



**Written Testimony of Demetria L. McCain
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**Submitted to the U.S. House of Representatives Oversight and Government
Reform Committee
Subcommittee on Healthcare and Financial Services
In Connection with the June 25, 2025, Hearing
“Sacrificing Excellence for Ideology: The Cost of DEI”**

I. Introduction

The success of our multi-racial democracy depends on creating an inclusive economy where every person can access living wage jobs, high-quality education, and other opportunities. Diversity, equity, inclusion, and accessibility initiatives—such as engaging in outreach and recruitment measures to expand a college applicant pool, adopting a hiring policy to strictly focus on necessary skills and qualifications, or providing training to ensure healthcare providers can effectively treat patients of all backgrounds—can help ensure merit, rather than access, determines what people can achieve. Such measures are essential because Black, Latino, Asian American, and Indigenous people; women; LGBTQ+ community members; and people with disabilities encounter ongoing discrimination in education¹, employment,² access to capital³ and financial services⁴, housing⁵, and other sectors. Diversity, equity, inclusion, and accessibility programs can help both the federal government and private actors prevent discrimination and comply with civil rights laws. Unfair racial disparities are particularly prevalent in healthcare and in small business development, highlighting the need for continued investment in efforts that can help close these gaps. Far from costing money, addressing racial discrimination and ensuring equal access to opportunity can help grow the American economy trillions of dollars a

¹ See, e.g. Izraelle I. McKinnon, PhD et. al, *Experiences of Racism in School and Associations with Mental Health, Suicide Risk, and Substance Use Among High School Students — Youth Risk Behavior Survey*, U.S. DEP’T OF HEALTH AND HUMAN SVCS. CTRS. FOR DISEASE CONTROL (Oct. 10, 2024), <https://www.cdc.gov/mmwr/volumes/73/su/su7304a4.htm>.

² U.S. Equal Employment Opportunity Commission (EEOC), 2024 Annual Performance Report (2025), <https://www.eeoc.gov/2024-annual-performance-report> (explaining that, in Fiscal Year 2024, the EEOC received 88,531 new charges of workplace discrimination—an increase of 9.2% over the previous year).

³ Imani Augustus, *Five Reasons Minority Borrowers Can’t Access Capital*, THIRD WAY (Sept. 28, 2022), <https://www.thirdway.org/report/five-reasons-minority-borrowers-cant-access-capital>.

⁴ Greenlining, *DEIs Pendulum Swing: Debunking Common Myths about Diversity, Equity, and Inclusion in Financial Services* (Aug. 20, 2024), <https://greenlining.org/2024/debunking-financial-services-dei-myths/>.

⁵ Lawrence Yun, et al., *2024 Snapshot of Race and Home Buying in America*, NAT’L ASSOC. OF REALTORS RESEARCH GROUP (Feb. 20, 2024), <https://www.nar.realtor/sites/default/files/documents/2024-snapshot-of-race-and-home-buying-in-america-02-20-2024.pdf>.

year.⁶ We urge Congress to oppose the Trump administration's attacks on diversity, equity, inclusion, and accessibility efforts, which will take us decades backwards as a nation.

Founded in 1940 by Thurgood Marshall, LDF⁷ is the nation's premier racial justice legal organization. LDF was launched at a time when America's aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality. For over eighty-five years, the LDF has worked to dismantle racial segregation and ensure equal educational opportunities, most notably in the landmark case of *Brown v. Board of Education*.⁸ LDF has also endeavored to ensure Black people's equal access to economic opportunity. To that end, LDF has litigated numerous economic justice cases⁹ and filed *amicus* briefs supporting remedial federal contracting programs.¹⁰ LDF's mission has always been transformative: to achieve racial justice, equality, and an inclusive society.

II. Diversity, Equity, Inclusion, and Accessibility Programs Help Ensure Merit, Rather Access, Determine Opportunity

Diversity, equity, inclusion, and accessibility initiatives are an essential tool in ensuring everyone has an equal opportunity to achieve the American Dream. Contrary to what opponents claim, such efforts are not quotas and do not require unlawful racial balancing, which has long been outlawed. Instead, diversity, equity, inclusion, and accessibility efforts include a range of lawful initiatives that help ensure talented and hardworking people of all backgrounds have the opportunity to succeed and reach their full potential. These initiatives can include strategies such as:

- Offering mentoring programs available to all;
- Engaging in broad outreach and recruitment measures to ensure every qualified applicant is aware of education, employment, or other opportunities;
- Adopting a policy to strictly focus on necessary skills and qualifications in hiring;
- Providing training to prevent workplace discrimination and help employees of different backgrounds better understand each other; and
- Fostering affinity groups that allow people with similar backgrounds to share experiences and find community.

