# EXPERT REPORT OF DR. UMA JAYAKUMAR

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## III.     FACTUAL BACKGROUND AND ASSUMPTIONS

In each class, the University of North Carolina at Chapel Hill seeks students with a variety of qualities to foster a scholarly community: "intellect, talent, curiosity, and creativity; leadership, kindness, and courage; honesty, perseverance, perspective, and diversity."[1] To facilitate this goal, UNC uses race as one of a number of factors in its holistic analysis of a student's application for admission to the undergraduate program. Race comprises one of more than forty criteria considered at every stage of the admissions process, which are grouped into eight broad categories: academic performance (such as grade point average, rank in class, and trends in grades), academic program (such as the rigor of courses taken), standardized testing (including SAT scores), extracurricular activity (such as work history and demonstrated

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    1. *Foundations and Practices Regarding the Evaluation and Admission of Candidates*, Office of Undergraduate Admissions (2016-2017), UNC032603-UNC0323610, at 4, UNC0323606.

leadership), special talent (including talent in athletics and music), essay (including persuasiveness, evidence of self-knowledge, and unique perspective), background (including socio-economic status and legacy status), and personal characteristics (including curiosity, integrity, and history of overcoming obstacles).[2]

To assure reliability and appropriate application of these criteria, there are multiple stages of review with different readers who must participate in training. Through these comprehensive, individualized evaluations,[3] UNC aims to draw together students who will enrich each other's education and strengthen the campus community.[4] Throughout this process, UNC adopts a flexible, non-numerical approach towards the consideration of race. Race is always viewed in the context of everything else that the admissions committee knows about a candidate and in light of the range of contributions the candidate might make to the University community.[5]

The University of North Carolina at Chapel Hill's consideration of race is now being challenged as unconstitutional. Students for Fair Admissions filed a lawsuit alleging that UNC's admissions procedure intentionally discriminates against its members on the basis of race, color, and/or ethnicity in violation of the Fourteenth Amendment, 42 U.S.C. § 1983, and 42 U.S.C. § 2000d[6] by failing to use race only as a "plus" factor and failing to use available race-neutral alternatives.[7] The suit also alleges that any consideration of race in the admissions process is unconstitutional and urges that prior Supreme Court holdings to the contrary should be reversed.[8]

## IV.    EDUCATIONAL BENEFITS OF DIVERSITY

The educational benefits that flow from student body diversity have been repeatedly recognized as a compelling interest.[9] The benefits

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2. *Id.* at 5-7, UNC0323607-UNC0323609.

3. *Id.* at 4-5, UNC0323606-UNC0323607.

4. *Id.* at 4, UNC0323606.

5. *Id.* at 7, UNC0323609.

6. Plaintiff dismissed additional claims brought pursuant to 42 U.S.C. § 1981. Jt. Stip. of Voluntary Dismissal (Doc. 29).

7. Compl., Claims for Relief, Counts I and II (Doc. 1).

8. *Id*., Claims for Relief, Count III.

9. *See, e.g., Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978); *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Fisher v. Univ. of Texas at Austin* (*Fisher I*) 133 S. Ct. 2411 (2013); *Fisher v. Univ. of Texas at Austin* (*Fisher II*), 136 S. Ct. 2198 (2015).

cited by the Supreme Court have been confirmed by decades of academic research.[10] As discussed further below, numerous studies have affirmed that meaningful, cross-racial interactions contribute to:

- reducing prejudice;[11]
- reducing social distance between racial groups;[12]
- promoting a sense of belonging;[13]
- cultivating intergroup dialogue skills and pluralistic orientation;[14]
- encouraging comfort with people from other races;[15]
- improving racial/cultural understanding and engagement;[16]

10. *See, e.g.*, Nida Denson, "Do Curricular and Cocurricular Diversity Activities Influence Racial Bias? A Meta-Analysis," *Review of Educational Research* 79, no. 2 (June 2009): 805-839; Nicholas A. Bowman, "College Diversity and Cognitive Development: A Meta-Analysis," *Review of Educational Research* 80, no. 1 (2010): 4-33 (describing the authors' meta-analysis that systematically and empirically examines consistencies and discrepancies in findings across the literature over time).

11. Kristin Davies, Linda Tropp, Arthur Aron, Thomas Pettigrew, and Stephen Wright, "Cross-Group Friendships and Intergroup Attitudes," *Personality and Social Psychology Review* 15, issue 4 (2011): 332-351; Nisha Gottfredson, Abigail T. Panter, Charles E. Daye, Walter F. Allen, and Linda F. Wightman, "The Effects of Educational Diversity in a National Sample of Law Students: Fitting Multilevel Latent Variable Models in Data with Categorical Indicators," *Multivariate Behavioral Research* 44, no. 3 (2009): 305-331; Thomas Pettigrew and Linda R. Tropp, "A Meta-Analytic Test of Intergroup Contact Theory," *Journal of Personality and Social Psychology* 90, No. 5 (2006): 751-783.

12. Nicholas A. Bowman, "The Conditional Effects of Interracial Interactions on College Student Outcomes, *Journal of College Student Development* 54 (2013): 322-328; Patricia Odell, Kathleen Korgen, and Gabe Wang, "Cross-Racial Friendships and Social Distance between Racial Groups on a College Campus," *Innovative Higher Education* 29, no. 4 (2005): 291-305.

13. Angela Locks, Sylvia Hurtado, Nicholas Bowman, and Leticia Oseguera, "Extending Notions of Campus Climate and Diversity to Students' Transition to College," *The Review of Higher Education* 31, no. 3 (2008): 257-285.

14. Patricia Gurin, Biren (Ratnesh) A. Nagda, and Ximena Zúñiga, *Dialogue Across Difference: Practice, Theory, and Research on Intergroup Dialogue* (New York: Russell Sage Foundation) 2013; Mark E. Engberg and Sylvia Hurtado, "Developing Pluralistic Skills and Dispositions in College: Examining Racial/Ethnic Group Differences," *The Journal of Higher Education* 82, no. 4, (July/August 2011): 416-443.

15. Sylvia Hurtado, "The Next Generation of Diversity and Intergroup Relations Research," *Journal of Social Issues* 61, no. 3 (2005): 595-610; Shana Levin, Collette van Laar, and Jim Sidanius, "The Effects of Ingroup and Outgroup Friendships on Ethnic Attitudes in College: A Longitudunal Study," *Group Processes and Intergroup Relations* 6, issue 1 (2003): 76-92.

16. Mitchell Chang, Nida Denson, and Victor Saenz, "The Educational Benefits of Sustaining Cross-Racial Interaction among Undergraduates," *The Journal of Higher Education* 77, no. 3, (2006): 430-455; Nida Denson and Mitchell Chang, "Racial Diversity Matters: The Impact of Diversity-Related Student Engagement and Institutional Context,"

- furthering overall student well-being and retention;[17]
- civic development and social agency;[18]
- improved academic skills and cognitive outcomes[19]
- personal growth and development;[20]
- and developed capacity for teamwork and leadership.[21]

Many of these benefits have been shown to last beyond the college years and into adulthood,[22] and many of these skills are highly valued (and continue to increase in value) in today's global workplaces.[23]

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*American Educational Research Journal* 46, no. 2 (2009): 322-353; Nida Denson and Shirley Zhang, "The Impact of Student Experiences with Diversity on Developing Graduate Attributes, *Studies in Higher Education* 35, no. 5, (August 2010): 529-543.

17. Bowman, 2010; Mitchell J. Chang, "Does Racial Diversity Matter?: The Educational Impact of a Racially Diverse Undergraduate Population," *Journal of College Student Development* 40, no. 4 (1999): 377-95.

18. Sylvia Hurtado, Cynthia Alvarez, Chelsea Guillermo-Wann, Marcela Cuellar, and Lucy Arellano, "A Model for Diverse Learning Environments," in *Higher Education: Handbook of Theory and Research*, Vol. 27, edited by John Smart and Michael Paulsen (Springer Netherlands, 2012); Nicholas A. Bowman, "Promoting Participation in a Diverse Democracy: A Meta-Analysis of College Diversity Experiences and Civic Engagement," *Review of Educational Research* 81, no.1 (March 2011): 29-68; Nelson Laird, "College Students' Experiences with Diversity and their Effects on Academic Self-Confidence, Social Agency, and Disposition Toward Critical Thinking," *Research in Higher Education* 46, no. 4 (2005): 365-387; Mitchell Chang, Alexander Astin, and Dongbin Kim, "Cross-Racial Interaction Among Undergraduates: Some Consequences, Causes, and Patterns," *Research in Higher Education* 45, no. 5 (August 2004): 529-553; Patricia Gurin, Eric Dey, and Sylvia Hurtado, "Diversity and Higher Education: Theory and Impact on Educational Outcomes," *Harvard Educational Review* 72, no. 3 (Fall 2002): 330-36; Alexander Astin, *What Matters in College? Four Critical Years Revisited* (San Francisco: Jossey Bass 1993).

19. Denson and Chang, 2009; Jiali Luo and David Jamieson-Drake, "A Retrospective Assessment of the Educational Benefits of Interaction Across Racial Boundaries," *Journal of College Student Development* 50, no. 1 (January/February 2009): 67-86; Shouping Hu and George D. Kuh, "Diversity Experiences and College Student Learning and Personal Development," *Journal of College Student Development* 44, no. 3 (2003): 320-334; Gurin et al., 2002.

20. Luo and Jamieson-Drake, 2009; Hu and Kuh, 2003.

21. Denson and Zhang, 2010; Luo and Jamieson-Drake, 2009.

22. William G. Bowen and Derek Bok, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* (Princeton: Princeton University Press 2000); Uma Jayakumar, "Can Higher Education Meet the Needs of an Increasingly Diverse and Global Society? Campus Diversity and Cross-Cultural Workforces Competencies," *Harvard Educational Review* 78, no. 4 (Winter 2008): 615-651.

23. Brief of Fortune-100 and Other Leading American Businesses As Amici Curiae in Support of Respondents at 5-23, *Fisher II.*

V.        Obtaining "Dynamic Diversity" on College Campuses

The educational benefits associated with diversity are not automatic or guaranteed. Rather, they only develop when students can engage in meaningful cross-racial interactions and meaningful and equitable participation across a range of institutional and educational settings. The ability of students to have such meaningful interactions and participation is affected by the demographic composition of the student body as well as numerous contextual environmental factors (such as institutional frameworks, governance structures, and sociopolitical and historical forces at the local, state, and national level) that influence student behavior.

"Critical mass" is a term frequently used to describe the demographic composition of underrepresented students necessary to allow all students to obtain the educational benefits of diversity. However, that term suggests an entirely numeric or quantitative approach and does not, on its face, encompass any of the relevant environmental factors needed to achieve those benefits. Thus, a better term to describe the conditions that a university must create to harness those benefits is "dynamic diversity." "Dynamic diversity" emerges when students of all racial identities engage in meaningful participation and meaningful cross-racial interaction.

The factors that affect a university's ability to achieve a climate that furthers the educational benefits of diversity are contextual, interdependent, cross-racial, and participatory. First, dynamic diversity is *contextual* because it requires an understanding of the specific conditions needed for full participation and meaningful interaction. These contexts cut across national, state, campus, classroom, and interpersonal levels as well as time and space—from historical to current sociopolitical contexts. Next, it is *interdependent* because the key institutional components that enable dynamic diversity (the number of students of color on campus and particularly members of historically underrepresented groups, campus climate, and classroom climate) continuously shape and are shaped by one another. Dynamic diversity is *cross-racial* because it is defined by productive interactions across race at both the individual and institutional

levels. Finally, it is *participatory* because it is characterized by participation that engages group members' full selves.[24]

In this section, I discuss the conditions and factors that shape dynamic diversity, as well as strategies that might allow institutions to determine the extent to which they have cultivated the proper conditions for achieving dynamic diversity.

*A.    Obtaining the Educational Benefits of Diversity Requires Meaningful Student Participation and Cross-Racial Interaction*

1.    Meaningful Participation

Full and meaningful participation in all aspects of the learning environment is perhaps the most basic precursor for acquiring the educational benefits of diversity. Meaningful participation occurs when students are included and welcomed as equal participants in the learning context. Under the appropriate learning conditions, diverse perspectives can be freely shared and welcomed for the benefit of all students. Full participation by underrepresented students in college life, across a range of contexts and settings, is a necessary prerequisite for students to engage in meaningful interactions across race.

Research has shed light on the conditions that may impede or promote full participation by students who identify with historically underrepresented groups. Importantly, educational institutions must encourage productive participation across races. Frequency of *positive* participation across race (e.g., studying, dining, socializing, or having serious discussions across racial groups) is more strongly related to student outcomes than is the overall frequency of participation across race.[25]

Positive minority participation is suppressed by conditions that foster a sense of racial isolation, tokenism, and stereotype threat among students of color. These impediments are conceptually distinct, but tend to occur in tandem and have interrelated consequences. All three cultivate an unhealthy racial climate that suppresses the participation of students of color and meaningful cross-racial interaction.

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24. Liliana Garces and Uma Jayakumar, "Dynamic Diversity: Toward a Contextual Understanding of Critical Mass," *Educational Researcher* 43, no. 3 (2014): 115-124.

25. Denson and Chang, 2009; Hurtado, 2005; Laird, 2005.

*Racial isolation* is often marked by overt discriminatory comments, such as the prevalence of racial stereotypes or slurs. It can also be marked by more subtle forms of discrimination, often referred to as "microaggressions." Subtle and often automatic, racial microaggressions are verbal and nonverbal insults directed at and experienced by people of color.[26] They reflect implicit racial bias and cause substantial racial stress due to the demeaning messages they convey: "you do not belong," "you are abnormal," "you are intellectually inferior," "you cannot be trusted."[27] The cumulative weight of racially isolating acts creates environmental stress.[28] When microaggressions are unaddressed in the learning environment, "students on the receiving end perceive that others hold negative views of them and that they are 'outsiders' on their own campus and in their own classrooms."[29]

*Tokenism*, in this context, refers to the sense of scrutiny and pressure felt by students of color to represent their group when faced with extreme underrepresentation and can also impede meaningful cross-racial interaction.[30]

The concept of *stereotype threat* recognizes that looming societal stereotypes can also cause psychological stress among historically underrepresented groups and diminish their participation. Stereotype threat is "[a] situational threat—a threat in the air—that, in general form, can affect the members of any group about whom a negative stereotype exists." Members of groups subject to negative stereotypes can "fear

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26. Chester Pierce, "Offensive Mechanisms," in *The Black Seventies*, edited by Floyd Barbour (Boston: P. Sargent 1970); Derald Wing Sue, Jennifer Bucceri, Annie I. Lin, Kevin L. Nadal, and Gina C. Torino, "Racial Microaggressions and the Asian American Experience," *Asian American Journal of Psychology* S, no. 1 (2009): 88-101; Daniel Solorzano, Walter R. Allen, and Grace Carroll, "Keeping Race in Place: Racial Microaggressions and Campus Racial Climate at the University of California, Berkeley," *Chicana/o Latina/o Law Review* 23, no. 1 (2002): 15-112.

27. Derald Sue, Christina Capodilupo, and Aisha Holder, "Racial Microaggressions in the Life Experience of Black Americans," *Professional Psychology: Research and Practice* 39, no. 3, (2008): 329-336.

28. Solorzano, et al., 2002.

29. Janice McCabe, "Racial and Gender Macroaggressions on a Predominantly-White Campus: Experiences of Black, Latina/o and White Undergraduates," *Race, Gender & Class* 16, no. 1-2, (2009): 133-151.

30. Rosabeth Kanter, "Some Effects of Proportions on Group Life: Skewed Sex Ratios and Responses to Token Women," *American Journal of Sociology* 82 (1977): 971-972.

being reduced to that stereotype," and such fear can be "self-threatening."[31]

Numerous studies have documented how repetitive exposure to these three impediments – racial isolation, tokenism, and stereotype threat – cause students identifying with historically underrepresented groups (such as students of color) to feel invisible, othered, unwelcome, and/or unsafe which, in turn, causes them to withdraw. Similarly, national longitudinal studies indicate that negative interactions are often associated with unfavorable outcomes including reductions in civic engagement, self-confidence, and moral reasoning skills for all students.[32] Among other harms to students' psychological well-being and participation, these impediments stifle meaningful participation in campus life by students of color.

