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STUDENT SPOTLIGHT

LEGAL AND BUSINESS FOUNDATIONS OF DIVERSITY, EQUITY, AND INCLUSION INITIATIVES

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This paper examines the legal and business foundations of Diversity, Equity, and Inclusion (DEI) initiatives in corporate America, with a particular focus on the impact of the Supreme Court's 2023 decision in Students for Fair Admissions v. Harvard (SFFA). Although the ruling directly addressed race-conscious admissions in higher education, it has intensified legal scrutiny, political polarization, and shareholder challenges surrounding workplace DEI programs. Tracing the origins of DEI to the civil rights movement and federal anti-discrimination laws, this paper distinguishes between affirmative action and modern DEI practices while analyzing the evolving legal framework governing employers under Title VII and related statutes. It further explores the business case for DEI, including its integration into ESG metrics, talent management strategies, and long-term organizational performance. Recent corporate responses, including budget reductions, terminology shifts, and litigation risks, demonstrate a recalibration rather than a uniform retreat. The future of DEI in corporate America will depend on transparency, measurable outcomes, and alignment with both legal mandates and organizational values.

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I. LEGAL AND BUSINESS FOUNDATIONS OF DIVERSITY, EQUITY, AND INCLUSION (DEI) INITIATIVES: COMPANIES ARE CHANGING THEIR DEI INITIATIVES/PROGRAMS FOLLOWING THE SCOTUS AFFIRMATIVE ACTION DECISION

The 2020 murder of George Floyd prompted unprecedented corporate commitments to racial equity and diversity, equity, and inclusion (“DEI”) initiatives. Companies across industries pledged billions of dollars toward racial justice causes, expanded diversity recruiting efforts, and created or elevated Chief Diversity Officer roles. Four years later, corporate America is recalibrating its approach, reducing internal DEI teams, outsourcing consultants, and reframing initiatives under alternative terminology. Others have maintained formal commitments while quietly reassessing program design to mitigate legal and reputational risk.

This recalibration has unfolded against a backdrop of intensified legal and political scrutiny. Numerous state legislatures have introduced or advanced legislation aimed at restricting or eliminating DEI initiatives in public institutions.¹ Corporate responses have varied significantly, reflecting differing levels of institutional commitment and risk tolerance. Even among companies maintaining public commitments, internal restructuring and resource reallocation have become increasingly common.

Most significantly, the Supreme Court’s 2023 decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* (“SFFA”)² invalidated race-conscious admissions frameworks in higher education and signaled a renewed constitutional emphasis on formal neutrality in equal protection analysis. Although the ruling does not directly govern private employers under Title VII of the Civil Rights Act of 1964, its reasoning has influenced the legal environment in which corporate DEI programs operate.

This paper examines the legal and business foundations of corporate DEI initiatives considering this evolving landscape. It traces the historical roots of DEI to the civil rights movement and federal anti-discrimination law, distinguishes between affirmative action and contemporary DEI practices, and analyzes the governing legal framework under Title VII and related statutes.

It further evaluates the business rationale for DEI, including its integration into environmental, social, and governance (ESG) frameworks and human capital strategy. Finally, it assesses the impact of *SFFA* and subsequent litigation trends on corporate policy, arguing that sustainable DEI efforts must move beyond symbolic compliance toward transparent, data-driven, and legally sound implementation. Rather than signaling wholesale retreat, the current moment reflects strategic recalibration shaped by constitutional doctrine, market pressures, and stakeholder expectations.

II. THE ORIGINS OF DEI IN THE WORKPLACE: THE BUSINESS CASE FOR DEI AND THE LAWS AND POLICIES THAT AIMED TO PROTECT AND PROMOTE HUMAN RIGHTS AND DIVERSITY

Diversity, equity, and inclusion are three interrelated and interdependent concepts that refer

to the respect, recognition, and representation of human differences and similarities in various dimensions, such as race, ethnicity, gender, sexual orientation, disability, age, religion, culture, and socio-economic status. DEI also encompasses the policies, practices, and behaviors that create a culture of belonging, fairness, and empowerment for all people, regardless of their backgrounds and identities. To have effective DEI programs, firms need to consider both the business and legal reasons for making DEI programs that ensure demographic diversity, gender equality, and an inclusive work environment.³

To understand the legal and business evolution of DEI in the workplace, it is necessary to clarify the conceptual distinctions among diversity, equity, inclusion, and belonging. The term "belonging" is defined by Pat Wadors, the chief talent officer of ServiceNow, a software company, as the feeling of psychological safety that allows employees to be their authentic selves at work, and to feel valued, respected, and supported by their colleagues and managers.⁴ The term "inclusion" is defined by the Diversity and Inclusion Benchmarks, a tool for assessing and measuring the effectiveness of DEI practices in organizations, as the degree to which diverse individuals can participate fully in the decision-making processes within an organization or group.⁵ The term "equity" is defined by the Diversity and Inclusion Benchmarks, a tool for assessing and measuring the effectiveness of DEI practices in organizations, as the fair and respectful treatment of all people, and the provision of opportunities and resources to enable all people to achieve their full potential.⁶ These concepts, while distinct, collectively inform the legal obligations and strategic frameworks that shape modern workplace DEI initiatives. Their institutionalization in corporate practice, however, emerged from earlier civil rights struggles and federal anti-discrimination mandates. Those struggles produced both statutory mandates and judicial doctrine that continue to shape employer obligations today. The resulting legal framework remains central to contemporary debates over corporate DEI governance.