Many such efforts recognize that access is often as important as talent and qualifications in determining who can succeed. No person can apply for a job or other opportunity unknown to them. Similarly, no person can thrive in a school, workplace, or community without understanding the institutional culture and receiving the support all people need to flourish. Diversity, equity, inclusion, and accessibility initiatives can help level the playing field by closing

⁶ DANA M. PETERSON & CATHERINE L. MANN, CITI GPS: GLOBAL PERSPECTIVES & SOLUTIONS, CLOSING THE RACIAL INEQUALITY GAPS: THE ECONOMIC COST OF BLACK INEQUALITY IN THE U.S. (Sept. 2020), https://ir.citi.com/NvIUklHPilz14Hwd3oxqZBLMn1_XPqo5FrxsZDox6hhil84ZxaxEuJUWmak51UHvYk75VKeHCM I%3D.

⁷ LDF has been fully separate from the National Association for the Advancement of Colored People (NAACP) since 1957.

⁸ 347 U.S. 483 (1954)

⁹ See, e.g., *Lewis v. Chicago*, 560 U.S. 205 (2010); *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *Sniadach v. Fam. Fin. Corp.*, 395 U.S. 337 (1969); *Mandala v. NTT Data, Inc.*, 88 F.4th 353 (2d Cir. 2023); *Pickett v. City pf Cleveland*, No.: 1:19 CV 2911 (N.D. Ohio); *Taylor v. City of Detroit*, 368 F.Supp.2d 676 (E.D. Mich. 2005); *Hall v. Coburn Corp. of Am.*, 26 N.Y.2d 396 (N.Y. 1970); *Russell v. Coburn Corp. of Am.*, 298 N.Y.S.2d 893 (N.Y. App. Div. 1969); *Cline v. Credit Bureau of Santa Clara Valley*, 1 Cal.3d 908 (Cal. 1970).

¹⁰ Br. of NAACP Legal Defense & Educational Fund, Inc., et al., as *Amicus Curiae*, *Rothe Development, Inc. v. U.S. Dep't of Defense & U.S. Small Business Admin.*, No. 15-5176 (Jan. 28, 2016 D.D.C.); Br. of NAACP Legal Defense & Educational Fund, Inc., as *Amicus Curiae*, *Dynalantic Corp. v. U.S. Dep't of Defense, et al.*, No. 95-2301 (Jan. 19, 2005 D.D.C.), 2005WL3803518.

those gaps. These programs often serve people of various backgrounds, including people from different racial, ethnic, and religious backgrounds; women; people with disabilities; LGBTQ+ community members; and, in some cases, veterans, first generation students, and people from rural America. A successful diversity, equity, inclusion, and accessibility program strives to ensure no one feels excluded or treated unfairly and that all talented and qualified people have the opportunity to succeed. These programs are an essential tool in creating true meritocracy.

As detailed further in LDF's response to the U.S. Department of Commerce's Request for Information on Proposed Business Diversity Principles (Ex. A, attached), several diversity, equity, inclusion, and accessibility initiatives have been shown to break down unfair barriers to opportunity for Black people and other people of color, women, and other groups. Notably, while opponents have argued for employers, educational institutions, and other actors to shutter diversity, equity, inclusion, and accessibility offices, maintaining a dedicated team focused on equal opportunity is among the most successful interventions. Having a group of full-time staff dedicated to diversity, equity, inclusion, and accessibility can help organizations pinpoint specific problems that unfairly prevent advancement and identify solutions.¹¹ Attacks on efforts to advance equal opportunity preserve a status quo of racial, gender, and other forms of inequality that has existed in the United States since its founding.

III. Diversity, Equity, Inclusion, and Accessibility Initiatives Help Address Discrimination, Which Remains Prevalent in America

While we have made some progress as a nation, the unfortunate reality is that the American Dream remains unfairly out of reach for far too many. Many hardworking and talented people face unfair barriers to success because of discrimination based on their race, ethnicity, gender or gender identity, sexual orientation, or disability status. While opponents have claimed that diversity, equity, inclusion, and accessibility programs are "illegal" and discriminatory, they in fact help with civil rights compliance.

Discrimination against Black people—as well as against Latino, Indigenous, and Asian American people, women, LGBTQ+ community members, and people with disabilities—remains all too common in America.

- As discussed further in the testimony of Jin Hee Lee, LDF's Director of Strategic Initiatives, before the Senate Small Business Committee (Ex. B, attached), Black entrepreneurs experience intentional discrimination and pervasive unfair barriers in access to financial services, capital, networks, and other opportunities that stunt the growth of their businesses and prevent qualified companies from effectively competing for government contracts.¹²
- Black people and other people of color in the United States suffer disproportionately from preventable disease and premature deaths,¹³ including high rates of maternal mortality.¹⁴ Many of these racial disparities persist even when accounting for

¹¹ Frank Dobbin & Alexandra Kalev, *The origins and effects of corporate diversity programs*, in THE OXFORD HANDBOOK OF DIVERSITY AND WORK (Quinetta M. Roberson, ed.) (2013).

