
DEFENDING RACE-BASED AFFINITY ORGANIZATIONS IN HIGHER EDUCATION IN A POST-SFFA SOCIETY

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ABSTRACT

*Since the Supreme Court's characterization of race-conscious admissions policies as unconstitutional in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* ("SFFA"), the role of race in higher education has been under attack. States have passed bans on Diversity, Equity, and Inclusion ("DEI") efforts leading to the closure of DEI offices and programming in universities. In the beginning of his second term in office, President Trump issued an executive order terminating DEI efforts in the federal government. In response to an era of growing hostility to DEI and race-conscious admissions policies, challenges are likely to arise regarding the constitutionality of race-based affinity organizations in higher education.*

Before SFFA, litigation against race-based affinity organizations in schools and workplaces focused on allegations that such organizations violated the Equal Protection Clause of the Fourteenth Amendment. In the current anti-DEI era, race-based affinity organizations in higher education are also likely to encounter challenges based on the rationales underlying SFFA, state bans on DEI, and President Trump's executive orders terminating DEI. Race-based affinity organizations in higher education are integral to promoting the sense of belonging and inclusion for students of marginalized racial groups and improving the retention of such groups. As a result, this Note discusses the history of race-based affinity organizations and analyzes the challenges to race-based affinity organizations based on prior litigation under the Equal Protection Clause, the expansion of the rationale in SFFA, and increasing state and federal bans on DEI. This Note proposes two frameworks to defend the constitutionality of race-based affinity organizations in higher education in order to preserve their many benefits to students of marginalized racial groups, especially in an era of growing hostility to DEI and race-conscious policies.

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CONTENTS

INTRODUCTION	2039
I. BACKGROUND ON <i>SFFA</i> AND RACE-BASED AFFINITY ORGANIZATIONS	2043
A. <i>SFFA Decision</i>	2043
B. <i>History of Race-Based Affinity Organizations</i>	2044
C. <i>Benefits & Drawbacks of Race-Based Affinity Organizations</i>	2047
1. Benefits of Race-Based Affinity Organizations	2047
2. Drawbacks of Race-Based Affinity Organizations	2049
II. CHALLENGES TO RACE-BASED AFFINITY ORGANIZATIONS	2050
A. <i>Past Litigation Against Race-Based Affinity Organizations Pre-SFFA</i>	2050
1. <i>Parents Defending Education v. Wellesley Public Schools</i>	2051
2. <i>Deemar v. Board of Education of Evanston-Skokie</i>	2052
3. <i>Diemert v. City of Seattle</i>	2053
B. <i>Constitutional Arguments Against Race-Based Affinity Organizations and SFFA's Impact</i>	2055
1. Equal Protection Clause of the Fourteenth Amendment	2055
2. Arguments Applying <i>SFFA</i> to Race-Based Affinity Organizations	2057
C. <i>Rising Litigation and Bans Against DEI and President Trump's Executive Orders</i>	2058
1. Litigation and State Bans Against DEI Initiatives Post- <i>SFFA</i>	2058
2. President Trump's Executive Orders on DEI and Their Impact	2061
III. DEFENDING RACE-BASED AFFINITY ORGANIZATIONS	2063
A. <i>Race-Based Affinity Organizations Do Not Violate the Equal Protection Clause</i>	2064
1. Race-Based Affinity Organizations Are Not Subject to the Equal Protection Clause	2064
2. Race-Based Affinity Organizations Do Not Merit Strict Scrutiny	2066
B. <i>Race-Based Affinity Organizations are Consistent with SFFA</i>	2067
1. Race-Based Affinity Organizations are Subject to Meaningful Judicial Review	2068
2. Race-Based Affinity Organizations Combat Racial Stereotypes	2070
3. Race-Based Affinity Organizations Do Not Require an End Point	2072
CONCLUSION	2073

INTRODUCTION

The end of affirmative action and the characterization of race-conscious admissions policies as unconstitutional in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* (“*SFFA*”)¹ opened the door to a flood of challenges regarding the role of race in higher education and the employment sector. In *SFFA*, the Supreme Court declared that the admissions systems used by Harvard and the University of North Carolina (“UNC”), which explicitly considered an applicant’s race, violated the Equal Protection Clause (“EPC”) of the Fourteenth Amendment.² Although the decision in *SFFA* targets policies that specifically consider race in the college admissions process, the scope of the decision is contested and conservatives have been quick to try to expand it, especially to attack DEI³ initiatives in the employment sector.⁴ In the aftermath of *SFFA*, the job posting site *Indeed* saw a 23% decline in job postings with “DEI” in the title or description, and there has also been a rise in “reverse discrimination” claims where members of a “majority” allege that they are discriminated against at work in favor of a “minority” candidate.⁵ Anti-DEI organizations also started to bring lawsuits against targeted programs, such as scholarships or fellowships, for specific marginalized groups⁶ and against diversity programs that are, on their face, race-neutral.⁷ In addition to rising anti-DEI litigation by conservatives, states have begun to ban critical race theory in classrooms and to limit or ban DEI initiatives.⁸ After *SFFA*, the movement to

¹ 143 S. Ct. 2141 (2023).

² *Id.* at 2175 (finding Harvard and University of North Carolina’s (“UNC”) race-conscious admissions programs violate Equal Protection Clause because they lack measurable objectives, use race negatively, rely on racial stereotypes, and have no clear end point).

³ DEI stands for Diversity, Equity, and Inclusion. The origins of DEI in the workplace can be traced back to the mid-1960s and the Civil Rights Movement. DEI programs marked the beginning of workplace diversity training to combat racial discrimination. *See* Nicquel Terry Ellis, *What Is DEI, and Why Is It Dividing America?*, CNN (Jan. 23, 2025), <https://www.cnn.com/2025/01/22/us/dei-diversity-equity-inclusion-explained> [<https://perma.cc/E9A2-GJDW>].

⁴ Lauren Aratani, *How the U.S. Supreme Court’s Affirmative Action Ruling Unleashed Anti-DEI Cases*, GUARDIAN (Sept. 6, 2024), <https://www.theguardian.com/law/article/2024/sep/06/dei-affirmative-action-lawsuits> [<https://perma.cc/9KXJ-BMMZ>] (noting in the year since *SFFA*, sixty-eight lawsuits that question DEI were filed).

⁵ Ishan K. Bhabha, Erica Turret & Peggy Xu, Jenner & Block LLP, *One Year Later: The Implications of SFFA for Corporate America*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Aug. 6, 2024), <https://corpgov.law.harvard.edu/2024/08/06/one-year-later-the-implications-of-sffa-for-corporate-america/> [<https://perma.cc/29RM-R73B>].

⁶ Aratani, *supra* note 4 (providing example of such a lawsuit against Fearless Fund, an investment fund that prioritizes funding Black women and other business founders from marginalized groups).

⁷ Bhabha, *supra* note 5.

⁸ Sarah Schwartz, *Map: Where Critical Race Theory Is Under Attack*, EDUC. WEEK (May 23, 2025), <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06> [<https://perma.cc/33CR-A4JD>] (finding forty-four states introduced bills or

deem initiatives aimed at supporting marginalized racial groups as illegal grew, and this movement will only continue to grow under the Trump Administration and its attack on DEI. In an era where race-based admissions policies have been deemed unconstitutional and DEI programs are being outlawed, a new legal issue is likely to arise: Are race-based⁹ affinity organizations in higher education constitutional?¹⁰

Affinity organizations consist of people with a shared background or identity, such as race, religion, or sexual orientation, who gather to engage in activities or discussions.¹¹ Affinity organizations were created to provide a safe space for people of marginalized identities to celebrate their identity and to discuss work or school experiences.¹² Because affinity organizations are based on protected characteristics, such as race or sex, they present a risk of violating laws that prohibit discrimination on the basis of such protected characteristics.¹³

A few years before *SFFA*, Parents Defending Education (“PDE”) filed a lawsuit against Wellesley Public Schools over the existence of affinity groups that were exclusively for Black students and Asian American students.¹⁴ PDE argued that the affinity groups violated the EPC of the Fourteenth Amendment because they divided students by their race and only permitted students of a particular race to join the group.¹⁵ The lawsuit ended in a settlement where Wellesley Public Schools agreed to make the affinity groups open to all students

took other steps to restrict teaching critical race theory); Char Adams & Nigel Chiwaya, *Map: See Which States Have Introduced or Passed Anti-DEI Bills*, NBC NEWS (Mar. 2, 2024), <https://www.nbcnews.com/data-graphics/anti-dei-bills-states-republican-lawmakers-map-rc-na140756> [<https://perma.cc/6YKF-6TK4>] (finding over thirty states introduced or passed bills prohibiting or limiting DEI initiatives).

⁹ Although I use the term “race-based” for simplicity, I also include ethnic-based affinity organizations in my analysis, such as Latin American student associations. To avoid repetitiveness, I am encompassing ethnic-based affinity organizations within the term “race-based” affinity organizations solely for the purpose of this analysis.

¹⁰ See Lexi Lonas Cochran, *College Student Groups Based on Race, Ethnicity Could Be in Jeopardy Under Trump*, HILL (Feb. 23, 2025), <https://thehill.com/homenews/education/5155919-college-student-groups-race-ethnicity-trump-dei-doe-affirmative-action-civil-rights/> (noting the Department of Education (“DOE”) signaled it will seek to expand *SFFA* to all aspects of campus life, “potentially going after organizations such as Black fraternities or honor societies”).

¹¹ Drisana Hughes, *How to Guide: The Proven Impact of Affinity Spaces*, RACE, RSCH. & POL’Y PORTAL, <https://rapp.spia.princeton.edu/how-to-guide/the-proven-impact-of-affinity-spaces/> [<https://perma.cc/F3S4-7C4S>] (last visited Oct. 8, 2025).

¹² *Id.*

¹³ Anne-Marie Vercruysse Welch, Emory D. Moore, Jr., Jennifer Kroll & Heidi Sharp, *Legal Traps Associated with Affinity Groups*, 33 ABA J. LAB. & EMP. L. 267, 268 (2018).

¹⁴ Notice of Dismissal at 1, *Parents Defending Educ. v. Wellesley Pub. Schs.*, No. 1:21-cv-11709 (D. Mass. Feb. 7, 2022).

¹⁵ *Affinity Groups*, PARENTS DEFENDING EDUC., <https://defendinged.org/resources/affinity-groups/> [<https://perma.cc/7NKY-9BT3>] (last visited Oct. 8, 2025) (arguing affinity groups violate the EPC, as settled case law establishes “educational facilities based on race are unequal and unconstitutional”).

regardless of race and not identify affinity-based group sessions as intended for particular racial groups.¹⁶ As a result, affinity groups were permitted to continue at Wellesley Public Schools, but the settlement ensured that the district “must clearly and unequivocally state that such events are open to all students regardless of race.”¹⁷ Before *SFFA*, race-based affinity groups appeared to be reconciled with the EPC by ensuring that such groups were open to all students.

In response to *SFFA*, the Department of Justice stated that an institution may continue to offer affinity groups including “those that have a race-related theme”;¹⁸ however, that guidance is not likely to insulate race-based affinity organizations from potential litigation. The decision in *SFFA* has already been expanded to challenge race-based scholarships and programs at universities.¹⁹ In the midst of President Trump’s second term, there’s an increased likelihood that conservatives will start to target any organization or program centered on race, especially those that benefit minority racial groups. President Trump already started to attack DEI in one of his many executive orders issued on the day of his inauguration titled “Ending Radical And Wasteful Government DEI Programs And Preferencing.”²⁰ Under this order, President Trump declared that the Biden Administration “forced illegal and immoral discrimination programs, going by the name ‘diversity, equity, and inclusion’” into the federal government.²¹ As a result, President Trump called for the “termination of all discriminatory programs, including illegal DEI and ‘diversity, equity, inclusion, and accessibility’ (‘DEIA’) mandates, policies, programs, preferences, and activities in the Federal Government.”²² As race-based affinity organizations in higher education are created to provide safe spaces for marginalized racial groups and to promote diversity, they are likely to be the subject of future

¹⁶ *Id.*

¹⁷ Press Release, Parents Defending Educ., PDE Settles Lawsuit Against Wellesley Public Schools (Feb. 7, 2022), <https://defendinged.org/press-releases/pde-settles-lawsuit-against-wellesley-public-schools/> [<https://perma.cc/S4CB-SM96>].

¹⁸ U.S. DEP’T OF JUST. & U.S. DEP’T OF EDUC., QUESTIONS AND ANSWERS REGARDING THE SUPREME COURT’S DECISION IN *STUDENTS FOR FAIR ADMISSIONS, INC. V. HARVARD COLLEGE AND UNIVERSITY OF NORTH CAROLINA* (Aug. 14, 2023), https://highered.collegeboard.org/media/pdf/ocr-questionsandanswers-tvi-20230814%202023-08-14%2015_12_55%20-%20Copy%20%283%29.pdf [<https://perma.cc/67TU-4FYB>] (clarifying higher education institutions may continue to have affinity groups with race-related themes so long as such groups are open to all students, regardless of race).