The DEI movement is a collective and collaborative effort to promote and advance DEI in all spheres of life, especially in the workplace, where people spend a significant amount of their time and energy. DEI efforts in the workplace seek to extend opportunities to individuals who have historically been excluded, producing effects that extend beyond the workplace into families and communities. Ultimately, initiatives focused on diversity, equity, and inclusion in the workplace serve as an ethical and legal commitment, and they offer strategic advantages to companies, employees, their families, and society.

The origins of DEI can be traced back to the civil rights movement, women's rights, disability rights, LGBTQ+ rights, and human rights, which fought for the recognition and protection of the rights and dignity of marginalized and oppressed groups throughout history. It was a time when societal movements and legal changes began to reshape the corporate world. The introduction of equal employment laws and affirmative action marked the beginning of workplace diversity training. Additionally, there was a growing recognition of the business case for diversity, connecting programs to performance.

Organizations began to see diversity not just as a moral imperative but as a key driver of business success. The DEI movement in the 1980s and 1990s expanded to include the concepts of equity and inclusion, which recognized that diversity was not only a matter of numbers, but also of power and influence. In 2020, the term DEI became a buzzword in corporate America. After the

murder of George Floyd, the Black Lives Matter movement and public pressure for corporate social accountability, many companies made public commitments to DEI.

III. DEI THE BUSINESS CASE AND LEGAL FRAMEWORK

A. The Legal Framework for Diversity, Equity, and Inclusion

DEI and civil rights movements prompted employers to set goals to comply with legal mandates and avoid discrimination lawsuits. As Congress passed new laws, the Equal Employment Opportunity Commission (EEOC) offered guidance on how to implement the laws, practitioners served as professionals that collaborated with companies to promote change and legal compliance. In the 1980s companies developed the business case for diversity with the realization that increased diversity yields more success including financial success. The concepts of equity and inclusion have also evolved to include not only the internal dynamics of the organization, but also the external impact on the society and the environment. The goal is not only to create a positive and supportive workplace, but also to make a positive and sustainable difference in the world. Environmental social governance (ESG), a term that refers to the criteria and standards that measure the environmental, social, and ethical performance of an organization became popular, adding an additional rationale for DEI work.⁷ While employers were instituting changes based on social pressures and employee demands, such pressures and demands were not, in fact, new. These changes have historical and social roots and implications, as they relate to the earlier and current trends in society and culture.

In response to the murder of George Floyd, employees demanded more, calling for a more radical and transformative approach to DEI, one that challenges the status quo and reimagines a more equitable and inclusive world. Employers consequently stepped up their DEI programs and initiatives, shifting from a narrow and compliance-driven view of DEI to a broader and purpose-driven view that aligns with the ESG goals and values of an organization. While employers were instituting changes based on social pressures and employee demands, such pressures and demands were not, in fact, new, there is a long history of workers' movements and struggles for better working conditions, rights, and benefits. Anti-discrimination laws in employment date back to the Equal Protection Clause of the 14th Amendment.⁸ Notable laws include the Equal Pay Act of 1963,⁹ prohibiting unequal pay based upon sex; Title VII of the Civil Rights Act of 1964,¹⁰ prohibiting discrimination in employment practices against employees on the basis of race, color, national origin, and religion; the Age Discrimination in Employment Act of 1967,¹¹ prohibiting employment discrimination against individuals who are 40 years of age or older; and the Americans with Disabilities Act of 1990,¹² that prohibits discrimination against individuals with disabilities and requires them to provide reasonable accommodations.

The longest standing federal affirmative action program has its roots in World War II. Executive Order 8802,¹³ barring discrimination in the defense industry and creating the Fair Employment Practices Committee (FEPC) was issued by President Franklin Roosevelt in 1941. It was the result of the pressure and activism of the Black community and its allies, who demanded equal opportunity and justice in the face of discrimination and oppression. It was also the response of the Roosevelt administration, who recognized the moral and strategic necessity of addressing the racial inequality and injustice in the context of the war against fascism. The order had a significant and lasting impact on the defense industry, the labor market, the civil rights movement, and the federal policy. The order also set a

precedent and a standard for subsequent executive orders and legislation that expanded and strengthened the federal role in promoting and protecting the rights of minorities and women in education, housing, health care, and other areas of society. The FEPC served as a model and a precursor for the Equal Employment Opportunity Commission (EEOC), which was established in 1964 by the Civil Rights Act. In response to the civil rights movement, President John F. Kennedy created a Committee on Equal Employment in 1961 and issued Executive Order 10925,¹⁴ which was the first to use the term "affirmative action"¹⁵ and required federal contractors to take steps to ensure that applicants and employees are treated equally without regard to their race, color, religion, sex, or national origin. It also established the President's Committee on Equal Employment Opportunity, which later became the EEOC. The EEOC is responsible for enforcing federal laws that prohibit discrimination in employment based on protected characteristics. Affirmative action is one of the tools that the EEOC uses to remedy past and present discrimination and to promote diversity and inclusion in the workforce. The Executive Order was followed by the Civil Rights Act of 1964, Title VII of which recognized the role that corporations needed to play to help combat discrimination within their workplaces.

The legal case for DEI found its roots in this push for affirmative action, and the term was further expanded by subsequent presidents. Lyndon B. Johnson signed Executive Order 11246 in 1965,¹⁶ which added sex as a protected category and required federal contractors to develop affirmative action plans. Executive Order 11478 in 1969,¹⁷ issued by Richard Nixon, prohibited discrimination based on race, color, religion, sex, national origin, handicap, or age in the federal civilian workforce. It also established the EEOC as the agency responsible for enforcing the order and ensuring fair and equitable treatment of federal employees and applicants. The order was a significant step in the civil rights movement and the advancement of equal opportunity and diversity in the workplace.

