindering their ability to thrive and

²¹ Rob Moore, *Education and society: Issues and explanations in the sociology of education*, 27 BRITISH J. OF SOCIOLOGY OF EDUC. 111 (2004).

²² DANIEL BELL, *THE COMING OF POST-INDUSTRIAL SOCIETY* (1973).

²³ Amy Liu, *Unraveling the myth of meritocracy within the context of US higher education*, 62 HIGHER EDUC. 383 (2011).

²⁴ OSEI-KOFI NANA ET AL., *TRANSFORMATIVE APPROACHES TO SOCIAL JUSTICE EDUCATION: EQUITY AND ACCESS IN THE COLLEGE CLASSROOM* (2021).

²⁵ *Id.*

contribute meaningfully to their respective fields. Tokenization thus undermines the principles of meritocracy, reinforces stereotypes, and impedes the professional as well as educational development of those affected.

To mitigate the risks of tokenization, it is crucial to approach Affirmative Action policies with a focus on holistic diversity and inclusion. Organizations should prioritize creating environments that go beyond numerical representation to foster inclusive cultures where individuals from all backgrounds can contribute and succeed based on their merits and abilities. Developing mentorship programs, providing professional development opportunities, and making efforts to address systemic barriers are essential components to effectuate such a diversity strategy.

Therefore, while Affirmative Action policies aim to address historical inequalities, the risks and dangers of tokenization highlight the need for careful policy implementation. To truly promote diversity and inclusion, organizations must move beyond superficial measures and embrace comprehensive strategies that create environments conducive to the genuine advancement of individuals from underrepresented groups.

VII. REVIEW AND TIMELINE OF IMPORTANT RELEVANT COURT CASES

The history of Affirmative Action and its impact on educational policy in the United States is marked by several key milestones. In 1954, the landmark decision in *Brown v. Board of Education* established that segregation in public schools violates the Equal Protection Clause, setting a precedent for equality in education.²⁶ This foundation was further built upon during the early to mid-1960s, as Presidents John F. Kennedy and Lyndon B. Johnson laid the groundwork for Affirmative Action in employment and government contracting, culminating with the passage of

²⁶ *Brown v. Board of Education*, 347 U.S. 483 (1954).

the Higher Education Act in 1965.²⁷ The debate around Affirmative Action in education continued, and in 1978, the *Regents of the University of California v. Bakke* decision ruled against racial quotas but affirmed the consideration of race as a factor in admissions.²⁸

The discourse evolved through the 1990s, with significant legislation such as Title V in 1992, which aimed to improve higher education opportunities for historically underserved groups. However, the legal landscape shifted in 1996 with *Hopwood v. Texas* and California's Proposition 209,²⁹ which challenged and subsequently banned Affirmative Action in those states. Despite these challenges, Affirmative Action was upheld on a national level in 2003 when *Grutter v. Bollinger* supported the use of race in admissions at the University of Michigan Law School.³⁰ This stance was re-affirmed in 2016 by *Fisher v. University of Texas at Austin*, which maintained that race could be considered under strict scrutiny to achieve diversity in higher education.³¹

Yet, the trajectory of Affirmative Action faced a dramatic turn in 2023, when a significant decision by the Supreme Court of the United States prohibited the consideration of race in college admissions, marking a pivotal moment in the ongoing dialogue about DEI in educational leadership.³² These developments highlight the evolving nature of policy and its profound implications for shaping a more equitable educational landscape.³³

²⁷ Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (1965).

²⁸ *University of California Regents v. Bakke*, 438 U.S. 265 (1978).

²⁹ *Hopwood v. State of Texas*, 78 F.3d 932 (5th Cir. 1996).

³⁰ *Grutter v. Bollinger*, 539 U.S. 306 (2003).

³¹ *Fisher v. University of Texas at Austin*, 570 U.S. 297 (2013).

³² *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

³³ *Id.*

VIII. DIVERSITY, EQUITY, INCLUSION AND THE ERASURE— CONSEQUENCES UNFORESEEN

DEI has emerged as a crucial focal point in contemporary discourse, reflecting a commitment to fostering fair and inclusive environments. Within the pursuit of these noble goals, however, there is the risk of both unintended consequences and erasure. This article explores the complexities surrounding DEI initiatives, shedding light on the unforeseen repercussions of inadvertently neglecting certain perspectives, experiences, or groups.

DEI initiatives often begin with the noble intention of creating diverse and inclusive spaces; however, in the zeal to address specific issues or groups, there is a risk of inadvertently overlooking others. This erasure can result in neglecting intersectionality—the interconnected nature of social categorizations such as race, gender, and socioeconomic status.³⁴ Additionally, the consequences of erasure within DEI initiatives can be profound. When certain voices or experiences are marginalized, the overall effectiveness of diversity efforts is compromised. For example, a focus on gender diversity may inadvertently sideline issues related to ethnic or cultural diversity. This not only undermines the comprehensive nature of DEI but also perpetuates exclusivity within marginalized groups.

As mentioned above, an integral aspect often overshadowed in DEI discussions is intersectionality. Failing to acknowledge the complex interplay of various identities can result in the erasure of individuals who occupy multiple marginalized identities. An effective DEI strategy must, then, both recognize and address the unique challenges faced by those at the intersections to avoid the trap of oversimplification.

To navigate the complexities of DEI and mitigate unforeseen consequences, organizations and institutions must adopt a holistic approach. Organizations need to conduct thorough assessments of their DEI initiatives

³⁴ Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241 (Jul. 1991).

to identify areas of potential erasure. Essential components of a proactive strategy include listening to and amplifying diverse voices, creating inclusive spaces for dialogue, and fostering a culture of continuous learning.

A. The Role of Education and Awareness

Education plays a pivotal role in addressing the consequences of erasure within DEI initiatives. By raising awareness about intersectionality and the potential pitfalls of oversights, organizations can empower individuals to actively contribute to inclusive environments. Furthermore, through tailored training programs that focus on cultural competence and sensitivity, organizations can significantly boost the effectiveness of their DEI efforts. Such programs not only educate employees on the importance of acknowledging and respecting diverse cultural backgrounds but also provide practical skills and approaches for navigating and appreciating these differences in daily interactions and organizational decision-making.

By empowering individuals to take an active role in creating and sustaining inclusive environments, these educational initiatives foster a more engaged and aware workforce. This, in turn, contributes to a more inclusive organizational culture that can better recognize and address the nuanced needs of its diverse members, enhancing overall organizational performance and morale.

Training programs that emphasize cultural competence and sensitivity can further enhance the efficacy of DEI efforts:

A[n] outcome of the DEI policy paradigm in American higher education is related to the original intent of correcting historical wrongs. Mismatch theory, developed through an emerging research program in political economy, has shown that a narrow focus on achieving structural diversity on college campuses decreases cognitive opportunities for underrepresented

minorities by placing them, in many instances, in institutions for which they lack adequate academic preparation.³⁵

In the pursuit of DEI, acknowledging the existence of erasure and its unintended consequences is paramount. Recent developments in Texas, where legislation like SB 17 has led public colleges and universities to rename their DEI offices, underscore the need for a comprehensive and nuanced approach that prioritizes intersectionality and ensures no voice is left unheard.³⁶ Despite these offices adopting titles such as “belonging,” “community engagement,” and “student development,” challenges persist. Legislators like Senator Brandon Creighton have emphasized that mere cosmetic changes do not align with the law’s intent, signaling ongoing scrutiny and the need for substantive compliance. By fostering environments that actively resist erasure, organizations can build truly inclusive spaces that reflect the rich tapestry of human experiences. The path to genuine diversity and equity lies not only in visible representation but also in the commitment to understanding, embracing, and valuing the complexities of every individual’s unique identity.³⁷ This evolving dialogue between legislation and educational policy illustrates the critical balance required to cultivate environments where every member can thrive.³⁸

³⁵ See Peter Arcidiacono, Esteban M. Aucejo & V. Joseph Hotz, *University Differences in the Graduation of Minorities in STEM Fields: Evidence from California*, 106 AM. ECON. REV. 525 (2016). See also Peter Arcidiacono & Michael Lovenheim, *Affirmative Action and the Quality-Fit Trade-Off*, 54 J. ECON. LIT. 3 (2016).

