REVERSE INTEGRATION: CENTERING HBCUS IN THE FIGHT FOR
EDUCATIONAL EQUALITY

BY STACY HAWKINS*

Abstract. School integration as a means of achieving educational equality has in many ways failed. It is a great irony that the case most celebrated for dismantling our dual system of racialized education in America, *Brown v. Board of Education*, has wrought at best mixed results for true educational equality. One underutilized resource in the ongoing fight for educational equality is Historically Black Colleges and Universities (HBCUs). In part their oversight is attributable to *Brown*'s desegregation mandate being pursued predominantly through the abandonment of Black schools in favor of integrating Black students into white schools. Indeed, *Brown* may be most responsible for relegating HBCUs to the margins of our system of higher education despite having played an outsized role in educating Black students from their origins in the nineteenth century right up to the present. The little-known (and often ignored) data on the success of HBCUs in educating Black students deserves greater attention. The unsung story of HBCUs reveals that a large part of the pursuit for educational equality has always been, and continues to be, about the success of Black students who attend Black schools.

This Article recounts both the historic and contemporary data demonstrating that HBCUs remain unparalleled in educating Black (and especially first generation and low income) students. Synthesizing the available data and extant literature, the Article identifies a unique pedagogical model common among HBCUs and suggests this model offers key lessons as we continue in our quest to realize the full guarantee of educational equality promised in *Brown*. While HBCUs have been relegated to the periphery of higher education since the desegregation era, this Article contends that they ought to reclaim their rightful place on the vanguard of higher education. By centering the experiences and contributions of HBCUs, we might finally realize what it takes to achieve true educational equality on behalf of Black students. In the process we might transform the landscape of higher education for first-generation and low-income (FGLI) students as well, who not only represent a disproportionate share of HBCU students but also a growing share of students served by all institutions of higher education.

* Professor of Law, Rutgers Law School. I am grateful to the following people for reading and offering comments on this Article: Anil Kalhan and the participants of the Drexel University Kline School of Law faculty colloquium, Kimberly Robinson, Kimberly West-Faulcon, Jonathan K. Stubbs, Jonathan Feingold, Vinay Harpalani, Erika Wilson, Marybeth Gasman, and Walter Allen. I would also like to thank the student editors at the *University of Pennsylvania Journal of Law and Social Change* for their editorial support in getting this Article to its final published form. Any remaining errors and omissions are mine.

INTRODUCTION	353
I. A HISTORY OF HBCU SUCCESS	356
A. Origins, Challenges, and Accomplishments	356
B. The Fight for Integration in <i>Brown</i>	360
C. The Fight for Survival in the Aftermath of Fordice	361
D. HBCU Success in Educating Black Students	366
II. THE HBCU PEDAGOGICAL MODEL	372
A. Black Educators and Administrators	373
B. High Expectations with Appropriate Academic Support	375
C. Culturally Relevant Curricula with Opportunities for Applied Learning	381
III. THE FAILURES OF HWIS	384
A. Student-Teacher Mismatch	388
B. Stereotyping and Other Climate Threats	391
C. Lack of Curricular Engagement	393
IV. REASSESSING <i>BROWN</i> 'S INTEGRATION STRATEGY	395
A. The "True" Meaning of Educational Equality	395
B. The Integration / Segregation Debate	397
C. The Harms of Segregation and the Benefits of Integration	398
V. INVESTING IN AND EXPANDING THE HBCU MODEL	400
A. Strengthening HBCUs	402
B. Improving Faculty Diversity at HWIs	406
C. Ensuring Critical Mass of Diverse Students at HWIs	407
D. Offering Diverse Students Culturally Relevant Instruction at HWIs	409
CONCLUSION	410

INTRODUCTION

Historically Black Colleges and Universities (HBCUs)¹ once provided the sole means of higher education for Black students and, as a result, produced our nation's most accomplished Black leaders for over a century.² Many of this country's greatest civil rights leaders, including those whose efforts led to the desegregation of public education and made it possible for Blacks to attend historically white institutions (HWIs),³ were themselves educated at HBCUs.⁴ Notwithstanding their storied history, HBCUs have received too little attention in the academic literature.⁵ While there is increasing study of HBCUs among education researchers, little focus has been directed to HBCUs in the legal scholarship.⁶ Whether the motivation is to understand academic achievement among Black students specifically, or assessing the current state of educational equality generally, attention to HBCUs has been sorely lacking.⁷

Perhaps because of this inattention, many HBCUs exist outside of the broader public consciousness. They have even been relegated to the sidelines of our discourse on higher education.⁸

¹ The amended Higher Education Act of 1965 defines HBCUs as “any historically Black college or university established before 1964, whose principal mission was (and is) the education of Black Americans.” Jamie P. Merisotis & Kristin McCarthy, *Retention and Student Success at Minority-Serving Institutions*, 125 NEW DIRECTIONS FOR INSTITUTIONAL RSCH., 45, 46 (2005).

² See discussion *infra* Section I.D. This Article refers to Black students rather than African American students because many Black college students in the United States do not identify as African Americans either because they are African immigrants or because they identify instead as Caribbean American. For instance, scholars have documented the overrepresentation of non-native Black students, relative to native African Americans, enrolled in college. See, e.g., Douglas S. Massey, Margarita Mooney, Kimberly C. Torres & Camille Z. Charles, *Black Immigrants and Black Natives Attending Selective Colleges and Universities in the United States*, 113 AM. J. EDUC. 243, 243 (2007).

³ Historically white institutions (HWIs) are those colleges and universities established prior to the Civil Rights Era whose history reflects a practice of admitting and enrolling exclusively or predominantly white students. These schools have sometimes been referred to in the literature as “predominantly white institutions” (PWI). See, e.g., C. Rob Shorette II & Robert T. Palmer, *Historically Black Colleges and Universities (HBCUs): Critical Facilitators of Non-Cognitive Skills for Black Males*, 39 WEST. J. BLACK STUD. 18, 19 (2015). However, due to recent changes in the demographic composition of the student bodies of some of these schools to reflect only a plurality (or in some instances a minority) of white students, see CLIFTON CONRAD AND MARYBETH GASMAN, EDUCATING A DIVERSE NATION: LESSONS FROM MINORITY-SERVING INSTITUTIONS 28–34 (2015) (discussing the emergence of Hispanic Serving Institutions (HSIs) and Asian American and Pacific Islander Institutions (AAPIs) based on changes in enrollment demographics at HWIs), the term HWI is now more descriptive than PWI.

⁴ Thurgood Marshall, lead counsel on behalf of the NAACP Legal Defense Fund in the seminal *Brown v. Board of Education* case, obtained his bachelor's degree from Lincoln University and then attended Howard University Law School. See CHARLES OGLETREE, ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF CENTURY OF BROWN V. BOARD OF EDUCATION 135-136 (2005). One of Marshall's first cases after obtaining his license was to sue for the integration of the University of Maryland Law School, which prevented Marshall from even applying due to its policy of admitting only white students. *Id.* at 136.

⁵ See CONRAD & GASMAN, *supra* note 3, at 10–12.

⁶ See *id.* A Westlaw search for law review articles containing “HBCU” in the title produced only seven results, all of which were published in the 2000s. Adding the full designation “historically Black colleges and universities” to the search yielded only three additional law review articles. (Search results on file with author).

⁷ *Id.* (acknowledging the dearth of data and research on HBCUs).

⁸ *Id.*

Public support for HBCUs has waned since the desegregation era, and as a result many face continual threat of closure.⁹ In spite of their struggles, HBCUs continue to serve a vital function in our higher education ecosystem. Overall, they have done (and continue to do) more to educate Black students than many larger, more well-resourced HWIs.¹⁰ Despite representing a mere fraction of all four-year, degree-granting colleges and universities, HBCUs successfully graduate a disproportionate share of Black students each year.¹¹ They produce more Black science and engineering majors than any HWI, and they have produced the majority of Black doctors, lawyers, judges, and academics for generations.¹² HBCUs have consistently generated both educational and professional outcomes for their Black graduates that far exceed those of their HWI peers,¹³ making them an ideal case study for how to close existing educational attainment and academic achievement gaps on behalf of Black students.

Drawing on the available research on HBCUs in the educational literature, this Article identifies a unique pedagogical model common among HBCUs, highlights the success of this model in effectively educating Black students, and suggests that HBCUs have much to teach us all about how to ensure educational equality for Black students specifically, and even for first-generation and low-income (FGLI) students more generally, who are overrepresented at HBCUs.¹⁴ The success of this model not only implores us to reclaim HBCUs from the margins of higher education (and many from the brink of extinction), but by centering the history and experiences of HBCUs it also offers HWIs important lessons on how they can better educate Black, and FGLI, students who are so often

⁹ See discussion *infra* Section I.C, Part V.

¹⁰ See discussion *infra* Section I.D.