¹² See also *Promoting Opportunity: The Need for Targeted Federal Business Programs to Address Ongoing Racial Discrimination: Hearing Before the Senate Small Business Committee*, 118th Cong. (2024), <https://www.sbc.senate.gov/public/index.cfm/2024/5/promoting-opportunity-the-need-for-targeted-federal-business-programs-to-address-ongoing-racial-discrimination>.

¹³ Risa Lavizzo-Mourey & David Williams, *Being Black Is Bad for Your Health*, U.S. NEWS (Apr. 14, 2016), <https://www.usnews.com/opinion/blogs/policy-dose/articles/2016-04-14/theres-a-huge-health-equity-gap-between-whites-and-minorities>.

¹⁴ DONNA HOYER, NATIONAL CENTER FOR HEALTH STATISTICS, MATERNAL MORTALITY RATES IN THE UNITED STATES, 2022 (2024), <https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2022/maternal-mortality-rates-2022.pdf>.

socioeconomic status, lifestyle, insurance coverage, and other risk factors.¹⁵ Several studies have shown that “provider and institutional bias are significant contributors” to health inequities,¹⁶ and the U.S. Department of Health and Human Services has found that Black people received worse care than white people across 43 percent of 195 quality measures.¹⁷

- In 2023, the Department of Education reported that it received the most civil rights complaints in its history, most of which allege race, sex, or disability discrimination.¹⁸ In particular, racial barriers in medical education have long excluded or marginalized talented students of color, unfairly limiting access to the health professions and reinforcing inequities in health outcomes.¹⁹ These barriers—such as financial and educational barriers²⁰ and the lack of mentorship²¹—contribute to a medical workforce that does not reflect the communities it serves.
- The U.S. Department of Housing and Urban Development receives thousands of discrimination complaints each year. Of the seven protected classes under the Fair Housing Act of 1968 (FHA), disability continues to be the top basis of alleged discrimination (5,128) followed by race (2,158).²²
- While the number of Black people with college degrees has increased over the last two decades, Black people remain relegated to lower wage jobs and less lucrative industries compared to white people with similar levels of education, and Black women experience some of the largest pay gaps.²³

While opponents of civil rights claim there is a rash of discrimination against white men, the reality remains that most discrimination claims are brought by people of color, women, LGBTQ+ community members, and other historically marginalized groups that continue to be excluded from equal opportunity.²⁴

Diversity, equity, inclusion, and accessibility programs have long been used to prevent such discrimination and assist with civil rights compliance. For example, courts have found that

¹⁵ See Virginia Tangel et al., *Racial and Ethnic Disparities in Maternal Outcomes and the Disadvantage of Peripartum Black Women: A Multistate Analysis, 2007-2014*, 36 AM. J. PERINATOLOGY 835, 835, 843 (2019).

¹⁶ *Id.*

¹⁷ U.S. DEP’T OF HEALTH & HUMAN SERVS., AGENCY FOR HEALTHCARE RES. & QUALITY, 2021 NATIONAL HEALTHCARE QUALITY & DISPARITIES REPORT EXECUTIVE SUMMARY (2020), at ES-3, D-3-D-51, <https://www.ahrq.gov/sites/default/files/wysiwyg/research/findings/nhqdr/2021qdr.pdf>.

¹⁸ Eesha Pendahrkar, *The Ed. Dept. Received the Most Civil Rights Complaints in History Last Year*, ED WEEK (May 9, 2023), <https://www.edweek.org/leadership/the-ed-dept-received-the-most-civil-rights-complaints-in-history-last-year/2023/05>.

¹⁹ Adil Mouhab, et al., *Racial biases in clinical practice and medical education: a scoping review*, BMC MED. EDUC, vol. 24 (2024), <https://doi.org/10.1186/s12909-024-06119-1>.

²⁰ Kelsie Sandoval, *Students from underrepresented racial and ethnic groups face more barriers and are less likely to apply to and attend medical school*, UCLA HEALTH (Apr. 14, 2023), <https://www.uclahealth.org/news/release/students-underrepresented-racial-and-ethnic-groups-face-more>

²¹ *Id.*

²² The Fair Housing Act’s protected classes include race, color, national origin, religion, sex, disability and familial status. https://www.hud.gov/sites/dfiles/SFH/documents/FHEO_Annual_Report_FY_2023.pdf

²³ Ashley Jardina, et al., *The Limits of Educational Attainment in Mitigating Occupational Segregation Between Black and White Workers*, NAT’L BUREAU OF ECON. RESEARCH (Aug. 2023), <https://doi.org/10.3386/w31641>. National Women’s Law Center, *Black Women Have Been Undervalued and Underpaid for Far Too Long* (Jul. 1, 2024), <https://nwlc.org/resource/black-womens-equal-pay-day-factsheet/>.