¹⁹ Logan Johnson, *How the Supreme Court’s Ruling on Affirmative Action Is Impacting Race-Conscious Scholarships*, ACCESSLEX INST. (Oct. 30, 2024), <https://www.accesslex.org/news-tools-and-resources/how-supreme-courts-ruling-affirmative-action-impacting-race-conscious> [<https://perma.cc/ULR8-FEX9>] (noting University of Missouri “was among the first institutions to end all race-conscious scholarships” after ruling in *SFFA* and nearly fifty higher education institutions have taken similar steps).

²⁰ Exec. Order No. 14151, 90 Fed. Reg. 8339 (Jan. 20, 2025).

²¹ *Id.*

²² *Id.*

litigation, especially under an administration committed to the termination of DEI and initiatives that promote racial equity.

Maintaining race-based affinity organizations in the face of potential litigation has become increasingly important when considering the impact that *SFFA* and the end of affirmative action has had on minority racial groups in higher education. The impact of *SFFA* is demonstrated by statistics reporting on the demographics of students entering the class of 2028, which was the most recent undergraduate admissions cycle after the decision.²³ The Supreme Court decision resulted in a significant decline in the enrollment of Black and Hispanic students at top universities.²⁴ As the number of Black and Hispanic students decreases at prestigious universities, it has become increasingly imperative to ensure that those students feel included on a campus where they are, paradoxically, an increasing minority. One successful effort in ensuring the inclusivity of students from minority racial groups has been race-based affinity organizations.²⁵ However, critics post-*SFFA* are likely to argue that race-based affinity organizations promote segregation and stereotypes, and thus, they violate the EPC.

This Note explores a framework to defend the constitutionality of race-based affinity organizations in higher education in light of potential litigation that will challenge their existence post-*SFFA* and during Trump's Administration. Affinity organizations in higher education also include groups for LGBTQ+ students, students with disabilities, first-generation students, and other identities. However, this Note will focus specifically on race-based and ethnic-based affinity organizations as *SFFA* focused its analysis on race-conscious admissions policies. Additionally, race-based affinity organizations exist in employment spaces; however, due to *SFFA*'s limited higher education scope, this Note will be limited to defending the constitutionality of race-based affinity organizations in higher education. This Note is also limited to defending the constitutionality of race-based affinity organizations that are stated to be open to all.²⁶

²³ Anemona Hartocollis & Stephanie Saul, *At M.I.T., Black and Latino Enrollment Drops Sharply After Affirmative Action Ban*, N.Y. TIMES (Aug. 21, 2024), <https://www.nytimes.com/2024/08/21/us/mit-black-latino-enrollment-affirmative-action.html> (discussing declines in Black and Latinx enrollment at higher education institutions after the Court's ruling against race-based admissions policies).

²⁴ See, e.g., Char Adams, *MIT's Black Student Enrollment Drops Significantly After Supreme Court Affirmative Action Ruling*, NBC NEWS (Aug. 21, 2024), <https://www.nbcnews.com/news/nbcblk/mits-black-student-enrollment-slides-affirmative-action-supreme-court-rcna167622> [<https://perma.cc/PV98-VQQQ>] (reporting that the percentage of Black students in MIT's incoming class of 2028 was 5% as compared to an average of 13% in recent years, and Latinx students dropped from 15% to 11%).

²⁵ Hughes, *supra* note 11 ("Research has shown that affinity groups can advance feelings of inclusion at higher education institutions.").

²⁶ Race-based affinity organizations can also restrict entry to only members of a particular racial group. However, defending such race-based affinity organizations is beyond the scope of this Note.

This Note will demonstrate that race-based affinity organizations in higher education are constitutional and are not subject to the Equal Protection Clause of the Fourteenth Amendment even post-*SFFA*. Additionally, this Note will address how the existence of race-based affinity organizations is consistent with *SFFA* and actually serves many of the values stated by Chief Justice Roberts in the decision.

This Note begins with background on the history and origins of race-based affinity organizations dating back to the 1960s and the Civil Rights Movement. This Note also provides background on the benefits of race-based affinity organizations, framing the importance of defending their constitutionality and existence. Then this Note identifies past litigation against race-based affinity organizations and potential arguments against the constitutionality of race-based affinity organizations likely to arise amidst the growing anti-DEI movement. Finally, this Note ends by offering a framework to defend the constitutionality of race-based affinity organizations in higher education by arguing that they are not subject to the Equal Protection Clause of the Fourteenth Amendment. This Note also provides an analysis of how race-based affinity organizations are consistent with the holding in *SFFA* and the values stated in that decision.

I. BACKGROUND ON *SFFA* AND RACE-BASED AFFINITY ORGANIZATIONS

A. *SFFA Decision*

In November 2014, a nonprofit organization, Students for Fair Admissions (“SFFA”), filed a lawsuit against Harvard and the University of North Carolina (“UNC”) alleging that their race-based admissions programs violated Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause (“EPC”) of the Fourteenth Amendment.²⁷ Under the admissions systems used by Harvard and UNC, race is one factor taken into account when holistically evaluating an applicant.²⁸ SFFA argued that “despite Asian American applicants having stronger academic qualifications than other racial groups, they were admitted at lower rates” under this admissions scheme, and thus, the affirmative action policies discriminated against them.²⁹ The Supreme Court found that race-based admissions programs are permitted only within narrow restrictions, meaning that such university programs must comply with strict scrutiny, may never use race as a stereotype, and must end at some point.³⁰ When using racial classifications,

²⁷ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. (SFFA)*, 143 S. Ct. 2141, 2156 (2023).

²⁸ *Id.* at 2154 (noting admissions subcommittees “can and do take an applicant’s race into account when making their recommendations”).

²⁹ Hoang Pham, Imani Nokuri, Fatima Dahir & Mira Joseph, *Students for Fair Admissions v. Harvard FAQ: Navigating the Evolving Implications of the Court’s Ruling*, STAN. CTR. FOR RACIAL JUST. 2 (Dec. 12, 2023), <https://law.stanford.edu/2023/12/12/students-for-fair-admissions-v-harvard-faq-navigating-the-evolving-implications-of-the-courts-ruling> [<https://perma.cc/7LND-EAFG>].

³⁰ *SFFA*, 143 S. Ct. at 2166.

a policy is subject to the strict scrutiny standard under the EPC because “any official action that treats a person differently on account of [their] race or ethnic origin is inherently suspect.”³¹ Under strict scrutiny, “the government has the burden of proving that racial classifications ‘are narrowly tailored measures that further compelling governmental interests.’”³² The admissions systems of UNC and Harvard failed those criteria and were invalidated under the strict scrutiny standard of the EPC.³³

The Court declared that because racial discrimination is invidious in all contexts, universities are required to “operate their race-based admissions programs in a manner that is ‘sufficiently measurable to permit judicial [review]’ under the rubric of strict scrutiny.”³⁴ Although Harvard and UNC had commendable goals of “training future leaders in the public and private sectors” and “promoting the robust exchange of ideas,” they were “not sufficiently coherent for purposes of strict scrutiny” and were not measurable.³⁵ For the policy’s stated goals to be “measurable,” the Court required a way to know whether leaders have been adequately “train[ed]” and whether the exchange of ideas is “robust.”³⁶ Even if the goals could be measured, the Court also needed a way to determine when they are achieved.³⁷ Harvard and UNC provided no way to measure what their goals were or when they would be reached.³⁸ As a result, the Court held that race-conscious affirmative action, or the consideration of an applicant’s race as one factor in making an admissions decision in order to realize the educational benefits of diversity, is unconstitutional.³⁹ It is important to note that the decision in *SFFA* is limited to deeming as unconstitutional the direct consideration of an applicant’s race in the admissions process, rather than the way race defines an applicant’s life.⁴⁰

B. *History of Race-Based Affinity Organizations*

Although *SFFA* does not address the use of race in other settings within a university, anti-DEI organizations and litigants are likely to use the rationale in

³¹ *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 310 (2013) (quoting *Fullilove v. Klutznick*, 448 U.S. 448, 523 (1980)).

³² *Johnson v. California*, 543 U.S. 499, 505 (2005) (quoting *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995)).

³³ *SFFA*, 143 S. Ct. at 2166.

³⁴ *Id.* (quoting *Fisher v. Univ. of Tex. at Austin*, 579 U.S. 365, 381 (2016)).

³⁵ *Id.* (noting other goals that Harvard and UNC were pursuing including “fostering innovation and problem-solving,” “preparing engaged and productive citizens and leaders,” and enhancing “cross-racial understanding”).

³⁶ *Id.*

³⁷ *Id.* at 2166-67 (“There is no particular point at which there exists sufficient ‘innovation and problem-solving,’ or students who are appropriately ‘engaged and productive.’”).

³⁸ *Id.* at 2166.

³⁹ *Pham et al.*, *supra* note 29.

⁴⁰ *SFFA*, 143 S. Ct. at 2176 (“[N]othing in this opinion should be construed as prohibiting universities from considering an applicant’s discussion of how race affected his or her life.”).

SFFA to argue against the constitutionality of race-based affinity organizations in higher education. To understand the importance of defending the constitutionality of race-based affinity organizations in an era of growing hostility toward racial justice, it is essential to understand how and why affinity groups arose.

Affinity groups are associations of people organized around the interests of a specific demographic or marginalized group, such as a minority racial group or sexual orientation.⁴¹ A race-based affinity group is a group of people that share a common race and “gather with the intention of finding connection, support, and inspiration.”⁴² Affinity groups first emerged alongside the term “safe space” as an idea to “create a physical and psychological environment in which people with a shared identity could express themselves freely without fear of harm or retaliation.”⁴³ Affinity groups were first created in the workplace and were centered on racial identity.⁴⁴ They started to form in the 1960s during the Civil Rights Movement as “a space for racially minoritized groups to stay connected to each other, organize against racism, and learn skills from one another in the group.”⁴⁵ One of the first documented affinity groups was the Black Employee Caucus Group at the Xerox Corporation, which was a workplace affinity group for Black employees.⁴⁶ This affinity group was created in response to race riots occurring in the 1960s, after which Xerox chairman Joseph C. Wilson sought to increase integration and create a space for Black employees to discuss their experiences and lobby for change.⁴⁷

Affinity groups arose in educational spaces in response to students of marginalized identities’ experiences of isolation and microaggressions.⁴⁸ For those with marginalized identities who experience oppression, many spaces are

⁴¹ Vercruyse Welch et al., *supra* note 13, at 267.

⁴² GREAT SCHS. P’SHP, RACIAL AFFINITY GROUPS GUIDE FOR SCHOOL LEADERS 1 (2020) <https://www.greatschoolspartnership.org/wp-content/uploads/2021/01/Racial-Affinity-Groups-Guide-for-School-Leaders-Final.pdf> [<https://perma.cc/K5CD-HLD7>].

⁴³ Sharrika Miller & Stephanie Vaughn, *Evidence-Based Guidelines for Creating Affinity Groups in Nursing Programs*, 18 TEACHING & LEARNING NURSING 503, 504 (2023).

⁴⁴ Priyanka Gujar, *The Evolution of Employee Resource Groups*, TELESKOPE (Mar. 17, 2022), <https://www.teleskope.io/post/the-evolution-of-employee-resource-groups> [<https://perma.cc/K7PH-3NL4>] (noting first known affinity group was founded by Xerox employees in the 1960s).

⁴⁵ Hughes, *supra* note 11.

⁴⁶ Gujar, *supra* note 44 (providing a brief description on origins and evolution of employee resource groups).

⁴⁷ Francesca Cassidy, *From Civil Rights to Corporate Change: Xerox’s Guide to Employee Resource Groups*, RACONTEUR (Dec. 2, 2024), <https://www.raconteur.net/talent-culture/xerox-erg-interview> [<https://perma.cc/JQ8A-K84E>].

⁴⁸ Karen Myers, Laura Hunt Trull, B.J. Bryson & Hyong Suk Yeom, *Affinity Groups: Redefining Brave Spaces*, 24 J. BACCALAUREATE SOC. WORK 1, 1 (2019) (“Affinity groups are offered in response to diverse students’ experiences of isolation and microaggressions . . .”).

never totally safe.⁴⁹ Thus, affinity groups became “brave” spaces for those students.⁵⁰ College students are among the people most vulnerable to divisive messages based on identity posted on social media or shared verbally.⁵¹ White supremacists on college campuses use fliers and speeches with anti-Semitic, Islamophobic, and racist rhetoric to recruit students and target young and impressionable minds.⁵² In an era of likely increasing white supremacist propaganda on college campuses under the Trump Administration, race-based affinity organizations are increasingly essential to providing brave spaces for students of color and to combatting white supremacist ideologies.⁵³ Race-based affinity organizations respond to white supremacy culture and “the wounds it causes,” and they offer pathways to heal from the fragmentation that people of color may feel as a result of white supremacy conditioning them to think of themselves as inferior.⁵⁴ As a result, race-based affinity organizations are needed to heal people of color, to empower them to take collective action to dismantle racism, and to work across communities of difference.⁵⁵

Students of color on college campuses can experience a variety of responses to their presence at predominantly white colleges, including isolation, a lack of cultural understanding, misinformation about their identity, microaggressions, and physical and emotional harm.⁵⁶ These responses may be a result of a “race tax” where students of marginalized identities experience increased demands to engage in work related to DEI initiatives within their institutions.⁵⁷ They may

⁴⁹ *Id.* at 3 (“Brave spaces reflect the reality of diverse people that no space is ever totally safe, even among similar, like-minded, or identified people.”).