³⁶ Kate McGee, *Texas Senate approves bill that would ban diversity programs in public universities*, The Texas Tribune (Apr. 19, 2023), <https://www.texastribune.org/2023/04/19/texas-senate-dei-universities/> [<https://perma.cc/2U4X-P3EE>].

³⁷ JEFFREY F. MILEM ET AL., MAKING DIVERSITY WORK ON CAMPUS: A RESEARCH-BASED PERSPECTIVE (2005).

³⁸ Johonna Alonso, *Are DEI Office Name Changes Enough?*, INSIDE HIGHER ED. (Apr. 10, 2024), <https://www.insidehighered.com/news/government/state-policy/2024/04/10/diversity-office-name-changes-spark-concern-both-sides> [<https://perma.cc/7PM3-A78E>].

IX. WHY DEI?

Opponents of DEI programs argue that such initiatives are unnecessary, asserting that higher education has already achieved an acceptable level of equity or equality. However, an analysis of the data, as highlighted by Hanover Research, contradicts this claim.³⁹ The data reveals that leaders belonging to marginalized groups—including individuals of color, LGBTQIA+ community members, and those identifying as disabled—frequently experience a lack of acceptance, thus resulting in unequal opportunities for academic success.⁴⁰

Contrary to the perception of achieved equity, the data demonstrates persistent disparities in the experiences of underrepresented groups within higher education. Individuals from diverse backgrounds continue to face challenges that hinder their sense of belonging and limit their access to opportunities, thus affecting their academic success.⁴¹

The insights provided by Hanover Research support the need for ongoing and targeted DEI initiatives in higher education.⁴² In particular, the data underscores that achieving genuine equity remains an ongoing challenge.⁴³ This data from Hanover Research emphasizes the need for institutions to address systemic issues and create environments that actively foster inclusivity as well as equal opportunities for all students and faculty.⁴⁴

³⁹ SUSAN GROUNDWATER ET AL., STATE OF DIVERSITY, EQUITY, INCLUSION, & BELONGING (Hanover Research ed., 2023).

⁴⁰ *Id.*

⁴¹ Mega Wanti, Renate Wesselink, Harms Biemans, & Perry den Brok, *Determining factors of access and equity in higher education: A systematic review*, 1 EQUITY IN EDUC. & SOC'Y 279.

⁴² SUSAN GROUNDWATER ET AL., STATE OF DIVERSITY, EQUITY, INCLUSION, & BELONGING (Hanover Research ed., 2023).

⁴³ *Id.*

⁴⁴ Diana JR Lafferty, *A Path Forward: Creating an Academic Culture of Justice, Equity, Diversity, and Inclusion*, 105 THE BULL. OF THE ECOLOGICAL SOC'Y OF AMERICA 1 (2024).

X. CASE LAW

The landscape of Affirmative Action and diversity initiatives in higher education has been significantly influenced by recent Supreme Court decisions—notably in cases, such as *Students for Fair Admissions*.⁴⁵ This case marked a substantial shift in the legal framework governing race-conscious admissions policies and, consequently, have profound implications for DEI efforts in colleges and universities.

In the *Students for Fair Admissions* cases, the Supreme Court's majority opinion presented a complex and evolving understanding of Affirmative Action.⁴⁶ The ruling placed limitations on how colleges and universities can consider race in their admissions processes.⁴⁷ While not categorically prohibiting Affirmative Action, the Court imposed constraints on its application by requiring the careful and individualized assessment of each applicant's background.⁴⁸

This shift in legal precedent prompts a critical reassessment of the best practices in DEI efforts within educational institutions. The majority's decision also necessitates a closer examination of how race-conscious admissions policies align with constitutional principles as well as whether alternative approaches can achieve similar goals. Educational institutions are thus compelled to develop new strategies that adhere to legal standards while still advancing the core values of DEI.

The case highlights the ongoing tension between the pursuit of a diverse and inclusive student body and the constitutional considerations related to equal protection. While the Court acknowledged the University's

⁴⁵ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ The Learning Network, *What Students are Saying About the End of Race-Based Affirmative Action in College Admissions*, N. Y. TIMES (Sept. 21, 2023), <https://www.nytimes.com/2023/09/21/learning/what-students-are-saying-about-the-end-of-race-based-affirmative-action-in-college-admissions.html>.

compelling interest in fostering diversity, it also emphasized the need for narrowly tailored policies that avoid undue racial classifications. This balancing act places a heavier burden on institutions to justify the use of race in their admissions processes and calls for a continuous evaluation of both the effectiveness and fairness of these policies.

Beyond the immediate implications for higher education admissions, the decisions in the *Students for Fair Admissions* cases resonate throughout the workforce.⁴⁹ The demographic composition of college graduates directly impacts the pool of candidates entering various professions. Limitations on Affirmative Action in higher education may indirectly affect the diversity of the workforce—potentially perpetuating representational disparities in certain fields.

In response to these legal developments, educational institutions must navigate the evolving legal landscape while maintaining a commitment to fostering DEI. This involves exploring alternative approaches, such as socioeconomic factors or holistic admissions criteria, to achieve diverse student bodies while still adhering to the legal constraints. The Supreme Court's decision in *Students for Fair Admissions* underscores the need for ongoing dialogue, strategic planning, and innovative solutions to advance diversity and inclusion goals within the confines of the evolving legal framework.

XI. STATUS QUO BEFORE THE *SSFA* CASES

To grasp the transformative impact of the Court's decision, it's imperative to delve into the historical context that preceded it. The consideration of race in higher education admissions gained substantive attention in the 1978 case of *Regents of the Univ. of Cal. v. Bakke*.⁵⁰ In this landmark case, the Supreme Court ruled that quota systems in university

⁴⁹ *Id.*

⁵⁰ *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

admissions were unconstitutional.⁵¹ However, the Court upheld the idea that race could be considered among various factors when assessing applicants for admission.⁵² This decision, driven by a dedication to promoting diversity, permitted race to be a contributing factor in achieving a diverse student population without being the sole deciding factor in the admissions process.

The legal discourse on Affirmative Action continued over two decades later in the 2003 cases of *Gratz v. Bollinger* and *Grutter v. Bollinger*.⁵³ In *Gratz*, the Court dismissed the University of Michigan's undergraduate program's point system, which the Court claimed unfairly favored certain racial groups. Meanwhile, in *Grutter*, the Court supported the idea that a diverse student body was a crucial aspect, warranting the use of race as one of many factors in the comprehensive admissions process for Michigan's Law school. The Court emphasized the need for this consideration to be "narrowly tailored," permitting a flexible approach that integrated race alongside other considerations to assess an applicant's potential impact on the broader objective of fostering diversity.⁵⁴

Crucially, the Court expressed in *Grutter* that such race-conscious admissions practices should have a logical endpoint when they are no longer deemed necessary. The Court's decision on a definitive endpoint—in this case, 25 years—highlights the evolving nature of Affirmative Action policies, reflecting the belief that these measures should gradually give way to a future where alternative methods can successfully attain desired diversity goals without explicitly factoring in race.