²⁴ Brief for the NAACP Legal Defense and Education Fund et al. as Amicus Curiae, in *Ames v. Ohio Dep’t of Youth Services*, No. 23-1039 at 19-23 (Jan. 24, 2025).

training can help employers meet their legal obligation under Title VII of the Civil Rights Act of 1964 to prevent harassment and other forms of discrimination in the workplace,²⁵ and the U.S. Equal Employment Opportunity Commission has stressed in its official documents the importance of training to advance this goal.²⁶ Similarly, Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin by federally-funded institutions, including PK-12 schools and higher education institutions. In agreeing to resolve U.S. Department of Education Office for Civil Rights (OCR) investigations related to hostile environments based on race, schools have often implemented diversity, equity, and inclusion practices to remedy discrimination and foster a more positive and inclusive school climate.²⁷ These include resolution agreements drafted by OCR during the first Trump Administration.²⁸ Courts have previously upheld diversity statements and policies,²⁹ anti-bias trainings,³⁰ and targeted recruiting programs³¹ against a variety of legal challenges.³²

²⁵ *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998); *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 765 (1998) (discussing affirmative defense to harassment liability available where, among other things, an employer “exercised reasonable care to prevent and correct promptly any sexually harassing behavior” such as by informing employees of internal anti-harassment policies).

²⁶ See, e.g., EEOC, Amicus Brief in *Vavra v. Honeywell International, Inc.*, No. 23-2823 (7th Cir. Feb. 6, 2024) at 14-20; EEOC Strategic Enforcement Plan, Fiscal Years 2024-2028 at 18 (stating that “the EEOC will support employer efforts to implement lawful and appropriate diversity, equity, inclusion, and accessibility (DEIA) practices that proactively identify and address barriers to equal employment opportunity, help employers cultivate a diverse pool of qualified workers, and foster inclusive workplaces.”); EEOC, Guidance on Race and Color Discrimination (Apr. 19, 2006), Section IX, Proactive Prevention (encouraging employers “to reduce the likelihood of Title VII violations and to address impediments to equal employment opportunity” through proactive measures such as conducting selfanalyses and enhancing outreach).

²⁷ See U.S. Dep’t of Education, Office for Civil Rights, Fact Sheet: Diversity & Inclusion Activities Under Title VI (Jan. 2023), https://www.saveyourvi.org/_files/ugd/fed74f_f83be2e4e31141adaffb41d1c15307c7.pdf (removed from ED OCR website).

²⁸ See U.S. Dep’t of Education, Office for Civil Rights, Resolution Agreement for Maple Run Unified School District (Jul. 2018), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/investigations/more/01171319-b.pdf> (requiring remedies for a racially hostile environment, including racial bias training for staff, consultation with an equity coordinator, and changes to school grievance processes).

²⁹ See, e.g., *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599 (9th Cir. 2004) (stating goal of diversity policy to reduce sexual orientation discrimination is consistent with goals of civil rights laws); *Bernstein v. St. Paul Companies, Inc.*, 134 F. Supp. 2d 730, 739 (D. Md. 2001) (“A company’s (or its CEO’s) commitment to ‘diversity,’ if expressed in terms of creating opportunities for employees of different races and both genders, or fostering workplace tolerance, is not proof of discriminatory motive with respect to any specific hiring decision.”); *Lutes v. Goldin*, 62 F. Supp. 2d 118, 131 (D.D.C.1999) (stating concern for ensuring equal opportunity and removing barriers does not support a claim of discrimination when there is no evidence of any preference for one group over the other); *Johnson v. Metro. Gov’t of Nashville*, 502 F. App’x 523, 535 (6th Cir. 2012); *Bissett v. Beau Rivage Resorts*, 442 F. App’x 148, 152–53 (5th Cir. 2011); *Mlynczak v. Bodman*, 442 F.3d 1050, 1058 (7th Cir. 2006); *Tomaszewski v. City of Philadelphia*, 460 F. Supp. 3d 577, 594 (E.D. Pa. 2020).