⁵⁰ *Id.* (discussing how people of marginalized identities gathering together is a brave act of defiance and that brave spaces create a place for connection). I refer to race-based affinity organizations as “brave” spaces, rather than “safe” spaces, due to the recognition that such spaces are not totally safe or insulated from bias.

⁵¹ *See id.* at 1.

⁵² *See id.* (discussing a high incidence of white supremacist flyers posted on university campuses); Kristin Lam, *Recruiting Hate: White Supremacist Propaganda Rises for Third Straight Year on College Campuses*, ADL Says, USA TODAY (June 28, 2019, 9:54 AM), <https://www.usatoday.com/story/news/nation/2019/06/27/white-supremacist-recruiting-rise-college-campuses-report/1590886001/> [<https://perma.cc/78K7-44GN>] (reporting that rise in white supremacist propaganda on college campuses reflects hate groups’ efforts to recruit more young and impressionable minds).

⁵³ *See* Stephen Starr, “He Gives Them the Green Light”: Trump’s Rhetoric Revives Hate Groups Across US, GUARDIAN (Oct. 13, 2024), <https://www.theguardian.com/us-news/2024/oct/13/trump-anti-immigrant-racism-hate-white-supremacy-springfield> [<https://perma.cc/6JUT-UZTV>].

⁵⁴ MICHELLE CASSANDRA JOHNSON, A SPACE FOR US: A GUIDE FOR LEADING BLACK, INDIGENOUS, AND PEOPLE OF COLOR AFFINITY GROUPS 9 (2023).

⁵⁵ *Id.*

⁵⁶ Myers et al., *supra* note 48, at 2.

⁵⁷ Emiko J. Muraki et al., *Affinity and Allyship Groups to Advance Inclusion in Postsecondary Institutions: A Systematic Scoping Review*, J. DIVERSITY HIGHER EDUC., Jan. 11, 2024, at 1.

have to perform additional labor to challenge preconceptions and defend their legitimacy within an academic environment.⁵⁸ As a result of these experiences, marginalized individuals often report feelings of social and academic isolation in higher education environments.⁵⁹ These feelings of isolation significantly inhibit academic success, physical and mental health, and overall well-being.⁶⁰ Race-based affinity organizations can combat these negative effects and provide many benefits for students of color. While critics of such groups allege they promote segregation and stereotypes, in reality, race-based affinity organizations do the opposite.⁶¹

C. *Benefits & Drawbacks of Race-Based Affinity Organizations*

1. Benefits of Race-Based Affinity Organizations

Race-based affinity organizations benefit students of marginalized racial groups and contribute to their well-being and academic success. From their inception, affinity organizations were created to improve the well-being of students of marginalized identities by improving their perception of inclusion and belongingness.⁶² Affinity organizations benefit students' well-being through identity development, within-group diversity, social networks, professional development, and faculty-student relationships.⁶³ One CEO described racial affinity groups as "an oasis in the middle of a desert—a place for people of color to feel psychologically safe."⁶⁴ Affinity organizations have also been implemented as a way to facilitate dialogue for inclusive spaces in academic settings.⁶⁵ When affinity organizations are well-resourced and developed, "they can also increase individuals' sense of belongingness, empower group members to share their experiences, and foster mutual support and understanding."⁶⁶ Race-based affinity organizations are places where

⁵⁸ *Id.* (discussing "epistemic exclusion" as process where marginalized individuals may be required to perform additional labor to defend their legitimacy in academic environment).

⁵⁹ *Id.* at 2.

⁶⁰ See Hafiz Bek, *Understanding the Effect of Loneliness on Academic Participation and Success Among International University Students*, 8 J. EDUC. & PRAC. 46, 46 (2017) (finding loneliness among international students significantly impacted academic participation and student success); Mark Davies, Megan Elliott, Sarah Wallace & Carolyn Wallace, *Enhancing Student Wellbeing Through Social Prescribing: A Rapid Realist Review*, 44 PUB. HEALTH REVS. 1, 2 (2023) (noting various factors, including loneliness, contribute to reduced well-being of students, particularly minorities).

⁶¹ See *infra* Section I.C.2.

⁶² Miller & Vaughn, *supra* note 43, at 503.

⁶³ Myers et al., *supra* note 48, at 11.

⁶⁴ Arlene S. Hirsch, *An Inside Look at Workplace Racial Affinity Groups*, SHRM (Sept. 20, 2021), <https://www.shrm.org/topics-tools/news/inclusion-diversity/inside-look-workplace-racial-affinity-groups> [<https://perma.cc/EC8S-FPPS>].

⁶⁵ Muraki et al., *supra* note 57, at 2.

⁶⁶ *Id.*

students can talk about the isolation they sometimes feel, build relationships that enable them to feel less alone, and build a stronger sense of self.⁶⁷

An ethnographic case study examining racial affinity groups among educators found that each group member expressed gratitude for simply having access to a learning space where they could regularly engage with other people of color and have a shared commitment to resisting white supremacy.⁶⁸ The racial affinity group served as a space for members to grapple with their racialized experiences while working within schools.⁶⁹ It also became a space where members “found camaraderie and could heal collectively in solidarity with one another.”⁷⁰

In addition to providing benefits to the mental well-being of students from minority racial groups, race-based affinity organizations also have tangible impacts on the academic success of minority racial groups. An inclusive environment that fosters belongingness, as is created by race-based affinity organizations, “has been suggested to improve attrition rates and grade point averages” for historically excluded students.⁷¹ Students working in affinity organizations are empowered to participate in the classroom and become risk-takers in learning as they feel more comfortable and included in the classroom.⁷² A study of a race-based affinity organization at a predominantly white high school found that before the organization began, students of color waited for their white peers to participate in a topic before contributing to the discussion.⁷³ After the affinity organization started, students of color moved to engage in discussion without waiting and were able to further their understanding of classroom topics.⁷⁴ Race-based affinity organizations are also critical to academic success by allowing students space to “refuel” in a

⁶⁷ Julie Parsons & Kimberly Ridley, *Identity, Affinity, Reality: Making the Case for Affinity Groups in Elementary School*, 71 INDEP. SCH. 38, 40 (2012) (discussing benefits of affinity groups for elementary school students).

⁶⁸ Farima Pour-Khorshid, *Cultivating Sacred Spaces: A Racial Affinity Group Approach to Support Critical Educators of Color*, 29 TEACHING EDUC. 318, 324 (2018) (examining healing effects of participation in a racial affinity group).

⁶⁹ *Id.* at 325-26 (discussing the racial affinity group as a space where members could regularly engage with issues of race while developing their own racial identity).

⁷⁰ *Id.* at 326.

⁷¹ Miller & Vaughn, *supra* note 43, at 503.

⁷² Leslie Sinsay, *How Affinity Groups Support Your Children Socially and Academically*, CAPITOL HILL DAY SCH. (Nov. 16, 2024), <https://www.chds.org/about/belonging/details/~board/belonging/post/more-than-meets-the-eye-creating-social-comics-in-humanities-1731808601695> [<https://perma.cc/JTM6-VMXE>] (discussing benefits of affinity group participation on child identity formation and academic success).

⁷³ Ryan Oto & Anita Chikkatur, “We Didn’t Have to Go Through Those Barriers”: *Culturally Affirming Learning in a High School Affinity Group*, 43 J. SOC. STUD. RSCH. 145, 154 (2018) (finding the affinity group enabled students of color to develop strategies to navigate classroom discussion).

⁷⁴ *Id.* (illustrating how “the affinity group offered a space for students of color to complicate their understandings of material by challenging one another”).

comfortable setting with classmates who understand the challenges they are facing.⁷⁵

2. Drawbacks of Race-Based Affinity Organizations

One of the most common misconceptions about race-based affinity organizations is that they promote racial segregation because, although they may be open to all, they create spaces intended only for certain racial groups.⁷⁶ Opponents of affinity groups, such as Parents Defending Education (“PDE”), argue that affinity groups are “school-sponsored groups that deliberately separate and divide students and staff into groups based on their skin color, ethnicity, or sexual orientation.”⁷⁷ PDE goes on to state that affinity groups “teach children that our sameness and our differences are found in our immutable traits like skin color.”⁷⁸ Other observers argue that affinity organizations are destructive to the creation of a common student identity and merely serve to exacerbate ethnic tensions and maintain the isolation of minority groups on campus.⁷⁹ A common critique of brave spaces, such as race-based affinity organizations, is that they cause balkanization and create a “tendency for students to group themselves racially on campus.”⁸⁰ One study of ethnic-based affinity organizations at UCLA found that membership in such organizations increased the perception that ethnic groups are in a zero-sum competition with one another and increased the feeling of victimization by virtue of one’s ethnicity.⁸¹ Additionally, many corporations have found that affinity organizations polarize employees, and many people of color are reluctant to join such groups for “fear of being reduced to their racial identity.”⁸²

⁷⁵ Katherine Mangan, *Segregation or Student Support?*, CHRON. HIGHER EDUC., Oct. 2, 2023, at 28 (noting many student leaders and experts believe that racial affinity groups allow students to socialize with members of their own race and “refuel” in a comfortable setting).

⁷⁶ See GREAT SCHS. P’SHIP, *supra* note 42, at 3; Monita K. Bell, *Making Space*, LEARNING FOR JUST. (Summer 2015), <https://www.learningforjustice.org/magazine/summer-2015/making-space> [<https://perma.cc/6GCN-5BYH>] (explaining affinity groups exist not because students want to segregate themselves from the greater population but because the greater population excludes them).

⁷⁷ PARENTS DEFENDING EDUC., *supra* note 15.

⁷⁸ *Id.*

⁷⁹ See, e.g., Jim Sidanius, Colette Van Laar, Shana Levin & Stacey Sinclair, *Ethnic Enclaves and the Dynamics of Social Identity on the College Campus: The Good, the Bad, and the Ugly*, 87 J. PERSONALITY & SOC. PSYCH. 96, 96 (2004) (noting observers have argued affinity groups are “destructive to the creation of a common student identity and merely serve to maintain and even exacerbate ethnic tension, as well as to maintain the alienation and isolation of minority groups on campus”).

⁸⁰ Vinay Harpalani, “Safe Spaces” and the Educational Benefits of Diversity, DUKE J. CONST. L. & PUB. POL’Y 117, 120 (2017) (quoting Anthony Lising Antonio, *Diversity and the Influence of Friendship Groups in College*, 25 REV. HIGHER EDUC. 63, 65 (2001)).

⁸¹ Sidanius et al., *supra* note 79, at 106.

⁸² Klein, *supra* note 44.

However, students in affinity organizations do not want to separate themselves from the rest of the student body.⁸³ These organizations are simply a response to a school environment that is already unwelcoming of certain students to begin with, and thus, affinity organizations aid students of marginalized identities to connect with students of other identities and to feel like they belong.⁸⁴ Race-based affinity organizations help provide students of marginalized racial groups with a brave space and support system from which they can reach out to the larger campus community.⁸⁵ The same study at UCLA also found that membership in ethnic-based organizations was associated with a sense of being a part of the larger university community and increased their ethnic activism.⁸⁶ While participating in an affinity organization, students work toward a deeper sense of their own identity and are able to use that understanding as a tool to make connections with others.⁸⁷ Though it may be reasonable to think that race-based affinity organizations promote separatism and stereotypes, as discussed further in Part III, race-based affinity organizations actually contribute to dispelling stereotypes and to making students of marginalized racial backgrounds feel more comfortable engaging with their larger campus community.⁸⁸

II. CHALLENGES TO RACE-BASED AFFINITY ORGANIZATIONS

A. *Past Litigation Against Race-Based Affinity Organizations Pre-SFFA*

Before *SFFA*, organizations were already filing lawsuits contesting the constitutionality of race-based affinity organizations.⁸⁹ In this Section, I analyze

⁸³ See Bell, *supra* note 76 (arguing that affinity groups give students tools to become more engaged with the student body and push schools to become more activist-oriented).

⁸⁴ See Carly C.M. Alicea & Rupert Everol Johnson, *Creating Community Through Affinity Groups for Minority Students in Communication Sciences and Disorders*, 30 AM. J. SPEECH-LANGUAGE PATHOLOGY 2028, 2030 (2021) (explaining how students who participated in an affinity organization reported it helped them connect to peers and feel a sense of belonging).

⁸⁵ Sidanius et al., *supra* note 79, at 96.

⁸⁶ *Id.* at 106.

⁸⁷ Sinsay, *supra* note 72 (noting a misconception that affinity groups create separatism in a school environment).

⁸⁸ See *infra* Part III.

⁸⁹ In the aftermath of the murder of George Floyd and the Black Lives Matter Movement in 2020, institutions began to implement racial equity policies to combat systemic racism. Litigation ensued against these policies, including policies that implemented race-based affinity organizations. See Curtis Bunn, *Hamstrung by 'Golden Handcuffs': Diversity Roles Disappear 3 Years After George Floyd's Murder Inspired Them*, NBC NEWS (Feb. 27, 2023, 12:46 PM), <https://www.nbcnews.com/news/nbcblk/diversity-roles-disappear-three-years-george-floyd-protests-inspired-rcna72026> [<https://perma.cc/Q5KW-2D7J>] (reporting on the phasing out of diversity, equity, and inclusion roles at companies); Philip Marcelo, *District Settles Lawsuit Over Groups For Students of Color*, AP NEWS (Feb. 8, 2022), <https://apnews.com/article/education-boston-lawsuits-race-and-ethnicity-massachusetts-58e1a70c6c66d4c>

three lawsuits prior to *SFFA* that targeted race-based affinity organizations in schools and the workplace, arguing that such organizations violate the Equal Protection Clause.