The legal foundation of modern DEI initiatives has been shaped by a series of landmark Supreme Court decisions defining both constitutional equality and statutory employment protections. In *Brown v. Board of Education* (1954),¹⁸ the Court rejected the doctrine of "separate but equal," establishing that state-sponsored racial segregation violates the Equal Protection Clause. In the employment context, the Court further clarified the reach of Title VII in *Griggs v. Duke Power Co.* (1971), holding that discrimination under the statute extends beyond overt intent to encompass practices that are neutral on their face but discriminatory in operation, and that such practices must be job-related and consistent with business necessity. The Court explained in *Griggs*:¹⁹

Congress directed the thrust of the Act to the consequences of employment practices, not simply the motivation. The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity.

The Court's articulation of disparate impact liability in *Griggs* remains central to evaluating contemporary workplace DEI initiatives under Title VII. Unlike constitutional equal protection analysis, which subjects explicit racial classifications to strict scrutiny, Title VII focuses on whether employment practices are job-related and consistent with business necessity.²⁰ As a result, employer initiatives designed to broaden recruitment pipelines, reduce structural bias, or expand access to opportunity may remain lawful if implemented through race-neutral criteria and supported by legitimate business objectives.²¹ The distinction between impermissible quotas

and permissible inclusive practices grounded in business necessity is therefore critical to understanding how corporate DEI programs can operate within existing statutory constraints.²²

By contrast, in *Regents of the University of California v. Bakke* (1978),²³ the Court addressed the distinct question of race-conscious admissions in higher education, permitting race to be considered as one factor among many while rejecting rigid quotas. Together, these decisions frame the legal terrain within which modern DEI efforts operate.

The *Roberts v. Texaco, Inc.* case²⁴ inspired today's DEI work. In this case, six highly qualified African American employees filed a class action complaint against Texaco, Inc., alleging that the company failed to promote African American employees to upper-level jobs and failed to compensate them fairly in relation to Caucasian employees in similar positions. Investigations not only revealed the complaint to be justified but also highlighted that the affirmative action plan in place at Texaco was poorly implemented and there was little or no effort to attract and increase minority representation in higher level jobs. The settlement agreement achieved by the parties represented the single largest settlement in the history of employment race discrimination litigation. In addition, Texaco agreed to the creation of an independent Equality and Tolerance Task Force, which was given broad powers over the company's anti-discrimination, affirmative action, and diversity efforts. Finally, Texaco agreed to broad, company-wide diversity and sensitivity training for all employees. The Texaco case settled in context of the Civil Rights Act of 1991 with expanded compensatory and punitive damages and the right to a jury trial; this gave employers an incentive to prevent lawsuits by implementing more effective DEI policies and practices, or to settle them quickly and confidentially to avoid the risk of costly and public verdicts.

In the late 1990s and early 2000s, major corporations were being sued for race and gender discrimination. One of the factors that contributed to the rise of lawsuits against corporations for race and gender discrimination was the growing awareness and activism of the affected groups, who were empowered by the civil rights movement, the feminist movement, and the affirmative action policies. These groups had higher expectations and aspirations for their careers and opportunities, and were more willing to challenge the discriminatory practices and cultures that limited their advancement and inclusion in the corporate world.

Contrary to widespread misperception, affirmative action and DEI are not the same. affirmative action started in the 1960s to stop employers and universities from discriminating against women and racial minorities. In the 1990s, Congress changed Title VII to cover all protected traits, making employers responsible for any discrimination. The efforts to promote affirmative action in the 1960s have evolved with society into the current DEI programs. DEI efforts are backed by two important ideas: the business case and corporate social responsibility.

B. The Business Case for Diversity, Equity, and Inclusion

A solid business case for DEI increases the likelihood of leadership commitment and resources necessary to implement diversity initiatives. The business case should highlight diversity integration as a competitive edge gained by optimizing people resources of the company.

Organizations are incorporating DEI considerations into talent acquisition, leadership

development, performance management, product development, marketing, and customer engagement. This integration aligns DEI efforts with the overall goals and objectives of the organization. The business case for DEI has evolved from being primarily driven by legal compliance and basic representation numbers to a strategy linked to innovation, performance, and market competitiveness. What companies may struggle with is how to prove that DEI contributes to profitability and performance. If companies consider only profits as a measure of success, this challenge persists. However, success can also be reflected in employee satisfaction and retention, soft skills that open new markets, and the cultural competence to engage with a diverse customer base without estrangement. Therefore, companies need to adopt a broader perspective on the value of DEI and how it can enhance their competitive edge in a globalized economy. Instead of treating DEI as a compliance issue or a public relations strategy, they should integrate it into their core mission and vision, and align it with their strategic goals and objectives. By doing so, they can create a culture of inclusion and innovation that fosters creativity, collaboration, and customer loyalty.

Having examined the legal foundations of DEI, it is necessary to consider how these principles have been operationalized in corporate practice.

IV. THE DEI LANDSCAPE IN CORPORATE AMERICA

A. Corporate Expansion and ESG Integration (2020–2022)

The modern corporate DEI landscape was significantly reshaped in 2020 following the murder of George Floyd. In response to widespread public protest and employee activism, corporations across industries pledged billions of dollars toward racial justice initiatives, expanded diversity recruitment efforts, and elevated Chief Diversity Officer roles within executive leadership structures.²⁵ The #MeToo movement and Black Lives Matter protests further intensified pressure on employers to reassess workplace equity and representation practices.