³⁰ *Young v. Colorado Dep’t of Corrections*, 94 F.4th 1242 (10th Cir. 2024); *Vavra v. Honeywell*, 106 F.4th 702 (7th Cir. 2024); *Young v. Colorado Department of Corrections*, No. 23-1063 (10th Cir. Mar. 11, 2024). Cf. *Henderson v. Sch. Dist. of Springfield R-12*, No. 6:21-cv-03219-MDH, 2023 WL 170594 (W.D. Mo. Jan. 12, 2023) (dismissing plaintiffs’ claims that anti-bias training violated 42 U.S.C. § 1983 and the First Amendment for lack of standing because they could not demonstrate that they were harmed); but cf. *Diemert v. City of Seattle*, No. 2:22-cv-1640, 2023 WL 5530009 (W.D. Wash. Aug. 28, 2023) (holding that plaintiff plausibly stated a hostile work environment claim, as plaintiff alleged that he experienced verbal and physical harassment from his co-workers, in addition to raising concerns about defendant’s anti-bias training).

³¹ See, e.g., *Mlynczak*, 442 F.3d 1050 (finding that U.S. Department of Energy’s recruitment policy was intended to ensure “diversity in the applicant pool for positions at the agency” and was not evidence of discrimination because the efforts “were of the type that expand the pool of persons under consideration, which is permitted”); *Duffy v. Wolle*, 123 F.3d 1026, 1038-39 (8th Cir. 1997). The EEOC has stated that an employer may “adopt strategies to expand the applicant pool of qualified [Black] applicants, such as recruiting at schools with high Black enrollment.” EEOC, Section 15 Race and Color Discrimination, in *Directives Transmittal*: (EEOC No. 915.003) 15-31 (2006), https://www.eeoc.gov/sites/default/files/migrated_files/policy/docs/race-color.pdf.

³² For further background on the legal frameworks governing diversity, equity, inclusion, and accessibility practices in the workplace and other areas, see NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC., THE ECONOMIC IMPERATIVE TO

The Supreme Court’s recent decision in *Students for Fair Admissions v. Harvard/University of North Carolina (SFFA)* did not alter the legality of initiatives that advance racial diversity, equity, inclusion, and accessibility.³³ In *SFFA*, the Supreme Court held that the explicit use of race, as one among many other factors, in admissions at Harvard and the University of North Carolina violated the Equal Protection Clause and Title VI. The decision does not implicate other bodies of law—such as Title VII, which governs employment discrimination. The Court in *SFFA* expressly recognized that race-based decisions remain permissible where there is a compelling interest in “remediating specific, identified instances of past discrimination that violated the Constitution or a statute.”³⁴ Moreover, the case reaffirmed that race-neutral efforts to increase diversity, equity, inclusion, and accessibility are lawful. For example, in his concurring opinion in *SFFA*, Justice Brett M. Kavanaugh emphasized that “governments and universities still ‘can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race.’”³⁵ The many diversity, equity, inclusion, and accessibility programs do not involve race-based decisions, as well as narrowly tailored race-based programs designed to remedy discrimination, thus remain lawful.

IV. Diversity, Equity, Inclusion, and Accessibility in Healthcare is Critical to Addressing Racial Health Disparities

Closing disturbing disparities in healthcare for Black people and improving outcomes for all patients requires concerted effort to address discrimination in health care. Diversity, equity, inclusion, and accessibility efforts—like targeted recruiting initiatives, culturally-competent training, mentorship and sponsorship programs, and employee resource groups—can help achieve these goals. Research consistently demonstrates that a diverse physician workforce enhances communication, trust, and health outcomes, particularly for historically underserved populations.³⁶ As the American Academy of Medical Colleges and other physicians groups have explained, “diversity in medical education yields better health outcomes . . . because all physicians become better practitioners overall as a result of a diverse working and learning environment.”³⁷ Once in practice, members of diverse healthcare teams are less likely to make the types of mistakes they might make in a more racially and culturally homogenous environment.³⁸ Patients experience higher satisfaction and better health outcomes when their healthcare providers understand their cultural backgrounds and personal experiences.³⁹ Black and other health care providers of color are also more likely to work in underserved areas.⁴⁰ Finally, diversity, equity, inclusion, and accessibility initiatives can promote a more inclusive

ENSURE EQUAL OPPORTUNITY: GUIDANCE FOR EMPLOYERS, BUSINESSES, AND FUNDERS (2024), <https://www.naacpldf.org/wp-content/uploads/2024-02-01-Aff-Axn-Economic-Guidance-2.pdf>; NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC., AFFIRMATIVE ACTION IN HIGHER EDUCATION (2003), [HTTPS://WWW.NAACPLDF.ORG/WP-CONTENT/UPLOADS/2023_09_29-REPORT.PDF](https://www.naacpldf.org/wp-content/uploads/2023_09_29-REPORT.PDF).

³³ 600 U.S. 181 (2023).

³⁴ *Id.* at 207.

³⁵ *Id.* at 317.

