Written Testimony
Renu Mukherjee
Fellow, The Manhattan Institute

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

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

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

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

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

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

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

[3] Ibid.

[4] Ibid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

[10] Ibid.

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

[27] Campus Reform's Anti-DEI Legislation Tracker (last updated March 4, 2025), https://www.campusreform.org/article/campus-reforms-anti-dei-legislation-tracker/27589.

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