¹¹ This Article focuses only on four-year degree granting institutions because the vast majority of HBCUs are four-year institutions and only a small fraction are two-year degree granting institutions. See Brian K. Bridges, Barbara Cambridge, George D. Kuh, & Lacey Hawthorne, *Student Engagement at Minority Serving Institutions: Emerging Lessons from the BEAMS Project*, 125 NEW DIRECTIONS FOR INST'L RSCH. 25, 28 (2005) ("HBCUs make up less than 3 percent of all higher education institutions but enroll approximately 16 to 18 percent of all Black college students and continue to graduate a disproportionate percentage—26 percent as recently as 1998—of Black baccalaureate recipients."). For ease of comparison, all references to HWIs also refer only to four-year degree granting institutions.

¹² See discussion *infra* Section I.D.

¹³ See *id.*

¹⁴ There are two populations that sometimes get conflated due to their substantial overlap. First, there are first-generation students with low-socioeconomic status, sometimes referred to as "disadvantaged students," who need significant educational scaffolding and support to successfully develop an academic identity, the skills necessary to succeed in higher education, and the capacity to navigate the college experience overall. See KRISTIN ANDERSON MOORE & CAROL EMIG, INTEGRATED STUDENT SUPPORTS: A SUMMARY OF THE EVIDENCE BASE FOR POLICYMAKERS, CHILD TRENDS 1 (Feb. 2014), <https://www.childtrends.org/wp-content/uploads/2014/02/2014-05ISSWhitePaper3.pdf> [<https://perma.cc/KA4Y-SN2H>] (addressing the success of the "integrated student support" method of educational delivery for minority and low-income K-12 students). Second, there are minority students, who face different challenges even when they are academically prepared and fully callable of succeeding in college. These students need faculty and peer support to provide encouragement and affirmation, but they also benefit from a culturally relevant curriculum and practical educational experiences to remain fully engaged learners. See CONRAD & GASMAN, *supra* note 3, at 18–19, 22–25. Compare Richard Cummings, *All Male Black Schools: Equal Protection, The New Separatism and Brown v. Board of Education*, 20 HASTINGS CONST. L. Q., 725, 725–726 (1993) (critiquing the arguments made for Afrocentric schools and curricula designed to address the unique needs of Black students), with John A. Powell, *Black Immersion Schools*, 21 N.Y.U. REV. L. & SOC. CHANGE 669, 689 (1994) (expressing equivocal support for Afrocentric schools). In addition to educating a largely Black student population, HBCUs also educate a disproportionate number of FGLI students relative to HWIs. See CONRAD & GASMAN, *supra* note 3, at 21–22.

underserved by these schools.¹⁵

This Article is divided into five parts. Part I chronicles the history and success of HBCUs, tracing their rise during the post-Reconstruction era to their fight for survival in the wake of *Brown* and the desegregation efforts of the Civil Rights era that ensued. This Part highlights the many ways in which HBCUs have contributed and continue to contribute to the academic and professional success of their Black graduates, but also the ways in which their survival has been threatened post-*Brown*. Synthesizing the data and research on HBCUs from the educational literature, Part II identifies a unique pedagogical model common among HBCUs.¹⁶ A model that centers student well-being and support, values an ethos of collectivism over individualism, and promotes a cultural model of instruction. The benefits of this pedagogical model for those Black students who attend HBCUs extend well beyond their undergraduate experience – they launch students into successful graduate education, inspire high professional ambitions, and even improve students’ personal well-being.¹⁷

Contrasting the history and success of HBCUs set out in Parts I and II, Part III recounts a set of disheartening but all-too-familiar data about the overall failures of our system of higher education, and in particular HWIs, to effectively serve the needs of Black students. These failures can be seen in the academic achievement gap, Black students’ lower overall educational attainment, and their greater dissatisfaction with the experience of higher education.¹⁸ This Part concludes with a discussion of the numerous climate threats posed to Black students attending HWIs. From stereotype and stigma threat to physical assaults, these climate threats compromise the emotional well-being and physical safety of Black students attending HWIs, and they also exacerbate the academic problems already faced by Black students attending HWIs which thereby further contribute to the widely-noted Black-white achievement gap.

In light of the persistent failures of our system of higher education overall to effectively educate Black students, and the extraordinary success of HBCUs in doing so, Part IV considers what it means to truly provide equal post-secondary educational opportunities for Black students. This Part engages the longstanding debate between integration and segregation in the quest for educational equality. Identifying the benefits and drawbacks of both approaches, Part IV concludes that true educational equality must effectively mediate between the failed integration ideal typified by HWIs on the one hand and the abandoned segregation legacy of HBCUs on the other. Finally, Part V offers a modest proposal to move us towards this preferred middle ground. The compromise position seeks to celebrate and strengthen HBCUs as the unique and vital resource they are, while at the same time

¹⁵ See discussion *infra* Part V.

¹⁶ Some parts of this model are also in use at other minority-serving institutions, including Hispanic Serving Institutions (HSIs) and Tribal Colleges and Universities (TCUs). See, e.g., CONRAD & GASMAN, *supra* note 3, at 35, 93; see also Bridges et al., *supra* note 11, at 26. However, research has not revealed the benefits of this model for students attending HSIs and TCUs the way it has for Black students attending HBCUs. See Sean Seymour & Julie Ray, *Grads of Historically Black Colleges Have Well-Being Edge*, GALLUP (Oct. 27, 2015), <https://news.gallup.com/poll/186362/grads-historically-Black-colleges-edge.aspx> [<https://perma.cc/TR4B-GB56>]. Part of the reason may be that so few studies have looked at the effects of HSIs and TCUs on their students as compared to Hispanic or Native American students attending HWIs. See Merisotis & McCarthy, *supra* note 1, at 49.

¹⁷ See discussion *infra* Section II.A (discussing Gallup poll results about the success of Black students attending HBCUs).

¹⁸ See discussion *infra* Section III.C (on achievement gaps), Part III (on hostile environments at HWIs), Section III.B (on Black students’ dissatisfaction with HWIs).

improving the educational experiences and outcomes of those Black students who do attend HWIs. The added advantage of this model is the likely improved success of first generation and low-socioeconomic status (SES) students attending HWIs as well, who experience many of the same challenges in higher education, and benefit from many of the same approaches, as Black students.

The dual approach suggested here envisions the growth and expansion of HBCUs befitting their legacy of success, together with some adaptation of the unique HBCU pedagogical model by HWIs in ways that will inure to the benefit of Black as well as first generation and low-SES students. These changes will expand the positive impact of HBCUs to more students and allow HWIs to better serve their Black and FGLI students, both of whom comprise an increasing share of students in higher education.¹⁹ White students, and HWIs themselves, also stand to benefit from this expanded pedagogical model in ways that enhance the entire educational enterprise by imparting the knowledge and skills necessary for all students to navigate an increasingly complex and multicultural world.

I. A HISTORY OF HBCU SUCCESS

A. *Origins, Challenges, and Accomplishments*

HBCUs have a long and storied history in the United States.²⁰ The very first HBCUs were private institutions established prior to the Civil War as a means of providing religious and basic skills instruction to free Blacks in the North.²¹ With passage of the Morrill Act of 1862, states were given land by the federal government to establish land-grant public colleges, a handful of which were established for the education of free Blacks.²² However, it was not until after the Civil War and passage of the second Morrill Act in 1890 that the federal government took a more aggressive approach to establishing public HBCUs.²³ By conditioning the receipt of federal funds to states operating segregated systems of public higher education on the establishment by those states of separate schools for Blacks, the second Morrill Act produced seventeen new HBCUs.²⁴ Because the Act limited these public land-grant schools to agricultural and vocational training, they offered no broad liberal arts or professional education for Blacks.²⁵ In addition to these public, land-grant colleges, between 1865 and 1890, over 200 private HBCUs were founded in the South, largely by

¹⁹ See *Merisotis & McCarthy*, *supra* note 1, at 56 (projecting that the majority of the increase in college enrollment would be among students from low-income backgrounds); see also Conrad & Gasman, *supra* note 3, at 257 (acknowledging growth among students entering college from low-income backgrounds).

²⁰ For an extended account of this history, see generally JAMES D. ANDERSON, *THE EDUCATION OF BLACKS IN THE SOUTH, 1860-1935* (1988). See also Roland G. Fryer & Michael Greenstone, *The Causes and Consequences of Attending Historically Black Colleges and Universities* (Nat'l Bureau of Econ. Rsch., Working Paper No. 13036, 2007).

²¹ There were three such institutions founded during this time: Cheyney University (1837) and Lincoln University (1854), both in Pennsylvania, and Wilberforce College (1856) in Ohio. MARYBETH GASMAN, *ENVISIONING BLACK COLLEGES: A HISTORY OF THE UNITED NEGRO COLLEGE FUND* 11 (2007); see also Earnest N. Bracey, *The Significance of Historically Black Colleges and Universities (HBCUs) in the 21st Century: Will Such Institutions of Higher Learning Survive?*, 76 AM. J. ECON. & SOCIO. 670, 676 (2017).

²² See CONRAD & GASMAN, *supra* note 3, at 31.