³⁶ Fatima Cody Stanford, *The Importance of Diversity and Inclusion in the Healthcare Workforce*, J. Nat’l Med Assoc., vol. 112, no. 3, pp. 247-249 (Apr. 23, 2020), doi: 10.1016/j.jnma.2020.03.014; cf. Jonathan M. Metzl & Helena Hansen, *Structural Competency: Theorizing A New Medical Engagement With Stigma and Inequality*, 103 SOC. SCI. & MED. 126, 128-32 (1982).

³⁷ *Id.* at 5.

³⁸ L.E. Gomez & Patrick Bernet, *Diversity Improves Performance and Outcomes*, 111 J. NAT’L. MED. ASS’N, 383, 384-89 (2019). See also, e.g., Roland A. Owens, *The Carter Lab at NIH: A Model of Inclusive Excellence in Biomedical Research*, 31 HUM. GENE THERAPY 512, 512-17 (2020) (describing the benefits of diverse team of researchers in the development of gene therapy vectors).

³⁹ *Id.*

⁴⁰ Jordan J. Cohen, et al., *The Case for Diversity in the Healthcare Workforce*, HEALTH AFFAIRS, vol. 21, no. 5, pp. 90-102, https://www.apcprods.org/assets/docs/ldd/the_case_for_diversity_in_the_health_care_workforce.pdf

and fairer environment for healthcare staff, which can help reduce burnout⁴¹ and enhance staff well-being and retention.⁴² Promoting equitable access to the profession can thus help close the gap in health disparities and create a more responsive, inclusive health care system for all.

V. Remedial Federal Programs Help Address Ongoing Discrimination Against Black and Other Disadvantaged Business Owners

As noted above and explained in more detail in Exhibit B, Black and other socially and economically disadvantaged business owners continue to experience active and passive discrimination in government contracting. The Department of Justice has catalogued dozens of studies documenting this ongoing racial and gender discrimination.⁴³

In order to redress these harms, the federal government has created programs to help these business owners compete fairly for federal contracts and access the benefits of other federal programs, such as the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) Program and the U.S. Small Business Administration's 8(a) program. Each of these programs is administered in different ways and raises different legal considerations.

Some programs, like the 8(a) program and programs offered by the Minority Business Development Agency, do not currently involve the consideration of race or gender in determining who can qualify. The 8(a) program, for example, has long permitted any business that can demonstrate that it is owned by one or more people who have experienced economic⁴⁴ and social disadvantage⁴⁵ to participate. Following a recent court decision, all 8(a) businesses must make this showing, rather than rely on a presumption that people of color and women have experienced social disadvantage.⁴⁶

Other programs, like the DBE program, involve the limited consideration of race in narrowly tailored circumstances to remedy discrimination. The DBE program, for example, requires recipients of Department of Transportation contracts to set realistic goals for the participation of socially and economically disadvantaged businesses⁴⁷ and to try to achieve those goals through race-neutral means to the maximum extent possible.⁴⁸ Courts have repeatedly upheld well-designed programs that consider race to address discrimination, including the DBE Program.⁴⁹ Indeed, every federal circuit court that has considered the constitutionality of the

⁴¹ *E.g.* Julia C. Whiteleather, et al., *Diversity engagement is associated with lower burnout among anesthesia providers*, JCA Advances, vol., issues 3–4 (Dec. 2024), <https://www.sciencedirect.com/science/article/pii/S2950553424000273>.

⁴² Samantha E. Kaplan, et al., *Race/ethnicity and success in academic medicine: Findings from a longitudinal multi-institutional study*, *Academic Medicine*, vol. 93, no. 4, pp. 616–622 (2018), <https://pubmed.ncbi.nlm.nih.gov/29068820/>.

⁴³ U.S. Dep't of Justice, *The Compelling Interest to Remedy the Effects of Discrimination in Federal Contracting: A Survey of Recent Evidence* (2022), <https://www.justice.gov/crt/page/file/1463921/dl?inline>.

⁴⁴ 15 U.S.C. §637(a)(6) (defining "economically disadvantaged individuals" as "those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged").

⁴⁵ 15 U.S.C. §637(a)(5) (defining social disadvantage as "racial or ethnic prejudice or cultural bias within American society, stemming from their membership in a group and independent of their individual qualities").

⁴⁶ *Ultima Servs. Corp. v. U.S. Dept of Agric., et al.*, 683 F.Supp.3d 745 (E.D. Tenn. 2023).

⁴⁷ 49 C.F.R. § 26.45(b).

⁴⁸ 49 C.F.R. § 26.51(a).