DEI is underscored by the urgent need to address pervasive narratives that perpetuate bias and hinder true societal progress. Prisca Dorcas Mojica

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Gratz v. Bollinger*, 539 U.S. 244 (2003); *Grutter v. Bollinger*, 539 U.S. 306 (2003).

⁵⁴ Christine Chambers Goodman, *A Modest Proposal in Deference to Diversity*, 23 NAT'L BLACK L. J. 1, 2 (2009).

Rodriguez's poignant statement, "Slowly, white people taught me that no matter what I did and how I behaved, I was never going to read 'good' to them because of the deviant brown body narrative" from *Good Girls vs. Bad Girls: The False Binary* encapsulates the pervasive challenges that individuals from marginalized communities face.⁵⁵

Advocacy for DEI transcends mere controversy; it addresses the systemic biases deeply embedded in societal structures. Mojica Rodriguez's narrative highlights the impact of racial narratives on individual perceptions, emphasizing the urgency to challenge and dismantle such narratives.⁵⁶ In educational leadership, schools, and community decision-making, DEI principles become imperative to foster inclusive environments. The works of Mojica Rodriguez and others advocating for DEI highlight that it is not merely a matter of controversy, but a fundamental requirement for dismantling discriminatory structures. Organizational leadership that embraces DEI principles actively works to mitigate biases, thus creating spaces where everyone is valued for their unique contributions.

To counteract controversies surrounding DEI, it is crucial to recognize the inherent value of diversity. DEI is not a threat, but an opportunity for growth, understanding, and progress. By incorporating diverse perspectives into decision-making processes, schools and communities alike can better address the needs of all members, thus fostering a sense of belonging and equity.

Prisca Dorcas Mojica Rodriguez's narrative is a powerful call to action, emphasizing the critical importance of DEI advocacy to challenge harmful narratives and promote equity.⁵⁷ Beyond controversy, DEI stands as a foundational element for building inclusive leadership, schools, and

⁵⁵ Prisca Dorcas Mojica Rodriguez, *Good Girls vs. Bad Girls: The False Binary*, Philadelphia Print Words, ZINE, <https://philaprint.wordpress.com/2017/09/10/good-girls-vs-bad-girls-the-false-binary/> [https://perma.cc/2NBX-CE47].

⁵⁶ *Id.*

⁵⁷ *Id.*

communities that honor the dignity and worth of every individual, irrespective of their background or identity.

XII. HISTORICALLY SPEAKING

Executive Order 11246, issued by President Lyndon B. Johnson in 1965 and subsequently amended, was a groundbreaking initiative designed to combat employment discrimination among federal government contractors, focusing on ensuring equal opportunities regardless of race, color, religion, sex, or national origin. By mandating Affirmative Action programs for minorities and women, the Order aimed to dismantle systemic barriers to employment. However, over time, critics have identified unforeseen consequences, such as “reverse discrimination,” suggesting that individuals outside the specified protected groups might face disadvantages in hiring processes. This has sparked ongoing debates about the fairness and effectiveness of Affirmative Action policies.

Moreover, the emphasis on categorical distinctions such as race and gender has sometimes overshadowed other dimensions of diversity, thus inadvertently reinforcing a binary perspective. There is a potential oversight of the broader spectrum of identities, including those related to sexual orientation, gender identity, and disability. As society’s understanding of diversity evolves, the rigid categorizations outlined in Executive Order 11246 may inadvertently contribute to a limited and outdated approach to inclusivity.⁵⁸

Similarly, Title IX of the Education Amendments of 1972 was instituted to address gender-based discrimination in educational settings receiving federal financial assistance.⁵⁹ While Title IX has been instrumental in

⁵⁸ Exec. Order No. 11,246, 3 C.F.R. 339 (1965); see also Akiko Iwama, *Concept of a Minority, Affirmative Action, and Social Movements in the United States*, 66 応用社会学研究 3 (2024).

⁵⁹ Educational Amendments of 1972, 42 U.S.C. § 1681.

promoting gender equality in education, its unintended outcomes have also manifested in certain areas.

One notable area of unintended consequence is Title IX's impact on collegiate sports. While the intention was to provide equal opportunities for male and female athletes, the enforcement of Title IX has led to the elimination of certain men's sports programs to achieve proportional representation.⁶⁰ For example, "men's soccer, tennis, and wrestling teams" were eliminated at Miami University to comply with Title IX.⁶¹ Critics suggest that this has unfairly disadvantaged male athletes in certain sports, leading to reduced opportunities in favor of maintaining gender proportionality.

The unintended outcomes of Executive Order 11246 and Title IX highlight the complexities inherent in implementing laws intended to protect certain groups against discrimination. While these policies have made significant strides in promoting equal opportunities, continuous evaluation, and refinement are necessary to ensure that the pursuit of justice and equality does not also inadvertently create new forms of inequity simultaneously. In striving toward a more inclusive society, it is essential to remain vigilant in addressing these unintended outcomes as well as adapting policies to align with evolving societal needs and values.

Legislative actions like Executive Order 11246 and Title IX were crucial in combating systemic discrimination in employment and education.⁶² Despite their intentions, however, the underrepresentation of minority scholars and professionals persists. This underrepresentation thus emphasizes the ongoing importance of DEI and Affirmative Action

⁶⁰ Klinker, David. *Why Conforming with Title IX Hurts Men's Collegiate Sports*. 13 SETON HALL J. SPORT L. 73, 74 (2003).

⁶¹ *Id.*

⁶² Exec. Order No. 11,246, 3 C.F.R. § 339 (1965); *see also* Chahat Gupta & Dharun Lakshman, *History and Evolution of Affirmative Action in United States of America*, SSRN, <https://dx.doi.org/10.2139/ssrn.4687100> [<https://perma.cc/XXK2-JYTP>].

efforts.⁶³ By maintaining DEI initiatives, institutions can rectify past discrimination while also actively supporting the professional growth of underrepresented minority scholars and professionals. In these unintended outcomes, there is a lesson for DEI initiatives; efforts to promote diversity must be comprehensive and considerate of the broader spectrum of identities—including race, ethnicity, gender, sexual orientation, and disability.

The importance of DEI and Affirmative Action initiatives lies in addressing the persistent disparities that underrepresented minority scholars and professionals face throughout their professional pipelines. The professional pipeline “represents the flow of individuals from academic preparation to establishment in a given profession.”⁶⁴ Recognizing that systemic barriers persist, institutions need to go beyond merely avoiding discrimination and must actively create environments that foster inclusion, provide mentorship, and support the advancement of underrepresented individuals in both academic and professional settings.

DEI initiatives play a crucial role in rectifying the unintended consequences of past policies, ensuring that the professional pipeline is not inadvertently biased against certain groups. By embracing diversity and actively fostering an inclusive culture, institutions contribute to breaking down barriers and creating opportunities for underrepresented minority scholars and professionals to thrive at every stage of their careers.

In essence, the legacy of past legislation underscores the ongoing need for DEI and Affirmative Action initiatives. These efforts should not only rectify historical injustices but also proactively create pathways for underrepresented individuals to enter and advance within professional pipelines. When discussing compliance with these efforts in the context of

⁶³ MELINA DUARTE ET AL., GENDER DIVERSITY, EQUITY, AND INCLUSION IN AMERICA (2023).

⁶⁴ Linda Schweitzer et al., *Exploring the Career Pipeline: Gender Differences in Pre-Career Expectations*, 66 PROQUEST 422, 424 (2011).

diversity and equity, it goes beyond merely adhering to regulations. It's about creating an environment where the talents, perspectives, and contributions of all individuals, particularly those from historically marginalized groups, are truly valued and celebrated. This approach emphasizes the importance of not just meeting legal standards but actively fostering a culture that embraces and uplifts diverse voices.