For example, a study of 78 black, Latinx, and white female and male undergraduates on a predominantly white campus found that, due to the prevalence of microaggressions, students of color felt invisible, glossed over, or dismissed in class conversations.[33] Moreover, they experienced anxiety and isolation because of a perception that faculty and peers expected them to be spokespersons for their race and gender. This was especially the case for black women and Latinas.[34] Similarly, another study found that high-achieving black students on a predominantly white campus frequently experienced heightened anxiety and a sense of being

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31. Claude Steele, "A Threat in the Air," *American Psychologist* 52, no. 6 (1997): 613-628.

32. Matthew Mayhew and Mark E. Engberg, "Diversity and Moral Reasoning: How Negative Diverse Peer Interactions Affect the Development of Moral Reasoning in Undergraduate Students," *The Journal of Higher Education* 81, no. 4 (July 2010): 459-488; Denson and Chang, 2009; Mark Engberg, "Educating the Workforce for the 21st Century: A Cross-Disciplinary Analysis of the Impact of the Undergraduate Experience on Students' Development of a Pluralistic Orientation," *Research in Higher Education* 48, (2007): 283–317; Hurtado, 2005;
Laird, 2005.

33. This report will use the following shortened terms: "Latinx" will refer to individuals who identify as Latino/a or Hispanic; "American Indian" will refer to people who identify as "American Indian," "Alaska Native," "Indigenous," or "Native American"; "black" will refer to individuals who identify as Black or African American; and "white" will refer to individuals who identify as White or Caucasian. *See* Cristobal Salinas Jr. & Adele Lozano, "Mapping and recontextualizing the evolution of the term Latinx: An environmental scanning in higher education," *Journal of Latinos and Education* (2017); Michael Yellow Bird, "What We Want to Be Called: Indigenous Peoples' Perspectives on Racial and Ethnic Identity Labels," *American Indian Quarterly* 23, no. 2 (1999): 1-21; American Sociological Association *Style Guide*, 5th ed., 2014. However, where an individual has specified their own racial, ethnic, or cultural identity, I have deferred to their self-identification.

34. McCabe, 2009.

stereotyped by both peers and professors as a result of being the only black student in most classes.[35]

Additionally, negative racial experiences have a direct impact on the participation of students of color within the learning environment. For example, a study examined the cross- racial experiences of 75 undergraduate black, Latinx, Asian American, and American Indian students at a large, predominately white research university. Researchers found that racial stereotypes increased the distance and discomfort with others felt by students of color.[36]

Numerous studies also report that underrepresented and marginalized students choose silence as an act of resistance to perceived hostile learning environments, a response that inherently limits students' meaningful participation.[37] Often, students of color opt out of particular academic programming when faced with a hostile racial climate. Students' assessments of "the climate of academic and social environments" can be a "central factor in their decision to participate in various academic and social activities on their campuses."[38] For example, "students of color report a chilly climate and subsequent feelings of discouragement in STEM majors where Black and Latinx students are especially underrepresented and subject to tokenism and stereotype threat in the classroom."[39] Multiple studies have found that "less supportive educational environments are related to Black, Hispanic, and Native American college students' departure from the STEM circuit."[40] These

35. Sharon Fries-Britt and Kimberly Griffin, "The Black Box: How High-Achieving Blacks Resist Stereotypes About Black Americans," *Journal of College Student Development* 48, no. 5, (September/October 2007): 509-524.

36. Amana Lewis, Mark Chesler, and Tyrone A. Forman, "The Impact of 'Colorblind' Ideologies on Students of Color: Intergroup Relations at a Predominantly White University," *The Journal of Negro Education* 69 (2000): 74-91.

37. Meera Deo, "The Promise of *Grutter*: Diverse Interactions at the University of Michigan Law School," *Michigan Journal of Race & Law* 17, issue 1 (2011): 63-118; Carole Buckner, "Realizing *Grutter v. Bollinger*'s Compelling Educational Benefits of Diversity: Transforming Aspirational Rhetoric into Experience," *University of Missouri-Kansas City Law Review* 72 (2004): 877-1159; Lewis et al., 2000.

38. Ryan J. Davis, Robert T. Palmer, Dina C. Maramba, and Samuel Museus, "ASHE 2011 Report, Special Issue: Racial and Ethnic Minority Students' Success in STEM Education," *Association for the Study of Higher Education* 36, issue 6 (2011): 65-66 (hereinafter, "ASHE Higher Education Report, 2011").

39. Sharon Fries-Britt, Toyia Younger, and Wendell Hall, "Lessons from High-Achieving Students of Color in Physics," *New Directions for Institutional Research* 148 (2010): 75-83.

40. ASHE Higher Education Report, 2011 at 67; Sylvia Hurtado, June C. Han, Victor B. Saenz, Lorelle L. Espinosa, Nolan Cabrera, and Oscar S. Cerna, "Predicting Transition and

studies demonstrate how the negative effects of racial stereotypes and racial isolation can contribute to decreased student participation in academic programs.[41]

When denigrating experiences related to racial, ethnic, and cultural backgrounds are endemic in the structured learning context, they can serve a *pushing-out* function that diminishes or erases participation. For example, traditional educational structures (including those related to curriculum, values, and pedagogy) that align with the needs of the dominant group can foster conditions of racial isolation and discourage participation among underrepresented groups. Students of color are effectively pushed out by learning contexts that require them to abandon or reject their own cultural traditions, values, or sense of worth as members of a particular community in order to achieve.[42] When the learning context threatens cultural integrity, a student may choose fragmented participation (i.e., disassociating from parts of their identity to remain engaged) or decide to leave the environment altogether in order to maintain cultural integrity.[43]

In contrast, full participation is fostered when schooling practices promote cultural pride and continuity.[44] Research on racial socialization and identity asserts the importance of cultural integrity in supporting the

Adjustment to College: Biomedical and Behavioral Science Aspirants' and Minority Students' First Year of College," *Research in Higher Education* 48, no. 7 (November 2007): 841-887.

41. Students of color can and often do persist in the face of racial isolation, tokenism, and stereotype threat. But they often do so by creating same-race support networks, which do not necessarily further the types of cross-racial interaction and participation which yield the fuller benefits of diversity. Tara J. Yosso, William A. Smith, Miguel Ceja, Daniel G. Solorzano, "Critical Race Theory, Racial Microaggressions, and Campus Racial Climate for Latina/o Undergraduates," *Harvard Educational Review* 79, no. 4 (Winter 2009): 659-690.

42. Donna Deyhle, "Navajo Youth and Anglo Racism: Cultural Integrity and Resistance,"
*Harvard Educational Review* 65, no. 3 (September 1995): 403-445.

43. The genesis of this assertion is drawn from both Donna Dehyle's findings on cultural integrity discussed in this report and from Jeanine Staples' scholarship on the impact of social and emotional trauma in the lives of girls and women of color. Deyhle, 1995; Jeanine M. Staples, *The Revelations of Asher: Toward Supreme Love in Self* (New York: Peter Lang, 2015) (providing explication on emotional justice and fragmented selves).

44. Prudence Carter, *Keepin' It Real: School Success Beyond Black and White* (Oxford: Oxford University Press, 2005); Amy Fann, *Forgotten Students: American Indian High School Students' Narratives on College Going* (Berkeley: UC Berkeley Center for the Study of Higher Education Research 2004); William G. Tierney, and Alexander Jun, "A University Helps Prepare Low Income Youths for College: Tracking School Success," *The Journal of Higher Education* 72, no. 2 (2001): 205; Deyhle, 1995.

ability of students of color to form the positive identities necessary for full participation at predominantly white institutions.[45] Underrepresented students are more likely to succeed when they feel validated and where participation does not require them to undermine their own cultural or racial history and values.[46]

## 2.     Meaningful Cross-Racial Interactions

Meaningful cross-racial interaction occurs when conditions support a "robust exchange of ideas,"[47] promote "'cross-racial understanding,' help to break down racial stereotypes, and 'enable[] [students] to better understand persons of different races.'"[48] When cross-racial interaction is facilitated in meaningful ways, it contributes to learning in a manner that challenges students' pre-existing stereotypes, biases, and worldviews. Two central components of meaningful cross-racial interactions are a) structured and sustained intergroup dialogue, and b) ensuring diversity within each identity-group (or "diversity within diversity").

Structured and sustained intergroup dialogue is central to obtaining the benefits of diversity. In his classic work, Allport contends that intergroup contact can reduce stereotypes and prejudice under the right conditions.[49] Cross-racial interactions reduce prejudice when intergroup dialogue highlights similarities and differences across groups and promotes an understanding of various differences across multiple

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45. Tabbye Chavous, Debra Bernat, Karen Schmeelk-Cone, Cleopatra Caldwell, Laura Kohn- Wood, and Marc Zimmerman, "Racial Identity and Academic Attainment Among African American Adolescents," *Child Development* 74, issue 4 (July 2003): 1076-1090; Lori Holleran and Margaret Waller, "Sources of Resilience Among Chicano/a Youth: Forging Identities in the Borderlands," *Child and Adolescent Social Work Journal* 20, no. 5 (2003): 335-350; Tracy R. Rone, "The Socialization of Academic Achievement and Racial Consciousness in an African American Community-Based Youth Program," *African American Education* 2 (2002): 179-212.

46. Laura I. Rendón, "Community College Puente: A Validating Model of Education," *Educational Policy* 16, no. 4 (2002): 642-667; Laura I Rendón, "Validating Culturally Diverse Students: Toward a New Model of Learning and Student Development," *Innovative Higher Education* 19, no. 1 (1994): 33-51.

47. *Bakke*, 438 U.S. at 312 (quoting *United States v. Associated Press*, 52 F. Supp. 362, 372 (1943)).

48. *Grutter*, 539 U.S. at 310.

49. Gordon W. Allport, *The Nature of Prejudice Unabridged* (Addison-Wesley Publishing Company 1979).

identity dimensions.[50] A comprehensive experimental design study of 1,450 students enrolled in 52 dialogue courses on race and gender found that cross- racial interaction led to greater intergroup understanding and prejudice reduction when there was structured, facilitated, and sustained dialogue among participants under conditions of equal representation across social status groupings.[51] Over time, quality interactions with peers from different groups can also reduce perceptions, attributions, and generalizations associated with stereotypes and biases.[52] These findings are supported by a meta-analysis of existing literature that confirms that interactions with racial diversity are more strongly linked with cognitive growth than interactions with nonracial diversity.[53]

Notably, the cognitive growth that flows from racial diversity may not be entirely free from racial tension and conflicts, as students confront various forms of racialized vulnerability. A meta-analysis of 81 different studies on interracial interactions found that participants engaging in cross-racial interactions were more likely to experience anxiety and other negative emotions than those engaging within homogenous racial groups.[54] However, while researchers have found that heterogeneous social identity groups may have greater potential conflict than homogenous groups, heterogeneous groups ultimately demonstrate greater innovation and improved intergroup understanding when there are supportive conditions to dissolve such tensions.[55] Indeed, the process of resolving these tensions itself produces heightened cognitive growth.[56] And studies present evidence that these stress responses naturally

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50. Gurin et al., 2013.

51. *Id.*

52. Nilanjana Dasgupta and Shaki Asgari, "Seeing is believing: Exposure to counterstereotypic women leaders and its effect on the malleability of automatic gender stereotyping," *Journal of Experimental Social Psychology* 40, no. 5 (2004): 642-658; John J. Seta, Catherine E. Seta, and Todd McElroy, "Attributional Biases in the Service of Stereotype Maintenance: A Schema- Maintenance Through Compensation Analysis," *Personality and Social Psychology Bulletin* 29 (2003): 151-163.

53. Bowman, 2010.

54. Uma Jayakumar, "Why Are All the Black Students Still Sitting Together in the Proverbial College Cafeteria?" *Higher Educational Research Institute* (October 2015).

55. Gurin et al., 2013; Scott E. Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton: Princeton University Press 2008). Other researchers have similarly observed that while social diversity can cause discomfort and greater perceived conflict, it is vital to improving individual and company outcomes, and leads to "unfettered discoveries" and "breakthrough innovations." Katherine W. Phillips, "How Diversity Makes Us Smarter," *Scientific American*, October 1, 2014.

56. Gurin et al., 2013.

dissipate with repeated exposure to and interactions across difference.[57] Thus, sustained exposure can improve cross-racial understanding and cultural competence, and frequency of cross-racial interaction has been shown to increase comfort with socializing across race before, during, and after the college years.[58]

Cross-group dialogues are particularly significant in the educational development of white students, who are the most likely to experience first-time encounters with racial difference in college.[59] Unlike students of color, who are likely to interact across race lines with students and/or teachers throughout schooling, white students increasingly are located in neighborhoods and educational environments that are *de facto* segregated.[60] White students accustomed to segregated environments can experience initial discomfort involving feelings of victimization and defensiveness. White students' sense of racialized vulnerability manifests itself in a distinct set of concerns and behaviors known as "white fragility." A sense of white fragility is associated with unconscious bias and stereotypes, fears, and resentments pertaining to black people and other people of color.[61] These harmful views and patterns are exacerbated when white students lack opportunities for cross-racial interaction.

There is evidence that the experience of racialized vulnerability can lead to decreased engagement among white college students[62] and an increased tendency to group together.[63] However, exposure to diversity

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57. Jayakumar, "Proverbial College Cafeteria," 2015.

58*. Id.*

59. Gary Orfield and Chungmei Lee, "Racial Transformation and the Changing Nature of Segregation," *The Civil Rights Project, Harvard University* (January 2006).

60. Gary Orfield and Chungmei Lee, "Why Segregation Matters: Poverty and Educational Inequality," *The Civil Rights Project, Harvard University* (January 2005).

61. Eduardo Bonilla-Silva, *Racism Without Racists: Color Blind Racism and the Persistence of Racial Inequality in America* (Maryland: Rowman and Littlefield Publishers, 2009); Jim Sidanius, Shana Levin, Colette van Laar, and David O. Sears, *The Diversity Challenge: Social Identity and Intergroup Relations on the College Campus* (New York, NY: Russell Sage Foundation, 2008); William A. Smith, Tara J. Yosso, and Daniel G. Solorzano, "Racial Primes and Black Misandry on Historically White Campuses: Toward Critical Race Accountability in Educational Administration," *Educational Administration Quarterly* 43, no. 5 (2007): 559-585.

62. Jayakumar, "Proverbial College Cafeteria," 2015.

63. For example, Quillian and Campbell showed that when children do not have opportunities to interact across race lines they are less inclined to envision themselves as capable of doing so. Lincoln Quillian and Mary E. Campbell, "Beyond Black and White: The Present and Future of Multiracial Friendship Segregation," *American Sociological Review* 68, no. 4 (2003): 540-566.

helps regulate defensive responses to racialized vulnerability.[64] Repeated exposure and experiences with people from different racial backgrounds results in faster recovery from a stress response during cross-racial interaction.[65] Indeed, the likelihood of white students engaging in cross-racial interaction, despite feelings of vulnerability, increased with engagement across racial difference.[66] Over time, repeated positive cross-racial interactions are more likely to lead to positive emotional responses, improved attitudes, and reduced prejudices,[67] particularly amongst white students.[68]

In light of the aforementioned dynamics, institutions seeking the benefits of diversity should not avoid tension in the learning environment — it is a natural and beneficial byproduct of exposure to people from different backgrounds, particularly for white students accustomed to segregated environments. Challenging students to overcome feelings of white fragility thus facilitates dynamic diversity,[69] but racialized vulnerability experienced by students of color faced with racial microaggressions and colorblind racial frames hinders its development. Thus, dynamic diversity is not facilitated by prioritizing white students' comforts over challenges to racial isolation, tokenism, and stereotype threat.[70]

Impediments to the full and meaningful participation of all students may signal a lack of institutional support for diversity, even if an institution espouses such values. Such dissonance impacts the overall

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64. J. Blascovich, Wendy B. Mendes, Sarah B. Hunter, and Brian Lickel, "Stigma, Threat, and Social Interaction" in *The Social Psychology of Stigma*, edited by Todd F. Heatherton, Robert E. Kleck, Michelle R. Hebl, and Jay G. Hull (New York: The Guilford Press, 2000).