During this period, DEI became closely intertwined with environmental, social, and governance (“ESG”) frameworks. Companies increasingly incorporated diversity metrics into human capital disclosures, leadership evaluations, and compensation structures.²⁶ Board diversity, pay equity, employee resource group participation, and workforce demographic reporting became components of broader ESG reporting regimes.²⁷ The integration of DEI into governance frameworks reflected a shift from compliance-based diversity programs toward strategic, enterprise-wide initiatives tied to long-term organizational performance. This expansion phase, however, proved vulnerable to shifting legal and political winds. As judicial scrutiny intensified and political backlash grew, signs of retrenchment began to emerge.

B. Retrenchment, Branding Shifts, and Strategic Recalibration

This recalibration coincided with growing legal uncertainty following the Supreme Court’s decision in *SFFA*. Beginning in 2023, however, signs of retrenchment emerged. Several major corporations including Zoom, Meta, Tesla, DoorDash, Lyft, and Home Depot reduced or restructured their DEI teams, in some cases eliminating positions entirely.²⁸ Others reframed

diversity initiatives under broader “talent strategy” or “belonging” terminology to mitigate reputational and legal risk.

Public examples illustrate this recalibration. In 2024, Tractor Supply Company eliminated DEI roles and withdrew certain ESG commitments following public criticism from conservative advocacy groups.²⁹ Similarly, Eli Lilly reduced references to DEI language in corporate proxy statements and scaled back public reporting on racial justice commitments.³⁰ These shifts suggest not wholesale abandonment, but rather strategic repositioning within a politically polarized environment.

Executive compensation structures also evolved. Starbucks initially tied executive incentives to diversity targets but later recalibrated performance metrics to prioritize financial performance alongside inclusion goals.³¹ Such adjustments reflect an effort to balance stakeholder expectations with heightened litigation risk and shareholder scrutiny.

C. Governance, Disclosure, and Structural Challenges

Beyond visible restructuring, companies face structural governance challenges in implementing and measuring DEI initiatives. Regulatory human capital disclosure requirements have prompted qualitative reporting on diversity commitments, yet many organizations remain reluctant to publish detailed demographic data or pay equity metrics.³² The gap between aspirational transparency and measurable accountability raises governance questions regarding oversight and effectiveness.

Recent industry research reflects these tensions. Although approximately 80% of organizations report measuring DEI in some capacity, more than half rely primarily on basic workforce data rather than comprehensive performance metrics.³³ Only a minority of companies describe their DEI efforts as advanced or strategically embedded.³⁴ These findings underscore that even where public commitments remain intact, institutional maturity varies considerably.

Taken together, the contemporary corporate DEI landscape reflects expansion, retrenchment, and structural uncertainty operating simultaneously. The evolution of corporate policy in this domain cannot be understood solely as retreat; rather, it reflects an ongoing recalibration shaped by legal risk, governance pressures, and political contestation.

Against this backdrop of corporate expansion, recalibration, and governance uncertainty, the Supreme Court’s 2023 decision in *Students for Fair Admissions* introduced a new layer of constitutional and litigation complexity. These legal developments unfolded within an increasingly polarized political environment.

V. THE POLITICAL LANDSCAPE

Legal recalibration following *Students for Fair Admissions* (“SFFA”) has unfolded alongside intensifying political polarization. Corporate DEI initiatives now operate within an environment shaped not only by judicial doctrine, but also by federal and state political contestation and coordinated advocacy campaigns. Federal and state political actors have

increasingly sought to influence how corporations interpret and implement diversity initiatives.

A. Federal Polarization and Executive-Level Responses

Following the Supreme Court's 2023 decision in *SFFA*, several state Attorneys General publicly questioned the legality of corporate diversity initiatives. Thirteen Republican Attorneys General sent letters to Fortune 100 companies asserting that certain DEI programs may constitute unlawful discrimination under federal law, while a group of Democratic Attorneys General responded by encouraging corporations to continue pursuing diversity-focused initiatives consistent with Title VII.³⁵

These competing interpretations illustrate the widening partisan divide surrounding corporate DEI governance. Public opinion data further reflects this polarization. While a majority of Americans report viewing diversity as a national strength, partisan divisions persist regarding mandatory DEI training and race-conscious initiatives in the workplace.³⁶ At the federal level, legislative efforts to codify or restrict DEI-related practices have been introduced, though their passage remains uncertain in a divided Congress.³⁷ Together, these developments underscore that corporate DEI strategies now exist within a contested national policy framework.

B. State-Level Legislative Backlash

At the state level, opposition to DEI initiatives has taken more concrete legislative form. Lawmakers in more than thirty states have introduced or passed over one hundred bills aimed at restricting or eliminating DEI programs in public institutions.³⁸ These measures commonly target diversity training mandates, race-conscious scholarships, or the use of public funds for equity initiatives.

The proliferation of state-level anti-DEI legislation has generated regulatory uncertainty for corporations operating across multiple jurisdictions. As businesses navigate differing state standards and political expectations, compliance strategies must account for both federal anti-discrimination law and emerging state restrictions.³⁹ This decentralized legislative activity reinforces the perception that DEI policy is not merely a governance issue, but a politically charged matter subject to rapid statutory change.

C. Advocacy Organizations and Strategic Litigation

Political polarization has also manifested through coordinated advocacy efforts. Organizations such as the American Alliance for Equal Rights ("AAER") and America First Legal ("AFL") have pursued litigation and regulatory complaints challenging diversity goals, race-conscious fellowships, and corporate training programs.⁴⁰ These groups frame DEI initiatives as discriminatory preferences inconsistent with constitutional principles of equal treatment.