XIII. SAFEGUARDING DIVERSITY AND EQUITY: NAVIGATING THE EROSION OF AFFIRMATIVE ACTION

In the ever-evolving landscape of higher education and professional settings, the erosion of Affirmative Action and DEI policies poses a threat to the hard-fought progress achieved in promoting equal opportunities. As the pendulum swings away from these initiatives, the underlying issues of systemic bias and exclusion resurface. The challenges posed by the sweeping policy change of Affirmative Action as well as DEI practices and policies emphasize the need for a proactive and comprehensive call to action to embed Diversity, Equity, Inclusion, and Accessibility (DEIA) competencies into various aspects of both academic and professional life.

XIV. IMPLICATIONS OF THE EROSION OF AFFIRMATIVE ACTION AND DEI POLICIES

The erosion of Affirmative Action on campuses has significant repercussions that extend beyond the structural to profoundly influence campus culture. This decline contributes to an environment where microaggressions, racism, and a general sense of discomfort not only persist but may intensify. As traditional diversity initiatives falter, underrepresented minorities often find themselves navigating increased challenges and isolation. This issue is echoed in the narrative from Harvard Magazine, which discusses the mission of Harvard's Office of Equity,

Diversity, Inclusion, and Belonging (OEDIB).⁶⁵ The OEDIB aspires for everyone to bring their “whole self” to campus, embracing a wide range of identities including background, culture, experiences, nationality, religion, sexual orientation, gender identity, race, and more. However, despite these intentions, the next paragraph reveals a gap in inclusivity, noting an active effort to welcome various groups such as people of color, women, persons with disabilities, and LGBTQIA+ individuals, but notably omitting religious identities among others from their outreach. This oversight highlights the complexity and challenges in creating fully inclusive environments, underscoring the vital role of comprehensive Affirmative Action policies in fostering a truly welcoming and diverse academic community.

XV. A CALL TO ACTION: EMBEDDING DEIA COMPETENCIES

To effectively counteract the erosion of Affirmative Action and cultivate a genuinely inclusive environment, a detailed and actionable plan is essential. The California Community Colleges (CCC) serve as a particularly instructive example in this regard, due to their proactive and comprehensive approach to embedding Diversity, Equity, Inclusion, and Accessibility (DEIA) into their institutional frameworks.⁶⁶ The CCC system, being the largest network of higher education in the United States, has implemented a series of strategic initiatives that can inform broader efforts.

Drawing inspiration from the CCC Chancellor’s Office recommendations, the plan involves a multifaceted approach to embedding DEIA competencies across all levels of an institution. These recommendations include the integration of DEIA goals into hiring

⁶⁵ IO Y. Gilman, *The Fight Over DEI Arrives at Harvard*, THE HARV. CRIMSON (Feb. 24, 2024), <https://www.thecrimson.com/article/2024/2/24/dei-scrut/> [<https://perma.cc/5BPT-J27B>].

⁶⁶ *Diversity, Equity, Inclusion, and Accessibility (DEIA)*, CAL. CMTY. COLLEGES, <https://www.cccco.edu/About-Us/diversity-equity-inclusion> [<https://perma.cc/SNE8-G2HS>].

practices, curriculum development, and student services. Specifically, the CCC has been notable for its inclusive hiring practices that not only prioritize diversity in recruitment but also retention and promotion, ensuring that diversity is reflected at all levels of the organization. Additionally, the curriculum is designed to reflect and honor a multitude of perspectives, particularly those from underrepresented groups, which helps foster a more inclusive academic environment.

The call to action based on these practices includes several key steps. First is adopting a holistic approach to recruitment and retention that mirrors the CCC model of inclusive excellence. Second, revising curricular and extracurricular programs to ensure they are thoroughly inclusive in content and delivery. Finally, providing ongoing training and development in DEIA competencies for all faculty and staff, ensuring that everyone is equipped to contribute to an environment where diversity is not only welcomed but actively celebrated. By implementing such a robust plan, institutions can move beyond superficial compliance to truly embrace and enhance diversity, equity, inclusion, and accessibility.

In response to the ongoing challenges and opportunities within higher education regarding diversity, equity, inclusion, and accessibility (DEIA), institutions are called to implement several critical actions. Firstly, districts are urged to reassess and integrate DEIA principles into their Equal Employment Opportunity (EEO) plans.⁶⁷ This involves setting clear objectives, regularly assessing progress, and adapting strategies to meet evolving challenges, thus demonstrating a continuous commitment to both EEO and DEIA initiatives. Additionally, fostering mentorship opportunities between students and faculty is essential. Such relationships can create a supportive environment that not only promotes diversity and inclusion but also assists in breaking down barriers for underrepresented groups. Lastly,

⁶⁷ Gillespie F. Treena et al., *EEO/AA and “doing good”: an exploratory study*, 56 INT’L J. OF L. & MGMT. 443 (2014).

providing professional learning resources about institutional bias and structural racism is crucial. These resources will help faculty and staff deepen their understanding of DEIA issues and improve their contributions to cultivating an inclusive campus culture. This comprehensive approach ensures that educational institutions not only address diversity and equity challenges but also promote a culture of inclusion and accessibility that enhances student success.

As Affirmative Action as well as diversity and inclusion initiatives face challenges, a proactive approach is necessary to embed DEIA competencies into the fabric of academic and professional settings. The calls to action presented, inspired by the CCC's recommendations, provide a roadmap for institutions to uphold their commitments to DEI. By fostering a culture that actively incorporates DEIA principles into everyday practices, we can counteract the erosion of Affirmative Action by the Supreme Court and work towards a future where everyone has equitable opportunities to thrive.

XVI. SHAPING COMMUNITY, CULTURE, AND THE WORKING CLASS THROUGH PUBLIC EDUCATION

Diversity represents a dynamic force, encompassing variations in race, ethnicity, gender, and socioeconomic status, among other factors. It acts as a powerful catalyst for positive change across communities, cultural landscapes, and economic structures. Public schools play a critical role in establishing the foundations of diversity by shaping the minds and perspectives of young individuals.⁶⁸ These students, in turn, influence the broader societal fabric through their evolved understanding and actions. This comprehensive exploration delves into the principles of diversity within the context of public education. It examines how diversity enhances community cohesion, enriches cultural understanding, and contributes to

⁶⁸ U.S. DEP'T OF EDUC., *ADVANCING DIVERSITY AND INCLUSION IN HIGHER EDUCATION* (2016).

the development of the working class by bringing diverse perspectives and problem-solving approaches into workplaces, thereby fostering innovation and adaptability.

A. Community Transformation Through Inclusive Education

Public schools play a pivotal role in shaping the composition and dynamics of local communities. Embracing diversity in educational settings fosters inclusivity and breaks down barriers between individuals from different backgrounds. When students have peers of diverse races, ethnicities, and socio-economic statuses, they develop essential social skills as well as an appreciation for differences, which lays the groundwork for cohesive and harmonious communities. Diverse educational environments contribute to the creation of social capital within communities; social capital, characterized by trust, reciprocity, and a sense of shared identity, is vital for the functioning of cohesive communities.⁶⁹ Public schools become spaces where students learn to navigate diverse relationships, fostering a sense of belonging and interconnectedness that extends beyond the school gates.

Public schools are not only centers for academic learning, but also hubs for community engagement.⁷⁰ Embracing diversity in school environments sets the stage for inclusive community initiatives where parents, educators, and students collaborate to address shared challenges. In this way, public education becomes a catalyst for equity, driven by a collective commitment to diversity.