1. *Parents Defending Education v. Wellesley Public Schools*

In 2021, PDE filed a lawsuit against Wellesley Public Schools (“WPS”) in Massachusetts, alleging that the district violated students’ Fourteenth Amendment rights and Title VI of the Civil Rights Act of 1964 through the use of segregated affinity groups.⁹⁰ In their complaint, PDE alleged that WPS adopted a policy of segregating students by race through racial affinity group meetings that were open to some students but closed to others, based solely on the race of the students involved.⁹¹ PDE claimed that the school “sought to reintroduce racial segregation in the classroom for the ‘benign’ purposes of ‘diversity, inclusion, and belonging’” through racial affinity groups.⁹² They went on to argue that racial affinity groups, by definition, exclude individuals of certain racial groups and foster racial division, and thus, they do more harm than good.⁹³ Under WPS’ Racial Affinity Group Policy, the racial affinity group was defined as an opportunity for students to share their experiences “without another group’s voices.”⁹⁴ Teachers and administrators of WPS had repeatedly shared that the affinity group meetings were safe spaces for students of color and were not for white students.⁹⁵ As a result, PDE argued that WPS policies prohibited certain Wellesley students from participating in certain school activities because of their race and ethnicity.⁹⁶

PDE eventually settled the suit with WPS, and the parties came to the agreement that WPS “will not exclude students from affinity-based group sessions” on the basis of race and will not identify affinity-based group sessions as intended only for certain racial groups.⁹⁷ Announcements of affinity-based group sessions will state: “This event is open to all students regardless of race,

1b9d2d1d70c3b2d3f (discussing lawsuit against racial affinity groups in a Massachusetts school district).

⁹⁰ *Parents Defending Education Files Federal Lawsuit Challenging Wellesley Public Schools’ Segregated Affinity Groups and Speech Policy*, PARENTS DEFENDING EDUC. (Oct. 19, 2021), <https://defendinged.org/lawsuits/pde-v-wps/> [<https://perma.cc/C4D8-PCS2>].

⁹¹ Verified Complaint at 1, *Parents Defending Educ. v. Wellesley Pub. Schs.*, No. 1:21-cv-11709 (D. Mass. Oct. 19, 2021) (challenging legality of affinity groups restricted to students of particular racial groups) [hereinafter Complaint PDE].

⁹² *Id.* at 4 ¶ 19.

⁹³ *Id.* at 4-5.

⁹⁴ *Id.* at 5 ¶ 27.

⁹⁵ *Id.* at 8 ¶ 41 (detailing a teacher’s message emphasizing the group was for Asian/Asian-American students to process events and offering resources for white students if they needed it).

⁹⁶ *Id.* at 21.

⁹⁷ Notice of Dismissal, *supra* note 14, at 5.

color, sex, gender identity, religion, national origin, or sexual orientation.”⁹⁸ The settlement of the suit also resulted in a letter from WPS to its community stating that “[t]he Constitution and federal laws prohibit schools from excluding students from affinity-based group sessions” on the basis of their race, and thus, when any affinity-based group session is held, all students are welcome to attend and notice of the event will be publicized to all.⁹⁹ PDE filed a similar suit against the Shelburne Community School in Vermont, claiming that its Black, Indigenous, and People of Color (“BIPOC”)¹⁰⁰ Affinity Group is not open to all students and violates Title VI.¹⁰¹ This complaint was also resolved by the school, ensuring that “all are welcome” to join the group, and they would not restrict membership on the basis of race.¹⁰²

2. *Deemar v. Board of Education of Evanston-Skokie*

Another case was brought by a white elementary and secondary school teacher in 2021 against Evanston-Skokie School District 65 (“District 65”) in Illinois, arguing that the school district violated the EPC and Title VI¹⁰³ by treating individuals differently because of their race.¹⁰⁴ The complaint stated that what seems like a relatively benign cause, such as “diversity and inclusion,” is actually code-speak for the dangerous “practice of conditioning individuals to see each other’s skin color first and foremost, [and] then pitting different racial groups against each other.”¹⁰⁵ District 65 required every teacher to undergo anti-racist programming, which included “participat[ing] in exercises with individuals of only the same color called ‘affinity groups’” which the complaint stated was equivalent to “racially segregat[ing] themselves.”¹⁰⁶ In her complaint, Deemar alleged that District 65 employed “affinity groups” that segregate

⁹⁸ *Id.*

⁹⁹ *Id.* at 9.

¹⁰⁰ *BIPOC*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/BIPOC> [https://perma.cc/78MC-DHT6] (last visited Oct. 8, 2025).

¹⁰¹ Guy Page, *Parent Group Sues Shelburne School Over “BIPOC Only” Affinity Group*, VT. DAILY CHRON. (Jan. 5, 2023), <https://vermontdailychronicle.com/parent-group-sues-shelburne-school-over-bipoc-only-affinity-group/> [https://perma.cc/F3MV-EB8B].

¹⁰² Letter from Meighan McCrea, Supervisory C.R. Att’y, U.S. Dep’t of Educ., to Nicole Neily, Re: Complaint No. 01-23-1132 (May 1, 2023), https://defendinged.org/wp-content/uploads/2023/06/01231132_-Champlain-Valley-C-May-1.pdf [https://perma.cc/QMG4-3DNY] (stating Office of Civil Rights closed the complaint after it was made clear that membership in the group would not be restricted).

¹⁰³ Though cases allege that race-based affinity organizations violate Title VI and the EPC, this Note focuses on the EPC analysis of race-based affinity organizations as Title VI’s protections are coextensive with the EPC of the Fourteenth Amendment. *See* Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 980 F.3d 157, 185 (1st Cir. 2020).

¹⁰⁴ Complaint at 1, *Deemar v. Bd. of Educ. of Evanston/Skokie*, No. 1:21-C0-03466 (N.D. Ill. June 29, 2021).

¹⁰⁵ *Id.* at 2 ¶ 4.

¹⁰⁶ *Id.* at 3 ¶ 8.

faculty members and students into groups on the basis of race to further race essentialism.¹⁰⁷

In response to this suit, the United States Department of Education (“DOE”) wrote a letter stating that District 65 violated Title VI by offering various “racially exclusive affinity groups” that separated students, parents, and community members by race.¹⁰⁸ The DOE found that District 65 engaged in intentional race discrimination by conducting racially exclusive affinity groups, “which result[s] in the separation of participants in district programs based on race in violation of the Title [VI] regulation.”¹⁰⁹ “[D]eliberately segregating students and employees by race reduced them ‘to a set of racial stereotype[s]’” and the DOE stated that such treatment has no place in federally-funded programs.¹¹⁰ However, when Biden took office in the beginning of 2021, he withdrew the letter of finding by the DOE without explanation.¹¹¹

When the case was eventually tried in district court, the court conceded that the state’s use of racially segregated affinity groups can give rise to a cognizable injury as “[i]njuries stemming from the separation of individuals based on race are certainly within the purview of the Equal Protection Clause.”¹¹² However, Deemar never alleged that she attended any racially segregated meetings or that she otherwise would have sought the benefits associated with those meetings if not for their segregated nature.¹¹³ The court ultimately found that Deemar failed to identify any discriminatory conduct that caused her to personally suffer a concrete injury sufficient to invoke the court’s subject matter jurisdiction and her discrimination claim was dismissed.¹¹⁴

3. *Diemert v. City of Seattle*

In an affinity group case from the employment context, Joshua Diemert alleged that his employer, the City of Seattle (“the City”), discriminated against

¹⁰⁷ *Id.* at 5 ¶ 12 (“District 65 sets up a dichotomy between white and non-white races that depicts whiteness as inherently racist and a tool of oppression. In furtherance of this ideology, District 65 employs ‘affinity groups,’ whereby it segregates faculty members and students into groups on the basis of race.”).

¹⁰⁸ Letter from Carol Ashley, Enft Dir., U.S. Dep’t of Educ., to Dr. Devon Horton, Superintendent, Evanston/Skokie Sch. Dist. 65 (Jan. 2021) (on file with author).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Federalist Society: SLF Provides Update on Deemar v. District 65*, SE. LEGAL FOUND. (June 4, 2025), <https://www.sfliberty.org/federalist-society-slf-provides-update-on-deemar-v-district-65/> [<https://perma.cc/9HT8-CB8Y>].

¹¹² *Deemar v. Bd. of Educ. of Evanston/Skokie*, No. 21-cv-3466, 2024 WL 3757169, at *9 (N.D. Ill. Aug. 9, 2024).

¹¹³ *Id.*

¹¹⁴ *Id.* at *10. A second complaint has been filed on behalf of Deemar in 2025. SE. LEGAL FOUND., *supra* note 111. Additionally, the DOE under President Trump has announced that it was opening up a new investigation into District 65. *Id.*

him and violated the EPC through the use of race-based affinity groups.¹¹⁵ The City moved to dismiss Diemert's claims for failure to state a claim.¹¹⁶ Diemert argued that the City violated the EPC when they subjected him to "intentionally segregated staff meetings by race" and "promoted affinity groups."¹¹⁷ To establish his EPC claim against a municipal entity, Diemert had to show that his injury was caused by a municipal policy or custom.¹¹⁸ The City's policy at issue was one that "promoted caucuses through which white people and people of color would 'meet separately in order to do [their] different work.'"¹¹⁹ Diemert elected not to attend the trainings for white people, which were voluntary.¹²⁰ However, when he tried to sign up for a training reserved for people of color, he was harassed and advised that he should not sign up.¹²¹

The City argued that even if Diemert alleged sufficient facts to state an EPC claim, it would not matter because the policy is narrowly tailored to achieve the compelling state interest of eradicating systemic racism within the City's workforce.¹²² However, the court found that the City must demonstrate that the particular affinity group distinctions are narrowly tailored to achieve the alleged compelling state interest.¹²³ The court decided that further factual development was necessary regarding the City's affinity group policy and whether it caused Diemert a constitutional injury.¹²⁴ As a result, the court found that Diemert stated a plausible equal protection claim with regards to the race-based affinity groups by his employer.¹²⁵ However, after examining the full record, the court ultimately found that Diemert's EPC claim failed.¹²⁶ The City's affinity groups were "open to any City employee, regardless of their race" and whether to participate or not was voluntary.¹²⁷ There were no additional benefits to those who participated and no consequences for those who did not.¹²⁸ Thus, the court determined that no reasonable juror could find that the City acted with a

¹¹⁵ Diemert v. City of Seattle, 689 F. Supp. 3d 956, 960-62 (W.D. Wash. 2023).

¹¹⁶ *Id.* at 960 (noting that the City moved to dismiss Diemert's claims under Rule 12(b)(6)).

¹¹⁷ *Id.* at 964.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 965.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* ("The City's policy, as alleged, however, appears to encourage employees to attend different trainings based on their race, so the City must establish these affinity group distinctions are narrowly tailored to achieve the asserted compelling state interest.").

¹²⁴ *Id.*

¹²⁵ *Id.* at 964.

¹²⁶ Diemert v. City of Seattle, No. 2:22-cv-1640, 2025 WL 446753, at *17 (W.D. Wash. Feb. 10, 2025) (detailing why the claim failed and its dismissal was correct).

¹²⁷ *Id.* at 18.

¹²⁸ *Id.*

discriminatory purpose in sponsoring the affinity groups and found summary dismissal of the claim appropriate.¹²⁹

B. *Constitutional Arguments Against Race-Based Affinity Organizations and SFFA's Impact*

1. Equal Protection Clause of the Fourteenth Amendment

As demonstrated in Section II.A, the main constitutional argument against the existence of race-based affinity organizations is that they violate the Equal Protection Clause of the Fourteenth Amendment. The EPC prohibits the government from “deny[ing] . . . any person within its jurisdiction the equal protection of the laws.”¹³⁰ “[W]henver the government treats any person unequally because of [their] race, that person has suffered an injury” that falls under the EPC.¹³¹ Because race-based affinity organizations divide students by their race and cater to the interests of specific racial groups, critics argue that they are subject to the Fourteenth Amendment guarantee of equal protection under the law.¹³²

Distinctions between citizens solely because of their ancestry are, by their very nature, odious to a free people and “any official action that treats a person differently on account of [their] race or ethnic origin is inherently suspect.”¹³³ As a result, under an EPC analysis, all racial classifications must be analyzed under strict scrutiny “even for so-called ‘benign’ racial classifications” due to the fear that such racial classifications are motivated by an invidious purpose.¹³⁴ Courts apply strict scrutiny to all racial classifications to “‘smoke out’ illegitimate uses of race by assuring that [government] is pursuing a goal important enough to warrant the use of a highly suspect tool.”¹³⁵ “Under strict scrutiny, the government has the burden of proving that racial classifications ‘are narrowly tailored measures that further compelling governmental interests.’”¹³⁶ The government is required to demonstrate that its “purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is necessary . . . to the accomplishment of its purpose.”¹³⁷ It is for the courts to

¹²⁹ *Id.*

¹³⁰ U.S. CONST. amend. XIV, § 1.