Such advocacy campaigns frequently invoke the reasoning of *SFFA* to argue that corporate diversity programs resemble impermissible racial classifications.⁴¹ Even where Title VII doctrine differs from constitutional equal protection analysis, the rhetorical force of *SFFA* has emboldened legal challenges and regulatory complaints. The resulting litigation climate contributes to a broader environment in which corporate DEI initiatives are scrutinized not only for effectiveness, but also for constitutional defensibility.

The convergence of judicial retrenchment and political polarization has reshaped the legal risk calculus for corporate DEI programs, prompting closer scrutiny of how such initiatives are structured under existing anti-discrimination law.

It was against this backdrop of intensifying political polarization and coordinated legal challenges that the Supreme Court issued its decision in *Students for Fair Admissions*.

VI. LEGAL RULINGS AND CASE LAW IMPACTING DEI

The legacy of the civil rights movement, including the work of Dr. Martin Luther King, Jr., continues to inform contemporary debates over affirmative action and corporate DEI initiatives.⁴² While critics of race-conscious policies invoke King's aspiration for a "color-blind" society, others argue that remedial measures remain necessary to address entrenched structural inequality and achieve meaningful parity in education and employment. This tension between formal neutrality and remedial justice remains central to modern equal protection jurisprudence. The Supreme Court's 2023 decision in *Students for Fair Admissions* represents the most recent and consequential articulation of that tension.⁴³

A. The SFFA Ruling

The Supreme Court's 2023 ruling in *SFFA* was a landmark decision that ended four decades of precedence and sparked debate over affirmative action policies, diversity programs, and initiatives. The Court ruled that a university's admissions criteria which used race as a primary basis for admissions decisions violated the Fourteenth Amendment, as well as Title VI of the Civil Rights Act. The *SFFA* decision did not directly interpret Title VII of the Civil Rights Act of 1964, which governs the employment practices of private employers. The *SFFA* decision had no direct, legal impact on private employers.

The controversial *SFFA* decision was disguised as a lawsuit seeking fairness in college admissions, but was, in fact, an attack against the major legislative victories of America's civil rights movement; specifically, Title VI and Title VII of the Civil Rights Act of 1964. Although the ruling did not specifically define affirmative action as unconstitutional, it did succeed in destroying race-inclusion-focused civil lawsuits.⁴⁴

B. Impact of the SFFA on DEI programs in Corporate America

Although the decision does not directly govern private employers, it may influence how companies structure and defend their anti-discrimination efforts. The opinion could undermine the importance of diversity as a compelling interest and undercut some of the rationales used to support DEI initiatives and affirmative action measures in the workplace.

The majority's reasoning reflects an unmistakable constitutional skepticism toward race-conscious decision-making, emphasizing formal neutrality over remedial justification. As Chief Justice Roberts explained:⁴⁵

Eliminating racial discrimination means eliminating all of it. The student must be treated based on his or her experiences as an

individual—not on the basis of race. 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.

Although this language formally applies to educational institutions subject to the Fourteenth Amendment and Title VI, it has reverberated throughout corporate America. The breadth and tone of the majority opinion have intensified scrutiny of diversity initiatives and contributed to a climate in which corporate DEI programs are increasingly evaluated through a litigation-risk lens. As a result, many companies have begun reassessing the structure and implementation of their DEI efforts—shifting toward race-neutral criteria, increasing legal oversight, and reframing initiatives in terms of inclusion, equal opportunity, and measurable business outcomes rather than demographic targets.

Although the decision has not had any immediate legal impact on the validity of DEI programs in the private sector, it has emboldened plaintiffs to pursue litigation seeking to extend its reasoning beyond higher education. In an interview with Tamika Jean-Baptiste, Vice President & Chief Diversity Officer at Amgen, she observed that the legal landscape surrounding DEI resembles a pendulum, continually shifting between regulatory expansion and retrenchment. This dynamic underscores the uncertainty companies now face as they attempt to balance compliance obligations, stakeholder expectations, and evolving judicial interpretations.

Corporate America will be affected differently because most DEI programs in workplaces will still be legal but any hiring or promotion that uses race, ethnicity, or gender to reach some quota may invite legal challenges. Moreover, DEI initiatives are experiencing budget reductions as companies evaluate their return on investment. There is also the issue of litigation risks from shareholders who argue that DEI efforts violate corporate fiduciary responsibilities.

C. Legality of corporate diversity efforts

The Supreme Court ruling has far-reaching consequences for employers. In the wake of *SFFA* outlawing affirmative action in college admissions, there is a heightened risk that employers with robust DEI initiatives may face litigation from employees, contracting partners, advocacy groups, and government agencies.⁴⁶ *SFFA* does not alter federal employment law because race-based decision-making by employers is already illegal under Title VII.⁴⁷ The EEOC is taking the position that the Court's decision does “not address employer efforts to foster diverse and inclusive workforces,” and that “[i]t remains lawful for employers to implement diversity, equity, inclusion, and accessibility programs that seek to ensure workers of all backgrounds are afforded equal opportunity in the workplace.”⁴⁸ One advocacy group, AFL, has filed over fifteen letters with the EEOC, alleging that companies are implementing discriminatory DEI policies in violation of Title VII, and request that one or more EEOC Commissioners file a Commissioner's Charge of discrimination. This would require the EEOC to investigate the companies' DEI practices and take appropriate legal action against them, if appropriate.