Public schools act as crucial cultural incubators, significantly shaping the narratives and perspectives that enrich society. The diverse educational experiences students receive help them understand and appreciate various

⁶⁹ WENZEL MATIASKE, *SOCIAL CAPITAL IN ORGANIZATIONS: AN EXCHANGE THEORY APPROACH* (2013).

⁷⁰ CATHERINE M. HANDS, *PATHWAYS TO COMMUNITY ENGAGEMENT IN EDUCATION* (2023).

cultures, paving the way for a more inclusive community. By exposing students to a broad range of cultural perspectives through learning about the customs, traditions, and histories of classmates from different backgrounds, public education fosters a nuanced and empathetic worldview. This exposure not only broadens students' cultural perspectives but also plays a vital role in preserving and promoting cultural heritage, enhancing students' pride and identity. Additionally, public schools are instrumental in breaking socio-economic barriers by providing equal educational opportunities, which allows students from all economic backgrounds to potentially overcome systemic inequalities. This empowerment helps cultivate a working class that truly reflects the broader population. Furthermore, the values of inclusivity and equity instilled in students contribute to the formation of a diverse and empowered workforce. As these students transition into professional roles, they carry with them the principles of diversity education, fostering more inclusive work environments that leverage the collective strengths of diverse groups, thereby reshaping the professional landscape in profound ways.⁷¹

Public schools play a pivotal role in instilling diversity tenets in students, yet they face significant challenges that hinder their potential to fully shape communities, cultures, and the working class. Funding disparities, for instance, create uneven educational landscapes where access to quality resources and opportunities varies dramatically between different districts. Moreover, unequal access to quality education persists, often reflecting and reinforcing broader systemic inequalities that affect marginalized communities disproportionately. These systemic biases prevent public education from being the great equalizer it aims to be, limiting its ability to foster a truly inclusive and diverse professional landscape. Addressing these obstacles is essential for empowering public schools to not only teach

⁷¹ Pooja Vishnoi, *School as a Microcosm of Society*. 9 LEARNING CURVE 73 (2021).

diversity principles but to also embody and enact them, thereby transforming their capacity to influence societal structures meaningfully.

1. Breaking Socio-Economic Barriers

Public education serves as a vehicle for breaking socio-economic barriers. Public schools empower individuals to overcome systemic inequalities by providing equal educational opportunities to all students, regardless of their economic background.⁷² This empowerment, in turn, contributes to the creation of a working class that mirrors American demographics and the broader population.

2. Fostering Inclusive Work Environments

Diversity education in public schools extends beyond classroom walls to influence professional environments. Graduates from diverse public schools bring with them an understanding of the value of inclusivity. As they enter the workforce, they create more inclusive work environments that harness the collective strengths of a diverse workforce.

B. Challenges and Opportunities

While attending public schools instills diversity tenets in students, public education still has its challenges. Funding disparities, unequal access to quality education, and persistent systemic biases pose obstacles to the full potential of shaping communities, cultures, and the working class through diversity.

1. Addressing Funding Disparities

Funding disparities among public schools often perpetuate educational inequalities, with schools in economically disadvantaged areas lacking the necessary resources and opportunities to provide a robust and diverse

⁷² Morgan Robinson, *Minority Access to Education and Affirmative Action*, 13 FAU UNDERGRAD. L. J. 64 (2024).

educational experience. Addressing these disparities is crucial for ensuring that all students have equal access to the benefits of diversity education. According to a report, fiscally disadvantaged districts are defined as those with higher-than-average student needs relative to their labor-market location and lower-than-average resources when state and local revenues are combined. Notably, Illinois and Pennsylvania have some of the most pronounced disparities, with cities like Chicago and Philadelphia being consistently identified as the most fiscally disadvantaged large urban districts in the nation.⁷³ These stark inequalities underscore the urgent need for targeted interventions to ensure equitable educational opportunities across all districts.⁷⁴

2. Tackling Systemic Biases

Public schools must confront and address systemic biases ingrained in educational systems. Bias in curriculum design, standardized testing, and disciplinary practices can perpetuate inequalities. By actively dismantling these biases, public education can ensure that diversity is not only celebrated in theory but actively embedded in every facet of the educational experience.

Public education serves as a formidable catalyst for transforming communities, enriching cultures, and shaping the working class through the lens of diversity. Through fostering inclusivity, equity, and a celebration of diversity, public schools establish the foundation for a society that recognizes the power within its varied perspectives. The journey toward a more inclusive future requires a collective commitment to addressing challenges, dismantling biases, and fostering environments where diversity

⁷³ Bruce D. Baker, *America's Most Financially Disadvantaged School Districts and How They Got That Way: How State and Local Governance Causes School Funding Disparities*, CTR. FOR AMERICAN PROGRESS (2014).

⁷⁴ *Id.*

thrives. As public education evolves in this manner, its role in shaping a diverse, equitable, and inclusive society remains paramount.

XVII. UPHOLDING EQUITY: THE LEGAL FRAMEWORK FOR ACCOUNTABILITY

In the quest for a just and inclusive society, the legal landscape plays a pivotal role in holding both individuals and institutions accountable for promoting diversity. This section explores the importance of laws designed to ensure the cultivation of diverse workforces and student populations as well as the implementation of protective policies. From landmark cases to comprehensive anti-discrimination statutes, the legal framework is a critical tool in translating the principles of diversity and equity into actionable mandates.⁷⁵

A. The Legal Mandate for Diverse Student Populations

Affirmative Action is a cornerstone in the legal efforts to address historical disparities and foster diversity in educational institutions. Key legal precedents, such as *Regents of the Univ. of Cal. v. Bakke* and *Grutter v. Bollinger*, establish the constitutional foundation of Affirmative Action.⁷⁶ Affirmative Action ensured that educational institutions are held accountable for actively pursuing diversity in student populations as well as countered notions of reverse discrimination by affirming the constitutionality of race-conscious admissions policies.

Title VI of the Civil Rights Act of 1964 reinforces the legal commitment to diversity in educational settings by prohibiting discrimination based on race, color, or national origin in programs receiving federal financial

⁷⁵ MARILYN Y. BYRD & CHAUNDA L. SCOTT, DIVERSITY IN THE WORKFORCE: CURRENT ISSUES AND EMERGING TRENDS (2024).

⁷⁶ *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978); *Grutter v. Bollinger*, 539 U.S. 306 (2003).

assistance.⁷⁷ Title VI is a powerful tool in rectifying imbalances and promoting diversity in student populations because it holds educational institutions accountable for fostering inclusive environments.

B. Legal Framework for Diverse Workforces

Title VII, another section of the Civil Rights Act of 1964, is a linchpin in the legal framework that holds employers accountable for cultivating diverse workforces. This statute prohibits discrimination based on race, color, religion, sex, or national origin.⁷⁸ Employers are legally obligated to create workplaces free from discriminatory practices to foster environments where individuals from diverse backgrounds have equal employment opportunities. This legal framework ensures that accountability is embedded in the hiring, promotion, and retention processes, contributing to the establishment of diverse and equitable workplaces.

The Americans with Disabilities Act (ADA) further expands the legal mandate for diversity by prohibiting discrimination based on disability.⁷⁹ Employers are held accountable for providing reasonable accommodations to ensure that individuals with disabilities have equal access to employment opportunities. The ADA ensures that workplaces are inclusive by recognizing the importance of diverse talents and contributions irrespective of a person's physical or mental abilities.

C. Protective Policies and Legal Accountability

Gender equality laws such as Title IX of the Education Amendments of 1972 and the Lilly Ledbetter Fair Pay Act represent a significant legal commitment to protecting individuals from discrimination based on gender. Title IX is particularly impactful in educational settings, as it applies to any

⁷⁷ Civil Rights Act of 1964, P.L. 88-352, 78 Stat. 241 (codified at 42 U.S.C. § 1971 et seq. (2006)).