¹³¹ *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 229-30 (1995).

¹³² PARENTS DEFENDING EDUC., *supra* note 15 (opining affinity groups are discriminatory because they prevent students from participating in school-sponsored events due to their race).

¹³³ *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 310 (2013) (quoting *Fullilove v. Klutznick*, 448 U.S. 448, 523 (1980)).

¹³⁴ *Johnson v. California*, 543 U.S. 499, 505 (2005) (quoting *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003)).

¹³⁵ *Id.* at 506 (alteration in original) (quoting *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989)).

¹³⁶ *Id.* at 505 (quoting *Adarand*, 515 U.S. at 227).

¹³⁷ *Fisher*, 570 U.S. at 309 (alteration in original) (quoting *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 305 (1978)).

decide whether the means chosen to accomplish the stated purpose are narrowly framed and necessary or whether the government could achieve the stated goal without racial classifications.¹³⁸

The complaint filed by PDE in their suit against WPS alleging that their policy of racial affinity groups violated the EPC elucidates some arguments against the constitutionality of race-based affinity groups.¹³⁹ Under WPS's Racial Affinity Group Policy, affinity groups were created where only students of certain races were invited to join and participate in the group's activities.¹⁴⁰ Because WPS used racial classifications and treated students differently based on race, PDE argued that their policy was subject to strict scrutiny under the EPC.¹⁴¹

PDE stated that WPS failed to show a compelling interest for their policy because racial segregation in schools never serves a compelling interest as segregation and the notion of "separate but equal" was rejected in *Brown v. Board of Education*.¹⁴² The racial affinity groups at WPS were intended to create spaces where members of marginalized groups could come together in a spirit of mutual support, but PDE asserted that "a generalized assertion that there has been past discrimination" cannot serve as a compelling interest for racial classifications.¹⁴³ PDE also argued that the policy is not narrowly tailored because there is no evidence that WPS "considered methods other than explicit racial classifications to achieve [its] stated goal."¹⁴⁴ Thus, PDE asserted that WPS's Racial Affinity Group Policy failed strict scrutiny as there was neither a compelling interest served by it nor a narrow tailoring of the policy, had their interest been compelling.

¹³⁸ *Grutter*, 539 U.S. at 333.

¹³⁹ Complaint PDE, *supra* note 91, at 19-22 (laying out legal arguments alleging WPS' policy violates the EPC).

¹⁴⁰ *Id.* at 22 ¶ 126 ("[T]he Racial Affinity Group Policy is an express policy that, when enforced, causes a constitutional deprivation . . . separating students by race in WPS schools.").

¹⁴¹ *Id.* at 22 ¶ 127.

¹⁴² See generally 347 U.S. 483 (1954). Complaint PDE, *supra* note 91, at 22 ¶ 128 ("WPS cannot show a compelling interest for its Racial Affinity Group Policy because racial segregation in schools never serves a compelling interest."); see also *Johnson v. California*, 543 U.S. 499, 506 (2005) ("Indeed, we rejected the notion that separate can ever be equal—or 'neutral'—50 years ago in *Brown v. Board of Education* . . . and we refuse to resurrect it today." (citation omitted)).

¹⁴³ Complaint PDE, *supra* note 91, at 22 ¶ 128 (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 498 (1989) ("[A] generalized assertion that there has been past discrimination in an entire industry provides no guidance for a legislative body to determine the precise scope of the injury it seeks to remedy.")).

¹⁴⁴ Complaint PDE, *supra* note 91, at 22 ¶ 130 (alteration in original) (quoting *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 704 (2007) (holding race-based policy did not survive strict scrutiny in part because school failed to consider race-neutral alternatives)).

2. Arguments Applying *SFFA* to Race-Based Affinity Organizations

Opponents of race-based affinity organizations are also likely to expand the ruling and rationale of *SFFA* to support their constitutional argument that race-based affinity organizations violate the EPC. *SFFA* declared the use of race-conscious admissions policies to achieve diversity in education as unconstitutional under the Fourteenth Amendment.¹⁴⁵ The Court evaluated the race-conscious admissions policies under the strict scrutiny standard of the EPC and found that the universities' diversity-related goals failed strict scrutiny because they cannot be subjected to meaningful judicial review.¹⁴⁶ Additionally, Chief Justice Roberts stated that race-based admissions "may never use race as a stereotype or negative, and—at some point—they must end."¹⁴⁷

Harvard identified several educational benefits as part of the compelling interest for its policy, including "better educating its students through diversity" and "producing new knowledge stemming from diverse outlooks."¹⁴⁸ Roberts stated that "it is unclear how courts are supposed to measure any of these goals," including how to know whether "new knowledge" is being developed."¹⁴⁹ Similarly, critics of race-based affinity organizations are likely to argue that the stated goals of such organizations to increase individuals' sense of belonging and to foster mutual support are immeasurable.¹⁵⁰

The admissions programs in *SFFA* also failed to articulate a meaningful connection between the means they employed and the goals they pursued.¹⁵¹ It was not evident how "assigning students to these racial categories" furthers the educational benefits that universities claim to pursue.¹⁵² Critics have already argued that the rationale "to diversify student bodies so students learn to work across cultural gaps" is antithetical to racial affinity organizations, where students learn that race divides us forever.¹⁵³ Other critics argue that race-based affinity organizations are destructive to the creation of a common student identity and merely serve to exacerbate ethnic tensions.¹⁵⁴ They state that such

¹⁴⁵ See *supra* Section I.A (discussing the holding in the *SFFA* decision).

¹⁴⁶ Jonathan P. Feingold, *The Right to Inequality: Conservative Politics and Precedent Collide*, 57 CONN. L. REV. 57, 88 (2024) (explaining how the Court's holding in *SFFA* in part rested on fact judges could not evaluate when program was no longer needed).

¹⁴⁷ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. (SFFA)*, 143 S. Ct. 2141, 2166 (2023).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ See *id.*

¹⁵¹ *Id.* at 2167.

¹⁵² *Id.*

¹⁵³ Ethan Blevins, Discourse: *Segregation by Any Other Name*, PAC. LEGAL FOUND. (Feb. 8, 2024) (emphasis omitted), <https://pacificlegal.org/discourse-segregation-by-any-other-name/> [<https://perma.cc/F8N4-5K7Y>].

¹⁵⁴ Sidanius et al., *supra* note 79 (finding ethnic group membership caused an "increased sense of ethnic victimization and a decreased sense of common identity and social inclusiveness").

groups tell students of color that “their white classmates are incapable of understanding or respecting their feelings” or that “their white classmates are a threat to their mental health.”¹⁵⁵ Such groups create an echo chamber where students may be less open to “different opinions, different ideas and philosophies,” instead of fostering diverse ideologies.¹⁵⁶

Race-based affinity organizations are also argued to promote segregation and employ race as a negative stereotype.¹⁵⁷ Critics state that race-based affinity groups promote racial essentialism—the belief that racial groups form discrete genetic categories and that different races are fundamentally different.¹⁵⁸ Race-based affinity organizations, according to these critics, run the mistake of assuming that students must have shared experiences because they share a skin color.¹⁵⁹ Lastly, opponents may also argue that there is no end point to race-based affinity organizations as required by *SFFA*.¹⁶⁰

C. *Rising Litigation and Bans Against DEI and President Trump’s Executive Orders*

1. Litigation and State Bans Against DEI Initiatives Post-*SFFA*

After *SFFA* and before President Trump’s second term, litigation against DEI initiatives and state bans on DEI increased and are only continuing to grow. Since 2022, legislatures have introduced over thirty bills targeting DEI funding and practices at schools, and as of April 2025, fifteen of these bills have been signed into law.¹⁶¹ In Alabama, Senate Bill 129 was signed into law in March 2024, prohibiting the state’s public colleges and universities from promoting, sponsoring, or maintaining DEI offices and programs.¹⁶² Similarly, Utah’s

¹⁵⁵ Ye Zhang Pogue, *We Should Have “Common Humanity” Groups, Not “Racial Affinity” Groups in Schools*, FAIR (Nov. 24, 2021), <https://news.fairforall.org/p/we-should-have-common-humanity-groups> [<https://perma.cc/J2P4-ABBR>].

¹⁵⁶ Mangan, *supra* note 75, at 32.

¹⁵⁷ See, e.g., Complaint PDE, *supra* note 91, at 22 (claiming WPS’ affinity policy separates students by race).

¹⁵⁸ Zhang Pogue, *supra* note 155 (noting concern racial essentialism is fostered by affinity groups); Jennifer Tsai, *How Should Educators and Publishers Eliminate Racial Essentialism?*, 24 AMA J. ETHICS 201, 201 (2022) (defining racial essentialism as “the belief that racial groups form discrete genetic categories”).

¹⁵⁹ Mangan, *supra* note 75, at 31.

¹⁶⁰ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. (SFFA)*, 143 S. Ct. 2141, 2166 (2023) (noting Harvard’s affirmative action program failed in part because there was “no end . . . in sight”).

¹⁶¹ Jessica Bryant & Chloe Appleby, *These States’ Anti-DEI Legislation May Impact Higher Education*, BEST COLLS., <https://www.bestcolleges.com/news/anti-dei-legislation-tracker/> [<https://perma.cc/C7FR-H54F>] (last updated May 6, 2025) (reporting fifteen states have signed anti-DEI bills into law including Florida, North Dakota, South Dakota, Tennessee, Texas, Utah, Alabama, Idaho, West Virginia, North Carolina, and Iowa).

¹⁶² *Id.*; S. 129, 2024 Leg., Reg. Sess. (Ala. 2024) (detailing prohibited “discriminatory” practices).

House Bill 261 declares “diversity, equity, and inclusion” programs as a prohibited discriminatory practice and prohibits taking race into account in hiring practices.¹⁶³ Under Senate Bill 1 in Ohio, which the state senate passed, “[e]ach state institution of higher education shall prohibit all policies designed explicitly to segregate faculty, staff, or students based on those individuals’ race” in formal orientation or graduation ceremonies.¹⁶⁴ Iowa, which is stated to have the most restrictive ban on DEI on college campuses, signed Senate File 2435 into law, which bans DEI offices at universities and also bans institutions from promoting the ideas of antiracism, implicit bias, and microaggressions.¹⁶⁵

As a result of these state bans, universities are closing down DEI offices and programming.¹⁶⁶ Ohio State University announced that it plans to close its Office of Diversity and Inclusion, and the University of Pennsylvania has scrubbed references to DEI from its websites and policies.¹⁶⁷ The University of Iowa eliminated its living learning communities for Black, Latinx, and LGBTQ+ students during the 2025-2026 academic year.¹⁶⁸ Additionally, several universities have cancelled scholarships for students of color, closed multicultural centers, and terminated staff overseeing DEI initiatives.¹⁶⁹

In addition to state bans on DEI, there has been a rise in litigation against DEI efforts at universities and workplaces.¹⁷⁰ In the wake of *SFFA*, several

¹⁶³ H.R. 261, 2024 Leg., Gen. Sess. (Utah 2024).

¹⁶⁴ S. 1, 134th Gen. Assemb., Reg. Sess. (Ohio 2025).

¹⁶⁵ S. 2435, 90th Gen. Assemb., Reg. Sess. (Iowa 2024); see also Matthew Arrojas, *Iowa Now Has the Nation’s “Most Extreme” Anti-DEI Law. Here’s What it Does*, BEST COLLS., <https://www.bestcolleges.com/news/iowa-adopts-most-extreme-anti-dei-law-for-colleges/> [https://perma.cc/433M-CUVE] (last updated May 10, 2024) (“Laws restricting diversity, equity, and inclusion (DEI) efforts at colleges aren’t uncommon in 2024, but free speech advocates say Iowa’s latest legislative move is among the most extreme.”).

¹⁶⁶ Laura Spitalniak, *A Surge of DEI Cuts Hits Colleges Across the US*, HIGHER ED DIVE (Feb. 27, 2025), <https://www.highereddive.com/news/surge-dei-cuts-wave-colleges-ohio-state-upenn-iowa/741191/> [https://perma.cc/AM3T-2DEH] (naming various universities that closed their DEI offices).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Gloria Oladipo, “We’re Going Backwards”: The Black Student Unions Being Defunded on US Campuses, GUARDIAN (Mar. 5, 2025), <https://www.theguardian.com/us-news/2025/mar/05/black-student-unions-us-schools> [https://perma.cc/A3EC-V8XG] (“Several universities have cancelled scholarships specifically aimed at students of color. Multicultural and LGBTQ+ student centers have been shuttered. And staff overseeing DEI initiatives have been terminated or reassigned.”).