1. DEI Lawsuits: Retaliation for challenging or expressing concerns about diversity programs

Most cases post-*SFFA* have been filed against private companies, and the expectation is

that these are expected to continue. These cases include allegations of individual discrimination alleging that adverse employment actions were the result of DEI policies.

As Title VII complainants must first file a charge with the EEOC before proceeding to federal court, there may be an increase in Title VII reverse discrimination litigation in the next several years.

1. *Diemert v. City of Seattle*. Plaintiff, a white man filed a lawsuit against his previous employer, the City of Seattle, claiming that its diversity programs, such as compulsory diversity training and promoting involvement in race-specific employee resource groups, constituted racial discrimination under Title VII and the Fourteenth Amendment. The court rejected the City's request for dismissal, referencing SFFA and emphasizing the necessity for the city to prove that these affinity groups and initiatives withstand strict scrutiny.⁴⁹
2. *Farkas v. FirstEnergy Corp.* A former white male corporate counsel at FirstEnergy has filed a lawsuit against the company under Ohio's antidiscrimination law, claiming he was terminated in response to his objections to the company's Diversity, Equity, and Inclusion initiatives.⁵⁰ FirstEnergy submitted a sealed motion to dismiss the lawsuit on December 19, 2023, under seal arguing in the unsealed portions that claiming the plaintiff did not give adequate notice of the claims, some claims are too old to be considered, and there was no legitimate claim established based on Ohio's procedural regulations. The plaintiff responded to this motion, also under seal and the decision is still pending.⁵¹
3. *Duvall v. Novant Health Inc.* A white male marketing executive filed a lawsuit against Novant Health, claiming he was wrongfully terminated from his managerial role due to his race and gender, which is against Title VII and North Carolina laws. The jury sided with the plaintiff and awarded an initial \$10 million in punitive damages, which was subsequently reduced to \$300,000, leading Novant to file an appeal.⁵² Recent Verdict: On March 12, 2024, a North Carolina jury ruled that Novant unlawfully dismissed David Duvall on grounds of his race, sex, or both, breaching Title VII of the Civil Rights Act. In addition to the finding of liability, the jury awarded Duvall \$10 million in punitive damages. While confirming liability, the court determined the evidence at trial did not justify the \$10 million in punitive damages granted to Duvall.⁵³
4. *Meyersburg v. Morgan Stanley & Co. LLC*. On August 29, 2023, a former white male executive director filed a lawsuit against Morgan Stanley, claiming he was wrongly terminated and replaced by a less experienced Black female colleague, in violation of Section 1981 and the New York State Human Rights Law.⁵⁴ The plaintiff referenced Morgan Stanley's diversity, equity, and inclusion initiatives as proof of the alleged discrimination. On October 12, 2023, both parties agreed to move the case to arbitration in line with a previously signed arbitration agreement. Consequently, the court placed a hold on the proceedings on October 23, pending the results of the arbitration.⁵⁵

These cases illustrate a strategic reframing of DEI as a source of reverse discrimination claims rather than solely a tool of remediation. Employers can mitigate similar challenges by

proactively reviewing existing DEI initiatives for compliance with statutory and constitutional constraints. The current environment underscores the need for disciplined governance, ongoing compliance review, and careful program design. As Justice Roberts stated in his majority decision in *SFFA*,⁵⁶ “[r]acial classifications are simply too pernicious to permit....” Corporate DEI programs must therefore be carefully structured to avoid race-conscious criteria that could invite legal challenge.

Public companies must also take into consideration the risk factors associated with the legal and regulatory landscape concerning ESG and DEI disclosure, the costs associated with gathering data, lack of standardized reporting, and potential lawsuits and shareholder proposals from both pro and anti-ESG and DEI stakeholders.

The hiring of a Chief Diversity Officer (CDO) is also a strong message of a company’s commitment to DEI and can help attract and retain diverse talent, customers, and partners.

According to a recent report by Russell Reynolds Associates,⁵⁷ the number of CDO appointments in the US increased by 84% in 2020, compared to 2019, reflecting the growing demand and recognition of the role of CDOs in leading and advancing DEI. However, the report also notes that the average tenure of a CDO is only about three years, indicating that there are still significant barriers and expectations that CDOs face in their work. When asked about the “work,” Ms. Jean-Baptiste stated, “you have to quiet the noise and focus on the work.”⁵⁸ She focuses on what needs to be accomplished and the necessary steps to achieve it.

VII. WORKING TOWARDS CORPORATE SOCIAL JUSTICE

According to DEI strategist Lily Zheng, corporate DEI programs must challenge entrenched structures to create more equitable workplaces.⁵⁹ As generational shifts reshape the labor market—by 2025, Generation Y and Generation Z are projected to comprise a substantial majority of the workforce—companies face increasing pressure to demonstrate authentic commitments to diversity and inclusion.⁶⁰ Organizations seeking to attract and retain top talent must therefore integrate DEI into core governance and human capital strategies rather than treat it as a peripheral initiative.

The continued evolution of environmental, social, and governance (“ESG”) frameworks further reinforces this integration. ESG metrics increasingly incorporate human capital disclosures, including diversity data, pay equity analysis, and workforce development practices.⁶¹ Investors and stakeholders now evaluate not only financial performance but also how companies manage talent, mitigate social risk, and embed inclusion within leadership structures.⁶² As a result, DEI initiatives are becoming more closely tied to long-term enterprise sustainability.