⁷⁸ *Id.*

⁷⁹ Americans with Disabilities Act of 1990, 3 U.S.C. § 421.

institution receiving federal funds. This law mandates that no individual shall be subjected to discrimination based on sex in any educational program or activity, which includes a range of initiatives from admissions and athletics to science, technology, engineering, and math (STEM) programs.⁸⁰ The Lilly Ledbetter Fair Pay Act complements these protections by addressing wage disparities, specifically extending the time frame within which workers can file pay discrimination claims.⁸¹ This act makes it easier for employees to challenge unfair wages, thereby promoting gender equality in compensation.⁸² Collectively, these laws compel institutions to implement and enforce policies that not only protect against gender-based discrimination but also actively promote gender equity across all aspects of academic and professional life.

Anti-harassment laws, including those addressing sexual harassment and hostile work environments, underscore a legal commitment to creating safe and inclusive spaces. These laws oblige institutions and employers to implement policies that not only prevent but also address instances of harassment, fostering environments where individuals can work and learn without fear of discrimination or mistreatment. The legal framework is further defined by the Supreme Court's decisions in *Farragher* and *Ellerth* which introduce an affirmative defense aimed at motivating employers to adopt preventive and corrective procedures regarding the conduct of their agents.⁸³ These decisions encourage targets of harassment to come forward and employers to rectify hostile work environments. However, while complaint procedures and corrective actions are critical, they cannot undo the harm already inflicted by harassment. Moreover, by shielding employers from liability for past harassment by a supervisor, the Court

⁸⁰ Educational Amendments of 1972, 42 U.S.C. § 1681.

⁸¹ Lilly Ledbetter Fair Pay Act of 2009, 123 U.S.C. § 5.

⁸² Carolyn E. Sorock, *Closing the Gap Legislatively: Consequences of the Lilly Ledbetter Fair Pay Act*, 85 CHI.-KENT L. REV. 1199 (2010).

⁸³ *Farragher v. City of New York*, 21 N.Y.2d 756 (1968). *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).

effectively shifts the cost of this incentive system to the victims. This issue was evident in the case of *Ashton ex rel. Ashton v. Okosun*, where a juvenile worker's complaint of inappropriate behavior was dismissed after she declined to return to work, despite being offered a transfer to avoid the accused manager.⁸⁴ This scenario highlights the complexities and potential shortcomings of the current legal provisions in fully protecting individuals from harassment.⁸⁵

D. Challenges and Evolving Legal Responses

1. Ongoing Legal Challenges

Despite significant legal strides, holding individuals and institutions accountable for diversity remains challenging. Legal complexities often arise in the interpretation and implementation of Affirmative Action policies, particularly with the ongoing debates around the constitutionality of race-conscious admissions. This challenge was highlighted on June 29, 2023, when the Supreme Court of the United States overturned nearly a half-century of precedent by banning the use of “race” in college admissions in a 6–3 ruling.⁸⁶ This decision was met with mixed reactions: many conservative Americans welcomed it, seeing it as a step towards equality, while others advocating for inclusion, equity, and accessibility lamented the loss of a race-based Affirmative Action option, which they argue is essential for achieving racial equality. Furthermore, the evolving nature of workplace dynamics calls for continuous legal adaptation to address new forms of discrimination and bias. As a result, both academic institutions and workplace managers must now strategize on how to recruit and retain a diverse population through other practical and legal means,

⁸⁴ *Ashton ex rel. Ashton v. Okosun*, 266 F. Supp. 2d 399 (D. Md. 2003).

⁸⁵ Jennifer Ann Drobac, *Sexual Harassment: The U.S. in Comparative Perspective*, in COMPANION TO SEXUALITY STUDIES (2020).

⁸⁶ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

adapting to a significantly altered legal landscape concerning Affirmative Action.⁸⁷

2. Evolving Legal Responses

In response to ongoing challenges, legal frameworks must continually evolve to address emerging issues related to DEI. Courts interpret existing laws to address new conceptions of diversity, while legislative bodies enact or amend statutes to ensure these frameworks adapt to contemporary societal complexities. However, a recent seismic shift occurred with the Supreme Court's decision to overturn Affirmative Action in college admissions, signaling a need for further adaptation in legal strategies to promote diversity. This decision underlines the ongoing imperative for legal accountability in fostering diverse student populations and workforces and in maintaining protective policies.⁸⁸ Justice Jackson, in her dissenting opinion, poignantly highlighted the enduring racial disparities, explaining that while race-based gaps exist, they:

“were created in the distant past, but have indisputably been passed down to the present day through the generations. Every moment these gaps persist is a moment in which this great country falls short of actualizing one of its foundational principles—the ‘self-evident’ truth that all of us are created equal.”⁸⁹

As society progresses, so too must the legal commitment to diversity, ensuring that accountability, equity, and justice continue to guide our efforts toward a truly inclusive society. Legislative bodies should enact new

⁸⁷ Bahaudin Ghulam Mujtaba, *The Rationale for Affirmative action (AA) Being Overturned by SCOTUS: An Informational Perspective of Its Pros and Cons For the American Dream*, EQUALITY, DIVERSITY AND INCLUSION, (2023).

⁸⁸ Neharika Vohra, *Inclusive Workplaces: Lessons from Theory and Practice*, 40 VIKALPA 324 (2015).

⁸⁹ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023) (Brown, K. J., dissenting).

statutes or amend existing ones to ensure that the legal framework remains responsive to the complexities of contemporary society.⁹⁰

Holding institutions legally accountable for fostering diverse student populations, workforces, and protective policies is instrumental in translating principles of diversity and equity into tangible actions. The legal framework serves as a powerful tool to rectify historical imbalances and shape a more inclusive future, for example, by passing comprehensive anti-discrimination statutes. As society evolves, the legal commitment to diversity must adapt, thus ensuring that the principles of accountability, equity, and justice continue to guide our collective efforts toward a truly diverse and inclusive society.

XIII. AFFIRMATIVE ACTION, DIVERSITY INITIATIVES, AND LEGAL PROTECTIONS: UPHOLDING EQUITY AND INCLUSION BEYOND THE CLASSROOM

Affirmative Action was originally conceived as a crucial response to entrenched historical disparities, specifically designed to level the playing field for underrepresented minorities. By acknowledging and addressing the systemic barriers that marginalized communities face, Affirmative Action aims to dismantle these obstacles, providing equitable opportunities in education and employment. This initiative aligned with the broader goal of managing diversity, which emphasizes “integration” to develop everyone’s capacity to accept, incorporate, and empower diverse human talents not just within organizations, but across the nation and ultimately the world. This would enable every individual to be as productive as possible. Despite its alignment with the historical and textual intentions of the Fourteenth Amendment, which permits race-conscious measures under the Equal Protection Clause and was previously upheld as constitutional by the

⁹⁰ Prue Burns & Jan Schapper, *The Ethical Case for Affirmative Action*, 83 J. OF BUS. ETHICS 369 (2008).

Supreme Court, the framework for implementing such measures has been significantly altered.⁹¹

Representation plays a crucial role in how individuals from diverse backgrounds perceive themselves in various facets of life, as Rudine Bishop's analogy of windows, mirrors, and sliding glass doors so aptly emphasizes.⁹² This concept of representation extends beyond literature, influencing broader societal contexts where it is essential for ensuring that all community members see themselves reflected and valued. Affirmative Action and diversity initiatives have been pivotal in challenging the stereotypes that often hinder the recognition of the skills, talents, and capabilities of individuals from underrepresented groups. By breaking down these barriers, such initiatives not only foster a more inclusive and diverse society but also challenge ingrained prejudices and preconceived notions. However, the efficacy of these measures has been undermined in states where Affirmative Action bans have led to a drop in minority enrollment, despite an increase in the minority population. This regression in civil rights highlights ongoing discriminatory practices that continue to thrive, underscoring a critical need for courts to recognize and address these issues actively. The recent setbacks in Affirmative Action only emphasize the importance of sustained efforts in representation and inclusion to counteract these trends and ensure that diversity initiatives effectively empower all individuals in society.