¹⁷⁰ See Debo P. Adegbile et al., *Corporate DEI Landscape—One Year After SFFA*, WILMERHALE (June 27, 2024), <https://www.wilmerhale.com/en/insights/client-alerts/2024/0627-corporate-dei-landscape-one-year-after-sffa> [https://perma.cc/Y2CP-U93K] (reporting that after *SFFA* decision, opponents of DEI “have raised numerous challenges to corporate DEI efforts”); *Universities Under Attack for “Reverse Discrimination” in Employment*, PECHMAN L. GRP. (July 10, 2024), <https://pechmanlaw.com/universities-under-attack-for-reverse-discrimination-in-employment/> [https://perma.cc/Q52G-WMJJ].

universities have been sued for “reverse discrimination.”¹⁷¹ A recent lawsuit against Northwestern University asserts that its law school unlawfully mandates the preferential hiring of Black, Hispanic, Asian, women, and LGBTQ+ candidates, thereby excluding qualified white male applicants.¹⁷² Additionally, the lawsuit individually names the editor-in-chief and senior equity and inclusion editor of Northwestern University Law Review.¹⁷³ Faculty, Alumni, and Students Opposed to Racial Preferences (“FASORP”), the complainant, asserts that the student editors of Northwestern University’s Law Review discriminate on account of race and sex in violation of Title VI, Title IX, and 42 U.S.C. § 1981.¹⁷⁴ In their complaint, FASORP states that the student editors gave discriminatory preferences to racial minorities among other groups when selecting their members, editors, and articles.¹⁷⁵ Additionally, a white employee at University of Wisconsin-Eau Claire has filed a federal lawsuit alleging racial discrimination and that she was demoted from a DEI leadership position because of her race.¹⁷⁶ The employee states that the university subjected her to a “racially hostile and abusive work environment because she identified as white.”¹⁷⁷

The rise of state bans on DEI and litigation related to DEI initiatives are sure to seep into challenges against race-based affinity organizations. The United States Military Academy at West Point (“West Point”) has already taken preemptive measures against affinity organizations and disbanded a dozen West Point cadet clubs centered on ethnicity, gender, race, and sexuality in response to efforts to eliminate diversity programs throughout the government.¹⁷⁸ Students at Harvard have also raised concerns about the existence of their

¹⁷¹ PECHMAN L. GRP., *supra* note 170 (listing schools sued for their DEI programs).

¹⁷² *Id.*

¹⁷³ Complaint at 1, FASORP v. Nw. Univ., No. 1:24-cv-05558 (N.D. Ill. Sept. 30, 2024), <https://eppc.org/wp-content/uploads/2024/10/25-FIRST-AMENDED-complaint-by-Faculty-Alumni-and-Students-Opposed-to-Racial-Preferences-FASORP-against-Faculty-Alumni-and-Students-Opposed-to-Racial-Preferences-FASORP-9.30.2024.pdf> [<https://perma.cc/8DJM-E5NK>].

¹⁷⁴ *Id.* at 34.

¹⁷⁵ *Id.*

¹⁷⁶ Felicity Dachel, *New Federal Lawsuit Filed Against UW-Eau Claire Chancellor, Accused of Discrimination*, WQOW (Mar. 19, 2024), https://www.wqow.com/eye_on_eau_claire/new-federal-lawsuit-filed-against-uw-eau-claire-chancellor-accused-of-discrimination/article_c68bf820-e609-11ee-88db-ef721df51c28.html [<https://perma.cc/6EFF-VF3G>].

¹⁷⁷ Felicity Dachel, *Federal Lawsuit Filed Against UW-Eau Claire; White Employee Says She Was Demoted Due to Race*, WQOW (Apr. 18, 2024), https://www.wqow.com/eye_on_eau_claire/federal-lawsuit-filed-against-uw-eau-claire-white-employee-says-she-was-demoted-due-to/article_af5b54f0-9df9-11ee-9d5f-b7cab04d4536.html [<https://perma.cc/Y3D4-24RG>].

¹⁷⁸ *West Point Shuts Down Clubs for Women and Students of Color in Response to Trump’s DEI Policies*, AP NEWS, <https://apnews.com/article/west-point-student-clubs-diversity-trump-dei-a8e992f1bbceda4bf217db6dfbd6b92> [<https://perma.cc/A5QC-BRWE>] (last updated Feb. 5, 2025) (reporting the military academy shut down groups including the Asian-Pacific Forum Club, Latin Cultural Club, and National Society of Black Engineers Club).

affinity groups in light of actions taken by the federal government to attack DEI.¹⁷⁹

Even if such state DEI bans will not directly outlaw race-based affinity organizations, bans on funding DEI programming will likely be construed to ban funding to race-based affinity organizations that promote the inclusion of racial minorities on campuses. This has already happened at the University of Utah, where the Black Student Union's budget has been slashed and the group has been forced to officially disassociate from the university as a result of the anti-DEI law passed in Utah.¹⁸⁰ The University of Utah stated that the Black Student Union can continue to operate but has changed its status from "sponsored" to "registered," removing access to university funding.¹⁸¹ Similarly, the Black Student Union at the University of Alabama had its funding revoked and was forced to relocate from its office as the state bill restricting DEI went into effect.¹⁸²

2. President Trump's Executive Orders on DEI and Their Impact

Under the current Trump Administration, attacks on DEI and programming aimed to achieve racial equity will likely continue to increase. In response to President Trump's executive orders "Ending Radical And Wasteful Government DEI Programs And Preferencing"¹⁸³ and "Ending Illegal Discrimination And Restoring Merit-Based Opportunity,"¹⁸⁴ major companies have rolled back diversity, equity, and inclusion programs.¹⁸⁵ Target stated that it will end its

¹⁷⁹ Samuel A. Church & Cam N. Srivastava, *Students Share Fears for Affinity Groups Under Trump at AFRO Town Hall*, HARV. CRIMSON (Feb. 28, 2025), <https://www.thecrimson.com/article/2025/2/28/affinity-groups-town-hall> [<https://perma.cc/354K-CYDA>] ("Roughly a dozen students expressed concern about the future of Harvard affinity groups amid Trump administration threats to diversity programming at a town hall hosted by the African and African American Resistance Organization Thursday evening.").

¹⁸⁰ Oladipo, *supra* note 169.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Exec. Order No. 14151, 90 Fed. Reg. 8339 (Jan. 20, 2025). Under this order, President Trump called for the "termination of all discriminatory programs, including illegal DEI and 'diversity, equity, inclusion, and accessibility' (DEIA) mandates, policies, programs, preferences, and activities in the Federal Government, under whatever name they appear." *Id.* at 8339.

¹⁸⁴ Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025). Under this order, President Trump revoked previous executive orders establishing DEI programs and stated that illegal DEI policies violate civil rights laws and called upon federal agencies to "encourage the private sector to end illegal DEI discrimination and preferences." *Id.* at 8635.

¹⁸⁵ Conor Murray & Molly Bohannon, *IBM Reportedly Walks Back Diversity Policies, Citing "Inherent Tensions": Here Are All The Companies Rolling Back DEI Programs*, FORBES (Apr. 11, 2025), <https://www.forbes.com/sites/conormurray/2025/03/05/victorias-secret-tweaks-dei-language-to-inclusion-and-belonging-here-are-all-the-companies-rolling-back-dei-programs/> [<https://perma.cc/H4FS-GRXE>] (showcasing companies' termination of DEI programs and goals, including Victoria's Secret's intention to halt preexisting goal to promote a certain percentage of Black workers).

three-year DEI goals and end a program focused on carrying more products from Black or minority-owned businesses.¹⁸⁶ Google cut its diversity hiring goals and stated that it will no longer mark the start of cultural observances like Pride Month and Black History Month.¹⁸⁷ Meta, Walmart, and McDonald's have also dropped DEI-related goals due to conservative activists and the ruling in *SFFA*.¹⁸⁸ Deloitte told United States employees working with government clients to remove pronouns from their email signatures and stated it would roll back its DEI goals and diversity reports.¹⁸⁹

Additionally, the Department of Education issued a letter in response to President Trump's executive orders and the ruling in *SFFA* addressing the obligations of schools that receive federal financial assistance from the DOE.¹⁹⁰ The letter reiterated the obligations of schools under Title VI and the EPC.¹⁹¹ It stated that educational institutions have embraced race-based preferences and "many American schools and universities even encourage segregation by race at graduation ceremonies and in dormitories and other facilities."¹⁹² Craig Trainor, Acting Assistant Secretary for Civil Rights at the DOE, went on to discuss the holding in *SFFA* and states that the "Supreme Court's holding applies more broadly."¹⁹³ He said the test is simple:

If an educational institution treats a person of one race differently than it treats another person because of that person's race, the educational institution violates the law. Federal law thus prohibits covered entities from using race in decisions pertaining to admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life. Put simply, educational institutions may neither separate or segregate students based on race, nor distribute benefits or burdens based on race.¹⁹⁴

The letter also warned against the use of DEI programs and proxies, such as personal essays or extracurriculars, "as a means of determining or predicting a

¹⁸⁶ Melissa Repko, *Target Rolls Back DEI Initiatives, The Latest Big Company to Retreat*, CNBC (Jan. 24, 2025), <https://www.cnbc.com/2025/01/24/target-rolls-back-major-dei-initiatives.html> [<https://perma.cc/8VJ6-3VEK>].

¹⁸⁷ Murray & Bohannon, *supra* note 185.

¹⁸⁸ See Repko, *supra* note 186.

¹⁸⁹ Murray & Bohannon, *supra* note 185.

¹⁹⁰ Letter from Craig Trainor, Acting Assistant Sec'y for C.R., U.S. Dep't. of Educ. (Feb. 14, 2025), <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf> [<https://perma.cc/9LHR-N92A>]. Though a federal court enjoined the DOE from enforcing the letter on April 24, 2025, the DOE responded and stated that they will not take any enforcement action until further notice. Thus, there is still a possibility that the DOE will attempt to implement what is stated in the letter or similar restrictions in the future.

¹⁹¹ *Id.* at 1.

¹⁹² *Id.*

¹⁹³ *Id.* at 2.

¹⁹⁴ *Id.*

student's race" and granting racial preferences.¹⁹⁵ It provided notice of the DOE's interpretation of existing federal law and gave schools fourteen days from the date of the letter to comply with the stated requirements in order to receive federal funding.¹⁹⁶

Though not legally binding, the DOE's oversimplification and expansion of the holding in *SFFA* will have drastic impacts on educational institutions; in fact, the DOE's interpretation has already raised questions relating to support for Historically Black Colleges and Universities ("HBCUs") and the existence of Black sororities and fraternities.¹⁹⁷ There are growing concerns that Black Greek life and other cultural student groups could be targeted under the Trump Administration's push for "race neutrality" and the DOE's prohibition on the separation of students based on race, on the use of race in graduation ceremonies, and on all other aspects of campus life.¹⁹⁸ As a result of President Trump's anti-DEI campaign and the DOE's letter expanding the holding of *SFFA*, the status of race-based student organizations is uncertain.¹⁹⁹ At her Senate confirmation hearing, DOE Secretary Linda McMahon would not say if race-based groups in higher education would be safe under her department.²⁰⁰ Paulette Granberry Russell, the president of the National Association of Diversity Officers in Higher Education, stated that there is a legitimate concern that the Trump Administration may restrict student organizations and "even fraternities and sororities with a nondiscriminatory focus on race, ethnicity, gender, religion, and other cultural identities."²⁰¹

III. DEFENDING RACE-BASED AFFINITY ORGANIZATIONS

In response to the growing concern that the "future of college student groups based on race or ethnicity could be in jeopardy,"²⁰² this Note offers two solutions to defend the legality and constitutionality of race-based affinity

¹⁹⁵ *Id.* at 2-3 (citing *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. (SFFA)*, 143 S. Ct. 2141, 2176 (2023) ("[U]niversities may not simply establish through application essays or other means the regime we hold unlawful today.")).

¹⁹⁶ *Id.* at 3.

¹⁹⁷ Catherine Brown, *Trump Administration Forbids Schools, Agencies from Considering Race in Programming and Operations*, NAT'L COLL. ATTAINMENT NETWORK (Feb. 17, 2025), <https://www.ncan.org/news/693958/Trump-Administration-Forbids-Schools-Agencies-from-Considering-Race-in-Programming-and-Operations.htm> [<https://perma.cc/KGY3-SLSR>] (expressing concern for the directive's potential impact on dedicated housing for students from underrepresented backgrounds).

¹⁹⁸ Phyllis Coley, *Black Fraternities & Sororities Under Fire as Trump's Anti-DEI Agenda Threatens Their Future*, SPECTACULAR MAG. (Feb. 25, 2025), <https://spectacularmag.com/2025/02/25/black-fraternities-sororities-under-fire-as-trumps-anti-dei-agenda-threatens-their-future/> [<https://perma.cc/9GCD-83YZ>].

¹⁹⁹ Cochran, *supra* note 10.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

organizations in higher education. The two solutions include arguments that: (1) race-based affinity organizations do not violate the Equal Protection Clause, and (2) race-based affinity organizations are consistent with the values stated in *SFFA*.