²³ *Id.*

²⁴ *Id.*

²⁵ See ANDERSON, *supra* note 20, at 35.

white missionary organizations.²⁶ Collectively, these institutions, both public and private HBCUs, became the backbone of higher education for Blacks from the late nineteenth to the mid-twentieth centuries.²⁷

Importantly, these early HBCUs were not equivalent in any respect to their HWI counterparts.²⁸ Even when white organizations sympathetic to abolition were involved in establishing or operating these early HBCUs, they were largely concerned with inculcating their Black students (both before and after the Civil War) with values and training designed to “civilize” rather than educate them.²⁹ Moreover, unlike the contemporary missions and curricula of HBCUs, designed to venerate Black history and culture, these early HBCUs more closely reflected their times, valorizing white history and culture while denigrating Black history and culture.³⁰ Perhaps most significantly, from the very beginning HBCUs suffered from inferior funding and resources relative to HWIs, and more often than not served as secondary (or even elementary) rather than post-secondary institutions.³¹ Many did little more than train Blacks to become teachers in the very institutions that graduated them.³²

In spite of these many challenges and shortcomings, for the first hundred years of their existence, HBCUs did not just produce the overwhelming majority of Black college graduates in the country, they produced some of the most accomplished. Thurgood Marshall, the first Black Supreme Court Justice and one of the architects of school desegregation, was himself the product of two HBCUs.³³ The alumni of Howard University, Marshall’s law school alma mater and today one the country’s largest HBCUs, reads like a Who’s Who of Black excellence.³⁴ Among its alumni are

²⁶ See *id.* A handful of these private institutions were established by Black Baptist churches. *Id.*

²⁷ Some of the most notable private HBCUs founded during this period included Fisk University, Howard University, Hampton University, Morehouse College, and Tuskegee University. See Bracey, *supra* note 21, at 676–77.

²⁸ Walter R. Allen & Joseph O. Jewell, *A Backward Glance Forward: Past, Present and Future Perspectives on Historically Black Colleges and Universities*, 25 REV. OF HIGHER EDUC. 241, 241–261 (2002). Not only were these schools woefully underfunded relative to their white counterparts, few actually involved instruction at the post-secondary level. See ANDERSON, *supra* note 20, at 238 (noting that in 1915, out of the sixteen Black federal land-grant schools in the South only one provided post-secondary instruction, at the twenty-three land-grant and state schools only twelve of 7,513 students were enrolled at the collegiate level, while more than 2,000 Black students were enrolled at the collegiate level at private HBCUs).

²⁹ See Allen & Jewell, *supra* note 28, at 243–246.

³⁰ *Id.* This changed in the 1920s as Black students at HBCUs began protesting their Eurocentric curricula and largely white faculty while agitating for greater representation of Blacks among the faculty and within the curriculum. *Id.* at 246. A subsequent student protest movement occurred in the 1960s and 1970s coincident with Black students agitating for greater inclusion of Black faculty and African American studies at HWIs. *Id.* see also WAYNE GLASKER, BLACK STUDENTS IN THE IVORY TOWER: AFRICAN AMERICAN STUDENT ACTIVISM AT THE UNIVERSITY OF PENNSYLVANIA, 1967-1990 (2002) (chronicling the efforts of Black students during this period through a study of students attending the University of Pennsylvania).

³¹ See Allen & Jewell, *supra* note 28, at 250 (“[T]he vast majority of these institutions were not recognized as college-grade institutions by federal and state agencies and, for many years, were denied accreditation.”).

³² *Id.* at 246.

³³ Marshall received his bachelor’s degree from the historic Lincoln University, the country’s very first HBCU. He then attended Howard University for law school. See OGLETREE, *supra* note 4.

³⁴ Howard University is considered among a select group of “elite” HBCUs, which also includes Morehouse College, Spelman College, Fisk University, Xavier University, and Hampton University. See Gregory N. Price, William Spriggs, & Omari H. Swinton, *The Relative Returns to Graduating from a Historically Black College/University: Propensity Score Matching Estimates from the*

renowned writers Paul Lawrence Dunbar, Zora Neale Hurston, and Toni Morrison, noted sociologist E. Franklin Frazier, and historic political figures Ralph Bunche, Andrew Young, Douglas Wilder, David Dinkins, and Elijah Cummings.³⁵

This is perhaps unsurprising for Black graduates educated prior to the Civil Rights Era, as these notable figures were.³⁶ Until the late 1960s, HBCUs continued to be the primary means of accessing higher education for Black students.³⁷ At the apex of their reign over Black higher education, there were over two hundred HBCUs educating tens of thousands of Black students.³⁸ Today this number has been cut in half. Only 105 HBCUs continue in operation today, but they continue to play an outsized role in the higher education of Black students.³⁹ These 105 HBCUs make up just 2 percent of degree-granting institutions in the United States, but they enroll 11 percent of Black undergraduate students and confer approximately 20 percent of all Black bachelor's degrees.⁴⁰ For first-generation Black students from low-income families, HBCUs continue to be the primary source of post-secondary education.⁴¹ Without access to an HBCU, many of these FGLI Black students would simply not obtain a college degree.⁴²

HBCUs produced some of the country's most notable Black figures of the twentieth century, including W.E.B. DuBois, Booker T. Washington,⁴³ Ida B. Wells,⁴⁴ Ella Baker, Medgar Evers, Bayard Rustin, Julian Bond, Barbara Jordan, Adam Clayton Powell, Jr., Jesse Jackson, and perhaps

National Survey of Black Americans, 38 REV. BLACK POL. ECON. 103, 118 (2011); *see also* Fryer & Greenstone, *supra* note 20, at 8 (including Xavier, Spelman, Morehouse, and Howard among the “elite” HBCUs).

³⁵ *See* ENCYCLOPEDIA BRITANNICA, Howard University, <https://www.britannica.com/topic/Howard-University> [https://perma.cc/FLM7-UAP8] (last accessed Jan. 31, 2021).

³⁶ The leaders of the Civil Rights Movement who organized and participated in the lunch counter sit-ins in Greensboro, North Carolina, the mass civil disobedience in Birmingham, Alabama, and the Freedom Summer voter registration drives in Philadelphia, Mississippi were often students from HBCUs. *See* Allen & Jewell, *supra* note 28, at 249. Alumni of HBCUs were equally well-represented among those civil rights lawyers pursuing equal opportunities for Blacks in education alongside Thurgood Marshall and the NAACP. *Id.*

³⁷ *See* Fryer & Greenstone, *supra* note 20, at ii.

³⁸ *See* JACQUELINE FLEMING, BLACKS IN COLLEGE 7–8 (1984) (noting that 90 percent of Black students attended HBCUs in the 1950s, but that number has been reduced substantially); *see also* Marybeth Gasman & Andrew T. Arroyo, *An HBCU-Based Educational Approach for Black College Student Success: Toward a Framework with Implications for all Institutions*, 121 AM. J. EDUC. 57, 57 (2014).

³⁹ CONRAD & GASMAN, *supra* note 3, at 31–32.

⁴⁰ *Id.*; *see also* Marybeth Gasman & Felecia Commodore, *The State of Research on Historically Black Colleges and Universities*, 8 J. MULTICULTURAL EDUC. 89, 90 (2014). Other research puts the number of HBCUs at 103 and their share of Black bachelor's awardees at 22 percent. *See* Fryer & Greenstone, *supra* note 20, at 1. Regardless of the precise numbers, HBCUs represent a small fraction of all colleges and universities and graduate a disproportionate number of Black students.

⁴¹ *See* Merisotis & McCarthy, *supra* note 1, at 47–48 (“low income” is defined by the authors as having an annual family income of less than \$25,000).

⁴² *See id.*

⁴³ Washington attended Hampton University when it was Hampton Normal & Agricultural Institute. *See* ENCYCLOPEDIA BRITANNICA, Booker T. Washington, <https://www.britannica.com/biography/Booker-T-Washington> [https://perma.cc/9SK9-VDZF] (last accessed Feb. 23, 2021).

⁴⁴ Wells is a graduate of Fisk University. *See* ENCYCLOPEDIA BRITANNICA, Ida B. Wells, <https://www.britannica.com/biography/Ida-B-Wells-Barnett> [https://perma.cc/8YSW-ZPMB] (last accessed Feb. 23, 2021).

most notably Martin Luther King, Jr.⁴⁵ Although their numbers and influence have diminished significantly, this legacy of excellence in educating the country's Black elite continues even today. Some notable luminaries of the twenty-first century who are HBCU graduates include: Oprah Winfrey, Spike Lee, TaNaheesi Coates, and Kamala Harris.⁴⁶ The success of HBCUs is not just reflected in the individual accomplishments of their graduates, it is equally reflected in their collective success.