65. Elizabeth Page-Gould, Wendy Berry Mendes, and Brenda Major, "Intergroup Contact Facilitates Physiological Recovery Following Stressful Intergroup Interactions," *Journal of Experimental Social Psychology* 46 (2010): 854-858.

66. Jayakumar, "Proverbial College Cafeteria," 2015.

67. Pettigrew and Tropp, 2003.

68. Linda R. Tropp and Thomas F. Pettigrew, "Differential Relationships Between Intergroup Contact and Affective and Cognitive Dimensions of Prejudice," *Personality and Social Psychology Bulletin* 31, no. 8 (2005): 1145-158.

69. Sidanius et al., 2008, at 1.

70. Page-Gould et al., 2010; Jim Blascovich, Wendy Berry Mendes, Sarah B. Hunter, Brian Lickel and Neneh Kowai-Bell, "Perceiver Threat in Social Interactions With Stigmatized Others," *Journal of Personality and Social Psychology* 80, n. 2 (2001): 253-267; Alberto Cabrera and Amary Nora, "The Role of Perceptions of Prejudice and Discrimination on the Adjustment of Minority Students to College," *The Journal of Higher Education* 67, no. 2 (1996): 119-148., Robin DiAngelo, "White Fragility," *International Journal of Critical Pedagogy* 3 (2011): 54-70.

racial climate on campus. Thus, institutions should attend to such tensions through inclusive pedagogical practices that encourage students to move away from preconceptions tinged with bias, and towards more complex world views.[71]

Admitting and enrolling students that reflect differences *within* a particular racial group is another necessary condition for meaningful cross-racial interaction. "Diversity within diversity" reduces prejudice and prevents the solidification of stereotypes by increasing exposure to and awareness of the vast variety of both observable identity characteristics (e.g., skin color, age, gender) and inferred identity characteristics (e.g., ethnicity, religion, family status, education level, social class, culture, values, ancestry). Exposure to the intersectionality of these characteristics encourages students to avoid crude and inaccurate inferences based on isolated, observable attributes.[72]

Just as importantly, "diversity within diversity" increases the likelihood that students will develop *cultural flexibility*, which is comfort with and ability to navigate diverse social environments such as the workplace, communities, and neighborhoods. Diversity within diversity promotes cultural flexibility by highlighting social similarities and differences across other significant identity markers such as culture and socioeconomic status.[73] For example, researchers find that institutions with greater socioeconomic diversity within racial groups are associated with increased levels of cross-racial interactions and greater involvement in curricular diversity activities.[74] Similarly, studies have shown that service learning programs designed to promote community engagement are more likely to reduce racial biases when the students involved are racially diverse and when encounters with the local community allow for discrepant experiences among individuals from the same racial background.[75]

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71. Gurin et al., 2002.

72. Scott Page, *The Diversity Bonus: How Great Teams Pay Off in the Knowledge Economy* (New Jersey: Princeton University Press 2017).

73. Prudence L. Carter, "Race and Cultural Flexibility among Students in Different Multiracial Schools." *Teachers College Rec.* 112, no. 6 (2010): 1529-1574.

74. Julie J. Park, Nida Denson, and Nicholas Bowman, "Does Socioeconomic Diversity Make a Difference? Examining the Effects of Racial and Socioeconomic Diversity on the Campus Climate for Diversity," *American Educational Research Journal* 50, no. 3 (2013): 466-496.

75. Scott C. Seider and Amanda Hillman, "Challenging Privileged College Students' Othering Language in Community Service Learning," *Journal of College and Character* 12, no. 3 (2011).

B.      *Meaningful Participation and Cross-Racial Interactions*
        *Require Meaningful Representation of Students of Color*

Significant numerical representation of students of color on campus is a necessary factor in attaining the educational benefits of diversity. It enables students to feel safe to fully express their identities and affirmatively choose to interact across difference, thus decreasing the likelihood of tokenism and stereotype threat. It also encourages a level and quality of cross-racial interactions that challenge pre-existing stereotypes, worldviews, and current beliefs. It is particularly significant in reducing racial vulnerability for individuals from historically subordinated racial or ethnic backgrounds.

However, while demographic representation is necessary, it alone will not lead to meaningful participation and cross-racial interactions or the associated educational benefits.

1.      Meaningful Demographic Representation is One (But Not the Only) Consideration in Fostering Dynamic Diversity

The Supreme Court has recognized that achieving the educational benefits of diversity requires "meaningful representation" of students of color, which it defines as "a number that encourages underrepresented minority students to participate in the classroom and not feel isolated," or "numbers such that underrepresented minority students do not feel isolated or like a spokesperson for their race."[76]

Social science research establishes that "meaningful representation" depends on much more than numbers – rather, it turns symbiotically on institutional and organizational dimensions, including campus culture and climate.[77] The relationship is symbiotic because the context shapes what meaningful same-race representation is and should

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76. *Grutter*, 539 U.S. at 318-19. Even the dissent recognized that a certain number of minority students would be necessary "[t]o ensure that . . . minority students do not feel isolated or like spokespersons for their race; to provide adequate opportunities for the type of interaction upon which the educational benefits of diversity depend; and to challenge all students to think critically and reexamine stereotypes." *Id.* at 380 (Rehnquist, C.J., dissenting).

77. Sylvia Hurtado, Alma R. Clayton-Pedersen, Walter Recharde Allen, and Jeffrey F. Milem, "Enhancing Campus Climates for Racial/Ethnic Diversity: Educational Policy and Practice," *The Review of Higher Education* 21, no. 3 (1998): 279-302; Uma Jayakumar and Samuel Museus, *Creating Campus Cultures: Fostering Success Among Racially Diverse Student Populations.* (Routledge 2011).

be.[78] Campus cultures are unique and can be experienced quite differently by members of different minority groups.[79] Thus, only by assessing student participation and interactions across a variety of educational settings can an institution know whether there is "meaningful representation" of a particular racial or ethnic group conducive to promoting the educational benefits of diversity that the institution seeks.

Research across various fields confirms that context matters and meaningful participation depends on more than numbers alone. Studies across numerous disciplines—from the social sciences to medicine—consistently find that "critical mass" cannot be measured using a pre-existing formula. For example:

- In the field of business, critical mass refers to the point at which consumers feel confident investing in new technologies or products. Once critical mass is reached, the result is continuation of the product and the elimination of risk for other buyers. Attaining a critical mass is important for a technology to move from short- to long- term sustainability.[80] Four contextual factors are considered—supplier issues, industry issues, customer issues, and vendor issues—and all must be considered in concert.[81]

- Critical mass has been used to promote public safety and the inclusion of cyclists on the road. Research indicates that the likelihood of bicycle injuries decreases as the number of cyclists increases, in part because motorists become more observant and respectful once cyclists reach a critical mass.[82]

78. Samuel Museus, Maria Ledesma, and Tara Parker, "Racism and Racial Equity in Higher Education," *Association for the Study of Higher Education* 42, issue 1 (2015): 1-112.

79. Samuel Museus, Uma Jayakumar, and Thomas Robinson, "Modeling Racial Differences in the Effects of Racial Representation on Two-Year College Student Success," *College Student Retention* 13, no. 4 (2011-2012): 549-572.

80. Bradley Ruffle, Avi Weiss, and Amir Etziony, "Coordination and Critical Mass in a Network Market: An Experimental Investigation," *Bar-llan University Department of Economics*, (February 2010).

81. Jose Spencer and John Klocinski, "High Technology Product Success: the Critical Mass Dependency," *Journal of Global Business and Technology* 6, no. 1 (Spring 2010): 28-40.

82. Peter Lyndon Jacobson, "Safety in Numbers: More Walkers and Bicyclists, Safer Walking and Bicycling," *Injury Prevention* 9, (2003): 205-209.

> Notably, the number of cyclists needed would vary by the size of the town, the density of the population, the conditions of the streets, and the extent to which motorists are dominant and cyclists are marginalized.[83]

Thus, in a number of fields, it is well-established that "critical mass" or meaningful representation relies on quantitative and qualitative factors. Similarly, both quantitative and qualitative factors affect the conditions by which the educational benefits of diversity can be obtained.

2.      The Significance of Meaningful Demographic Representation

Although numeric representation is not sufficient to ensure meaningful participation and interaction, it is nevertheless important. Even in the face of racial isolation, greater numbers of same-race peers increase the likelihood that underrepresented minorities will continue to participate rather than choose silence, distance, or disengagement.

A medical education study showed the importance of demographic composition in ensuring meaningful content and the sharing of varied perspectives. Drawing from 24 focus groups at two institutions, the findings indicated that students from diverse racial and ethnic backgrounds play a pivotal role in shaping the implementation and delivery of cross-cultural knowledge and diversity perspectives. Faculty, staff, and student participants expressed the common sentiment that students—especially those from diverse backgrounds and especially in the context of race-based student organizations—were in fact the ones creating most of the diversity discussion on campus.[84]

Specifically, meaningful representation encourages both meaningful participation and meaningful cross-racial interactions, which, as discussed above, are necessary prerequisites to obtaining the educational benefits of diversity.

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83. Zach Furness, "Critical Mass, Urban Space and Vélomobility," *Mobilities* 2, no. 2 (2007).

84. Jeffrey F. Milem, Celia O'Brien, Danielle Miner, W. Patrick Bryan, Farah Sutton, Laura Castillo-Page, and Sarah Schoolcraft, "The Important Role that Diverse Students Play in Shaping the Medical School Curriculum," *Arizona Medical Education Research Institute* (2012).

### a.        Encouraging Meaningful Participation

When there are too few people of color, they are more vulnerable to social stigma,[85] more susceptible to tokenism,[86] and more likely to experience racial hostility.[87] For example, when a minority group is extremely underrepresented, individuals are under greater scrutiny and feel pressure to represent their group.[88] This tokenism and stereotype threat makes it difficult to facilitate the equal status necessary to reduce prejudice across racial groups.[89] In contrast, the availability of black student groups in predominantly white contexts enables students to gain validation, resist stereotypes, and develop culturally affirming identities.[90] Greater representation reduces isolation and increases validation, thereby facilitating the meaningful participation of students of color across all contexts.

Research demonstrates that an increased presence of students with different backgrounds leads to more diversity discussions and better learning in both undergraduate and graduate classrooms. Most of the study's 500 respondents were engaged in some level of interaction with students from several different racial backgrounds and had a high level of engagement with same-race peers. Students shared how classroom discussions on race, gender, and sexual orientation—among other intersectional dimensions—could result in open minds and more engaging classroom conversations. Further, they believed that participation among diverse peers and sharing of diverse perspectives on identity issues could decrease experiences of tokenism.[91]

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85. Claude Steele, "Race and the Schooling of Black Americans," *The Atlantic*, April 2012, https://www.theatlantic.com/magazine/archive/1992/04/race-and-the-schooling-of-black- americans/306073/.

86. Kanter, 1997.

87. Sylvia Hurtado, "The Campus Racial Climate: Contexts of Conflict," *Journal of Higher Education* 63, no. 5 (1992): 539-569.

88. Kanter, 1997.

89. Allport, 1979.

90. Beverly Daniel Tatum, *Why Are All the Black Kids Sitting Together in the Cafeteria?: and other Conversations about Race* (New York: Basic Books 2017).

91. Deo, 2011. The data include numerous examples of how students from different backgrounds shaped class discussions by drawing on a range of unique perspectives. For example, Colin (a white male) noted that, with high levels of diversity, preconceived racial stereotypes can be unlearned: "people would question their own views about privilege, [and] that upper middle- class, White, straight, male is the default and everything else is a disadvantage. When you are surrounded by people that are very diverse there is no default" (p. 99). Conversely, when a student feels he or she is seen as a spokesperson rather than an individual, this can negatively affect learning for *all* students, especially as classmates fail to

Social science research also reveals that meaningful representation within a particular racial subgroup offers particular benefits to students of color. For example, one quantitative, longitudinal, national study of students attending community colleges found that the level at which students of one's own racial group were represented on campus impacted academic and social integration, academic achievement, and persistence for all students. However, this was more important for the academic success of black and Latinx students than whites.[92] For black and Latinx students in particular, the level of same-race representation plays a more defining role in shaping the quality of cross-racial engagement than the level of broader diversity on a campus across various groups.[93]

b.    Encouraging Meaningful Interactions

Significant representation of students of color is central to meaningful cross-racial interactions by challenging pre-existing stereotypes, worldviews, and current beliefs. Meaningful demographic representation makes it more likely that students will have more frequent and more meaningful encounters across race that are crucial to overcoming pre-existing biases.[94] Without such encounters, information that strongly contradicts previously-held stereotypes is easily rationalized as an exception to the rule.[95] As Kanter famously asserted in establishing the harms of tokenism, "If there are enough people of the token's type to

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recognize the diversity of thought within a group. Raven (a Black female) asserted that under conditions of sufficient numeric representation "we would be blessed with being able to see the diverse perspectives within minority groups. All Black people don't think the same way. All Asian people don't think the same way" (p. 103).

92. Museus et al., 2012.

93. Jayakumar, "Proverbial College Cafeteria," 2015.

94. Mariette Berndsen, Russell Spears, Joop van der Pligt, and Craig McGarty, "Illusory Correlation and Stereotype Formation: Making Sense of Group Differences and Cognitive Biases" in *Stereotypes as Explanations* (Cambridge: Cambridge University Press, 2002); Steven Stroessner and Jason Plaks, "Illusory Correlation and Stereotype Formation: Tracing the Arc of Research over a Quarter Century," in *Cognitive Social Psychology: The Princeton Symposium on the Lecacy and Future of Social Cognition*, edited by Gordon B. Moskowitz (Mahway: Lawrence Erlbaum Publishers, 2001).

95. Miles Hewstone and Charles Lord, "Changing the Intergroup Cognitions and Intergroup Behavior: The Role of Typicality," in *Intergroup Cognition and Intergroup Behavior*, edited by Constantine Sedikides, John Schopler, and Chester Insko (Mahwah: Lawrence Erlbaum Publishers, 1998); David A. Wilder, Andrew F. Simon, and Myles Faith, "Enhancing the Impact of Counterstereotypic Information: Dispositional Attributions for Deviance," *Journal of Personality and Social Psychology* 71, no. 2 (Aug. 1996): 276-287.

let discrepant examples occur, it is possible that the generalization will change to accommodate the accumulated cases. But if individuals of that type are only a small proportion of the group, it is easier to retain the generalization and distort perception of the token."[96]

Interestingly, research also suggests that higher levels of white representation decrease the likelihood of white students engaging in cross-racial interaction. Most white students entering college have primarily experienced predominantly white environments and have not yet developed an understanding of white identity and capacity to interact across race lines.[97] Retreating to homogeneous white environments may be comforting because one does not have to think about whiteness or because it can provide validation for feelings of guilt, shame, and anger.[98] Thus, increased representation of students of color is necessary for encouraging white students to engage across race lines and obtain the benefit of resolving old frames and biased worldviews.[99]

Increased demographic representation also allows for diversity within diversity, which, as discussed, can reduce stereotypes and biases and encourage cultural flexibility. Identity categories may be observable (e.g., skin color, age, gender) or inferred (e.g., ethnicity, religion, family status, education level, social class, culture, values, ancestry). In the absence of exposure to intersectional identity categories, we are prone to making crude and inaccurate inferences based on isolated, observable attributes.[100] When diversity is understood holistically, increasing the representation of underrepresented groups enhances the depth of diversity within diversity and by extension enhances opportunities for reducing stereotypes and supporting cross-racial understanding.