Effective DEI implementation requires measurable accountability. Symbolic programming or episodic training efforts are insufficient to create durable institutional change.⁶³ Instead, organizations must adopt data-driven approaches that assess outcomes across the employee lifecycle—from recruitment and onboarding to promotion and retention. Transparent reporting of diversity metrics, compensation practices, and representation data strengthens governance credibility and builds stakeholder trust.⁶⁴

Embedding DEI within organizational strategy also requires leadership commitment and structural support. The role of the Chief Diversity Officer has expanded significantly in recent years, yet sustained impact depends on aligning DEI objectives with executive decision-making, compensation incentives, and performance metrics.⁶⁵ When inclusion is embedded in enterprise governance rather than isolated as a compliance function, it becomes more resilient to political and legal fluctuation.

Ultimately, advancing corporate social justice requires moving beyond reactive responses to external pressure. Organizations that integrate DEI into strategic planning, risk management, and governance oversight are better positioned to withstand legal scrutiny while fostering inclusive and competitive workplaces.

VIII. THE FUTURE OF DEI IN CORPORATE AMERICA

The history of the DEI movement shows us that DEI is not a new concept, but rather a long-standing and evolving one, that has been shaped by the struggles and achievements of countless individuals and groups, who have dedicated their lives and efforts to making the world a more just and inclusive place.

The future of DEI in corporate America will likely be shaped not only by political and judicial developments, but also by how organizations justify and operationalize their initiatives. Ultimately, DEI's durability will depend less on symbolic commitments and more on disciplined integration into governance structures capable of withstanding constitutional and political scrutiny.⁶⁶

Today, there are American businesses that are quietly scrubbing DEI from public view due to growing legal, social, and political backlash.⁶⁷ Depoliticizing DEI may offer organizations an opportunity to reframe inclusion as a governance and performance issue rather than a partisan symbol. In March 2024, the U.S. Court of Appeals for the Second Circuit made it harder for critics of workplace diversity, equity and inclusion efforts to mount legal challenges to those programs by ruling that an anti-DEI advocacy group, Do No Harm, didn't have standing to challenge Pfizer's fellowship program for historically underrepresented groups.⁶⁸ The court ruled that Do No Harm lacked standing because the plaintiffs were anonymous. The group alleged that the program discriminated against white and Asian American applicants.⁶⁹ This decision now provides precedence and establishes important rules on a plaintiff's ability to challenge these kinds of leadership development programs.

Making DEI work in today's business climate is less about filling a quota and more about having a way of measuring the success of DEI efforts. Measuring the effectiveness of DEI initiatives requires clear metrics and sustained organizational accountability. Effective DEI training is not proven and infrequently held DEI events will not help build an inclusive culture. Annual surveys are valuable to understand employee sentiment, yet they cannot always provide timely response or action. DEI annual diversity reports excellent for corporate commitment but do not measure employees' sense of inclusion and belonging.

Companies need to shift from program driven to more data-driven approaches to assess

where they are in the DEI journey and what needs to be done. Data should be used to measure every phase of the employee lifecycle, from attraction, recruitment, onboarding, and retention to development and offboarding. Yet data collection is not enough, sharing the data across the organization and transparency is also key to building an inclusive workplace.⁷⁰ Google, Salesforce, Intel, Starbucks, and Slack are some of the companies that are publicly sharing their DEI goals and findings for transparency. Companies should consider a bonus structure tied to talent outcomes, if you can prove that DEI can boost team dynamics, improve productivity, and foster innovation, even the most adverse people may begin to see its value. Organizations should also weave DEI into their culture and leverage the merits of a diverse workplace to achieve a competitive business advantage. Additionally, organizations should implement DEI as an organizational strategy and provide data driven ways to assess the effectiveness of that strategy.

Deep-rooted and systemic racism and discrimination still exist in organizations and society. We need an approach to DEI that challenges and reimagines a more equitable and inclusive world. It would require a shift from a compliance-driven view of DEI to a broader and purpose-driven view that aligns with the values of an organization and the ESG goals to address global challenges of the 21st century. Organizations would then not only enhance their reputation and performance but also contribute to social change and justice.

In an era defined by constitutional retrenchment and political polarization, DEI will endure not as rhetoric, but as governance disciplined, measurable, and strategically embedded.