⁹¹ Morgan Mottley, *Taking a Step Back from Civil Rights: The Supreme Court's Approval of Affirmative Action Bans*, 44 J. OF L. & EDUC. 155 (2015).

⁹² Rudine Bishop, *Mirrors, Windows, and Sliding Glass Doors*. 6 PERSPECTIVES ix (1990); MELINA DUARTE ET AL., GENDER DIVERSITY, EQUITY, AND INCLUSION IN AMERICA (2023).

A. Legal Protections: Safeguarding Against Discrimination

1. Anti-Discrimination Laws

Anti-discrimination laws, including Titles VI and VII of the Civil Rights Act as well as the Americans with Disabilities Act (ADA), play a pivotal role in protecting underrepresented groups from discrimination.⁹³ These legal protections extend beyond educational institutions to workplaces, safeguarding individuals from unfair treatment based on race, color, gender, or disability.

2. Creating Inclusive Spaces

In alignment with Bishop's sliding glass door metaphor, legal protections create inclusive spaces where everyone has equal access and opportunities.⁹⁴ Laws such as Titles VI and VII and the Civil Rights Act reinforce the notion that discrimination has no place in a just society, thus compelling institutions to implement policies that actively promote diversity and inclusion.

3. Addressing Harassment and Intimidation

Legal protections extend to addressing harassment, intimidation, and bullying faced by underrepresented groups. Individuals who encounter discrimination in various spaces, including schools and workplaces, can seek recourse through legal avenues to ensure their rights are upheld as well as that the accountability of that space is maintained.

⁹³ SHANNON D. JONES, MANAGING HEALTH SCIENCES LIBRARIES IN A TIME OF CHANGE 15-34 (Claire B. Joseph & Priscilla L. Stephenson eds., 2024).

⁹⁴ Rudine Bishop, *supra* note 92; see also Oscar Edwards et al., *Four Personal Stories about True Storytelling and the work of DEI*, 1 A World Scientific Encyclopedia of Business Storytelling 2, 107-128 (2024).

C. Challenges and the Continued Need for Support

1. Ongoing Challenges

Despite progress, challenges persist in achieving true equity and inclusion, and Affirmative Action faces ongoing debates about its effectiveness and legality. Legal protections, while crucial, are not always sufficient in eradicating deep-seated biases and prejudices that underrepresented groups encounter.

2. Consequences of Harassment

Harassment, intimidation, and bullying can have profound consequences on individuals, affecting their mental health, well-being, and professional or social advancement. Implementing support systems and creating environments where everyone feels safe and valued is crucial to counteract the negative impacts of discrimination.

XIX. RUDINE BISHOP'S ANALOGY: A FRAMEWORK FOR COMPREHENSIVE INCLUSION

Rudine Bishop's metaphor of windows, mirrors, and sliding glass doors, while initially coined in the context of literature, provides a potent conceptual framework for broader applications in education and policymaking.⁹⁵ This metaphor enriches our understanding of the role schools, leadership, and legislative frameworks play in fostering DEI. Here, windows allow individuals to view and appreciate diverse perspectives; mirrors help students and staff see their reflections in the curriculum and institutional culture, affirming their identities and experiences; sliding glass doors represent the crucial creation of accessible and inclusive environments that welcome all to participate fully.

In educational settings, this analogy highlights the necessity of curricula that not only educate but also reflect the diverse societies they serve,

⁹⁵ Rudine Bishop, *supra* note 92.

fostering a sense of belonging and validation. It stresses the importance of representation in leadership, which should mirror the community's diversity to effectively govern and inspire. Moreover, ensuring that educational environments are physically and culturally accessible to all underscores the sliding doors aspect of Bishop's metaphor.

Moving from schools to legislative arenas, leaders and policymakers must internalize and enact Bishop's metaphor through thoughtful, inclusive policies and practices. This involves not only recognizing diversity in terms of broad characteristics and perspectives but also addressing the power dynamics and opportunities that affect historically marginalized groups. A commitment to diversity that focuses solely on varied perspectives can overlook the crucial aspects of justice and equity. Therefore, a robust approach to diversity must also prioritize addressing systemic inequities and focus on groups that have faced historical oppression. In doing so, leadership and laws can truly reflect and promote an inclusive society where diversity is understood both instrumentally and morally, ensuring that all individuals can contribute and thrive.

XX. THE DILEMMA OF PERFORMATIVE DIVERSITY, EQUITY, AND INCLUSION: NAVIGATING THE FINE LINE BETWEEN VISIBILITY AND AUTHENTICITY

When diversity is approached instrumentally—focusing on the variety of perspectives and characteristics individuals bring rather than on structural differences in power and opportunity—a wider array of individuals can contribute to and be recognized within diversity initiatives. Each person possesses unique traits that enable them to add to a diversity that is characterized by varied perspectives or characteristics. However, when diversity is framed in moral terms, the focus shifts towards justice and equity, primarily emphasizing support for groups that have experienced systematic oppression. This moral approach to diversity tends to encompass

a narrower spectrum of individuals, as it targets efforts to rectify historical injustices.⁹⁶

A. Performative DEI: The Unsettling Paradox

In some organizations, DEI efforts can take on a performative nature, emphasizing surface-level gestures rather than fostering authentic inclusion. The emphasis on visibility may manifest as tokenism, where individuals from underrepresented groups are brought into the spotlight without meaningful engagement. Such tokenism can create the illusion of diversity without addressing underlying power structures.⁹⁷

For this article, I aim to define performative and professional compliance. Performative initiatives refer to actions taken primarily for the sake of appearance rather than to effect meaningful change. These initiatives are often criticized for being superficial or symbolic, designed to project an image of commitment to a certain cause, such as diversity or environmental responsibility, without implementing substantial or sustained efforts. Performative actions are typically characterized by their focus on public perception and may lack depth in terms of actual impact or investment in the issues they purport to address. Professional initiatives, on the other hand, are actions or programs undertaken by organizations or individuals that are aimed at improving professional practices, enhancing skills, or advancing career opportunities. These initiatives are deeply rooted in specific objectives related to professional development and are typically structured with clear, practical goals in mind. Professional initiatives might include training programs, workshops, seminars, or new policy implementations that are designed to enhance the effectiveness, efficiency,

⁹⁶ Jordan G. Starck, et al., *Interest Convergence and the Maintenance of Racial Advantage: The Case of Diversity in Higher Education*, J. OF SOC. ISSUES (2024).

⁹⁷ Elizabeth Hughes Fong & Seana Ficklin, *Increasing Cultural Understanding and Diversity in Applied Behavioral Analysis*, 17 BEHAV. & ANALYSIS: RSCH. & PRAC. 103 (2017).

or ethical standards of a profession or workplace. These initiatives are pragmatic and are intended to bring about real improvements or advancements within a professional context.