North Carolina A&T State University is the nation's top producer of Black undergraduate engineering degree holders.⁴⁷ Many HBCU alumni go on to graduate and professional schools.⁴⁸ Nine of the top ten colleges that graduate the most African Americans who go on to earn PhDs are HBCUs.⁴⁹ Spelman College and Bennett College together produce over half the nation's African-American female doctorates in all science fields.⁵⁰ Xavier University of Louisiana is ranked number one nationally for the number of African American graduates who enroll in medical school.⁵¹ Indeed HBCUs continue to produce a disproportionate number of Black graduates across a number of occupational fields.⁵² Data show that HBCUs have produced approximately 57 percent of Black STEM graduates,⁵³ 40 percent of Black congressmen and women, 13 percent of Black CEOs, 50 percent of Black professors at non-HBCUs, 70 percent of Black doctors and dentists,⁵⁴ 50 percent of Black lawyers, and 80 percent of Black judges.⁵⁵

⁴⁵ King obtained his undergraduate degree from Morehouse College at the age of nineteen. See *ENCYCLOPEDIA BRITANNICA*, Martin Luther King, Jr., <https://www.britannica.com/biography/Martin-Luther-King-Jr> [<https://perma.cc/43F3-DKHK>] (last accessed Jan. 15, 2021).

⁴⁶ See *Tell Them We Are Rising* (Firelight Films 2017).

⁴⁷ Soraya Nadia McDonald, *How Did North Carolina A&T Become the Nation's Leading Producer of Black Engineers?*, THE UNDEFEATED (Oct. 11, 2016), <https://theundefeated.com/features/how-did-north-carolina-at-become-the-countrys-leading-producer-of-black-engineers-care/> [<https://perma.cc/E6LN-36WW>].

⁴⁸ HBCUs instill in their students an expectation for graduate schooling. See discussion *infra* Section II.B.

⁴⁹ See Gregory Stewart, Dianne Wright, Tawan Perry, & Charlisha Rankin, *Historically Black Colleges and Universities: Caretakers of Precious Treasure*, J. COLL. ADMISSION 24, 28 (Fall 2008).

⁵⁰ *Id.*

⁵¹ *Id.* Additionally, “more than 50 percent of the nation's African-American public school teachers and 70 percent of African-American dentists earned degrees at HBCUs.” *Id.*

⁵² See, e.g., Shorette & Palmer, *supra* note 3, at 18 (“HBCUs are frequently praised for disproportionately producing minority graduates with degrees in science, technology, engineering and mathematics, as well as producing many of the nation's Black judges, lawyers, and doctors.”); Price et al., *supra* note 34, at 104 (“Since their genesis in the aftermath of the emancipation of slaves, [HBCUs] have been vehicles for social, political, and economic progress for Black Americans. Their historical efficacy is evidenced by the disproportionate number of HBCU graduates—well into the twentieth century—who are among the Black business elite.”).

⁵³ Although HBCUs educate only 11 percent of Black students, a 1995 study found that between 1980 and 1990, 57 percent of African American men who received doctorates in science or engineering fields received their undergraduate degree from an HBCU. See Merisotis & McCarthy, *supra* note 1, at 54.

⁵⁴ See Fryer & Greenstone, *supra* note 20, at 1; see also Gasman & Arroyo, *supra* note 38, at 71; FLEMING, *supra* note 38, at 8–9 (attributing 75 percent of Black PhDs, 80 percent of federal judges, 85 percent of Black doctors, and 75 percent of Black army officers to HBCUs in the 1980s).

⁵⁵ See Fryer & Greenstone, *supra* note 20, at 1.

B. *The Fight for Integration in Brown*

Despite this remarkable legacy, HBCUs have faced severe challenges over the last half century that can be traced to an unlikely source – integrationists, some of whom (like Marshall himself) owed their own education and careers to the very HBCUs they threatened (perhaps unwittingly) with extinction.⁵⁶ The fight for integration of public education is a familiar one.⁵⁷ Most notable is its culmination in the case of *Brown v. Board of Education*, in which the Supreme Court declared that racial segregation in schools violated the constitutional guarantee of equal protection because “in the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”⁵⁸ The remedy for this constitutional violation came in the form of judicial orders to dismantle these *de jure* systems of segregation in public education and to achieve racial integration of public schools.⁵⁹ The idea was laudable, even if the efforts toward that end were less so.⁶⁰

Beyond problems with enforcement, there was also some concern, albeit limited, about the remedy of integration itself.⁶¹ The basic assumption underlying integration was that not only were segregated schools inherently unequal, but Black schools themselves were irremediably inferior to white schools.⁶² So the remedial efforts to integrate almost invariably involved shuttering Black schools and integrating Black children into white schools. Examples of this trend are too innumerable to count, whereas examples of integration of white children into Black schools were so uncommon as to be virtually non-existent.⁶³

Entirely missed in this integration effort, as so eloquently observed by Charles Ogletree in

⁵⁶ In addition to the threats posed by integration, fiscal challenges have continuously plagued HBCUs. Always underfunded relative to HWIs, the first real signs of financial trouble for HBCUs actually came during World War II when virtually all colleges and universities faced funding crises. See Fryer & Greenstone, *supra* note 20, at 4. But with passage of the Higher Education Act of 1965, and an infusion of federal funds pursuant to Title III of the Act, which was designed primarily for their benefit, HBCUs seemed poised for a return to their former glory as the premier institutions of higher education for Black students. *Id.* at 5. However, their financial struggles have persisted. See Gasman & Commodore, *supra* note 40, at 91–92.

⁵⁷ See generally OGLETREE, *supra* note 4 (discussing the litigants in the seminal *Brown* case and the efforts of NAACP lawyers to prosecute the case all the way up to the Supreme Court).

⁵⁸ 347 U.S. 483, 495 (1954).

⁵⁹ See *Brown v. Board of Educ.*, 329 U.S. 294 (1955); see also *Green v. Cnty. Sch. Bd.*, 391 U.S. 430 (1968) and *Swann v. Charlotte-Mecklenburg Bd. Of Educ.*, 402 U.S. 1 (1971).

⁶⁰ The decision in *Brown* was met with a policy of “Massive Resistance,” particularly in the South, where government officials vowed to engage in every possible means to thwart implementation of the decision and maintain segregated schools even against the command of the nation’s highest court. See generally CLIVE WEBB, *MASSIVE RESISTANCE: SOUTHERN OPPOSITION TO THE SECOND RECONSTRUCTION* (2005). One such effort resulted in a unanimous decision by the Supreme Court declaring the supremacy of federal law over the states and the obligation of every state to enforce the *Brown*’s desegregation mandate. *Cooper v. Aaron*, 358 U.S. 1 (1958).

⁶¹ See OGLETREE, *supra* note 4, at 77–78; Robert Carter, *A Reassessment of Brown v. Board*, in *SHADES OF BROWN: NEW PERSPECTIVES ON SCHOOL DESEGREGATION* 20, 27 (Derrick Bell ed., 1980).

⁶² Derrick Bell, *A Model Alternative Desegregation Plan*, in *SHADES OF BROWN*, *supra* note 61, at 125.

⁶³ See OGLETREE, *supra* note 4, at 234–35, 308–310; see also Bell, *supra* note 62, at 125. This is as true for higher education as for primary and elementary schools; following desegregation orders, the number of HBCUs was cut in half. Compare Gasman & Arroyo, *supra* note 38, at 57 (noting that in the early twentieth century, there were more than 200 HBCUs), with CONRAD & GASMAN, *supra* note 3 at 31 (counting only 105 HBCUs today).

his personal and professional reflections on *Brown*, was the

failure ever to ask the hard and obvious questions about what we were doing. Why were the black children being forced to go to white schools, without anyone's raising the question of more resources for black schools? . . . Did anyone ask whether the black parents were getting the best for their children by sending them into white schools and neighborhoods where the chance to study and learn, given the intense racial hostility was marginal at best? What message were we sending to our children, having them leave their neighborhood schools and sending them to white, presumably better, schools? We didn't ask these questions then, to our regret, and perhaps to the harm of our children.⁶⁴

To be sure, some did ask these questions, but even when asked the answer was often an insistence on the benefits of integration over continued racial segregation.⁶⁵ In spite of how well some Black schools had served their Black students⁶⁶—and in particular the prospect of Black students trading Black schools where they had been nurtured for white schools hostile to their presence⁶⁷—the integration strategy prevailed at all costs.⁶⁸

C. *The Fight for Survival in the Aftermath of Fordice*

Due to widespread resistance to judicial desegregation orders by white school officials, especially in the South, meaningful school integration did not begin to occur until the 1970s.⁶⁹ These desegregation efforts posed an existential threat to HBCUs which, much like Black primary and secondary schools, were presumed inferior to their HWI counterparts and therefore expected to bear the brunt of federal court orders to eliminate the dual systems of public higher education maintained mostly in the South as a result of the Morrill Acts.⁷⁰

⁶⁴ OGLETREE, *supra* note 4, at 77–78.

⁶⁵ Carter, *supra* note 61, at 27.

⁶⁶ This is perhaps most true of HBCUs which, although often inferior to HWIs in terms of resources and curricular offerings, produced notable and accomplished Black graduates even at the turn of the century. *See supra* notes 44–51 and accompanying text (cataloguing notable HBCU graduates). Throughout their history, HBCUs have always been a particularly important source of Black teachers. *See infra* note 323 and accompanying text.