Footnotes

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- ² See generally *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181 (2023), https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf.
- ³ Veronica Root Martinez, *Reframing the DEI Case*, 46 *Seattle U. L. Rev.* 399 (2023).
- ⁴ Pat Wadors, *Diversity Efforts Fall Short Unless Employees Feel That They Belong*, *Harv. Bus. Rev.* (Aug. 10, 2016), <https://hbr.org/2016/08/diversity-efforts-fall-short-unless-employees-feel-they-belong>.
- ⁵ Lee Jourdan, *7 Metrics to Measure Your Organization's DEI Progress*, *Harv. Bus. Rev.* (May 4, 2023), <https://hbr.org/2023/05/7-metrics-to-measure-your-organizations-dei-progress>.
- ⁶ *Id.*
- ⁷ Andrea Giampetro-Meyer, *Transforming the Future of Work by Embracing Corporate Social Justice*, 29 *Wash. & Lee J. Civ. Rts. & Soc. Just.* 67 (2023).
- ⁸ U.S. CONST. amend. XIV, § 1.
- ⁹ 29 U.S.C. §206(d).
- ¹⁰ 42 U.S.C. §2000e-2(a)(1).
- ¹¹ 29 U.S.C. §§ 621-634
- ¹² 42 U.S.C. §§ 12101-12103.
- ¹³ Executive Order No. 8802, 6 *Fed. Reg.* 3109 (June 27, 1941).
- ¹⁴ Executive Order No. 10925, 26 *Fed. Reg.* 1977 (Mar. 8, 1961).
- ¹⁵ *Affirmative Action*, *Black's Law Dictionary* (Bryan A. Garner ed., 12th ed. 2024).
- ¹⁶ Executive Order No. 11246, 30 *Fed. Reg.* 12,319 (Sept. 24, 1965).
- ¹⁷ Executive Order No. 11478, 34 *Fed. Reg.* 12,985 (Aug. 8, 1969).
- ¹⁸ *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954), <https://supreme.justia.com/cases/federal/us/347/483/>.
- ¹⁹ *Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971), <https://supreme.justia.com/cases/federal/us/401/424/>.
- ²⁰ *Id.*
- ²¹ 42 U.S.C. § 2000e-2(k)(1)(A)(i).
- ²² *Ricci v. DeStefano*, 557 U.S. 557, 578–80 (2009), <https://supreme.justia.com/cases/federal/us/557/557/>.
- ²³ *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978), <https://supreme.justia.com/cases/federal/us/438/265/>.
- ²⁴ *Roberts v. Texaco, Inc.*, 979 F. Supp. 185 (S.D.N.Y. 1997).
- ²⁵ Telford, *supra* note 1.
- ²⁶ Lee Jourdan, *7 Metrics to Measure Your Organization's DEI Progress*, *Harv. Bus. Rev.* (May 4, 2023), <https://hbr.org/2023/05/7-metrics-to-measure-your-organizations-dei-progress>
- ²⁷ HR Research Inst., *The Future of Diversity, Equity, Inclusion and Belonging 2023* (2023), https://www.hr.com/en/magazines/all_articles/the-future-of-diversity-equity-inclusion-and-belonging-2023.html
- ²⁸ Telford, *supra* note 1.
- ²⁹ Rachel Treisman, *Tractor Supply Slashes Its DEI and Climate Goals After a Right-Wing Pressure Campaign*, *NPR* (June 28, 2024), <https://www.npr.org/2024/06/28/nx-s1-5022816/tractor-supply-dei-climate-backlash>
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- ³¹ *Id.*
- ³² HR Research Inst., *State of DEI*, *supra* note 27.
- ³³ *Id.*
- ³⁴ *Id.*
- ³⁵ Lauren Irwin, *Most Say Diversity Makes US Stronger, but Fewer Support DEI Training: Survey*, *The Hill* (Feb. 13, 2024), <https://thehill.com/blogs/blog-briefing-room/446555-most-say-diversity-makes-us-stronger-but-less-support-dei-training-survey/>
- ³⁶ *Id.*
- ³⁷ Cheyanne M. Daniels, *Democrats Seek to Codify DEI in Federal Programs*, *The Hill* (Apr. 5, 2024), <https://thehill.com/homenews/race-politics/4576282-democrats-seek-to-codify-dei-in-federal-programs/#%3A%7E%3Atext%3DReps.%2Cpractices%20in%20federal%20programming%20opportunities>.
- ³⁸ Rachel Treisman, *supra* note 29.
- ³⁹ Taylor Telford, *supra* note 1.

⁴⁰ Anne Cullen, *2nd Circ. Fortifies Employer Defenses Against Attacks on DEI*, *Law360* (Mar. 11, 2024, 9:26 PM), <https://www.law360.com/employment-authority/articles/1812257/2nd-circ-fortifies-employer-defenses-against-attacks-on-dei>.

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⁴³ *Students for Fair Admissions*, 600 U.S. at 181.

⁴⁴ Kimberly West-Faulcon, *The SFFA v. Harvard Trojan Horse Admissions Lawsuit*, 47 *Seattle U. L. Rev.* 1355 (2024), <https://digitalcommons.law.seattleu.edu/sulr/vol47/iss4/9/>

⁴⁵ *Students for Fair Admissions*, 600 U.S. at 206.

⁴⁶ Gibson, Dunn & Crutcher LLP, *DEI Task Force Update* (Nov. 2, 2023), <https://www.gibsondunn.com/dei-task-force-update/>.

⁴⁷ *Id.*

⁴⁸ *Id.* at 46.

⁴⁹ *Id.* at 46.

⁵⁰ *Id.* at 46.

⁵¹ *Id.* at 46.

⁵² *Id.* at 46.

⁵³ *Id.* at 46.

⁵⁴ *Id.* at 46.

⁵⁵ *Id.* at 46.

⁵⁶ *Students for Fair Admissions*, 600 U.S. at 217.

⁵⁷ Shoon Lim & Jennifer Flock, *A Global Look at the Chief Diversity Officer Landscape*, Russell Reynolds (Apr. 21, 2023),

<http://www.talentadvisoryboard.com/Insights.html#:~:text=%E2%97%8F%20A%20Global%20Look%20at,Forum%20on%20Corporate%20Governance%2C%20Feb.>

⁵⁸ Interview with Tamika Jean-Baptiste, Vice President & Chief Diversity Officer, Amgen (June 2024)

⁵⁹ Giampetro-Meyer, *supra* note 7, at 77.

⁶⁰ *See* Lim & Flock, *supra* note 57.

⁶¹ *See* Jourdan, *supra* note 5.

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⁶³ *See* Telford, *supra* note 1.

⁶⁴ HR Research Inst., *State of DEI*, *supra* note 27.

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⁶⁶ Martinez, *supra* note 3.

⁶⁷ Telford, *supra* note 9.

⁶⁸ Anne Cullen, *supra* note 40.

⁶⁹ HR Research Inst., *State of DEI*, *supra* note 27.

⁷⁰ HR Research Inst., *State of DEI*, *supra* note 27.

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