Finally, increasing demographical representation is necessary to ensure that tensions that arise from cross-racial engagement can be managed productively, particularly for students of color. The broader value of bonding with students of one's own race is well documented.[101]

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96. Kanter, 1977.
97. Tatum, 2017.
98. *Id.*
99. Gurin et al., 2002.
100. Page, 2017.
101. Tabitha L. Grier-Reed, "The African American Student Network : Creating Sanctuaries and Counterspaces for Coping With Racial Microaggressions in Higher Education Settings," *Journal of Humanistic Counseling, Education and Development* 49 (Fall 2010): 181-188; McCabe, 2009; Yosso et al., 2009; Solorzano et al., 2002; Lasley Barajas

Seeking out same-race peers through "counterspaces" or "safe spaces" — such as same-race study groups or cultural affinity groups—can provide emotional support and increase comfort level on campus.[102] The existence and viability of counterspaces relies, in part, on the presence of sufficient numbers of students of color, since students of color predominantly participate in such groups, initiate the creation of such groups, and lead the activities of such groups. When students have access to race-specific campus organizations and spaces, they are more likely to perceive a positive climate and experience a sense of belonging,[103] both of which encourage student engagement.[104] Such spaces also provide relief from racial stress and support for struggles with microaggressions, tokenism, and other elements of racial isolation.[105] Importantly, the research demonstrates that same-race representation does not hinder overall cross-racial engagement among students of color.[106]

### C.    Numerous Environmental Factors Also Shape the Conditions for Meaningful Participation and Interactions

Educational institutions exist within unique racial contexts. Various environmental factors are part of this context including the organizational features of the learning environment, an institution's actual and perceived commitment to and investment in racial diversity, and the larger policy context including government programs and initiatives. Importantly, sociohistorical forces shape how these environmental factors ultimately affect the conditions for fostering the educational benefits of diversity. For example, even where an institution has sought to confront or overcome its historical legacy of racial exclusion, echoes and elements of that past can linger in the institution's practices, governance structures, and institutional frameworks.

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and Jennifer Pierce, "The Significance of Race and Gender in School Success Among Latinas and Latinos in College," *Gender and Society* 15, issue 6 (2001): 859-878.; Lewis et al., 2000.

102. Yosso et al., 2009.

103. Guiffrida, 2003; Harper and Quaye, 2007.

104. Hurtado et al., 1998; Yosso, 2009.

105. Douglas A. Guiffrida, "African American Student Organizations as Agents of Social Integration," *Journal of College Student Development* 44, no. 3 (2003): 193-218; Stephen John Quaye and Shaun R. Harper, "Shifting the Onus from Racial/Ethnic Minority Students to Faculty: Accountability for Culturally Inclusive Pedagogy and Curricula," *Liberal Education* 92, no. 3 (2007): 19-24.

106. Jayakumar, "Proverbial College Cafeteria," 2015.

Below I discuss some significant environmental and external factors that affect an institution's ability to encourage dynamic diversity and its assessment.

### 1.    Local, State, and National Context

A campus racial climate is shaped and informed by local, state, and national contextual factors. As these political contexts evolve, their impact on the racial climate (and by extension their impact on meaningful participation and cross-racial interactions) can manifest in a variety of forms. A few illustrative examples include:

*Residential segregation*: Students' pre-college exposure to primarily segregated (versus diverse) neighborhood and high school environments heightens the challenges posed in cultivating a healthy racial climate. Most white students enter college with little prior exposure to people of different racial backgrounds.[107] The concentration of white students in segregated neighborhoods and schools may foster ingrained stereotypes, racial bias,[108] ways of thinking that promote racial discrimination and bias,[109] and even a pathological aversion to black men among white students.[110] For white students, segregated spaces also constrain the development of cultural flexibility.[111] These consequences shape the campus racial climate in ways that decrease the potential for meaningful participation and interaction.

*Local, state, and national controversies, dialogues, and hostility related to race:* Current controversies at the local, state, and national level impact campus race relations and students' capacity to engage in meaningful participation and interaction. In particular, since the 2016 presidential election there has been an increase in nationally reported hate violence and bullying.[112] This is mirrored in higher education by the prevalence of racially charged campus incidents and concern over

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107. Orfield and Lee, 2006.
108. Sidanius et al., 2008.
109. Bonilla-Silva, 2014.
110. Yosso et al., 2009; Smith et al., 2007.
111. Carter, 2010.
112. Brian Levin, "Final U.S. Status Report: Hate Crime Analysis & Forecast for 2016/2017," *Center for the Study of Hate & Extremism* (2017): 1-27, https://csbs.csusb.edu/sites/csusb_csbs/files/Final%20Hate%20Crime%2017%20Status%20 Repo rt%20pdf.pdf; Maureen B. Costello, "The Trump Effect: The Impact of the Presidential Campaign on our Nation's Schools," *Southern Poverty Law Center* (2016).

growing racial conflict.[113] Students of color have organized protests and actions across 80 campuses demanding institutional attention to racial bias, stereotypes, underrepresentation, and hostile racial climates.[114] In many instances, they have been met with defensive backlash from a small but emerging and highly vocal set of white student groups aligned with segregationist cultural values aimed at protecting white privilege and supremacy. The Union of White Cornell Students, for example, submitted a set of demands to the administration, describing themselves as "a community of white students who wish to preserve and advance their race."[115] If universities with segregationist histories give official status or campus resources to such groups, they may send organizational signals that conflict with moving away from lingering historical frameworks, with negative consequences for the health of the campus racial climate and engagement across race.

When racial hate crimes or racial incidents occur on college campuses or in surrounding communities, the institutional response signals whether underrepresented students are valued and welcomed as full participants on campus. When the burden of resolving the harmful consequences of these conflicts is placed on students of color, it reflects an unwelcoming, exclusionary campus culture, as evidenced by an analysis performed of high profile racial incidents at three highly selective university campuses.

For example, researchers found universities' responses to recent racial incidents were effectively superficial or noncommittal. In their responses, the universities visibly distanced the institution from the event, emphasized how the institution "did not condone" racist behavior, and stressed how the unfortunate event offered an opportunity for increasing

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113. Anti-Defamation League, *White Supremacists on Campus; Unprecedented Recruitment Efforts Underway* (June 9, 2017), https://www.adl.org/blog/white-supremacists-on-campus-                                unprecedented-recruitment-efforts-underway?_ga=1.3868912.1741098207.1488839158; Museus et al., 2015.

114. Jack Dickey, "The Revolution on America's Campuses," *Time* (May 31, 2016), www.time.com/4347099/college-campus-protests/ (discussing more than 50 student protests at universities around the country); Alia Wong and Adrienne Green, "Campus Politics: A Cheat        Sheet,"        *The*        *Atlantic*,        April        4,        2016. https://www.theatlantic.com/education/archive/2016/04/campus-protest-roundup/417570/.

115. Phoebe Keller and Sofia Hu, "Aided by White Nationalist Groups, Union of White Cornell Students to Release Demands, Host March," *The Cornell Daily Sun* (March 18, 2016), http://cornellsun.com/2016/03/18/aided-by-white-nationalist-groups-union-of-white-cornell- students-to-release-demands-host-march/.

awareness and improving racial conditions. Significantly, all of the documented responses failed to identify organizational issues and steps to address racial biases, stereotypes, and insensitivity to underrepresented groups. Moreover, they failed to address the pain caused to those affected by the racist incidents. Finally, they condoned public apologies from the perpetrating group that failed to admit the actions were racist and harmful. Instead, the perpetrators sought amends for being "'perceived as racist' or being 'taken the wrong way.'"[116]

In sum, an institutional framework and climate that signals a lack of concern for racial incidents and stressors can seriously impact opportunities for students at that institution to engage in the full and meaningful participation across race lines that is essential to obtain the educational benefits of diversity.

*Pathways to local, state, and national leadership*: A campus racial climate can also be influenced by whether there is evidence of equitable pathways to professional opportunities and leadership positions at the local, state, and national level for all students. When there is a historical legacy of exclusion, institutions must pay particular attention to whether and how they are promoting or failing to promote equity in professional opportunities and leadership positions. Such organizational signaling is highly relevant to perceptions regarding how that institution endorses or separates itself from its discriminatory past.

One manifestation of such signaling regarding leadership that is particularly within a university's control is the encouragement of visible pathways to leadership within the institution itself. The importance of meaningfully diverse faculty, staff, and administration to the creation of dynamic diversity is discussed further below.

2.     Institutional Infrastructure That Encourages and Signals a Commitment to Diversity

"Diversity infrastructures" promote racial empathy and understanding among all students and aim to facilitate healthy intergroup interactions, reduce prejudice and discrimination, and enhance the skills, knowledge, and motivation that can encourage meaningful interactions

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116. Shametrice Davis and Jessica C. Harris, "But We Didn't Mean it Like That: A Critical Race Analysis of Campus Responses to Racial Incidents," *Journal of Critical Scholarship on Higher Education and Student Affairs* 2, issue 1 (2016): 62-78.

across race. When diversity infrastructures work well, they signal that diversity is an institutional value that is both espoused (as evidenced by the existence of relevant programs and their missions) and enacted (as evidenced by the experienced benefits of improved interactions, enhanced cross- racial understanding of intersecting identity characteristics, and reduced prejudice and bias).[117]

Research demonstrates that there are many types of institutional infrastructures that can affect racial climate. For example:

- *Multicultural programming and well-facilitated intergroup dialogues* are associated with higher retention rates and more positive racial experiences for both white students and students of color. For white students in particular, studies show that intergroup dialogues and diversity workshops promote racial awareness, openness to diversity, and pluralistic orientation during and beyond the college years.[118]
- *Trainings for faculty and staff* permit more effective engagement in pedagogical practices that facilitate positive inter-group interactions, reduce prejudice and discrimination, and enhance the skills, knowledge and motivation to interact with people of different backgrounds.[119]
- *Institutionalized "counterspace programming"* permits students to interact with same-race peers, which reduce racial stress and the toxicity of unhealthy conditions for meaningful participation in and beyond the classroom.[120]

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117. Susan Iverson, "Camouflaging Power and Privilege: A Critical Race Analysis of University Diversity Policies," *Educational Administration Quarterly* 43, issue 5 (2007): 586-611.

118. Gurin et al., 2013; Jayakumar, 2008.

119. Katerina Bezrukova, Karen A. Jehn, and Chester S. Spell, "Reviewing Diversity Training: Where We Have Been and Where We Should Go," *Academy of Management Learning and Education* 11, no. 2 (June 2012): 207-227.

120. Lori D. Patton, ed., *Culture Centers in Higher Education: Perspectives on Identity, Theory, and Practice* (Sterling: Stylus Publishing 2010); Lori D. Patton, "The Voice of Reason: A Qualitative Examination of Black Student Perceptions of Black Culture Centers," *Journal of College Student Development* 47 no. 6 (Nov./Dec. 2006); Lori D. Patton, "Black Cultural Centers: Still Central to Student Learning," *About Campus* (May-June 2006).

- *Supporting specific academic departments and disciplines* by equitably allocating campus resources to academic departments which disproportionately train and support students of color, such as Ethnic Studies, Gender and Sexuality Studies, Education, and other departments.[121]

- *Recruitment efforts* influence the campus racial climate, and by extension, interactions across race. Recruitment efforts implicate the number of students of color who apply and enroll in an institution, and, potentially, the level of diversity within a racial group. Recruitment can directly influence the level of compositional diversity on campus and the racial climate, as well as students' perceptions of an institution's commitment to diversity.[122]

- *Admissions policies* that espouse a commitment to diversity can encourage applications and enrollment from students of color, whereas policies that fail to espouse a commitment to diversity can signal to underrepresented student populations, and students of color in particular, that they are not welcome. For example, bans on affirmative action can have a "discouragement effect" that leads students to not apply to an institution; whereas visible and effective efforts to increase the presence of people of color can signal an inclusive and welcoming environment to prospective students considering a selective institution.[123]

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121. *See, e.g.,* DATAUSA: Ethnic Studies (significant majority of degrees awarded in ethnic studies awarded to students of color), https://datausa.io/profile/cip/050200/#demographics; Stephen R. Porter and Paul D. Umbach, "College Major Choice: An Analysis of Person- Environment Fit," *Research in Higher Education* 47, no. 4 (June 2006): 429-449.

122. Kimberly A. Griffin, Marcela M. Muñiz, and Lorelle Espinosa, "The Influence of Campus Racial Climate on Diversity in Graduate Education," *The Review of Higher Education* 35, no. 4 (2012); 535-566; Susan Brown and Charles Hirschman, "The End of Affirmative Action in Washington State and Its Impact on the Transition from High School to College," *Sociology of Education* 79, no. 2 (April 2006): 106-130.

123. Griffin et al., 2012; Brown and Hirschman, 2006.

As the discussion of recruitment efforts and admissions policies demonstrates, diversity infrastructures that influence *perceptions* about the institution's commitment to diversity can powerfully impact the campus's racial climate and, by extension, the likelihood of participation and cross-racial interaction. Organizational signaling of commitment to diversity impacts how students engage with difference and their capacity to benefit.[124]

However, incorporating diversity and equity in the missions and operations of a campus is only beneficial to the extent that the institution's espoused values are consistent with its signaling and actions around diversity and equity.[125] Diversity infrastructures can vary in scope, approach, quality of facilitation and, importantly, follow-through. These frameworks often require additional efforts from institutions with historical legacies of segregation, since many of their pre-existing frameworks were specifically designed to perpetuate exclusion, racial separation, and the pre-eminence of white men. Traditionally white institutions often lack a comprehensive framework for inclusion that proactively works to remove exclusionary cultural artifacts and values[126] and that addresses impediments to full participation and meaningful interaction across race.[127]

### 3.     Meaningful Diverse Representation among Faculty, Staff, and Administration

Increasing representation of faculty, staff, and administrators of color on campus may improve the racial climate on campus, which, in turn, improves interactions across race.[128] For example, research has shown that the increased presence of faculty and administrators of color is associated with positive outcomes for students of color, such as reducing racial isolation on campus by bridging divides between

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124. Jeffrey Milem, Mitchell Chang, and Anthony Antonio, "Making Diversity Work on Campus," *Association of American Colleges and Universities* (2005): 1-38.

125. Iverson, 2007.

126. Milem et al., 2005; Jayakumar and Museus, 2011.

127. Garces and Jayakumar, 2014.

128. Shayla C. Nunnally, *Trust in Black America: Race, Discrimination, and Politics* (New York: New York University Press 2012); Nicholas Sorensen, Biren Nagda, and Patricia Maxwell, "Taking A 'Hands On' Approach to Diversity in Higher Education: A Critical-Dialogic Model for Effective Intergroup Interaction," *Analyses of Social Issues and Public Policy* 9, no. 1 (2009): 3-35.

underrepresented students and institutional actors and improved graduation outcomes for students of color.[129] The increased presence of faculty and administrators of color encourages healthy interracial contexts for learning between faculty and students of different races.[130]

Faculty of color are also less likely to exhibit racial biases and stereotypes and more likely to have pedagogical approaches and practices that validate students of color.[131] Similarly, the visible presence of faculty and leadership of color has been shown to affect students' environmental experience of microaggressions.[132] Their increased presence, therefore, simultaneously and synergistically serves to improve the racial climate, participation by students of color, and cross-racial interactions. Faculty, staff, and administrators of color are also more likely than white faculty to participate in and create diversity related programing on campus.[133] Not only do such programs benefit all students, but the presence of faculty, staff, and administrators to take on this institutional diversity work relieves some of the racial stress and extra burden otherwise placed on students of color.[134]

The hiring, retention, and promotion of faculty of color also demonstrates a visible commitment to including diverse voices in the decision-making process. Benefits to the racial climate are particularly acute when underrepresented minorities serve in top leadership roles among faculty and administration.[135]

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129. Leticia Oseguera and Byung Shik Rhee, "The Influence of Institutional Retention Climates on Student Persistence to Degree Completion: A Multilevel Approach," *Research in Higher Education* 50, no. 6 (2009): 546-569.

130. Nunnally, 2012; Sorensen et al., 2009.

131. Luis Urrieta Jr. and Rudolfo Chávez Chávez, "Latin@ Faculty in Academelandia," in *Handbook of Latinos and Education: Theory, Research, and Practice*, eds. L. Murillo Jr, E. G., Villenas, S., Galván, R. T., Muñoz, J. S., Martínez, C., and Machado-Casas, M. (Routledge 2009); Pamela Petrease Felder and Marco J. Barker, "African Americans and the Doctoral Experience: A Case Comparison Through Bell's Interest Convergence," *Journal of Progressive Policy & Practice* 2, no. 1 (2004): 79–100.