⁴⁹ *Midwest Fence Corp. v. Dep't of Transp.*, 840 F.3d 932 (7th Cir. 2016); *Associated Gen. Contractors of Am., San Diego Chapter, Inc. v. Cal. Dep't of Transp.*, 713 F.3d 1187 (9th Cir. 2013); *W. States Paving Co. v. Wash. State DOT*, 407 F.3d 983 (9th Cir. 2005); *N. Contracting, Inc. v. Illinois*, 473 F.3d 715 (7th Cir. 2007); *Sherbrooke Turf, Inc. v. Minnesota Dept. of Transp.*, 345 F.3d 964 (8th Cir. 2003); *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10th Cir. 2000).

DBE program since it was revised in the aftermath of *Adarand Constructors, Inc. v. Peña*,⁵⁰ has found that program is constitutional.⁵¹

Remedial programs like the DBE program are essential in ensuring federal taxpayer dollars do not perpetuate discrimination. For example, in 2024, the White House Council on Economic Advisors published an analysis finding evidence that racial discrimination contributed to disparities in contracting, but that such discrimination can be mitigated with DBE goals.⁵² By contrast, in the absence of such goals, DBEs are often unfairly excluded from contracting opportunities despite being qualified and available.⁵³ Some of the majority's hearing witnesses pointed to a handful of instances when people who have not experienced discrimination or are otherwise not qualified, under program rules, have improperly taken advantage of federal remedial programs. However, these few incidents do not undermine the legal and moral justification for the remedial programs themselves.

VI. Diversity, Equity, Inclusion, and Accessibility Efforts and Remedial Programs Grow the Economy

Diversity, equity, inclusion, and accessibility initiatives are important tools in creating a thriving economy. Research consistently shows that diversity drives innovation and strengthens organizations.⁵⁴ Inclusive environments empower individuals from diverse backgrounds to collaborate and create solutions to complex challenges.⁵⁵ These advantages increase productivity, economic growth, and social progress.

By contrast, ongoing discrimination and unfair barriers to opportunity limit American innovation, stunt the growth of our economy, and weaken the foundations of our democracy. According to a 2020 study by Citi, the United States' aggregate economic output would have been \$16 trillion higher since 2000 if we had closed racial gaps in wages, access to higher education, lending, and mortgage access.⁵⁶ Researchers at McKinsey estimated that the racial wealth gap alone will cost the U.S. economy between \$1 trillion and \$1.5 trillion between 2019 and 2028—4 to 6 percent of the projected GDP in 2028.⁵⁷ By contrast, if the rate of Black and Latino business ownership was on par with their share of the population, and those businesses

⁵⁰ 515 U.S. 200 (1995).

⁵¹ See, e.g., *Adarand Constructors, Inc.*, 228 F.3d 1147; *Sherbrooke Turf, Inc.*, 345 F.3d 964; *W. States Paving Co.*, 407 F.3d 983; *N. Contracting, Inc.*, 473 F.3d 715.

⁵² WHITE HOUSE COUNCIL ON ECONOMIC ADVISORS, RACIAL DISPARITIES IN GOVERNMENT CONTRACTING (Dec. 20, 2024) (attached as Ex. C).

⁵³ *Midwest Fence Corp.*, 840 F.3d at 951.

⁵⁴ Roger C. Mayer et al., *Do Pro-Diversity Policies Improve Corporate Innovation?*, 47 FIN. MGMT. 617 (2018); David Rock & Heidi Grant, *Why Diverse Teams are Smarter*, HARV. BUS. REV. (Nov. 4, 2016). See also William J. Holstein, *Diversity is Even More Important in Hard Times*, N.Y. TIMES (Feb. 13, 2009) (“[I]t’s difficult, if not impossible, for [a] homogenous board[] to challenge and offer different perspectives, unique experiences and the broad-based wisdom that makes the board, and therefore the company, as effective as they can be.”)

⁵⁵ E.g. Jason Miller, *The Power of Diversity and Inclusion*, FORBES (Apr. 16, 2023), <https://www.forbes.com/councils/forbesbusinesscouncil/2023/08/16/the-power-of-diversity-and-inclusion-driving-innovation-and-success/#:~:text=The%20Business%20Case%20For%20Diversity,innovative%20products%2C%20services%20and%20approaches>.

⁵⁶ PETERSON & MANN, *supra* note 6, at 7.