A. *Race-Based Affinity Organizations Do Not Violate the Equal Protection Clause*

1. *Race-Based Affinity Organizations Are Not Subject to the Equal Protection Clause*

Race-based affinity organizations should not be subject to the Equal Protection Clause of the Fourteenth Amendment since they are open to all students.²⁰³ Under an “accept-all-comers” policy as defined in *Christian Legal Society v. Martinez*,²⁰⁴ student organizations must accept any student who wishes to become a member.²⁰⁵ Universities typically require student organizations to agree to a “take all comers” policy as a condition of their recognition and to incorporate that membership policy in the constitutions of their organizations.²⁰⁶ This approach worked successfully for WPS in settling the suit filed by PDE challenging the existence of racial affinity organizations at the school.²⁰⁷ After WPS agreed to declare that events for affinity-based groups were “open to all students regardless of race,” PDE dismissed their complaint which alleged that WPS’ affinity groups violated the EPC.²⁰⁸ Additionally, in *Diemert v. City of Seattle*, the court recognized that it would be wrong to declare that all affinity groups violate the EPC because “[w]hen properly structured, they are voluntary and open to all” and “can foster a sense of belonging.”²⁰⁹

Through the structure of race-based affinity organizations, it is also evident that arguments that race-based affinity organizations promote “self-segregation”

²⁰³ There may be some race-based affinity organizations that are exclusive to certain racial groups, but this Note focuses on race-based affinity organizations that are open to all.

²⁰⁴ 561 U.S. 661, 668 (2010).

²⁰⁵ *Id.* at 694 (declaring that a policy where all student groups accept all comers is viewpoint neutral and justified); Adam J. Wolkoff, *Addressing Discrimination by Campus Organizations*, SUNY (Aug. 11, 2021), <https://system.suny.edu/sci/news/8-11-21-discrimination-by-campus-orgs/index.html> [<https://perma.cc/T8F5-BVXP>] (outlining approach taken by the Court in *Christian Legal Soc’y*).

²⁰⁶ *See, e.g.*, Wolkoff, *supra* note 205 (noting that SUNY requires a student group to have a constitution that certifies it will not restrict membership on the basis of race and other identities); *Asian Student Council*, RUTGERS GET INVOLVED, <https://rutgers.campuslabs.com/engage/organization/ruasc> [<https://perma.cc/6R8D-S9WN>] (last visited Oct. 8, 2025) (declaring their organization is open to all students).

²⁰⁷ Notice of Dismissal at 1, *Parents Defending Educ. v. Wellesley Pub. Schs.*, No. 1:21-cv-11709 (D. Mass. Feb. 7, 2022) (noting PDE’s voluntary dismissal of complaint with prejudice filed).

²⁰⁸ *Id.* at 5 ¶ 5.

²⁰⁹ *Diemert v. City of Seattle*, No. 2:22-cv-1640, 2025 WL 446753, at *17 (W.D. Wash. Feb. 10, 2025).

and are not open to all in practice are hollow.²¹⁰ Descriptions of race-based affinity organizations as promoting separatism and pitting students against each other based on race are a caricature of such organizations and there is a lack of evidence to legally support such claims.²¹¹ Race-based affinity organizations are generally open and welcoming to members who are not a part of the stated racial group.²¹² For example, the Black Student Union at the University of Utah stated that their events were always open to anyone who wanted to join and learn.²¹³ Nickolas Spencer, former President of Black Law Students Association at Chicago-Kent College of Law stated that he desired participation from members of other groups and that their events were designed to be outward-facing.²¹⁴ The Asian American Student Association at UNC states that their events are open to all and are intended to promote “cultural and social awareness on campus and to the community through service projects, cultural events, working with other organizations, and sponsoring social events.”²¹⁵ Race-based affinity organizations ultimately operate as a brave space for all students where they are able to express perspectives and engage in debates outside of mainstream discourse.²¹⁶

The EPC also requires the government to have a valid reason for any law or official action that treats similarly-situated people differently.²¹⁷ Under a “take all comers” policy, race-based affinity organizations avoid classifications in their membership and do not treat similarly situated students differently.²¹⁸ Race-based affinity organizations are often mischaracterized to be open only to particular racial groups, but many are open to all.²¹⁹ Contrary to what critics state, there is no suspect racial classification built into race-based affinity organizations; these organizations merely embrace a race-related theme.²²⁰ Additionally, race-based affinity organizations are often run by students, not

²¹⁰ Harpalani, *supra* note 80, at 136 (rejecting application of the word “segregation” to circumstances where minority students voluntarily create safe spaces at predominantly white universities).

²¹¹ *See id.* at 139-43 (dispelling arguments that safe spaces for minority students promote segregation through example of W.E.B. Du Bois College House at University of Pennsylvania).

²¹² *See id.* at 144.

²¹³ Courtney Tanner, *Two Student Clubs Cut Ties with University of Utah Over New Anti-DEI Restrictions*, SALT LAKE TRIB. (Nov. 12, 2024), <https://www.sltrib.com/news/education/2024/11/12/student-clubs-bsu-pisa-cut-ties/> [https://perma.cc/9CQ3-PP2Z].

²¹⁴ Harpalani, *supra* note 80, at 145.

²¹⁵ *Asian American Students Association*, HEEL LIFE, <https://heelife.unc.edu/organization/aasa> [https://perma.cc/9WHL-FMGM] (last visited Oct. 8, 2025).

²¹⁶ Harpalani, *supra* note 80, at 126.

²¹⁷ *The Right to Equal Protection Under the United States Constitution and the Connecticut Constitution*, CONN. SUP. CT. HIST. SOC’Y, <https://www.jud.ct.gov/HistoricalSociety/Rights.pdf> [https://perma.cc/333W-PLV6] (last visited Oct. 8, 2025).

²¹⁸ *See Johnson v. California*, 543 U.S. 499, 505 (2005).

²¹⁹ Harpalani, *supra* note 80, at 138.

²²⁰ *Id.* at 143.

university administrators, making an EPC challenge against them weaker because a challenge requires government action.²²¹ Ultimately, the EPC should be inapplicable to race-based affinity organizations.

2. Race-Based Affinity Organizations Do Not Merit Strict Scrutiny

If race-based affinity organizations are somehow subject to the EPC,²²² opponents will argue that they are subject to a strict scrutiny standard, as all racial classifications must be analyzed under strict scrutiny “even for so-called ‘benign’ racial classifications.”²²³ However, race-based affinity organizations do not merit a strict scrutiny analysis²²⁴ because race is related to the theme of the organization and does not operate as a classification for members of the organization.²²⁵ Race-based affinity organizations do not involve classifications based on race in the way the Supreme Court has defined them. In *SFFA*, the Court criticized the race-conscious admissions policies of Harvard and UNC for providing a racial preference to underrepresented racial groups in the admissions process.²²⁶ However, there are no racial preferences in race-based affinity organizations, as race is not used to select membership. Rather, race is used as a theme for the organization’s events.²²⁷

Critics also argue that race-based affinity organizations reduce cross-racial interactions and undermine the educational benefits of diversity that may be used to justify such organizations under a strict scrutiny analysis.²²⁸ However, race-based affinity organizations actually promote cross-racial interactions because they serve as a “home base” for students of color and enable them to feel more

²²¹ See *id.* at 144 (noting also that race-based affinity organizations “may reflect different agendas and interests than university policy at large”).

²²² Opponents may argue that race-based affinity groups do treat similarly-situated students differently and that they do so on the basis of race and should be subject to the strict scrutiny standard of the EPC.

²²³ *Johnson*, 543 U.S. at 505 (quoting *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003)); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. (SFFA)*, 143 S. Ct. 2141, 2162 (2023) (quoting *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995)) (“Any exception to the Constitution’s demand for equal protection must survive a daunting two-step examination known in our cases as ‘strict scrutiny.’”).

²²⁴ Even if subject to strict scrutiny, race-based affinity organizations should survive under the diversity rationale or remedial rationale. See Section I.A. However, such an analysis is beyond the scope of this paper, as I argue that race-based affinity organizations do not merit strict scrutiny at all.

²²⁵ See Jessica Mitten et al., *Equal Protection*, 23 GEO. J. GENDER & L. 267, 271 (2022) (noting government action is subject to strict scrutiny when directed at a suspect classification, including classifications based on race).

²²⁶ *SFFA*, 143 S. Ct. at 2167.

²²⁷ See, e.g., Tanner, *supra* note 213 (noting how the Black Student Union at the University of Utah hosted events like annual Soulfest about Black culture).

²²⁸ Harpalani, *supra* note 80, at 132 (citing news articles and legal scholarship arguing that affinity groups undermine *Grutter*’s values).

comfortable engaging in cross-racial interactions on campus.²²⁹ Schools are already segregated, and race-based affinity organizations are a tool to provide a better environment for students to be involved in classrooms and to minimize segregation.²³⁰ One study also noted that greater participation in race-based student organizations did not reduce the number of interracial friendships.²³¹ Additionally, as race-based affinity organizations are open to all, they allow students to explore an ethnic identity outside of their own and promote cross-racial understanding.²³²

The primary purpose of spaces like race-based affinity organizations is to be a support mechanism for minority students by mitigating feelings of isolation and helping them to adjust to predominantly white spaces.²³³ At the University of Utah, where only 1% of the student body is Black, a Black student stated that the Black Student Union was vital to her and gave her a space to meet others who understood her experience, which included being called racial slurs on campus.²³⁴ As a result, race-based affinity organizations do not promote segregation but rather promote the integration of racial minorities. Thus, race-based affinity organizations do not merit a strict scrutiny analysis. Events that are centered on a racial identity and open to all students do not involve racial preferences or discrimination against students based on their race.

B. *Race-Based Affinity Organizations are Consistent with SFFA*

Even if a court were to deem race-based affinity organizations as involving suspect classifications subject to the Equal Protection Clause, such organizations are distinct from the policies in *SFFA*, and they actually further the goals that Chief Justice Roberts states. The race-conscious admissions policies challenged in *SFFA* were deemed to violate the Equal Protection Clause because: (1) the racial classifications could not be subjected to meaningful judicial review, (2) race was used in a negative manner and reproduced stereotypes, and (3) the programs had no logical end point.²³⁵ However, race-based affinity groups:

²²⁹ Nicholas A. Bowman & Julie J. Park, *Interracial Contact on College Campuses: Comparing and Contrasting Predictors of Cross-Racial Interaction and Interracial Friendship*, 85 J. HIGHER ED. 660, 684 (2014).

²³⁰ *Id.*

²³¹ Julie J. Park & Young K. Kim, *Interracial Friendship and Structural Diversity: Trends for Greek, Religious, and Ethnic Student Organizations*, 37 REV. HIGHER ED. 1, 18 (2013) (finding that more frequent interaction with affinity groups does not negatively predict interracial friendships); Harpalani, *supra* note 80, at 134 (citing Park's and Kim's study).

²³² Harpalani, *supra* note 80, at 141, 143-44.

²³³ *Id.* at 127.

²³⁴ Tanner, *supra* note 213 (interviewing students in light of state action undermining the Black Student Union).

²³⁵ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. (SFFA)*, 143 S. Ct. 2141, 2175 (2023) ("Both programs lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points.").

(1) are subject to meaningful judicial review through surveys and the monitoring of retention rates, (2) operate to dispel stereotypes, and (3) don't require an end point because they do not employ racial preferences. Thus, race-based affinity groups are consistent with the values stated in *SFFA*.

1. Race-Based Affinity Organizations are Subject to Meaningful Judicial Review

In *SFFA*, the Court held that because racial discrimination is invidious in all contexts, universities must operate their "race-based admissions programs in a manner that is 'sufficiently measurable to permit judicial [review]'" under the rubric of strict scrutiny.²³⁶ The Court held that the compelling interests stated by Harvard and UNC, such as "better educating [their] students through diversity" and "promoting the robust exchange of ideas," were commendable goals, but "they are not sufficiently coherent for purposes of strict scrutiny."²³⁷ The Court went on to claim that "it is unclear how courts are supposed to measure any of these goals," and even if the goals could be measured, "how is a court to know when they have been reached."²³⁸ The interests that respondents seek from a diverse student population, such as "engaged and productive citizens" and effectively training future leaders, are standardless.²³⁹

In contrast to the race-conscious admissions policies of universities, the goals of race-based affinity organizations are not necessarily to increase the diversity of a student population. Rather, the goals concern the retention of historically excluded students by improving their perception of inclusion and belonging.²⁴⁰ The inclusive environment created by affinity organizations has tangible benefits, including the improvement of attrition rates and grade point averages for historically excluded students.²⁴¹ Thus, a central goal of race-based affinity organizations is to improve the sense of belonging for students of minority racial groups already at the university, rather than to increase the admission of such students. As a result, race-based affinity organizations have goals that are measurable. If the sense of belonging that race-based affinity organizations aim to achieve correlates with an improvement in attrition rates and grade point averages, then the goals of race-based affinity organizations can be measured through monitoring the grades and attrition rates of students of minority racial groups. Research has also shown that students who feel welcomed and supported

²³⁶ *Id.* at 2166 (alteration in original) (quoting *Fisher v. Univ. of Tex. at Austin*, 579 U.S. 365, 385 (2016)).

²³⁷ *Id.*

²³⁸ *Id.* ("How is a court to know whether leaders have been adequately 'train[ed]'; whether the exchange of ideas is 'robust'; or whether 'new knowledge' is being developed?" (alteration in original)).

²³⁹ *Id.* at 2167.

²⁴⁰ Miller & Vaughn, *supra* note 43, at 503.