132. Sue et al., 2008.

133. Sharon L. Holmes, "Narrated Voices of African American Women in Academe," *Journal of Thought* 43, no. 3-4 (2008): 101-124.

134. Louwanda Evans and Wendy Moore, "Impossible Burdens: White Institutions, Emotional Labors, and Micro-Resistance," *Social Problems* 62, no. 3 (2015): 439-454.

135. As the brief from military leaders in *Grutter* explained, racial diversity is crucial within the military's leadership corps to facilitate productive interactions that bridge chasms based in racial prejudice, low numbers of black officers, pervasive discrimination, and heightened racial hostility. Brief of Lt. Gen. Julius W. Becton et al., as Amici Curiae in Support of Respondents at 5-30, *Grutter v. Bollinger*, 539 U.S. 306 (2003); *see also* Brief of Fortune-100 and Other Leading American Businesses As Amici Curiae in Support of Respondents at 5-23, *Fisher v. Univ. of Texas at Austin*, (*Fisher II*), 136 S. Ct. 2198 (2016).

*D.     Evaluating Dynamic Diversity*

As detailed above, institutions must assess dynamic diversity using both qualitative and quantitative measures. Existing instruments can be useful in supporting institutions in evaluating and assessing those measures. For example, two effective racial climate assessments are the Higher Education Research Institute's Diverse Learning Environments survey and Rankin's Transformative Tapestry model.[136] Similarly, Estella Bensimon and her colleagues' Equity Scorecard instrument captures qualitative and quantitative measures tied to organizational behaviors and outcomes including structural vulnerability at the institutional level.[137] In addition, general college experience assessments, such as the Higher Education Research Institute's freshman and senior surveys used in diversity research and scholarship, also record relevant information. For example, these assessments measure levels of exposure to segregation in pre- college neighborhoods and K–12 schools, pre-college views related to bias and ways of thinking that promote stereotypes, and frequency and quality of cross-racial interactions. Across all of these various tools and methods, data can be especially informative when disaggregated by race and/or other identity-groups.

These and other indicators are useful for creating actionable plans to address racial bias and ways of thinking tied to exclusionary cultural norms among students, faculty, staff, and administrators.

VI.     RELEVANT EXAMPLES OF UNC'S EFFORTS TO OBTAIN THE EDUCATIONAL BENEFITS OF DIVERSITY

In recent years, UNC has repeatedly proclaimed its commitment to obtaining and maximizing the educational benefits of diversity for its students. It has taken numerous concrete steps towards achieving this goal, including extensive recruitment, student-focused initiatives, efforts to enhance faculty and staff diversity, and public statements. However, there remain numerous obstacles that inhibit meaningful participation by

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136. Diverse Learning Environments Survey, *Higher Education Research Institute*, https://heri.ucla.edu/diverse-learning-environments-survey/; Susan Rankin and Robert Reason, "Transformational Tapestry Model: A Comprehensive Approach to Transforming Campus Climate," *Journal of Diversity in Higher Education* 1, no. 4 (2008): 262-274.

137. The Equity Scorecard: Balancing Educational Outcomes, USC Rossier School of Education, https://rossier.usc.edu/the-equity-scorecard-balancing-educational-outcomes/.

underrepresented students of color and cross-racial interactions on campus as well as obstacles in engaging white students based on a lack of pre-college exposure to diversity and a lack of cultural flexibility. These obstacles can inhibit meaningful cross-racial interactions and participation by all students. Below, I discuss some of the information adduced in this litigation that may be relevant to the framework for evaluating critical mass/dynamic diversity set forth above.

From the information reviewed, I observe that while UNC is making strategic efforts to shift its institutional values toward diversity and inclusion—as opposed to upholding historical exclusion—significant obstacles to dynamic diversity persist, many of which are rooted in UNC's unique sociohistorical context. In this way, UNC's espoused value for diversity has not yet been consistently enacted to achieve the conditions for dynamic diversity. Such deep-seated obstacles require UNC's sustained attention and ongoing efforts to improve the racial climate and harness the full benefits of diversity.

## A.        *UNC's Efforts to Enhance Dynamic Diversity*

### 1.        Recruitment Efforts

UNC operates a number of outreach programs to promote diversity by drawing additional applicants from underrepresented communities. Its current efforts to recruit underrepresented students are numerous, extensive, and expanding. Most of these programs seek to address barriers to college access among low-income students attending under-resourced K-12 schools and first-generation students, which likely include students of color in addition to poor white students. Several programs, such as Project Uplift, invest additional efforts to recruit black, American Indian, Latinx, Asian American, and rural students.[138] Such programs facilitate adjustment and participation across campus by

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138. *See, e.g.,* James Dean, *The Educational Benefits of Diversity and Inclusion for Undergraduate Students at the University of North Carolina Chapel Hill* (May 26, 2017), UNC0349694- UNC0349712 (hereinafter "Report Benefits of Diversity"), at 6-11, UNC0349700-UNC0349705 (summarizing UNC's various efforts to attract, admit, and enroll students from diverse backgrounds); Declaration of Carol Lee Ware at 2 (alumni discussing being introduced to UNC through the Project Uplift Program).

communicating that underrepresented students are valued and belong at UNC.[139]

Having multiple thoughtful programs demonstrates that UNC is "dedicated to providing spaces so that those who unite on issues of socioeconomic class and race can form authentic and positive relationships."[140] These programs benefit students of color as well as other individuals, including those for whom diversity may be a less observable trait (e.g. low-income white students, LGBTQ students). Several of the programs are staffed by people who share similar background experiences and have a focus on culturally relevant practices and mentorship.[141] For example, the Carolina College Advising Corps, is based on a peer mentorship model that places recent UNC graduates in partnering low-income high schools.[142]

UNC has also engaged in efforts to increase the likelihood that underrepresented students will enroll in UNC once admitted. These efforts range from proactively contacting admitted applicants, to bringing them on campus, to expanding the Carolina Covenant program, which commits debt-free financial aid to the lowest income students.[143] These efforts reflect proven methods to not only increase enrollment rates but also promote matriculating students' academic success and retention.[144]

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139. *See, e.g.*, Declaration of Cheyenna Phelps (hereinafter "Decl. of Phelps") at 2 (Phelps speaks to the importance of the Minority Advising Program and the Carolina Covenant program in making her feel valued and welcome at UNC); Declaration of Adrian C. Douglass, M.D. at 2 (alumni similarly noting the benefit provided by the Minority Advisory Program); Dep. of Dr. Taffye Benson Clayton (May 24, 2017) at Ex. 13, Email with *Copy of Summary of SERU and 2010 Student Diversity Assessment and Survey Responses*, UNC0130765-UNC0130864 (hereinafter "2010 Diversity Assessment"), at UNC0130787. Respondent on 2010 Diversity Assessment wrote: "The diversity orientation day for prospective minority students was very well executed and made me feel welcome."

140. Decl. of Phelps at 2; *see also* Declaration of Patsy B. Ziegler at 3-5 (alumni describing affinity groups for black students as necessary "to survive the experience and graduate").

141. Report Benefits of Diversity, at 7, UNC0349701 (describing Project Uplift which invites high-achieving students from low-income, rural, racially diverse backgrounds on campus and which is staffed by current students, staff, and faculty many of whom have similar demographic backgrounds).

142. *Id.*

143. *Id*. at 6-8, UNC0349700-UNC0349702 (bringing students on campus); *id*. at 9, UNC0349703 (proactively contacting admitted applicants); *id*. at 11, UNC0349705 (expansion of Carolina Covenant program since 2004).

144. *Id*. at 9-11, UNC0349703-UNC0349705 (increasing enrollment rates); *id*. at 14-15, UNC0349708-UNC0349709 (retention and academic success of students).

## 2.     Student-Focused Initiatives

Recognizing that diversity efforts must extend beyond recruitment to engagement in the learning and extracurricular context, UNC engages in a broad range of student-focused initiatives. UNC promotes meaningful participation and cross-racial interaction through traditional student services such as those offered by the Division of Student Affairs. For example, Carolina Housing and Residential Education engages students across campus in addition to providing housing to 10,000 students. Another such program, the Campus Y, houses over 30 student-initiated social justice committees focused on community inclusion, education and youth development, public health, global issues, and advocacy. This particular public service and engagement-oriented program has been running for 150 years, and annually engages roughly 2,000 student volunteers.[145]

UNC has also introduced courses and programming to integrate diverse perspectives and epistemologies. Such course offerings were expanded in the School of Public Health, the College of Arts and Sciences, Clinical Psychology, the Department of Anthropology, and the School of Media and Journalism, including courses titled "Leading for Racial Equity: Examining Structural Issues of Race and Class", "Lesbian, Gay, Bisexual, and Transgender Health: A population perspective", "African American Political Philosophy", "Poverty, Inequality, and Health", and "Diversity and Communication."[146] According to the 2014-2015 Diversity Plan Report, approximately 22 departments or schools also incorporated academic-adjustment and success programs to support and retain diverse students, including underrepresented minority, first-generation, low-income, and rural students. For example, the Schools of Dentistry and Medicine offer an intensive educational program that provides information and socialization around pursuing a career in medicine.[147] Additionally, the College of Arts and Sciences offers the "Men of Color Engagement" initiative, which provides information about graduate and professional schools, mentorship and research opportunities, and spaces for discussing race-related issues such as

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145. *Id*. at 14, UNC0349708.
146. Dep. of Dr. Taffye Benson Clayton (May 24, 2017) at Ex. 10, 2014-2015 Diversity Plan Report, at UNC0283397-UNC0283432 (hereinafter "2014-2015 Diversity Plan Report"), at UNC0283418.
147. *Id*. at 18, UNC0283414.

organized networking and professional development events, and a bonding-oriented summer immersion trip to a major city.[148]

The University also supports a range of formal counterspace frameworks shown to assist in navigating racialized vulnerability and promote participation by underrepresented students and marginalized groups. Such groups include the Black Student Movement, the Carolina Indian Circle, the Carolina Hispanic Association, Ahmadiyya Muslim Student Association, and the LGBTQ Center, amongst others. The Carolina Union is a designated hub for many of these sponsored student organizations providing cultural, social, and educational programming to the campus community.[149] The Carolina Union also allows students with intersecting marginalized identities to fluidly move between social identity-based counterspaces. One student related that a program named Carolina United enabled her to explore different religious, sexual, and racial identities and students and she "became more accepting as a result."[150]

As discussed above, counterspaces are integral to reducing the harms of racial isolation, tokenism, and looming stereotype threats, which impede full participation and meaningful interaction in campus learning contexts. Students explained that UNC's counterspaces promoted their sense of comfort on campus, including interacting across race. For example, one student stated that, "I finally felt at home when I joined Latinx based organizations on campus, like the Carolina Hispanic Association, Carolina Latina/o Collaborative, and NC Sli. These organizations are very important to my happiness at UNC . . . ."[151]

In addition to counterspace frameworks, UNC also facilitates structured dialogues across difference to ensure the type of quality interactions essential to dynamic diversity. Student Affairs offers campus-wide forums such as the "Real Talk" series for students to voice

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148. Report Benefits of Diversity at 15, UNC0349709.
149. *Id*. at 14, UNC0349708.
150. Declaration of Star Wingate-Bey (hereinafter "Decl. of Wingate-Bey") at 2-3. Star Wingate- Bey speaks to effectiveness of Carolina United programming in facilitating structured dialogue across difference to develop empathy and cross-cultural understanding.
151. Declaration of Maria Gomez Flores (hereinafter "Decl. of Gomez Flores") at 2; *see also* Declaration of Jessica Mencia (hereinafter "Decl. of Mencia") at 2 (Mencia speaks to the importance of UNC's development of Latinx community and curricular programming related to Latinx issues).

identity- based experiences and concerns.[152] Similarly, the 2014-2015 Carolina Conversations initiative brought students together with other campus constituents to promote "interaction, understanding, and respect among the campus community through dialogue."[153] Based on this success and student demand, it was continued and expanded to offer both student-centered events as well as broader engagement with the campus community. Student-only conversations broached ongoing concerns related to race and campus climate such as "inclusive classrooms, a dialogue about the First Amendment and hate speech on campus, and a discussion about sexual assault."[154]

Thus, UNC's development of traditional student service frameworks, enhanced course offerings, robust counterspaces, and spaces for dialogues demonstrate institutional infrastructures that aim to enhance the ability of students to meaningfully participate and engage across a range of diverse backgrounds.

### 3.     Faculty and Staff Initiatives

Similarly, there are a number of UNC faculty and staff-focused initiatives to change existing frameworks and learning contexts. For example, a Curriculum Revision Working Group takes a holistic look at all available courses to revamp general education requirements to develop "challenging, contemporary, and visionary curriculum that reflects the best of North Carolina."[155] These efforts will include broader steps to remove barriers to quality education for disadvantaged groups in particular, but also for all students in the learning environment.

UNC faculty and staff acknowledge that dynamic diversity leads to desired benefits when learning contexts support student engagement

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152. Tyler J. Rouse, "UNC Real Talk event creates space for healing," *The Daily Tar Heel*, Feb. 16, 2015, www.dailytarheel.com/article/2015/02/unc-real-talk-0213; 2014-2015 Diversity Plan Report, at 18, UNC0283414.
153. *Id*. at 7, UNC0283403.
154. Report Benefits of Diversity, at 13, UNC0349707.
155. Curriculum 2019 - UNC General Education Curriculum Revision, The University of North Carolina Chapel Hill, http://curriculum2019.web.unc.edu/; "General Education Curriculum Revision Update" Presentation, The University of North Carolina Chapel Hill (November 8, 2017), http://curriculum2019.web.unc.edu/files/2017/11/public-meeting-20171108.pdf.

across race.[156] A recent 2016 Faculty Council resolution identified student body diversity as a "deeply-held institutional value" and a "critical element of academic excellence," and reaffirmed UNC's "civic contract with society and its core responsibilities to the citizens of the State of North Carolina."[157] UNC faculty, leaders, and departments express a common interest in and commitment to bridging differences among students, exposing discrepant experiences across and within social dimensions, and nurturing perspectives and skills needed for success in an increasingly diverse and global economy.[158] The newly formed "Office of Instructional Innovation" is a promising example of institutional infrastructure designed to promote excellence and inclusivity in course design and pedagogical approaches to support diverse learners.[159]

Faculty initiatives to revise teaching practices or pedagogy have also been undertaken by professors who care about cultivating greater participation among underrepresented students and meaningful interaction that benefits classroom learning for all students.[160] However, students' reflections suggest that it is relatively unique for classes to challenge old views and prejudices.[161] This reveals that while some learning environments promote conditions for meaningful interaction,

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156. Resolution 2016-12. On Commitment to Diversity and Inclusion, Office of Faculty Governance, the University of North Carolina at Chapel Hill (April 15, 2016), http://facultygov.unc.edu/faculty-council/resolutions/.

157. *Id*.

158. *Id*.; *see also* Diversity and Inclusion, University of North Carolina School of Government, https://www.sog.unc.edu/resources/microsites/diversity-and-inclusion; Commitment to Diversity, University of North Carolina School of Dentistry, https://www.dentistry.unc.edu/about/diversity/.

159. Office of Instructional Innovation: Office Overview, The University of North Carolina at Chapel Hill, College of Arts & Sciences, https://instructionalinnovation.unc.edu/office- overview/.

160. Report Benefits of Diversity, at 12-13, UNC0349707-UNC0349708; *see also* 2010 Diversity Assessment, at UNC0130790 (Respondent on 2010 Diversity Assessment wrote: "Often the professor or TA will ensure he/she incorporates multiple diversities into discussions."); Declaration of D'Angelo Gatewood (herein after "Decl. of Gatewood") at 3-5 (describing norm of isolation and frustration, but identifying professor of cultural diversity course who he doubted "as a white female, would be able to teach me about the struggles I faced as a black male, but I was proven completely wrong").