⁵⁷ Nick Noel, et al., *The economic impact of closing the racial wealth gap*, MCKINSEY & CO. (Aug. 13, 2019), <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap>.

generated the same revenue as their peers, these businesses would generate an additional \$1.6 trillion and \$2.3 trillion respectively⁵⁸ and create millions of jobs per year.⁵⁹

VII. The Trump Administration's Attacks on Diversity, Equity, Inclusion, and Accessibility Efforts and Remedial Programs Harm the Country

Despite the value and legality of these efforts, the Trump administration has attacked diversity, equity, inclusion, and accessibility initiatives and sought to end remedial programs. President Trump has issued numerous executive orders that target diversity, equity, and inclusion practices.⁶⁰ These executive orders seek to weaponize civil rights enforcement, terminate longstanding government programs, and dismantle important, decades-old legal tools for ferreting out discrimination in order to advance the administration's political agenda. While these executive orders cannot themselves change federal statutes, they are intended to stop lawful conduct by the public and private sector. Moreover, pursuant to these executive orders, the Trump administration has sought to cut funding for research into cancer, Black maternal health, autism, Alzheimer's disease and dementia, and HIV;⁶¹ halt programs to improve teacher development and quality,⁶² withhold funding for domestic violence services,⁶³ and ban the celebration of Black History Month at schools operated by the Department of Defense.⁶⁴ Advocates, including LDF, have challenged the executive orders and the actions that flow from them as unlawful.⁶⁵

The Trump administration's attacks on diversity, equity, inclusion, and accessibility take us backward as a nation. We must not allow the dismantling of diversity, equity, inclusion, and accessibility practices, policies, and principles. Doing so will hinder efforts to address ongoing inequality. Congress should not participate in these attacks. We cannot afford to turn back the clock on the progress our country has made towards opening opportunities for all.

VIII. Conclusion

The principles of diversity, equity, inclusion, and accessibility are essential for fostering a just and equitable society that enables all individuals to reach their full potential and thrive. Far from dividing people, initiatives that advance these values offer an opportunity to confront

⁵⁸ MCKINSEY & CO., UNDERESTIMATED START-UP FOUNDERS: THE UNTAPPED OPPORTUNITY (Jun. 23, 2023), <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/underestimated-start-up-founders-the-untapped-opportunity>.

⁵⁹ PETERSON & MANN, *supra* note 6, at 4.

⁶⁰ *E.g.* Exec. Order No. 14,151, 90 Fed. Reg. 8339 (Jan. 29, 2025) (entitled "Ending Radical And Wasteful Government DEI Programs And Preferencing"); *see also* Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 21, 2025) (entitled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity").

⁶¹ Jessie Hellman, *Trump cancels NIH grants on equity research*, ROLL CALL (Mar. 24, 2025 6:18 p.m.), <https://rollcall.com/2025/03/24/trump-cancels-nih-grants-on-equity-research/>.

⁶² Sarah D. Sparks & Sarah Schwartz, *Trump Administration Slashes Millions in Teacher-Training Grants*, EdWeek (Feb. 18, 2025), <https://www.edweek.org/teaching-learning/trump-administration-slashes-millions-in-teacher-training-grants/2025/02>.

⁶³ Christopher Shea, *ACLU asks R.I. federal judge to block Trump grant restrictions for groups aiding victims of violence*, RHODE ISLAND CURRENT (Jun. 9, 2025 6:35 PM), <https://rhodeislandcurrent.com/2025/06/30/aclu-asks-r-i-federal-judge-to-block-trump-grant-restrictions-for-groups-aiding-victims-of-violence/>.

⁶⁴ Jennifer H. Svan, *Trump's orders end cultural observances in DODEA schools, spur review of clubs and books*, STARS & STRIPES (Feb. 6, 2025), <https://www.stripes.com/theaters/europe/2025-02-06/dodea-makes-dei-changes-16741634.html>.

⁶⁵ *E.g. National Urban League v. Donald J. Trump*, No. 25-471 (D.D.C. 2025), [https://www.naacpldf.org/case-issue/national-urban-league-v-trump-2025-anti-dei-executive-orders-lawsuit/#:~:text=a%20preliminary%20injunction.-,The%20National%20Urban%20League%2C%20the%20National%20Fair%20Housing%20Alliance%2C%20and,adm inistration%20from%20implementing%20the%20orders;Mid-Atlantic Equity Consortium, Inc. v. U.S. Dep't of Education, No 1:25-cv01407 \(D.D.C. 2025\), https://www.naacpldf.org/wp-content/uploads/MAEC-Filed-Complaint.pdf](https://www.naacpldf.org/case-issue/national-urban-league-v-trump-2025-anti-dei-executive-orders-lawsuit/#:~:text=a%20preliminary%20injunction.-,The%20National%20Urban%20League%2C%20the%20National%20Fair%20Housing%20Alliance%2C%20and,adm inistration%20from%20implementing%20the%20orders;Mid-Atlantic Equity Consortium, Inc. v. U.S. Dep't of Education, No 1:25-cv01407 (D.D.C. 2025), https://www.naacpldf.org/wp-content/uploads/MAEC-Filed-Complaint.pdf).

uncomfortable truths, foster mutual understanding, and create pathways for opportunity and progress. Instead of attacking these initiatives, the federal government and the private sector should invest in the most effective measures to ensure equal opportunity for all. Only then will we achieve our full potential as a nation.