⁶⁷ Not only were Black schools themselves closed, but many Black teachers suffered massive layoffs as Black schools were shuttered in the quest for integration. Drew S. Days, III, *Brown Blues: Rethinking the Integrative Ideal*, 34 WM. & MARY L. REV. 53, 55 (1992).

⁶⁸ *See* OGLETREE, *supra* note 4, at 7–8. For additional discussion of this desegregation era debate over the choice between integration of Black students into white schools or remediation of Black schools, *see* discussion *infra* Section IV.B.

⁶⁹ Desegregation in public education peaked between the late 1960s, *see, e.g.*, *Green v. Cnty. Sch. Board*, 391 U.S. 430, 438–439 (1968) (declaring that “delays are no longer tolerable” and “[t]he burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now”), and the early 1990s, *see, e.g.*, *U.S. v. Fordice*, 505 U.S. 717 (1992) (ordering the desegregation of Mississippi’s dual system of higher education after nearly twenty years of litigation).

⁷⁰ This is curious given the success of many HBCUs in educating the Black elite of the time. *See supra* notes 44–47 and accompanying text. Unlike many of the segregated primary and secondary schools targeted by desegregation litigation for providing an inferior education to Black students, HBCUs were seemingly by that time providing an adequate education to

In spite of integration's threat to HBCUs, an early sign of hope came in the 1973 case, *Adams v. Richardson*.⁷¹ In *Adams*, the NAACP Legal Defense Fund sued the Department of Education for operating a dual system of higher education in violation of federal law by, among other things, maintaining HBCUs as institutions segregated from HWIs.⁷² Ruling in favor of the NAACP, the D.C. Circuit nevertheless encouragingly noted that achieving full desegregation of public colleges and universities should not be accomplished *at the expense or to the detriment of* HBCUs.⁷³ According to the circuit court's reasoning in *Adams*, the best way forward was to ensure that, as HWIs were opened up to Black students, HBCUs would also become desirable to white students.⁷⁴ However, implementation fell well short of this ideal for HBCUs, and the effort to desegregate higher education continued at their expense.⁷⁵

The question of what was to be done with HBCUs in the aftermath of the desegregation mandate in *Brown* finally made its way to the Supreme Court in 1991 in *United States v. Fordice*.⁷⁶ In *Fordice*, Black litigants first sued Mississippi in 1975 to desegregate that state's system of higher education, which much like their public elementary and secondary schools, continued to maintain separate colleges and universities for Black and white students well into the 1970s.⁷⁷ In particular, the Black challengers in *Fordice* were concerned with the disparities between Mississippi's HBCUs and the state's HWIs in terms of their educational offerings⁷⁸ and funding.⁷⁹ In 1992, the Supreme Court found that Mississippi had failed to dismantle its dual, segregated system of higher education by

their Black students, even if they did so with many fewer resources and inferior facilities relative to HWIs. *See infra* note 418 and accompanying text.

⁷¹ 480 F.2d 1159 (D.C. Cir. 1973). The NAACP Legal Defense Fund sued the Department of Health, Education, and Welfare (subsequently renamed the Department of Education) for maintaining dual systems of higher education in ten states, including Mississippi, Louisiana, Virginia, Maryland, Oklahoma, Florida, Georgia, Arkansas, and Pennsylvania, in violation of federal law. *Id.* at 1164.

⁷² *Id.* at 1164. It is notable that HBCUs themselves were at odds with the NAACP Legal Defense Fund over the *Adams* suit and the wisdom of pressing desegregation of public colleges and universities generally, which was believed would result in the shuttering of many HBCUs, just as desegregation efforts in K-12 schools had resulted in the closure of many Black primary and secondary schools. *See Days, supra* note 67, at 54.

⁷³ *See Fryer & Greenstone, supra* note 20, at 5.

⁷⁴ *Id.*; *see also* 480 F.2d. 1159, 1165 (noting the "crucial" role played by HBCUs in training Black professionals and the need to coordinate the integration of each state's system of higher education to better address the needs of HBCUs and the Black students they serve).

⁷⁵ For instance, a study of Black student enrollment at public HWIs in the state of Michigan found that the number of Black students enrolled doubled between 1970 and 1976, before declining again by 1986. *See* Walter R. Allen, *Black Students in U.S. Higher Education: Toward Improved Access, Adjustment, and Achievement*, 20 URBAN REV. 165, 167 (1988).

⁷⁶ 505 U.S. 717 (1992).

⁷⁷ *Id.* at 723.

⁷⁸ Recall that many of the Black schools were limited to agricultural and technical training pursuant to the Second Morrill Act. *See supra* note 31 and accompanying text.

⁷⁹ Despite the infusion of federal funds to HBCUs through the Higher Education Act of 1965, many states did not support these schools equally to their HWI counterparts. *See, e.g.,* Fryer & Greenstone, *supra* note 20, at 5 (noting the litigation was brought to remedy structural inequities between HBCUs and HWIs). *see also* Bracey, *supra* note 21, at 674 (observing that even after the Second Morrill Act, white land-grant institutions were receiving state appropriations at a rate twenty-six times that of HBCUs).

maintaining HBCUs and HWIs in close proximity with duplicative educational offerings.⁸⁰

Yet the Supreme Court declined to order Mississippi to equalize the state's HBCUs and HWIs, as the challengers had requested.⁸¹ Instead, the Court ordered the state to assert some "educational justification" for the continued existence of the dual educational systems or otherwise to eliminate duplication by closing some institutions while retaining others.⁸² Further, unlike the D.C. Circuit's decision in *Adams*, the Supreme Court did not instruct Mississippi to consider the burden integration might pose on HBCUs, such as ensuring that integration involved both Black students attending HWIs and white students attending HBCUs.⁸³ Because HBCUs received less funding and often maintained inferior conditions (both in their educational offerings and physical plant) as compared to their HWI counterparts, many thought the Supreme Court's decision in *Fordice* would result in the closure of Mississippi's HBCUs (and, by extension, other public HBCUs) in favor of preserving HWIs.⁸⁴ If duplication had to be eliminated, surely HBCUs would suffer the most, just as Black primary and secondary schools had in the earlier years of desegregation.⁸⁵

Notwithstanding notable losses through closure and consolidation of HBCUs into HWIs, state support for HBCUs did continue even after *Fordice*.⁸⁶ One possible explanation for this was recognition of the unique and vital role that HBCUs have played (and continue to play) in our higher education ecosystem. Even Justice Clarence Thomas, a staunch and vocal critic of race-based government action of any sort,⁸⁷ lauded the legacy and achievements of HBCUs in *Fordice* and urged their continued support and survival.⁸⁸ Writing in defense of HBCUs, Justice Thomas observed:

[T]hese institutions have survived and flourished. Indeed, they have expanded as opportunities for blacks to enter historically white institutions have expanded.

⁸⁰ 505 U.S. 717, 742–743. Similar cases challenging duplicative educational offerings and underfunding between HBCUs and HWIs continue to be litigated, including most recently in Maryland and Mississippi. See *infra* note 421 and accompanying text (describing the settlements in these cases).

⁸¹ Public HBCUs continue to be woefully underfunded relative to their HWI counterparts. See *infra* note 94. The compounded effects of this underfunding over time have resulted in HBCUs having lower per pupil expenditures than HWIs and the continued maintenance of HBCUs in inferior conditions to their HWI counterparts, including in physical plant, extracurricular offerings, and faculty salaries. See *id.*

⁸² 505 U.S. at 731.

⁸³ See *supra* note 73 and accompanying text.

⁸⁴ This was certainly Justice Scalia's conclusion, writing separately in concurrence/dissent, that any efforts by the state "that have the effect of facilitating the continued existence of [HBCUs]" were made constitutionally suspect by the Court's decision in *Fordice*. 505 U.S. at 760. Scalia noted, however, that while elimination of such schools "may be good social policy," it was not what the petitioners had requested, nor what the constitution required. *Id.* at 760–761.

⁸⁵ See *supra* note 63 and accompanying text.

⁸⁶ For instance, of the eight Mississippi colleges and universities challenged in *Fordice* (five HWIs and three HBCUs), all eight continue in existence today. See Mississippi Public Universities, *Commissioner of Higher Education*, <http://www.mississippi.edu/commissioner/welcome.asp> [https://perma.cc/G36T-9SFA] (last visited July 27, 2019).

⁸⁷ See, e.g., *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 752 (2007) (Thomas, J., concurring) ("The Constitution abhors classifications based on race, not only because those classifications can harm favored races or are based on illegitimate motives, but also because every time the government places citizens on racial registers and makes race relevant to the provision of burdens or benefits, it demeans us all. Therefore, as a general rule, all race-based government decisionmaking—regardless of context—is unconstitutional.") (internal quotations and citations omitted).

⁸⁸ *Id.* at 763.