161. Decl. of Gatewood at 3-4 (describing the pervasive sense of isolation and exclusion in his educational and classroom experiences); Decl. of Gomez-Flores at 3-4; Decl. of Mwamba at 2-3; Declaration of Hanna Watson (hereinafter "Decl. of Watson") at 2-3.

there may be missed opportunities across the campus that impede the full benefits of diversity.[162]

4.        Expressions of Institutional Commitment to Diversity

An institutional commitment to diversity can be reflected in strategic planning and reinforced by institutional leaders. UNC's current framework for obtaining the educational benefits of diversity is set forth in the University's 2014-2015 Diversity Plan that identifies five distinct objectives[163] and details actions to increase campus-wide diversity. These include publicizing its commitment to diversity by revamping websites and mission statements; highlighting underrepresented faculty, staff, and student achievements; forging meaningful connections with diverse community partners; being transparent about the racial and gender composition of various constituents; engaging various constituents in increasing diversity infrastructures; improving opportunities for dialogue across difference; and building awareness about prejudice, discrimination, and implicit bias.[164]

UNC has also taken concrete steps to put these objectives into practice. For example, the campus invited prominent diversity scholar Daryl Smith to engage a large group of faculty, staff, and senior-level administrators in an action-oriented seminar on "Exploring the Institutional Diversity Framework at Carolina," which generated ideas and action steps.[165] As part of a series of campus-wide meetings, a town hall held in November of 2015 allowed students, staff, and faculty to come together around national controversies and events recognized as presenting challenges to the University's ongoing efforts to foster intergroup and learning contexts that promote educational benefits for all students.[166] While these forums created an institutional space that valued

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162. Decl. of Gatewood at 4-5 (speaking to the importance of diversity training for faculty/staff and coursework that addresses issues of race, inclusion, and diversity); "Active learning in large science classes benefits black and first-generation college students most," *The University of North Carolina at Chapel Hill, College of Arts & Sciences*, September 2, 2014, https://college.unc.edu/2014/09/02/hoganstudy/ (recognizing one professor's inclusive pedagogical approach narrowed the achievement gap for black and first-generation students, but referring to such approaches as innovative and non-traditional, thereby indicating such methods remain relatively rare).
163. 2014-2015 Diversity Plan Report, at 6, UNC0283402.
164. *Id*. at 4-5, UNC0283400-UNC0283401.
165. *Id*. at 7, UNC0283403.
166. Report Benefits of Diversity, at 13, UNC0349707.

diverse voices and inclusivity, they also produced action steps such as the convening of senior leaders to work on further implementation and efforts.

In sum, the University has engaged in numerous, public pronouncements of an institutional commitment to diversity that contribute to the development of a campus climate that emphasizes diverse backgrounds, conversations, and interactions.

## B.      *Continuing Obstacles to Dynamic Diversity at UNC*

### 1.      Need for Better Representation of Diverse Students

Meaningful demographic representation must be sought in order to encourage the educational benefits of diversity. In terms of racial identity, 12% of UNC students identify as Asian/Asian American, 8% as black/African American, 8% as Latinx, 0.5% as American Indian/Alaska Native, with approximately 72% identifying as white or not identifying a category.[167]

As a reference point, these numbers reflect less diversity than in North Carolina as a whole. The 2016 American Community Survey Five-Year Estimates found that 21.5% of North Carolinians identify as black/African American, 8.9% as Latinx, 2.6% as Asian American, 1.2% as American Indian/Alaska Native, and 69.2% as white.[168]

### 2.      Lack of Representation Among Faculty, Administration, and Staff

As discussed above, the demographic composition of faculty, staff, and administrators affects the campus racial climate. However, compared to state demographics (and even student demographics), racial diversity across institutional actors at UNC remains markedly low, particularly in higher-ranked positions. With regard to racial diversity, underrepresented groups constitute 10% of the faculty, 12% of

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167. *Id*. at 15, UNC0349709.

168. United States Census Bureau, "American Census Survey (ACS) Demographic and Housing Estimates, 2012-2016 American Community Survey 5-year Estimates" for North Carolina, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF.

administrators, and 22% of the staff.[169] Disaggregating this data further, faculty were 5% black, 4% Latinx, and 0.4% American Indian; administrators were 9% black, and 3% Latinx; and staff were 19% black, 3% Latinx, and 0.4% American Indian. The overwhelming majority are white (79% of faculty and administrators and 70% of staff).Similarly, there are only 8 black and 2 Latinx people serving as high-level administrators; 10% and 3% of the leadership team, respectively.

UNC has recently made concerted efforts to diversify its staff, faculty, and administrators. For example, in 2014, UNC's targeted minority hiring program supported 20 hires (of the 28 new underrepresented faculty hires), among a total of 252 total hires that year.[170] But these efforts do not drastically affect the demographic composition of staff and faculty, particularly given UNC's struggles to retain such hires. In 2011, for example, UNC hired 22 faculty who identified with underrepresented minority groups, but also lost 11 that same year.[171]

The 2010 Diversity Assessment suggests that challenges with retention stem from similar types of racial climate issues: faculty and staff of color feel marginalized and undervalued. For example, 36% of the faculty respondents said that they had experienced situations in which they felt marginalized. But agreement rates were significantly higher for black faculty (51.5%) and American Indian faculty (87.5%).[172] When asked if "tenure and promotion processes in the University were free from bias based on personal characteristics," 21% of the faculty respondents disagreed. The disagreement rate to this statement was 42% for black respondents and 66.7% for Hawaiian or Pacific Islander respondents.[173] Faculty of color have reported feeling overly responsible for supporting the University's diversity efforts, which must take place in addition to their various commitments on campus.[174] This is similar to the burden reported by students of color described above.

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169. 2014-2015 Diversity Plan Report, at 12, UNC0183408.

170. *Id*. at 13, UNC0183409.

171. Dep. of Carol Lynn Folt (May 31, 2017) at Ex. 10, 2012-2014 Diversity Plan Report, UNC0124154-UNC0124193, at 18, UNC0124171 (11 underrepresented minority faculty members left UNC in 2011).

172. 2011-2012 Diversity Plan Report, UNC0283341-UNC0283396, at 19, UNC0283371
(discussing 2010 Diversity Assessment).

173. *Id*. at UNC0283369 (discussing 2010 Diversity Assessment).

174. 2014-2015 Diversity Plan Report, at 31, UNC0283427.

In this way, UNC's racial climate also presents barriers for faculty recruitment, engagement, and success. The corresponding shortage of faculty of color exacerbates the sense of isolation experienced by underrepresented students of color and represents missed opportunities for promoting meaningful cross-racial interaction and participation.[175]

Thus, UNC's recent efforts to increase diversity and cultural competency across state leadership are laudable, but sustained effort is required in light of past and present inequities embedded in the state's leadership frameworks.

### 3.     State Context and Legacy of Exclusion

As set forth in detail in the expert report of David Cecelski, UNC was a strong and active promoter of white supremacy and racist exclusion for most of its history. Founded as an institution of learning for members of the slaveholding class, the University excluded all people of color from its faculty and student body from its founding into the twentieth century.[176] Trustees and graduates of the University played leading roles in Ku Klux Klan ("KKK") activities in North Carolina, and more than half a dozen buildings on campus bear the names of leaders in their campaign for white supremacy.[177]

Although the University admitted its first black undergraduates in 1955 (pursuant to court order), the University and the surrounding neighborhood remained segregated and hostile to integration.[178] The Department of Health, Education, and Welfare cited UNC for maintaining a segregated system of postsecondary education in 1976, leading to a two-decade battle between UNC and the federal government

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175. Decl. of Gomez-Flores at 4; Decl. of Mencia at 4; Decl. of Mwamba at 5; 2010 Diversity Assessment at UNC0130795. Relatedly, the 2016 Undergraduate Diversity and Inclusion Campus Climate Survey (Nov. 2017) (hereinafter "2016 Climate Survey") shows that 17.8% of UNC students reported that they were "dissatisfied" or "very dissatisfied" with the "racial and ethnic diversity of the faculty". The level of dissatisfaction was notably highest for Black or African American (52.4%), Latinx or Hispanic (22%), and students of two or more races (21.7%). 2016 Climate Survey, "Satisfaction Campus Diversity," Question 29h.

176. Expert Report of Dr. David Cecelski (hereinafter "Cecelski Rep.") at 9-10.

177. *Id*. at 10-11.

178. *Id*. at 13-14.

that ended with a settlement brokered by the Reagan administration, over the strong objections of the NAACP Legal Defense Fund.[179]

Similarly, North Carolina has long struggled with racially discriminatory disparities in its K-12 public education system. Laws existed during the period of slavery in North Carolina restricting the education of both enslaved and free persons of color.[180] After Brown v. Board of Education was decided, North Carolina responded in part by enacting the infamous Pearsall Plan in order to impede integration of North Carolina's public schools.[181] Systemic underfunding of black schools and schools in heavily black counties is documented from Reconstruction through the 1960s.[182]

UNC now publicly rejects its prior legacy of exclusion and racial discrimination and recognizes it as a barrier to achieving its mission of preparing graduates to be leaders and innovators in diverse local and global contexts, but there are very real and entrenched manifestations of these lingering frameworks. For example, UNC played a significant part in encouraging white leadership throughout North Carolina through its perpetuation of segregated education prior to the twenty-first century. As UNC itself admits, denying black students access to UNC's campus effectively limited their access to prominent professions and positions well into the second half of the twentieth century.[183] And to this day, Ralph Campbell, State Auditor from 1992 to 2004, is the only African American elected to statewide political office and the only African American to sit on the politically important Council of State.[184] Similarly, North Carolina's General Assembly Latinx and Asian American membership does not reflect either the demographic diversity that exists in North Carolina or the nation.[185]

Another manifestation of UNC's continued struggle with its legacy of exclusion is the way in which underrepresented students' sense

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179. *Id*. at 16-17.
180. *Id*. at 18.
181. *Id*. at 19.
182. *Id*. at 21-26.
183. Brief of Amicus Curiae the University of North Carolina at Chapel Hill Supporting Respondents at 1-3, 13, *Fisher v. Univ. of Tex. At Austin* (*Fisher I*), 133 S. Ct. 2411 (2013).
184. "Political pioneer Ralph Campbell dies," *Raleigh News & Observer*, Jan. 12, 2011, http://www.wral.com/news/local/politics/story/8870862/.
185. N.C. Justice Center, Budget & Tax Center Report, Prosperity Watch, 76, no. 1 (July 2017), http://www.ncjustice.org/?q=budget-and-tax/prosperity-watch-issue-76-no-1-nc-and-us-growing- more-diverse-general-assembly-isnt.

of cultural and psychological threat was heightened after recent local events invoked historical frameworks of exclusion, bringing them concretely into the present.[186] One controversy involved lingering entrenched historical artifacts, igniting both hostility toward underrepresented students from campus peers[187] and also a resurrection of the real-life presence of white supremacists who live in the broader North Carolina community.[188] Underrepresented students reported fear of physical harm—even being scared for their lives—and administrators were in agreement about the real danger and immediate threat.[189] More generally, and as discussed further below, students at UNC continue to report overtly hostile racist remarks and experiences that result in heightened psychological threat and even fear of physical safety.[190]

When historical legacies of exclusion and past and current incidents are coupled with enduring racial hostility on campus, they produce "lingering feelings of mistrust" among underrepresented targeted groups.[191] Although the University changed the name of one of the many campus buildings named after individuals with ties to white supremacy in 2015,[192] it simultaneously enacted a moratorium on the

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186. Lauren Talley, Potential Lawsuit, Boycott, Protests Loom over Silent Sam, *The Daily Tar Heel* (Oct. 3, 2017), www.dailytarheel.com/article/2017/10/the-movement-to-remove-silent-sam- has-taken-many-turns-since-august (describing students' feelings that the continuing presence of the Silent Sam statute on campus creates a racially contentious climate).

187. *See*, *e.g.*, Decl. of Mencia at 4-5; Declaration of Diandra Anna-Kay Dwyer (hereinafter "Decl. of Dwyer") at 4.

188. *See*, *e.g.*, Declaration of Siena Scarbrough (hereinafter "Decl. of Scarbrough") at 3-4; Decl. of Gomez Flores at 1-2.

189. Emily Galvin, "Students express Silent Sam concerns at Board of Trustee's public talk," *The Daily Tar Heel*, Nov. 15, 2017, www.dailytarheel.com/article/2017/11/sam-public-talk-1115 (describing how multiple students have faced death threats, racial slurs, and harassment as they handed out information about Silent Sam); Jane Stancill, "UNC board members criticize leaders' handling of Silent Sam statue," *The News & Observer*, Sept. 7, 2017, http://www.newsobserver.com/news/local/education/article171704477.html.

190. *See*, *e.g.*, Decl. of Mwamba at 3-4; Decl. of Phelps at 3; Decl. of Gomez-Flores at 3-6; Decl. of Dwyer at 3-4; Decl. of Scarbrough at 4.

191. Dwonna Goldstone, *Integrating the 40 Acres: The Fifty-Year Struggle for Racial Equality at the University of Texas* at 152 (Athens: University of Georgia Press 2012).

192. "Trustees Rename Saunders Hall, Freeze Renamings for 16 Years," *Carolina Alumni Review*, May 28, 2015, https://alumni.unc.edu/news/trustees-vote-to-rename-saunders-hall-put-16-year- freeze-on-renamings/ (noting that other campus buildings named after people with ties to white supremacy include the Julian Shakespeare Carr Building, Josephus Daniels Student Stores, John Washington Graham Residence Hall, J.G. de Roulhac Hamilton Hall, Cameron Morrison Residence Hall, John J. Parker Residence Hall, Thomas Ruffin Residence Hall and Cornelia Phillips Spencer Hall).

removal of other historical artifacts on campus.[193] The University's ongoing refusal to take down these historically problematic artifacts continues to create feelings of hostility and unease, particularly among UNC's black community.[194]

These controversies are a clear example of the entrenched and complex nature of UNC's task of extracting historic exclusionary frameworks. Despite UNC's commitment to creating a healthy racial climate on campus, it continues to maintain artifacts that signal frameworks of exclusion that cause trauma and harm to current underrepresented students who walk by them every day and endure overtly racist comments from white peers emboldened by such artifacts and the University's decision against removal.[195] The statues and artifacts are linked to an exclusionary past and continue to signal an exclusionary culture, resulting in racial tensions.

### 4.     National Context and Broader Racial Tensions

Research on student movements demonstrates that external racial divides and controversy can heighten awareness and sensitivity to racial contexts and climate on college campuses.[196] Recently, in the summer of 2014, the shooting of Michael Brown by a white police officer (Darren Wilson) in the small town of Ferguson, Missouri, erupted into national controversy about broader structural problems of implicit and explicit racial bias.[197] The nation saw hundreds of protests to increase awareness

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193. Stephanie Lamm, "Saunders Hall renamed Carolina Hall," *The Daily Tar Heel*, May 28, 2015, http://www.dailytarheel.com/article/2015/05/saunders-renamed-carolina-hall (describing moratorium).

194. Galvin, 2017 (describing mistrust of the university for maintaining a monument to white supremacy on campus); Emily Yue, "There's More to Silent Sam," *The Daily Tar Heel*, August 27, 2017, http://www.dailytarheel.com/article/2017/08/edit-1-0828.

195. Jane Stancill, "UNC to look into student claim that Silent Sam creates racially hostile environment," *The News & Observer*, Sept. 22, 2017, http://www.newsobserver.com/news/local/education/article174871571.html; Michael Muhammed Knight, "The University of North Carolina's Silent Sam Statue Represents a Legacy of White Supremacy," *Vice*, Jan. 29, 2015, https://www.vice.com/en_us/article/xd5jbz/facing- the-legacy-of-racism-on-uncs-campus-456.

196. Robin D.G. Kelley, *Freedom Dreams: The Black Radical Imagination* (Boston: Beacon Press 2002); Robert A. Rhoads, *Freedom's Web: Student Activism in an Age of Cultural Diversity* (Baltimore: Johns Hopkins University Press, 2000).