The domain of DEI has taken center stage in current discussions, with a growing recognition among organizations and institutions of the necessity for diverse and inclusive environments. Yet, as these commendable goals are pursued, a complex issue has emerged: performative DEI. This article examines the intricacies of performative DEI, particularly the conflict between visibility and genuine representation. It highlights situations where marginalized voices are visible but not effectively heard, leading to a paradox where individuals are visible, but their perspectives remain marginalized. Historical efforts to dismantle racial hierarchies in the United States, rooted in Civil Rights achievements aimed at addressing the disadvantages faced by Black Americans, set the stage for these modern challenges.⁹⁸ The choice to acknowledge or ignore race-based disadvantages influences who feels secure in their identity. Attempts by dominant groups to recognize diversity can sometimes make minority group members feel uncomfortably spotlighted, stereotyped, or reduced to a single aspect of their identity.⁹⁹ This legal example illustrates a broader phenomenon where the “diversity bargain”¹⁰⁰ offered by instrumental rationales both represents and perpetuates a sense of entitlement, which is thought to fuel resistance among many White Americans toward efforts for racial justice, equity, and inclusion.¹⁰¹ Additionally, from personal

⁹⁸ Erin Kelly & Frank Dobbin, *How Affirmative Action Became Diversity Management: Employer Response to Antidiscrimination Law, 1961 to 1996*, 41 AMERICAN BEHAV. SCIENTIST 960 (1998).

⁹⁹ Linda Zou & Sapna Cheryan, *When Whites’ Attempts to be Multicultural Backfire in Intergroup Interactions*, 9 SOC. & PERSONALITY PSYCH. COMPASS 581 (2015).

¹⁰⁰ NATASHA WARIKOO, *THE DIVERSITY BARGAIN* (2016).

¹⁰¹ See Kevin Durrheim, et al., *Predicting Support for Racial Transformation Policies: Intergroup Threat, Racial Prejudice, Sense of Group Entitlement and Strength of Identification*. 41 EUR. J. OF SOC. PSYCH. 23 (2011). See MICHAEL KIMMEL, *ANGRY WHITE MEN: AMERICAN MASCULINITY AT THE END OF AN ERA* (2017); see also

observation, discussions on DEI often primarily focus on Black and White experiences, overshadowing those of other groups like Hispanic/Latino and Asian individuals, further exacerbating the issue of underrepresentation in DEI literature and dialogues.

Marginalized individuals find themselves walking a tightrope, balancing the need to be visible for the sake of DEI optics while contending with the unspoken expectation to conform to prevailing norms. This balancing act burdens individuals who must carefully navigate their visibility without overstepping invisible boundaries.¹⁰²

B. The Subtle Constraints on Authentic Expression

While organizations may encourage individuals to “speak up,” the nuances of this directive can be confounding. Authentic expression is often met with resistance when it challenges existing power structures or questions the authenticity of organizational DEI efforts.¹⁰³ The unspoken expectation to “speak up, but not too loud” constrains the genuine expression of diverse perspectives.

The demand for performative visibility without authentic expression can lead to unintended consequences. Individuals may self-censor to conform to organizational expectations, thus inhibiting the free flow of ideas and perspectives that are essential for genuine inclusion.¹⁰⁴

Maruice Mangum, & LaTasha DeHaan, *Entitlement and Perceived Racial Discrimination: The Missing Links to White Opinions Toward Affirmative Action and Preferential Hiring and Promotion*, 47 AM. POL. RSCH. 415 (2019).

¹⁰² Taylor H. Cox & Stacy Blake, *Managing Cultural Diversity: Implications for Organizational Competitiveness*, 5 ACAD. OF MGMT. PERSP. 45 (1991).

¹⁰³ S. Ghoshal, *Bad Management Theories Are Destroying Good Management Practices*, 4 ACAD. OF MGMT. LEARNING & EDUC. 75 (2005).

¹⁰⁴ L.H. Nishii & D.M. Mayer, *Do Inclusive Leaders Help to Reduce Turnover in Diverse Groups? The Moderating Role of Leader-Member Exchange in the Diversity to Turnover Relationship*, 94 J. OF APPLIED PSYCH. 1412 (2009).

C. The Need for Authentic DEI Practices

To address the paradox of performative DEI, organizations must move beyond mere metrics and appearances. Authentic inclusion requires a commitment to dismantling systemic barriers, amplifying marginalized voices, and fostering environments where everyone can contribute meaningfully.¹⁰⁵

Organizations can take proactive steps to empower marginalized voices by creating platforms for open dialogue, encouraging authentic expression, and seeking input from underrepresented groups.¹⁰⁶ It is imperative to move beyond symbolic gestures and create environments where individuals feel both seen and heard.

The tension between visibility and authenticity in performative DEI highlights the need for fundamental changes in organizational practices. Merely focusing on optics and superficial diversity is insufficient. True inclusion requires an unwavering commitment to breaking down systemic barriers, providing avenues for genuine expression, and creating environments where all voices are earnestly heard. As organizations grapple with the complexities of DEI, moving from performative to authentic practices is crucial for cultivating truly inclusive workplaces, not just in appearance but in essence.

This shift is particularly relevant in the context of legal and educational frameworks. Everyone seeks equal treatment under the law, yet the pathways to achieve this equality vary significantly among experts. Crusto notes, “although the Court has failed to honor the original vision of Affirmative Action as a means to level the playing field, given our nation’s centuries of exploitation, over 60% believe Affirmative Action is necessary and it now stands as the rule of law for American schools.”¹⁰⁷ Nonetheless,

¹⁰⁵ Cox & Blake, *supra* note 102.

¹⁰⁶ Jennifer L. Berdahl & Celia Moore, *Workplace Harassment: Double Jeopardy for Minority Women*, 91 J. APPLIED PSYCH. 426 (2006).

¹⁰⁷ Mitchell F. Crusto, *A Plea For Affirmative Action*, 136 HARV. L. REV. F. 205 (2022).

the Supreme Court's recent decision to end race-conscious admissions in colleges has shifted the landscape significantly. Chief Justice John Roberts emphasized that American institutions of higher education must adopt "colorblind criteria" in their admissions processes, marking a significant pivot from previous practices. This legal evolution underscores the broader challenge of aligning legal standards with the nuanced realities of achieving genuine diversity and equity in society.¹⁰⁸

XXI. CONCLUSION

The imperative to sustain Affirmative Action, diversity initiatives, and legal protections for underrepresented groups is rooted in the ongoing quest for equity and inclusion. Rudine Bishop's metaphor of "Windows, Mirrors, and Sliding Glass Doors" provides a compelling framework to understand the broader implications of these efforts.¹⁰⁹ This analogy extends beyond literature to encompass schools, leadership, and legislative frameworks, underscoring the need for comprehensive inclusivity in every facet of society. As we navigate the challenges posed by recent legal changes, particularly those stemming from *Students for Fair Admissions*, it becomes paramount to provide unwavering support for those who face harassment, intimidation, and bullying.¹¹⁰ This support ensures that the doors of opportunity remain open for everyone, regardless of their background or identity.

In doing so, we not only uphold the principles of justice but also actively contribute to the creation of a society where diversity is celebrated, and inclusion is a shared commitment. This article, therefore, serves as both a

¹⁰⁸Bahaudin Ghulam Mujtaba, *The Rationale for Affirmative Action (AA) Being Overturned by SCOTUS: an Informational Perspective of Its Pros and Cons for the American Dream*, EQUALITY, DIVERSITY AND INCLUSION: AN INTERNATIONAL JOURNAL (2023).

¹⁰⁹Rudine Bishop, *supra* note 92.

¹¹⁰Kaleb Demerew, *College Diversity Politics and American Higher Education: An Institutional Analysis*, 60 SOC'Y 983 (2023).

call to action and a wake-up call. It is crucial for those directly affected by these changes—particularly individuals from identities that disadvantage them and who are already feeling the negative effects—to recognize and address these challenges. As the saying goes, “Often you just don’t know what you don’t know.” Those born with privilege may not see that not everyone starts from the same place. Recognizing and addressing this disparity is essential for creating equitable and inclusive environments.