Between 1954 and 1980, for example, enrollment at historically black colleges increased from 70,000 to 200,000 students, while degrees awarded increased from 13,000 to 32,000. These accomplishments have not gone unnoticed: The colleges founded for Negroes are both a source of pride to blacks who have attended them and a source of hope to black families who want the benefits of higher learning for their children. They have exercised leadership in developing educational opportunities for young blacks at all levels of instruction, and, especially in the South, they are still regarded as key institutions for enhancing the general quality of the lives of black Americans.⁸⁹

As a testament to their ongoing importance, while overall rates of enrollment at HBCUs have not surprisingly declined since the desegregation era as more Black students have chosen to attend HWIs, HBCUs continue to experience periods of enrollment growth, particularly during moments that signal the need for greater racial solidarity and support.⁹⁰ Increased interest in HBCUs has at times been triggered by such innocuous events as popular movies and television shows.⁹¹ At other times it has been driven by more consequential events. The latest boost in HBCU enrollment, for instance, has come from increased racial tensions across the country, particularly on the campuses of HWIs.⁹² Some have branded this recent surge in HBCU enrollment the “Missouri Effect,” based on the high-profile protest of Black students at the University of Missouri in 2015 that resulted in the resignation of the university’s president for failing to take the racial concerns of Black students

⁸⁹ United States v. Fordice, 505 U.S. 717, 748 (1992) (citing CARNEGIE COMMISSION ON HIGHER EDUCATION, FROM ISOLATION TO MAINSTREAM: PROBLEMS OF THE COLLEGES FOUNDED FOR NEGROES (1971)). Justice Thomas’s observations about the expanded enrollment of HBCUs is not inconsistent with prior claims about their relative losses during this period: enrollment in higher education was increasing overall during this period, but this growth benefited HWIs more than HBCUs.

⁹⁰ The 1990s saw a renewed interest in HBCU attendance among Black students. See Walter R. Allen, Joseph O. Jewell, Kimberly A. Griffin, & De’Sha S. Wolf, *Historically Black Colleges and Universities: Honoring the Past, Engaging the Present, and Touching the Future*, 76 J. NEGRO EDUC. 263, 271–272 (2007). There is even some evidence that the election of Donald Trump in 2016, and the ensuing heightened racial tensions, drove another wave of renewed interest in HBCU attendance among Black college students. See, e.g., Maya Rhodan, *A New Era of Protest is Energizing Historically Black Colleges and Universities. But There are Challenges*, TIME, May 23, 2018; Alina Tugend, *Seeking a Haven in HBCUs and Single-Sex Colleges*, N.Y. TIMES, Feb. 21, 2019. Further, there are signs that some of the most heavily recruited Black college athletes are beginning to consider foregoing Division I powerhouse schools in favor of attending HBCUs. See Jemele Hill, *Young Black Athletes Are Starting to Understand Their Power*, THE ATLANTIC (Oct. 2, 2019) <https://www.theatlantic.com/ideas/archive/2019/10/can-josh-christopher-fix-what-ails-college-sports/599224/> [<https://perma.cc/4PXD-HAW7>] (noting a “shift in the mentality of young Black athletes” who could “hel[p] revitalize institutions that were once the nerve center of Black America”). Such a trend could be significant in shifting national attention to HBCUs. See Jemele Hill, *It’s Time for Black Athletes to Leave White Colleges*, THE ATLANTIC (Oct. 2019), <https://www.theatlantic.com/magazine/archive/2019/10/Black-athletes-should-leave-white-colleges/596629/> [<https://perma.cc/6G6T-332T>] (observing that while Black males make up only 2.4 percent of undergraduate students at the biggest Division I schools, “the so-called Power Five Athletic conferences,” they make up 55 percent of football players and 56 percent of basketball players at these schools “whose collective multibillion-dollar revenues have been built largely on the exertions of (uncompensated) Black athletes,” all while HBCUs struggle for survival despite playing “an important role in the creation and propagation of a Black professional class”).

⁹¹ Allen et al., *supra* note 90, at 271–72.

⁹² See Peter Jamison, *HBCUs Seeing Resurgent Appeal Amid Rising Racial Tensions*, WASH. POST, Mar. 16, 2019.

seriously.⁹³ But these temporary boosts to HBCU enrollment have not been enough to offset persistent financial challenges and an overall decline in enrollment since the desegregation era. Due to the longstanding and compounding effects of underfunding, HBCUs' per pupil expenditures are substantially lower than those of their HWI counterparts.⁹⁴ Many have struggled financially to a degree that has compromised their ability to remain in good academic standing with accrediting bodies.⁹⁵

Today, HBCUs face a number of challenges that limit their ability to continue playing a vital role in our system of higher education.⁹⁶ Although HBCUs survived the Supreme Court's decisions in both *Brown* and *Fordice*, they were not unscathed by the desegregation era. Closure and consolidation took their toll,⁹⁷ and many HBCUs that remain continue to face persistent underfunding and declining enrollment.⁹⁸ HBCUs went from educating virtually all Black students prior to the 1960s to enrolling only 16 percent of Black undergraduates by 2011.⁹⁹ As a result of declining enrollment trends, as well as anemic support from federal and state budgets, HBCUs face severe financial constraints.¹⁰⁰ Some are in full-blown financial crisis.¹⁰¹ All of these conditions together pose an existential threat to HBCUs. This threat seems all the more urgent given recent data demonstrating the extraordinary success HBCUs continue to have in educating Black students and producing some of the country's most accomplished leaders and visionaries.¹⁰²

⁹³ See Janelle L. Williams & Robert T. Palmer, *A Response to Racism: How HBCU Enrollment Grew in the Face of Hatred*, CMSI RESEARCH BRIEF (2019).

⁹⁴ See Bracey, *supra* note 21, at 675 (observing that HWI land-grant institutions receive appropriations at a rate twenty-six times that of HBCUs); see also STEPHEN PROVASNIK, LINDA SHAFER, & THOMAS SNYDER, NAT'L. CTR. FOR EDUC. STAT., U.S. DEP'T. OF EDUC., NCES 2004-062, HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, 1976-2001 86-87 (2004) [hereinafter NCES DATA].

⁹⁵ For instance, between 1996 and 2002, nearly half of all the private HBCUs in the Southern Association of Colleges and Schools received sanctions related to their financial standing. See Allen et al., *supra* note 90, at 271-72.

⁹⁶ See CONRAD & GASMAN, *supra* note 3, at 27. For an account of how HBCUs lost their ability to compete for top college athletes and the major NCAA revenue that comes with top athletic programs, see Hill, *It's Time for Black Athletes to Leave White Colleges*, *supra* note 90.

⁹⁷ In the early twentieth century, there were more than 200 HBCUs, see Gasman & Arroyo, *supra* note 38, at 57, while today there are only 105, see CONRAD & GASMAN, *supra* note 3 at 31.

⁹⁸ See Gallup-USA Funds Minority College Graduates Report, GALLUP 17 (2015), https://www.gallup.com/file/services/186359/USA_Funds_Minority_Report_GALLUP.pdf [<https://perma.cc/T8D2-SA5C>] [hereinafter *Gallup Report*].

⁹⁹ *Id.* According to Gallup's data, despite these low enrollment numbers, HBCUs still award 35 percent of Black bachelor's degrees. *Id.*

¹⁰⁰ See Gasman & Commodore, *supra* note 40, at 91-92 (identifying the challenges facing HBCUs as lack of financial resources and increased competition for students from HWIs, among other things). In addition to underfunding, HBCUs also have much smaller endowments than many of their HWI counterparts. See Merisotis & McCarthy, *supra* note 2, at 50.

¹⁰¹ See Allen & Jewell, *supra* note 28, at 259.

¹⁰² See *supra* notes 44-47 and accompanying text.

D. HBCU Success in Educating Black Students

Despite well over a century of success in educating Black students, HBCUs' contributions to higher education have not been well-studied in the scholarly literature.¹⁰³ This is beginning to change, especially in the education literature, which in recent years has published several empirical studies documenting the contributions of HBCUs to the educational and professional success of their Black graduates.¹⁰⁴ One of the first and most comprehensive of these studies was conducted by Jacqueline Fleming in 1984.¹⁰⁵ Until then, most of the literature focused on the experiences of Black students in higher education studied Black students attending HWIs and compared their experiences to those of their white counterparts, especially their adjustment to and achievement in these newly integrated environments in the immediate aftermath of desegregation.¹⁰⁶ Unlike the studies generally documenting the successes of desegregation in the K-12 context, many of these first studies documented the difficulties Black students experienced during the early days of integration in higher education.¹⁰⁷ They cited academic failure, social isolation, and campus unrest among the many problems Black students encountered at HWIs during the integration era.¹⁰⁸ According to Fleming, HWIs "expected black students to be assimilated into the university community without substantial alteration of academic structure or programs," and the "inappropriateness of these assumptions became apparent only after racial tensions, interpersonal problems, and . . . widespread protest."¹⁰⁹

¹⁰³ The first series of studies of HBCUs were conducted in the early twentieth century in an attempt to decide the future of these newly established institutions of higher education. See FLEMING, *supra* note 38, at 6. These studies demonstrated the educational value of HBCUs and gave rise to the "Black Ivy League," a group of schools deemed worthy of accreditation alongside HWIs. *Id.* A second wave of studies occurred during the Civil Rights Era in an attempt to facilitate the judicial mandate for desegregation. *Id.* at 7. These studies revealed a growing imbalance of public support for HBCUs relative to their HWI counterparts resulting in claims of inferiority and increasing enrollment of Blacks at HWIs. *Id.* The third, and most recent, wave of studies spans the last several decades and attempts to document, for the first time, the experiences and outcomes of Black students attending HBCUs relative to those of Black students attending HWIs. Jacqueline Fleming's groundbreaking 1984 study was the first (and still the largest) of this kind. See FLEMING, *supra* note 38. However, a handful of subsequent studies in the 1990s and 2000s have continued to study the experiences of Black students attending HBCUs in an effort to understand the unique contributions HBCUs make to higher education on behalf of Black students. See, e.g., *infra* notes 112-20 and accompanying text.