197. *See*, *e.g*., Rebecca Kaplan, "Eric Holder: 'Implicit and explicit racial bias' in Ferguson policing," *CBS News*, March 4, 2015, https://www.cbsnews.com/news/ferguson-policing-eric- holder-implicit-explicit-racial-bias/; German Lopez, "How systemic racism

about police shootings involving black and brown men and women as well as the creation of the #blacklivesmatter movement.[198]

The racial hostility heightened by these controversies impacted college students, who began to express their frustrations and resistance through organizing and participating in protests. In 2015, black college students at 76 colleges and universities across the nation, including at UNC, submitted demand letters to their institutions about the pressing need for addressing persisting racial biases, discrimination, and campus frameworks supporting unhealthy racial climate conditions.[199] Many of the documents spoke of unsafe spaces and a "white supremacist" culture which mistreats and undervalues "Black and Brown people."[200]

Over the past couple of years, there has been an increase in reported acts of hate violence and bullying,[201] in addition to reports of increased vulnerability and heightened fear amongst students from underrepresented groups at predominantly white campuses.[202] The current national climate is described as "producing an alarming level of fear and anxiety" among underrepresented and marginalized populations, as well as, "inflaming racial and ethnic tensions in the classroom."[203]

A number of controversies touching on race have occurred this past year in North Carolina, including an anticipated KKK march, action against the immigration ban (predominantly targeting Muslim countries), and the toppling of a local Confederate statue.[204] Students and faculty

entangles all police officers – even black cops," *Vox*, August 15, 2016, https://www.vox.com/2015/5/7/8562077/police-racism-implicit-bias.

198. *See*, *e.g*., Claire Foran, "A Year of Black Lives Matter," *The Atlantic*, Dec. 31, 2015, https://www.theatlantic.com/politics/archive/2015/12/black-lives-matter/421839/; Sara Sidner, "The Rise of Black Lives Matter: Trying to break the cycle of violence and silence," *CNN*, Dec. 28, 2015, http://www.cnn.com/2015/12/28/us/black-lives-matter-evolution/index.html.

199. Hollie Chessman and Lindsay Wayt, "What Are Students Demanding?" *Higher Education Today*, Jan. 13, 2016, https://www.higheredtoday.org/2016/01/13/what-are-students-demanding/.

200. Dep. of Carol Lynn Folt (May 31, 2017) at Ex. 14, A Collective Response to Anti-Blackness (November 19, 2015).

201. Costello, 2016.

202. Ryan A. Miller, Tonia Guida, Stella Smith, S. Kiersten Ferguson, and Elizabeth Medina, "Free speech tensions: Responding to bias on college and university campuses," *Journal of Student Affairs Research and Practice* (2017): 1-13; see, e.g., Marella A. Gayla, "Among Students of Color, Anxiety Mounts About Trump," *The Harvard Crimson*, November 10, 2016, http://www.thecrimson.com/article/2016/11/10/students-color-anxiety-trump/.

203. Costello, 2016.

204. *See*, *e.g*., Anna Irizarry, Bailey Aldridge, Cole del Charco, and Nathan Klima, "Protesters Gather in Durham for reported KKK rally," *The Daily Tar Heel*, August 18, 2017,

have been actively involved and expressed a need for additional institutional actions and support for students targeted by broader exclusionary policies and threats. Students describe an increase in racist remarks by white peers that are more overt in nature and expressive of racial animus. As one student shared:

> Shortly after the election of Donald Trump, a white fraternity member told me "my president says it is okay to kick out the niggers." After the election, some students on campus have been much more open about their racist views. I went out with my friends one night in the Fall of 2015, for instance, and was told by a white fraternity brother that "no slaves" were allowed in the house.[205]

The normalization of overt racism in the past year[206] has emboldened and encouraged overt discrimination and microaggressive comments in postsecondary institutions as well. It appears to be particularly pronounced at predominantly white institutions with lingering frameworks of exclusion (as seen recently with the Charlottesville riots involving the University of Virginia).[207] Students report a noted impact in the learning environment, where they experience heightened tokenism, and amplified feelings of being devalued and dismissed in classroom discussions.[208] This leads some students to identify a greater need for visible racial representation to ease current racial hostility.[209] Thus, the University's attempts to create a space for

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http://www.dailytarheel.com/article/2017/08/durham-protests-0818; Acy Jackson, "UNC faculty members ask administration to do more about immigration ban," *The Daily Tar Heel*, February 1, 2017, http://www.dailytarheel.com/article/2017/02/unc-faculty-members-ask-administration-to- do-more-for-about-immigration-ban; Maggie Astor, "Protesters in Durham Topple a Confederate Monument," *The New York Times*, Aug. 14, 2017, https://www.nytimes.com/2017/08/14/us/protesters-in-durham-topple-a-confederate-monument.html.

205. Decl. of Mwamba at 4.

206*. See*, *e.g.*, Jennifer Rubin, "The GOP will now tolerate overt racism," *The Washington Post*, Dec. 11, 2017, https://www.washingtonpost.com/blogs/right-turn/wp/2017/12/11/the-gop-will- now-tolerate-overt-racism/?utm_term=.825e9308bbb3.

207*. See*, *e.g.*, Shaun R. Harper, "Stop Sustaining White Supremacy," *Inside Higher Ed*, Aug. 21, 2017, https://www.insidehighered.com/views/2017/08/21/what-charlottesville-says-about-white- supremacy-universities-essay.

208. Decl. of Watson at 2-3.

209*. Id.*

meaningful participation and interactions across races has become more difficult in light of the current national racial tensions and their corresponding effect on the campus climate.

## C.    *Student Perspectives on Conditions That Stimulate or Impede Meaningful Participation and Interactions at UNC*

### 1.    Students Identify Numerous Ways in Which The University's Efforts to Obtain Educational Benefits of Diversity Were Succeeding

In a testament to the successes of UNC's commitment to diversity in recent years, students now overwhelmingly report that UNC's diversity has contributed to cross-cultural understanding and that they learn from it. According to the 2016 Undergraduate Climate Survey,[210] 82% of UNC students agreed or strongly agreed that they "have benefited from being exposed to diverse people and diverse ideas" at UNC.[211] Approximately 80% of students agreed that such exposure improved their "ability to understand people from racial or ethnic backgrounds different from [their] own," and that cross-racial interactions challenged them to think differently about an issue. Over 85% of students similarly reported learning from perspectives offered by students, faculty, or staff whose race differed from their own.[212]

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210. 2016 Climate Survey. This comprehensive survey was administered in April 2016 to evaluate undergraduate student perceptions of the campus climate and its impact on students' educational experiences. The Breakout Analysis disaggregates student responses by race, and the short terms identified above are used to summarize that data. UNC has engaged in numerous climate surveys over the years. Prior to this litigation UNC conducted the above-mentioned 2010 Diversity Assessment which surveyed faculty, staff, and students on various climate issues. *See generally* 2010 Diversity Assessment at UNC0130766-UNC0130767. As with the 2016 Climate Survey, data gathered from the 2010 Diversity Assessment was disaggregated by race and analyzed by UNC. *Id.* The two surveys (2016 and 2010) are not identical in their questions or methods, but there are some overlaps in question-type and theme. This report primarily discusses the most recent 2016 survey data; but when the 2010 Diversity Assessment offers comparable data, such information is provided in footnotes or otherwise incorporated into the discussion of UNC's climate.

211. 2016 Climate Survey, "Educational Benefits" sheet, Question 27d; *see also* 2010 Diversity Assessment, at UNC0130779–UNC0130780 (more than three-quarters of UNC's students agreed that diversity across campus was beneficial to their experiences, and approximately 90% of students agreed with the statement: "I am comfortable with discussing diversity with those around me.").

212. *Id.*, Questions 27a, 27b, 27c, 28a, 28b; *see also* 2010 Diversity Assessment, at UNC0130779– UNC0130780 (students expressed overwhelmingly high agreement—at nearly 90%—with the statement: "I have learned about cultural differences from my classmates, faculty, and staff.").

The 2016 Climate Survey also indicates that UNC students are developing the skills and abilities closely associated with the benefits of a diverse student body. A significant majority of students reported that they have occasionally or frequently challenged others on issues of bias or discrimination (79.6%), recognized that biases affect their own thinking (95.9%), critically evaluated their own position on an issue (95.3%), made an effort to get to know people from diverse backgrounds (92.1%), and used different points of view to make an argument (96.3%).[213] The majority of respondents also expressed acquiring skills necessary for today's workforce. Notable proportions of UNC students rated themselves as above-average in their ability to see "the world from someone else's perspective" (79.5%), to work cooperatively with diverse people (85.2%), to have their own views challenged (68.3%), and to accept others with different beliefs (76.8%).[214] Consistent with the 2016 Climate Survey, the 2016 Senior Report shows that seniors overwhelmingly reported gaining skills associated with diversity such as: "critical thinking skills (97%), analytical skills (94%), personal growth (94%), ability to work with people from diverse backgrounds (92%), working in teams (90%), leadership skills (85%), sensitivity to racial equality issues (85%), and sensitivity to gender equality issues (84%)."[215]

It is also noteworthy that, according to a 2016 Freshman survey conducted by the Cooperative Institutional Research Program (CIRP), 84.7% of UNC students said they have frequently socialized with someone of another racial or ethnic group.[216] Another 14.6% said they

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213. *Id*., "Thoughts and Behaviors" sheet, Questions 30a, 30b, 30e, 30g, and 30h.

214. *Id*., "Self Assessment" sheet, Questions 34b, 34c, 34d, and 34e.

215. General Administration (GA) Senior Report (2016), UNC0350252-UNC0350263, "Section C: Knowledge, Skills, and Personal Growth" at 5, UNC0350256 (documenting the percentages of seniors that found their college education very much or somewhat contributed to their knowledge, skills, and personal development in the specified ways); *see also* General Administration (GA) Senior Report (2012-2013), UNC0352125-UNC0352138, at 6, UNC0352130 (shows that seniors overwhelmingly reported gaining skills associated with diversity such as: "critical thinking skills (97%), analytical skills (94%), personal growth (95%), ability to work with people from diverse backgrounds (91%), working in teams (89%), leadership skills (87%), sensitivity to racial equality issues (85%), and sensitivity to gender equality issues (85%)."

216. 2016 CIRP Freshman Survey, UNC0351680-UNC0352020, at 34, UNC0351716; *see also* 2010 CIRP Freshman Survey, UNC0350264-UNC0350449, at 15, UNC0350357 (indicating 78.7% of UNC students said they have frequently socialized with someone of another racial or ethnic group).

did so occasionally.[217] As discussed previously, students' frequency of cross-racial interaction is associated with a welcoming and positive racial climate.

The declarations from UNC's students provide further insight into the types of diversity that are beneficial to UNC's learning contexts. They emphasized the general importance of differences across races and other identity categories in various learning contexts. For example, Andrew Brennen, a male sophomore who identifies as African American, stated that "the benefits of racial or ethnic diversity play an important role in a number of academic and campus activities that affect my undergraduate experience, including lectures, seminars, residential life, student government, communities of faith, extracurricular activities, and community service programs."[218]

Brennen further noted that the University's diversity increased his exposure to and understanding of multiple dimensions of difference as they interact with social structures. Brennen explained:

> My exposure to communities different from my own has led to countless instances of personal growth. For example, after being exposed to the fraternity system firsthand, I better understand the controversy surrounding its historical legacy. After participating in a vigil on campus following the murder of three Muslim students, I better understand the way Islamophobia plays out for members of the Carolina community. And after serving on several University committees focused on sexual assault prevention, I have a better understanding of the factors that play into gender-based sexual violence, especially among women of color. These examples are not exhaustive. But they do provide small insight into the value that being on a diverse campus has had on my college experience thus far.[219]

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217. 2016 CIRP Freshman Survey, at 34, UNC0351716; *see also* 2010 CIRP Freshman Survey, at 15, UNC0350357 (indicating 20.1% did so occasionally).

218. Declaration of Andrew Brennen (hereinafter "Decl. of Brennen") at 5; Declaration of Gwenevere Charlene Parker at 2.

219. *Id*. at 5-6; Declaration of Luis Acosta at 4.

A recent alumna who identifies as Hispanic, Cecilia Polanco, spoke more directly about the particular educational benefits that occur when there are varied forms of difference among same-race peers:

> [B]efore attending UNC-Chapel Hill, I had gone most of my life without meeting an academically successful Latino male, which may have created stereotypes in my mind of whether there were any. By meeting and working alongside other Latino students, I realized some of the prejudices I had and how I had made unfair assumptions about others.[220]

Diversity infrastructures, such as the Carolina Union discussed above, are reported to have had some success with regard to "gains in multicultural knowledge and understanding of diverse perspectives," including bringing to light "the prevalence and negative impact of racial micro-aggressions on racial minority students, faculty, and staff."[221]

In sum, the quantitative and qualitative data available demonstrates that UNC's efforts to encourage the educational benefits of diversity are succeeding on many levels.

### 2.    Students Confirm That There Are Also Many Internal and External Obstacles to Meaningful Participation and Cross-Racial Interactions at UNC

It is clear that UNC's recent diversity efforts have moved the University towards attaining many of the benefits of diversity. But the conditions for dynamic diversity have not yet been fully realized at UNC.

Climate surveys, institutional and external evaluation reports, and student declarations all demonstrate that there are persistent and pervasive impediments to meaningful participation at UNC, in addition to barriers to ensuring meaningful interaction across race. Underrepresented students continue to experience racial isolation in the form of microaggressions, discriminatory or disparaging comments, and tokenism. These experiences foster a sense of being unwelcome, devalued, invisible, and marginalized; they are harmful to full

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220. Declaration of Cecilia Polanco (hereinafter "Decl. of Polanco") at 3.
221. 2014–2015 Diversity Plan Report, at 29, UNC0283425.

participation when linked to structural vulnerability and associated with disparaging societal stereotypes. In addition to the more covert and sometimes unintended microaggressive assaults, it is commonplace for students to witness overt hate speech on campus. All of this contributes to diminishing participation and interactions across race within learning contexts, and, in its worst case scenario, departure from the institution altogether.

Quantitative institutional data suggest that underrepresented students at UNC experience a differential racial learning context. In particular, underrepresented students disproportionately experience discriminatory comments including microaggressions and disparaging remarks. The 2016 Climate Survey indicates that 91.4% of students reported hearing insensitive or disparaging remarks made by other students, with 25% hearing such remarks often or very often.[222]

Disaggregating these findings demonstrates that underrepresented students of color hear insensitive and disparaging remarks related to racial and ethnic minorities far more often (49.1% of black students and 29.4% of Latinx students heard such remarks often or very often).[223] White students, on the other hand, are comparatively uninformed or oblivious to this experience. Only 20.3% of whites reported that they frequently heard insensitive or disparaging racial remarks made by students.[224]

Students of color are also more likely to hear faculty or staff make disparaging comments related to racial and ethnic minorities: 42% of black students and 28% of Latinx students reported hearing faculty express stereotypes based on race or color either "sometimes," "often,"

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222. 2016 Climate Survey, "Experienced Bias, Observations" sheet, Question 46c; *see also* 2010 Diversity Assessment, at UNC0130782-UNC0130783, UNC0130821 (indicates that, over a one- year period, 75.8% of students reported hearing insensitive or disparaging remarks made by other students related to racial and ethnic minorities, with 18.8% of students hearing such remarks "frequently").

223. 2016 Climate Survey, "Experienced Bias, Observations" sheet, Question 46c; *see also* 2010 Diversity Assessment, at UNC0130821 (underrepresented minority students reported hearing such disparaging remarks far more often than other racial groups: 29.8% of American Indian students, 24.1% of black students, and 23% of Latinx students heard such remarks "frequently").