²⁴¹ *Id.*

by their colleges generally get better grades and fare better on persistence, engagement, and mental health.²⁴²

A court can know when the goal of race-based affinity organizations to increase the sense of inclusion and belonging of students of minority racial groups is achieved through the use of campus climate surveys that many universities employ. In his dissent in *Parents Involved in Community Schools v. Seattle School District No. 1*,²⁴³ Justice Breyer relies on research and data supporting that the schools' race-based student assignment plans serve a compelling interest to remediate past segregation and to produce an educational environment that reflects our "pluralistic society."²⁴⁴ The Ninth Circuit has also noted that "statistical and anecdotal evidence of discrimination are relevant in identifying the existence of discrimination."²⁴⁵ Likewise, statistical data can be relevant in determining whether a compelling interest to remedy such discrimination or to promote diversity is sufficiently measurable. Through campus climate surveys, students are able to answer questions related to their sense of belonging and inclusion on campus.²⁴⁶ To measure the impact of race-based affinity organizations, campuses can include questions specifically relating to how race-based affinity organizations impact a student's sense of belonging. Additionally, comparisons regarding how students of minority racial backgrounds feel on campus can be made between universities with robust race-based affinity organizations and universities with few to no race-based affinity organizations.

The Court in *SFFA* also found that the universities failed "to articulate a meaningful connection between the means they employ and the goals they pursue."²⁴⁷ The Court stated that it is far from evident how assigning students to racial categories such as "Asian," "White," and "Hispanic" and making admissions decisions based on these categories furthers the educational benefits that the universities claim to pursue.²⁴⁸ The racial categories were both overly broad and under-inclusive.²⁴⁹ Under-inclusiveness can "reveal that a law does

²⁴² Mangan, *supra* note 75, at 29.

²⁴³ 551 U.S. 701 (2007).

²⁴⁴ *Id.* at 839-41 (Breyer, J., dissenting) (highlighting study where Black and white students in desegregated schools were found to be less racially prejudiced than those in segregated schools).

²⁴⁵ *W. States Paving Co. v. Wash. State Dep't of Transp.*, 407 F.3d 983, 991-93 (9th Cir. 2005) (noting that in light of the substantial body of statistical and anecdotal material considered at the time of the Act, Congress had a strong basis in evidence for concluding there was discrimination against racial minorities).

²⁴⁶ See *Campus Climate Survey*, NC STATE UNIV., <https://isa.ncsu.edu/surveys/student-alumni-surveys/campus-climate-survey/> [<https://perma.cc/6VJG-LDVG>] (last visited Oct. 8, 2025).

²⁴⁷ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. (SFFA)*, 143 S. Ct. 2141, 2167 (2023).

²⁴⁸ *Id.*

²⁴⁹ *Id.*

not actually advance a compelling interest” as it does not account for all conduct that may achieve its stated purpose.²⁵⁰ Conversely, the Court found that a state law banning personal requests for money by judges did not raise any under-inclusivity concerns because it aimed squarely at the conduct most likely to undermine public confidence in the integrity of the judiciary, and it applied evenhandedly to all judges and judicial candidates.²⁵¹

Similarly, race-based affinity organizations that promote the culture and inclusivity of minority racial groups aim squarely at retaining students of minority racial backgrounds and remedying past discrimination that denied their entry. The organizations’ events are typically open to all students, and membership is voluntary. Additionally, race-based affinity organizations in universities, especially large universities, tend to break down into more specific racial or ethnic categories. At certain universities, race-based affinity organizations are usually centered on a particular country or region, depending on the student population. For example, Boston University has race-based affinity organizations ranging from a Bangladeshi Students’ Association to an Eritrean and Ethiopian Students Association to an African Students Organization.²⁵² Such organizations, when specific to a country, such as a “Bangladeshi Students’ Association,” are not under-inclusive, and more broad organizations such as an “African Student Organization” are not over-inclusive. Though the organizations center on the stated country or region, their events are open to all students, and they are not rigid racial categories assigned to students. Rather, the use of race or ethnicity in race-based affinity organizations functions as a theme for the organization, and the narrowness or broadness of the racial theme depends on the student population. Thus, race-based affinity organizations are more flexible and able to avoid the issue of employing racial categories that are overly broad and under-inclusive.

2. Race-Based Affinity Organizations Combat Racial Stereotypes

In *SFFA*, the Court expanded on *Grutter v. Bollinger* and found that the race-based admissions systems also failed to comply with the twin commands of the EPC that “race may never be used as a ‘negative’ and that it may not operate as a stereotype.”²⁵³ Under Harvard’s race-conscious admissions policies, fewer Asian American and white students were being admitted than otherwise would

²⁵⁰ *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 449 (2015).

²⁵¹ *Id.* at 461-62. Although the Court applied a First Amendment analysis in this case, the First Amendment operates as a sort of Equal Protection Clause for ideas. *See Barr v. Am. Ass’n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2354 (2020) (quoting *Williams-Yulee*, 575 U.S. at 470) (confirming that “First Amendment is a kind of Equal Protection Clause for ideas” and arguing that Congress violated that First Amendment equal-treatment principle by favoring debt-collection robocalls and discriminating against political robocalls).

²⁵² *Organizations*, TERRIER CENT., <https://bu.campuslabs.com/engage/organizations?categories=12684> [<https://perma.cc/TR5J-TUR6>] (filtered by cultural organizations) (last visited Oct. 8, 2025) (providing alphabetical list of cultural, ethnic, and racial affinity groups).

²⁵³ *SFFA*, 143 S. Ct. at 2168.

have been without the policy.²⁵⁴ Because “college admissions are zero-sum,” a benefit provided to some applicants but not others “necessarily advantages the former group at the expense of the latter.”²⁵⁵ With race-based affinity organizations, race is not used as a negative, and affiliation with a group is not zero-sum. Race-based affinity organizations that are properly structured are completely voluntary, and there are no additional benefits to students who participate in them and no consequences for those who do not.²⁵⁶ Race-based affinity organizations are also typically open to all students, and there are no limits on the number of members.²⁵⁷ Race is not used as a negative, but rather, one’s racial background is portrayed as a positive, as race-based affinity organizations work to “create an inclusive, celebratory, and educational space” to uplift cultures and people.²⁵⁸

Additionally, the Court stated that universities “may not operate their admissions programs on the ‘belief that minority students always (or even consistently) express some characteristic minority viewpoint on any issue.’”²⁵⁹ The Court claimed that such programs tolerated stereotyping and rested on the stereotype that a “[B]lack student can usually bring something that a white person cannot.”²⁶⁰ However, race-based affinity organizations actively work to combat stereotypes associated with racial groups. Stereotypes are narrow beliefs about a marginalized social group that often lead to prejudice and are based on overgeneralizations.²⁶¹ Racial stereotypes are usually formed from information that people received from their parents, media, and other influential people that generalizes a group of people based on their race.²⁶² One of the ways to combat stereotypes and discrimination is through celebrating other cultures by participating in cultural events and being exposed to cultural food.²⁶³ Race-based affinity organizations are intended to “promot[e] cultural appreciation”

²⁵⁴ *Id.* at 2168-69.

²⁵⁵ *Id.* at 2169.

²⁵⁶ *See, e.g.,* Diemert v. City of Seattle, No. 2:22-cv-1640, 2025 WL 446753, at *18 (W.D. Wash. Feb. 10, 2025).

²⁵⁷ *See, e.g., id.*

²⁵⁸ *See, e.g.,* African Students Organization, TERRIER CENT., <https://bu.campuslabs.com/engage/organization/african-students-organization> [<https://perma.cc/6S94-N5VL>] (last visited Oct. 8, 2025) (stating Boston University’s African Students Organization’s mission).

²⁵⁹ *SFFA*, 143 S. Ct. at 2169 (quoting *Grutter v. Bollinger*, 539 U.S. 306, 333 (2003)).

²⁶⁰ *Id.* at 2164.

²⁶¹ Arturia Melson-Silimon, Briana N. Spivey & Allison L. Skinner-Dorkenoo, *The Construction of Racial Stereotypes and How They Serve as Racial Propaganda*, SOC. & PERSONALITY PSYCH. COMPASS, July 21, 2023, at 2 (defining “stereotype” and addressing historical racism’s role in creating stereotypes).

²⁶² Amy Morin, *Harmful Psychological Effects of Racial Stereotyping*, VERY WELL MIND (Mar. 23, 2024), <https://www.verywellmind.com/harmful-psychological-effects-of-racial-stereotyping-5069394> [<https://perma.cc/37D8-49KK>] (emphasizing heavy influence of socialization on brain’s natural tendency to categorize people).

²⁶³ Sarah Ferguson, *5 Ways to Fight Hate and Discrimination*, UNICEF USA (Mar. 17, 2025), <https://www.unicefusa.org/stories/5-ways-fight-hate-and-discrimination>.

and to share the joy and traditions of cultural events with the greater university community.²⁶⁴

Additionally, another way to combat stereotypes is through contact with people from different social groups and seeing each person as an individual.²⁶⁵ Race-based affinity organizations host events centered on a particular race or culture that are open to all people, allowing people of different racial groups to connect and get to know each other. Thus, through race-based affinity organizations, race is viewed as a positive, and stereotypes are actively combatted.

3. Race-Based Affinity Organizations Do Not Require an End Point

In *SFFA*, the Court also stated that race-based admissions programs must at some point end as required by *Grutter*, which stated that “all race-conscious admissions programs [must] have a termination point” and “reasonable durational limits.”²⁶⁶ The Court set a time provision on such programs due to the fear that “[e]shrining a permanent justification for racial preferences” would offend the principle that racial classifications “are potentially so dangerous that they may be employed no more broadly than the interest demands.”²⁶⁷ The Court in *Grutter* approved the use of race to further an interest in a diverse student body in light of the expectation that one day “the use of racial preferences will no longer be necessary” to further such an interest.²⁶⁸ *SFFA* reaffirmed the requirement of an end point for race-based preferences and stated that the admissions programs of Harvard and UNC assure “that race will always be relevant” and that the ultimate goal of eliminating race as a criterion will never be achieved as their proffered end points are inadequate.²⁶⁹

Race-based affinity organizations in higher education do not require an end point because such organizations do not promote a racial preference that would need to end. Race-conscious admissions programs required an end point due to them allegedly contributing to a “racial preference[.]” for students of certain

²⁶⁴ See, e.g., *Brazilian Students Association at Rutgers-New Brunswick*, RUTGERS GET INVOLVED, <https://rutgers.campuslabs.com/engage/organization/rubrasa> [<https://perma.cc/WN6N-XRWE>] (last visited Oct. 8, 2025).

²⁶⁵ *Combating Implicit Bias and Stereotypes*, THINK CULTURAL HEALTH, <https://thinkculturalhealth.hhs.gov/assets/pdfs/resource-library/combating-implicit-bias-stereotypes.pdf> [<https://perma.cc/2WJX-YRKL>] (listing seven ways to combat implicit bias and stereotypes).

²⁶⁶ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. (SFFA)*, 143 S. Ct. 2141, 2165 (2023) (quoting *Grutter v. Bollinger*, 539 U.S. 306, 342 (2003)).

²⁶⁷ *Id.* at 2165, 2223 (quoting *Grutter*, 539 U.S. at 342).

²⁶⁸ *Id.* at 2166 (quoting *Grutter*, 539 U.S. at 343).

²⁶⁹ *Id.* at 2172 (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 495 (1989)); *id.* at 2170-72 (discussing respondents’ three proffered end points for their race-based admissions programs, which the Court viewed as inadequate: (1) when there is “meaningful representation and meaningful diversity” on college campuses, (2) when in their absence, students “nevertheless receive the educational benefits of diversity,” or (3) after five more years based on *Grutter*).

racial backgrounds.²⁷⁰ Although race-based affinity organizations were formed to create brave spaces for students of particular marginalized racial groups, they do not provide any preferences at universities for one racial group over another. The main goal of such affinity groups is to promote the healing and inclusion of racial minorities and to improve their retention at universities.²⁷¹ Thus, race-based affinity organizations are not subject to the requirement that they must at some point end because they do not operate as a racial preference.

CONCLUSION

Affinity organizations are critical to the sense of belonging that students of underrepresented racial groups feel, especially at predominantly white institutions. Race-based affinity organizations have tangible benefits for the mental well-being, academic success, and retention of minority racial groups. In the face of growing anti-DEI movements and attacks on higher education in a post-*SFFA* society, it is becoming increasingly important to defend organizations that work to promote brave spaces and to create a sense of belonging for students of marginalized backgrounds.

As this Note has articulated, constitutional challenges to race-based affinity organizations pose a great danger to students of underrepresented racial groups. Before *SFFA*, organizations argued that race-based affinity organizations violate the Equal Protection Clause. In a post-*SFFA* society and under the Trump Administration, schools have already started to decrease funding for race-based affinity organizations and to disband such organizations altogether. The enrollment of Black and Latinx students at top universities after *SFFA* has decreased, and it is becoming ever more important to have organizations in place to support the retention and belonging of students of minority racial groups.

As this Note demonstrates, there are two legal arguments to support the constitutionality of race-based affinity organizations: (1) race-based affinity organizations are not subject to the Equal Protection Clause, and (2) race-based affinity organizations are consistent with the values and requirements articulated in *SFFA*. For these reasons, race-based affinity organizations are constitutional and should continue to flourish in universities.

²⁷⁰ *Id.* at 2166.

²⁷¹ See JOHNSON, *supra* note 54, at 16-17 (describing “affinity spaces” as spaces in which to respond to “white supremacy culture”); Miller & Vaughn, *supra* note 43, at 503 (discussing recent efforts to improve conditions for “historically excluded students” in nursing programs).