¹⁰⁴ See Gasman & Commodore, *supra* note 40, at 92 (noting the growing body of empirical, quantitative research related to the academic development and achievement of Black college students within the HBCU environment, but also suggesting that more must be done to better understand their impact).

¹⁰⁵ See generally, FLEMING, *supra* note 38.

¹⁰⁶ See *id.* at 10-13,

¹⁰⁷ See *id.*

¹⁰⁸ See *id.* at 11. This conclusion was not uniform, as at least one early study suggested positive reactions to integration by Black students attending HWIs. See *id.* (citing to a 1974 study by W.M. Boyd finding generally positive reactions to integration among Black students attending HWIs).

¹⁰⁹ *Id.* at 12. Notably, little seems to have changed; these same challenges continue to be reported by Black students attending HWIs. See, e.g., Walter Allen, *The Color of Success: African-American College Student Outcomes at Predominantly White and Historically Black Public Colleges and Universities*, 62 HARV. EDUC. REV. 26, 29 (1992) (citing the isolation, alienation, and lack of support Black students face at HWIs).

In contrast with the difficulties of adjustment and achievement experienced by Black students integrating into HWIs, the data and research on Black students attending HBCUs has been far more positive, albeit limited.¹¹⁰ The first indicia of HBCUs' success noted in the literature is the rate at which they graduate Black students.¹¹¹ HBCUs comprise six of the top ten producers of African American graduates in education, two of the top ten producers in the social sciences and history, and the top twelve in physical sciences.¹¹² A 1995 study found that between 1980 and 1990, 57 percent of African American men who received doctorates in science or engineering fields received their undergraduate degree from an HBCU.¹¹³ These numbers are all the more staggering when one considers that HBCUs represent a mere 2 percent of all four-year degree granting institutions and enroll only about 10 to 15 percent of Black undergraduates.¹¹⁴

Beyond the disproportionate percentage of Black college graduates HBCUs produce, these graduates are also overrepresented among Blacks in high-status occupations such as law, medicine, and academia.¹¹⁵ This suggests that HBCUs not only offer Black students an educational environment conducive to their academic success (as demonstrated by higher rates of graduation than their HWI counterparts), but they also cultivate a sense of self-confidence and high self-esteem that allows their graduates to successfully pursue lofty career goals.¹¹⁶ These exceptional academic and career achievements are likely attributable to the empirical showing that Black students attending HBCUs have higher levels of social engagement, better relations with faculty and peers, and greater satisfaction with their college experience than their Black peers attending HWIs.¹¹⁷ It is not surprising that these advantages translate into both better academic performance and more ambitious career goals on behalf of those students attending HBCUs.¹¹⁸ Consequently, HBCU graduates are better represented among elite professions and high-status occupations than their Black peers who attend HWIs.¹¹⁹

Although the research about the post-graduate outcomes of Black HBCU graduates relative

¹¹⁰ These studies use Black students attending HWIs rather than white students as comparators, *See, e.g.*, FLEMING, *supra* note 38, at 27; Allen, *supra* note 109; CONRAD & GASMAN, *supra* note 3; Gasman & Arroyo, *supra* note 38; Gasman & Commodore, *supra* note 40. By comparing Black students attending HBCUs to Black students attending HWIs, rather than comparisons between Black and white students attending HWIs, these studies have been helpful in trying to identify and understand those aspects of Black students' experiences in higher education that are attributable to institutional factors, rather than to race. *See generally* Allen, *supra* note 109.

¹¹¹ HBCUs graduate a disproportionate share of Black students receiving bachelor's degrees relative to HWIs. *See* Allen, *supra* note 109, at 28.

¹¹² *See* Gasman & Commodore, *supra* note 40, at 4.

¹¹³ *See* Merisotis & McCarthy, *supra* note 1, at 54.

¹¹⁴ *See* Gasman & Commodore, *supra* note 40, at 91 (indicating HBCUs enroll 10 percent of Black students); Bridges et al., *supra* note 11, at 28 (indicating HBCUs enroll 16 percent of Black students). It is unclear from the data whether this discrepancy is due to differences in undergraduate versus total enrollment or to differences in empirical methods.

¹¹⁵ *See* Price et al., *supra* note 34, at 106.

¹¹⁶ *Id.*; *see also id.* at 127 ("HBCUs have a comparative advantage in nurturing the self-image, self-esteem, and identity of its graduates, which theoretically matters for labor market outcomes.").

¹¹⁷ *See* Allen, *supra* note 109, at 35–39.

¹¹⁸ *Id.* at 35–37.

¹¹⁹ *See* Price et al., *supra* note 34, at 106; *see also* Marybeth Gasman, Tiffany Smith, Carmen Ye, & Thai-Huy Nguyen, *HBCUs and the Production of Doctors*, 4 AIMS PUB. HEALTH 579, 583 (2017).

to Black students who attend HWIs has been both limited and mixed, recent data suggest that HBCUs offer distinct advantages across a range of post-graduate indices, including professional success, income, career satisfaction, and personal well-being.¹²⁰ One of the most comprehensive recent studies of Black HBCU graduates, conducted by Gallup, concluded that overall, “HBCUs are successfully providing black graduates with a better college experience than they would get at non-HBCUs.”¹²¹ Another study, looking at post-graduate income, found that although the pre-collegiate characteristics of students who attend HBCUs predict lower wages than the pre-collegiate characteristics of students who attend HWIs,¹²² the average value added in future wages from attending an HBCU is 38 percent higher than that from attending an HWI.¹²³

One of the more prolific scholars of Black student achievement in higher education is Walter Allen.¹²⁴ Allen has studied Black students attending both HBCUs and HWIs and compared the experiences between the two.¹²⁵ In an early study of Black students attending HWIs post-integration, Allen found that Black students had not fared well at HWIs and generally characterized the fit between Black students and HWIs as “a poor one.”¹²⁶ Yet Allen noted that the problems of Black student attrition and lack of relative success in higher education, particularly at HWIs, remained under-theorized because of inadequate research and attention to the issue in the scholarly literature.¹²⁷ Setting out to better understand how the experiences of Black students differed from those of white students generally and/or differed across educational contexts (e.g., HBCUs vs. HWIs), Allen compared each of these groups (Black students attending HBCUs, Black students attending HWIs, and white students attending HWIs) against one another, identifying both individual and institutional factors as possible explanatory variables in their college experiences and academic outcomes.¹²⁸ Allen’s results showed that Black students attending HWIs do not fare as well on any measure studied as their white counterparts.¹²⁹ He identified the source of Black students’ difficulties at HWIs as

¹²⁰ See, e.g., *id.* (“[T]he overrepresentation of HBCU graduates in occupations that are perhaps positively correlated with high confidence/self-esteem such as congressman, court judges, university professors, and civil rights activists, suggests that HBCUs have a comparative advantage in cultivating high confidence/self-esteem identities and self-image among Black college students.”) (citations omitted).

¹²¹ See *Gallup Report*, *supra* note 106, at 5.

¹²² This is likely due to the lower socioeconomic status, standardized test scores, and other measures of academic preparation characteristic of HBCU students. See Gasman & Arroyo, *supra* note 38, at 69.

¹²³ When disaggregated by gender, the added value is even higher for Black men. See Gasman & Commodore, *supra* note 40, at 3; see also Merisotis & McCarthy, *supra* note 1, at 54. An earlier study by Roland Fryer found that Blacks who graduated from HBCUs in the 1970s experienced an income advantage relative to their Black peers who graduated from HWIs, but this advantage disappeared by the 1990s. See Fryer & Greenstone, *supra* note 20, at 2–3.

¹²⁴ See Allen, *supra* note 109; see also Allen & Jewell, *supra* note 28; Walter R. Allen, *Black Student, White Campus: Structural, Interpersonal, and Psychological Correlates of Success*, 54 J. NEGRO EDUC. 134, 135 (1985).