224*. Id.*, "Experienced Bias, Observations" sheet, Question 46c; 2010 Diversity Assessment, at UNC0130821 (whites were relatively unaware of other students' making insensitive or disparaging remarks related to racial or ethnic minorities: only 14.4% reported hearing such remarks "frequently," compared to approximately 25% of underrepresented minority students).

or "very often."[225] The prevalence of disparaging comments in overt and more subtle forms is not new. UNC's earlier 2010 Diversity Assessment found that approximately 50% of all racial groups heard insensitive or hate speech about specific groups on campus.[226]

Providing evidence of the prevalence of tokenism—which, as discussed, is an impediment to meaningful participation—students of color expressed markedly higher agreement with the statement that "I feel pressured in class discussions to represent the views of all people from my racial or ethnic background." Just over 50% and 30% of black and Latinx students, respectively, agreed (compared to an average agreement rate of 14%).[227] Students of color were also more likely to report discomfort from being singled out in class, overwhelmingly because of their race or national origin. For example, nearly 50% of black students expressed such discomfort, and 76.5% of such students felt singled out due to race or color.[228]

As a further indication of heightened tokenism and stereotype threat, underrepresented students of color reported thinking about their race much more often than their peers. While only 22% of students thought about their race "very often," this rate rose to 53%, 55% and 33% for American Indian, black, and Latinx students respectively.[229] Experiences of tokenism and stereotype threat are also reflected by higher rates of agreement expressed by students of color with the statements: "While at UNC-Chapel Hill I have been in situations where I was the only person of my race or ethnic group;" "I don't feel comfortable contributing to class discussions;" and "I feel I have to work harder than other students

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225. 2016 Climate Survey, "Classroom Experiences" sheet, Question 43f; 2010 Diversity Assessment, at UNC0130821 (students of color similarly reported a higher likelihood of hearing disparaging comments related to racial and ethnic minorities from faculty: Twenty percent of Black students and over 20% of American Indian students reported hearing disparaging remarks either frequently or a few times over the past year.).

226. 2010 Diversity Assessment, at UNC0130819.

227. 2016 Climate Survey, "Classroom Experiences" sheet, Question 44c; *see also* 2010 Diversity Assessment, at UNC0130820 (students of color overwhelmingly agreed with the statement that "Minority students are perceived as speaking for their race or culture when participating in class discussions." Approximately 80% and 75% of American Indian and black students, respectively, agreed; Latinx and Asian American students agreed somewhat less often at a rate of 63% and 60%, respectively. This survey question likewise revealed that about 50% of white students were not cognizant of and are possibly insensitive to people of color being treated like representatives for their race, creating an additional challenge to ameliorating the harms of tokenism and diminished participation.).

228. *Id.*, "Classroom Experiences" sheet, Question 42d.

229. *Id.*, "Salience" sheet, Question 33i.

to be perceived as a good student."[230] Furthermore, the majority of students of color have personally experienced bias at UNC, and overwhelmingly report being subject to racial bias in particular (100% of American Indian students, 95% of black students, and 70% of Latinx students).[231]

These quantitative findings are corroborated by qualitative student testimony. In the excerpts below, it is apparent that microaggressions, tokenism, and stereotype threat are experienced by students of color at UNC and are associated with being devalued and unseen as full and equal participants in the classroom and broader campus community. These sentiments are impediments to participation and interactions, which are further exacerbated by certain conditions within classroom contexts and institutional frameworks. UNC will need to continue to address these conditions in the interest of attaining dynamic diversity.

Comments shared in the 2010 Diversity Assessment and student declarations evidence the pervasiveness of microaggressions on UNC's campus. One Hispanic UNC student described a microaggression and the associated perceptions of low expectations tied to stereotype threat and feeling devalued:

> I had an incident with a professor who kept bringing up my nationality as an explanation why I might not understand some things or if I misused a word. He made remarks that were clearly offensive, not only in my opinion but also of my fellow classmates. I made this clear in my evaluation of him and to my knowledge nothing was done.[232]

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230. *Id.*, "Isolation" sheet, Question 39c; "Classroom Experiences" sheet, Questions 42e, 42c; *see also* 2010 Diversity Assessment, at UNC0130820 (among racial groups, American Indian and black students reported the lowest levels of agreement with the statement: "The University community shows adequate respect for the minority perspective.").

231. 2016 Climate Survey, "Experienced Bias, Observations" sheet, Question 45; *see also* 2010 Diversity Assessment, at UNC0130817 (American Indian and black students expressed the highest levels of disagreement with the statement that the "The University adequately addresses campus issues/incidents that might involve unfair treatment due to race/ethnicity," at a rate of 15.8% and 17.6% respectively.).

232. 2010 Diversity Assessment, at UNC0130795.

Other students' testimony speaks to the consistency and prevalence of microaggressive comments from white peers that reveal bias or insensitivity toward underrepresented communities.[233] One student shared the experience of being turned away from an event for being Black. She stated "I am a Black female and I do feel unappreciated as a person on campus—even little things such as trying to get into a fraternity function and being turned away for being Black."[234] As discussed previously, such disparaging remarks are associated with a silencing or diminishing effect with regard to full participation, including a heightened awareness of tokenism in the learning environment.

Tokenism is also a problem at UNC and reports indicate that it is pervasive across many learning contexts. A student speaking about a typical example of tokenism explained, "The professor in a particular semester always assumed that I spoke for the entire Black race, assuming because I was the only Black student in the class."[235] Star Wingate-Bey stated, "If I am the only Black person or Black woman in a classroom setting it often feels like I have to be the fact checker for a conversation or the spokesperson for my entire race or gender."[236]

Tokenism is an unsurprising result of the continued lack of meaningful demographic representation across campus. The physical absence of students of color across various campus contexts manifests as evidence of a literal lack of visibility and contributes to perceptions of invisibility and of being devalued by the institution. This is evident in the following comment from Cecilia Polanco, who asserted why meaningful demographic representation is relevant to campus signaling:

> I'd like for UNC to be representative of North Carolina or even the United States as a whole. I think that an increase in the number of minority students would make it so people couldn't physically ignore our presence. I often feel invisible as a minority student—I felt this most my first year when I walked around campus and barely saw anyone who looked like me. Even given the current

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233. *See*, *e.g.*, Decl. of Mencia at 3-4; Decl. of Mwamba 2-4; Declaration of Sharifa Searles at 2.
234. 2010 Diversity Assessment, at UNC0130795.
235. *Id.*; *see also* Declaration of Kenneth Ward at 3-4 (alumni discussing frequent feelings of tokenism).
236. Decl. of Wingate-Bey at 3.

admissions policy, it's possible for a UNC student to make it through their four years here without diversifying their friend group or experiences.[237]

Other students similarly reported a continued lack of underrepresented students in visible numbers.[238]

As described above, underrepresentation can contribute to tokenism. It can also contribute to stereotype threat, which can result when demeaning messages are communicated to groups that suffer from structural vulnerability and denigrating societal stereotypes, potentially threatening a person's sense of self and cultural integrity. Students shared stories that illustrated that stereotype threat is occurring at UNC. As one student shared: "As an African American female, I feel that my presence on this campus is not respected or appreciated at all. I almost feel like I am a []number that is used by the University to say, Well, at least we have one Black student here.[]"[239] Cecilia Polanco stated: "I'm usually a minority in everything I'm involved with on campus. It often feels like people aren't expecting for me to perform well or to be insightful and effective. My intelligence, value, and worth are not assumed at UNC and I often feel like I have to prove myself."[240] These experiences reflect the relationship of tokenism to stereotype threat, revealing heightened awareness of stereotype threat, performance anxiety, and challenges to self-worth that must be overcome, as well as an accumulated emotional toll.[241]

These impediments are also reflected in campus reports about UNC's global atmosphere. While students on average reported positive perceptions of campus commitment to diversity and to minority perspectives, there were racial disparities in such assessments. For example, an average of 68% of students agreed that "UNC-Chapel Hill is committed to diversity." Disaggregated data reveal that black and American Indian students expressed the lowest levels of agreement with that statement, 44% and 53% respectively.[242]

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237. Decl. of Polanco at 4.

238. Decl. of Gomez-Flores at 4; Decl. of Phelps at 3; Decl. of Gatewood at 3.

239. 2010 Diversity Assessment, at UNC0130795.

240. Decl. of Polanco at 5.

241. Decl. of Gomez-Flores at 3-5; Decl. of Gatewood at 3-4; Decl. of Watson at 2-3; Decl. of Mencia at 3-4; Decl. of Mwamba at 2-4; *see also* Declaration of Valerie Newsome Hayes at 3.

242. 2016 Climate Survey, "Supportive Campus, Belonging" sheet, Question 31c.

Similarly, there were striking differences in students' agreement with the statement, "I have felt isolated at UNC because of the absence or low representation of people like me." On average, 16% of students agreed or strongly agreed with the statement. But the sense of marginalization was markedly highest for underrepresented students of color. 48% of black students felt isolated due to low representation, as did 31% of Latinx students. Although significantly lower, 9% of white students felt isolated as well.[243] It is worth noting here that, with regard to promoting confrontation with diversity, feelings of marginalization are relevant to consider for all students. Nevertheless, they pose more substantial impediments to the conditions for meaningful participation and interaction when they coincide with tokenism and structural vulnerability, as is the case for students of color.

Importantly, the 2016 Climate Survey also indicates that underrepresented minority students disproportionately feel the need to suppress their cultural identity to belong at UNC. 40% of black students and 29% of Latinx students agreed or strongly agreed with the statement: "I feel that I need to minimize aspects of my racial or ethnic culture to fit in here" (compared to an average agreement rate of 15%).[244] As discussed, such feelings suppress minority student participation and the expression of diverse perspectives.

Black students also had the lowest agreement rates with statements about positive diversity-related behaviors and attitudes of institutional faculty, staff, and administrators. Specifically, they expressed notably lower agreement with the statement that "UNC-Chapel Hill has campus administrators who regularly speak about the value of diversity," and expressed lower feelings that "Faculty empower me to learn here", "My contributions were valued in class", and "Faculty were able to determine my level of understanding of the course material."[245]

243. *Id.*, "Isolation" sheet, Question 44b; *see also* 2010 Diversity Assessment, at UNC0130820 (similarly revealing that the sense of marginalization is highest for underrepresented minority students. More than half of black students (54%) felt marginalized in campus contexts, as did 44% of American Indian students, and 41% of Latinx students. Likewise, white students felt marginalized as well but at a notably lower rate (35%).

244. 2016 Climate Survey, "Isolation" sheet, Question 44e; *see also* 2010 Diversity Assessment, at UNC0130820 (among racial groups, American Indian and black students reported the highest levels of disagreement with the statement: "The University community shows adequate respect for the minority perspective," at a rate of 21% and 16.6% respectively.).

245. 2016 Climate Survey, "Supportive Campus, Belonging" sheet, Questions 31b, 32b; "Classroom Experiences" sheet, Questions 48d, 48c; *see also* 2010 Diversity

Equity benchmarks, such as retention rates of students of color, can provide evidence related to marginalizing experiences that tend to have a pushing-out function on students. According to the 2010 Diversity Assessment, a total of 9% of respondents stated they had considered leaving for reasons related to race.[246] Black students were much more likely (19%) to consider leaving due to race than any of the other groups.[247] A similar pattern emerges from the 2016 Climate Survey which reveals that underrepresented minority students are more likely to consider transferring or dropping out of UNC. Such students list "Felt like I didn't fit in" as among the top reasons for leaving UNC (54.6% and 51.2% of black and Latinx students, respectively, listed it as "essential" or "very important" for contemplating transfer). Consistent with these survey responses, racial disparities are apparent in UNC's four-year graduation rates across three cohorts of students (those who graduated in 2008, 2009, and 2010). The University average retention rates for the period (85.5% of women and 77.1% of men) were higher than those for underrepresented minorities, with the lowest rates among American Indian students (69.7% of women and 60% of men) and black students (81.8% of women and 61.1% of men), followed by Latinx students (82.3% of women and 70.9% of men). Although the University has made progress in increasing underrepresented minority male admits in recent years, male black and American Indian graduation rates across the three cohorts were about 16% lower than the average percentage for all men at UNC.[248]

In a 2010 retention study comparing six-year graduation rates, differences across groups were generally not as large. However, black

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Assessment, at UNC0130788 (indicates black students have the lowest perceptions of faculty, staff, and administrators engaging in positive diversity-related behaviors. Black students expressed the lowest levels of agreement that "All students are treated equitably by faculty"; "Professors/instructors encourage critical thinking about diversity issues"; "Faculty exhibit awareness of diversity issues among students"; "Staff exhibit awareness of diversity issues among students"; and "Senior administrators exhibit awareness of diversity issues among students.").

246. 2010 Diversity Assessment, at UNC0130793-UNC0130794.

247. *Id*. The data also reflect marked disparities by income—12.8% of those with family incomes of $25,001 to $50,000 were likely to leave due to race, while 6.5% of those with family incomes of $75,001 to $100,000 considered leaving for the same reason. Id. at 44, UNC0130794.

248. 2014-2015 Diversity Plan Report, at 10, UNC0283406; *see also* Decl. of Gatewood at 3 (reflecting on how the isolation of being a black male student at UNC was "unsettling" and he could "have easily become another college dropout").

students were still 11 percentage points lower than white students.[249] The University has initiated targeted retention efforts with underrepresented minority men, with assessment data showing improvement. For example, from 1990 to 2015, the percentage of students with grade point averages above 3.0 grew from 10.6% to 37.4% for black men and from 17.14% to 47.8% for American Indian men.[250]

Climate assessments by individual departments provide another indication that while UNC is making strategic efforts to shift its institutional values toward diversity and inclusion—as opposed to upholding historical exclusion—such efforts are far from complete. One climate assessment conducted by a UNC department found that it "highlights cultural commonality and universal values that may mask deeper recognition and appreciation of cultural differences."[251] Such findings suggest that there continues to be some misalignment between institutional behavior and espoused commitments and values.

Several units on campus are reportedly struggling with "identifying a successful approach to ensure that all participants were comfortable discussing diversity-related issues," with particular challenges related to local and national incidents of racial hate and hostility.[252] While substantial work remains, an additional barrier is UNC's reliance on diverse students, faculty, and staff to facilitate diversity education and to promote racial inclusion. The University's own assessment reveals that underrepresented students, along with faculty and staff of color, are "tasked with advancing diversity without support."[253] Improved capacity for healthy racial climates and conversations as well as substantive support in numbers and resources for those who are taking on this important work will influence the health of the campus climate.

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249. Dep. of Carol Lynn Folt (May 31, 2017) at Ex. 8, Email with Copy of Encouraging Student Success at Carolina: The Undergraduate Retention Study (2010-2011), UNC0124077- UNC0124153, at 36, UNC0124113. The Retention Study also reveals differences in probation status by race among first year and transfer students. Black students only comprised 11% of the first-year students, but they comprised 34.2% of first-year students on probation.
Disproportionately high rates also characterized the probation status of Native American and Hispanic students, whose first-year probation rates are approximately double their proportions in the overall student population. *Id*. at 45, UNC0124122.
250. 2014-2015 Diversity Plan Report, at 11, UNC0283407.
251. *Id*. at 28, UNC0283424.
252. *Id*. at 31, UNC0283427; *see also* Decl. of Laura Ornelas at 3 (describing racial tension on campus as a result of debate regarding Saunders Hall).
253. 2014-2015 Diversity Plan Report at 31, UNC0283427; *see also* Decl. of Mencia at 4.

Thus, while UNC rejects its prior legacy of exclusion and racial discrimination as a definitive barrier to achieving its mission of preparing graduates for standing out as leaders and innovators in diverse local and global contexts, there are very real and entrenched manifestations of the lingering frameworks. It will take time and continued effort to increase the University's capacity for ensuring a healthy climate for dynamic diversity that enables the type of educational benefits all UNC students will need to excel.

## VII.    CONCLUSION

UNC faces a complex challenge. As social science research makes clear, the pursuit of the educational benefits of diversity requires a synergy of quantitative and qualitative factors in order to encourage both meaningful participation and meaningful cross racial interactions. Meaningful demographic representation is crucial towards fostering these goals, but campus climate is also influenced by a university's particularized historical legacy and the current state and national context. This suggests that UNC's history of exclusion and segregation pose a particular set of context-based challenges. Because there are various factors involved, some of which are outside of the institution's control, and all of which have serious consequences for the campus climate, it will take time and continued thoughtful interventions by UNC to create meaningful dynamic diversity on campus.