¹²⁵ See Allen, *supra* note 109; Allen & Jewell, *supra* note 28; Allen, *supra* note 124.

¹²⁶ Allen, *supra* note 124, at 135.

¹²⁷ *Id.*; see also Allen, *supra* note 109, at 27 (attributing “a limited and imprecise understanding of the factors that affect the increases and decreases in an institution’s enrollment of minority students” to “minimal systematic, quantitative, or analytic research”).

¹²⁸ Allen, *supra* note 109, at 27–28.

¹²⁹ *Id.* at 28 (“Black students on predominantly White campuses do not fare as well as White students in persistence rates, academic achievement, postgraduate study, and overall psychosocial adjustments.”).

“arising from isolation, alienation, and lack of support.”¹³⁰ Citing his own and others’ research, Allen observed that despite widespread assumptions about the superiority of HWIs for all students, there is a mismatch between Black students’ academic needs and the academic expectations of HWIs.¹³¹

Contrary to common assumptions about the superiority of HWIs, Allen found that HBCUs provide Black students with several advantages relative to HWIs, including better psychological adjustment, increased cultural awareness, and greater academic achievement.¹³² Perhaps most notable, Black students attending HWIs had higher high school grades but lower college grades than Black students attending HBCUs, a relationship that is counterintuitive from literature showing strong positive correlations between high school grades and college academic achievement.¹³³ Similarly, Black students attending HBCUs also outperformed their peers attending HWIs despite coming from lower socioeconomic backgrounds, another indicator often positively correlated with academic achievement.¹³⁴ Overall, Allen concluded once again that the data showed a better “fit” for Black students attending HBCUs than those attending HWIs.¹³⁵

Of particular note, Allen found that campus racial composition and faculty student relations were both positively correlated with student academic achievement, and each of these conditions favored HBCUs over HWIs.¹³⁶ Allen posited that both the supportive institutional climate and the strong cultural and interpersonal connections Black students experienced at HBCUs provided a significant buffer to the difficulties these students otherwise experienced adjusting to college life,¹³⁷

¹³⁰ *Id.* at 29.

¹³¹ *Id.* (explaining that various scholars have theorized a “mismatch” between Black students and HWIs by attributing the problem to academic deficits among Black students rather than the institutional failures of HWIs, as identified by Allen); *see, e.g.*, RICHARD SANDER AND STUART TAYLOR, JR., *MISMATCH: WHY AFFIRMATIVE ACTION HURTS THE STUDENTS ITS INTENDED TO HELP AND WHY UNIVERSITIES WON’T ADMIT IT* (2012). For a critique of this “mismatch” theory, similar to Allen’s, that explores the institutional variables that might contribute to the poor fit between Black students and HWIs, *see* Stacy Hawkins, *Mismatched or Counted Out: What’s Missing from Mismatch Theory and Why it Matters*, 17 U. PA. J. CONST. L. 855, 856–58 (2015).

¹³² *Id.* at 32; *see also id.* at 40 (“[S]tudents in the sample who attended historically Black universities reported better academic performance, greater social involvement, and higher occupational aspirations than Black students who attended predominantly White institutions . . .”).

¹³³ *Id.* at 35–37.

¹³⁴ *Id.* at 31.

¹³⁵ *Id.* at 39 (“On predominantly White campuses, Black students emphasize feelings of alienation, sensed hostility, racial discrimination, and lack of integration.”). Sander might suggest the “fit” issue is one of Black students being “mismatched” with HWIs based on academic rigor rather than HBCUs offering Black students superior institutional support. *See generally* SANDER AND TAYLOR, *supra* note 131. However, this argument is belied by the fact that when HBCUs are excised from Sander’s analysis, leaving for comparison with white students only Black students of comparable academic credentials attending different types of HWIs, this “mismatch” effect disappears. *See* Hawkins, *supra* note 131, at 878–79 (discussing the confounding “HBCU effect” on mismatch theory).

¹³⁶ Allen, *supra* note 109, at 35–37. Other studies have similarly found campus racial composition and student-faculty relations to be positively correlated with Black students’ academic achievement. *See* FLEMING, *supra* note 38, at xi–xiii (confirming the correlation between interpersonal support and cognitive growth and concluding that the evidence supports the finding that Black students attending HBCUs show more academic progress than their counterparts attending HWIs due to the “unaccepting environment” at HWIs).

¹³⁷ Allen, *supra* note 109, at 41 (“In the social aspect, the important ingredients are an extensive network of friends, numerous social outlets, and supportive relationships. In the psychological aspect, the key ingredients are multiple boosts to

causing them to succeed at higher rates than their peers attending HWIs, where Black students felt more isolated, alienated, and disengaged.¹³⁸

Another leading scholar researching Black students in higher education, and particularly the contributions of HBCUs to the education of Black students, is Marybeth Gasman.¹³⁹ Together with various collaborators, Gasman has conducted numerous studies of HBCUs in an effort to better document the role these historic institutions have played and continue to play in shaping the landscape of higher education and contributing to the success of Black students.¹⁴⁰ One of her stated goals is to offer instructive insights to academic leaders about how to fortify these institutions against the growing threat to their survival.¹⁴¹ Decrying the dearth of research on HBCUs, Gasman has sought to fill this scholarly void by offering empirical data and theoretical analysis of the HBCU student experience with the hope of allowing these experiences, and the demonstrated success of these students, to inform pedagogical models in higher education more broadly.¹⁴²

Gasman's work further supports the conclusions of Allen, Fleming, and others that HBCUs outperform HWIs in successfully educating Black students,¹⁴³ and she similarly attributes this success to HBCUs' unique pedagogical model.¹⁴⁴ Gasman reports that the academic climate at HBCUs "has a

self-confidence and self-esteem, feelings of psychological comfort and belonging, and a sense of empowerment/ ownership — a sense that 'this is our campus.' When these social-psychological ingredients are present in optimal combination, the chances that a student will be successful in college increase dramatically.”).

¹³⁸ *Id.* at 39–40 (“On predominantly White campuses, Black students emphasize feelings of alienation, sensed hostility, racial discrimination, and lack of integration. On historically Black campuses, Black students emphasize feelings of engagement, connection, acceptance, and extensive support and encouragement. Consistent with accumulated evidence on human development, these students, like most human beings, develop best in environments where they feel valued, protected, accepted, and socially connected. . . . The supportive environments of historically Black colleges communicate to Black students that it is safe to take the risks associated with intellectual growth and development. Such environments also have more people who provide Black students with positive feedback, support, and understanding, and who communicate that they care about the students' welfare.”).

¹³⁹ See, e.g., CONRAD & GASMAN, *supra* note 3; Gasman & Commodore, *supra* note 40; Gasman & Arroyo, *supra* note 38.

¹⁴⁰ *Id.*

¹⁴¹ Gasman has also studied other minority-serving institutions, such as Tribal Colleges and Universities (TCUs), Hispanic-Serving Institutions (HSIs), and Asian American and Native American Pacific Islander-Serving Institutions (AANAPISIs), see CONRAD & GASMAN, *supra* note 3, but HBCUs have featured prominently in her research and scholarship. See *supra* note 139.

¹⁴² See Gasman & Commodore, *supra* note 40, at 89 (“The research on HBCUs has grown substantially over the past 30 years. However, this body of research still has substantial gaps and holes. If filled, many of these gaps and holes would lead to stronger institutions, greater knowledge on the impact of HBCUs and enhanced learning experiences for HBCU students.”); see also Gasman & Arroyo, *supra* note 38, at 58 (describing this research as an effort to “begin a new line of theoretical HBCU-based research specifically related to the success of Black students, while contributing a fresh perspective to all institutions that educate them . . . to build a first-of-its-kind, institution-focused, theoretical framework that we call ‘an HBCU-based educational approach’ for Black college student success . . . in a way that provides a model for all institutions to consider in their approach to educating this population”).

¹⁴³ Observing that HBCUs enroll 11 percent and graduate 20 percent of all African American undergraduates and disproportionately educate those Black students who pursue graduate and professional education. See Gasman and Commodore, *supra* note 40, at 90.

¹⁴⁴ The unique features of the HBCU pedagogical model that contribute to their students' uncommon success include: “community engagement; leadership training of future generations; Afrocentric curricula and a competitive yet

significant impact on the intellectual and social gains of students compared to [Black] students at HWIs.”¹⁴⁵ Yet Gasman too, like Allen before her, continues to suggest that not enough is known about exactly how HBCUs’ unique environments translate into academic and later professional success for their Black graduates.¹⁴⁶ Moreover, Gasman highlights the challenges HBCUs face, some of which pose an existential threat to their survival.¹⁴⁷ Both the gaps in the literature about how and why HBCUs outperform HWIs in educating Black students and the enormous challenges they face to survive in the current educational landscape might lead some to question the evidence for their enduring value.

What is lacking in the quantitative data, however, can be found in the rich anecdotal accounts and personal narratives available from HBCU graduates throughout the literature. The abundant correlations drawn between HBCUs’ unique pedagogical model and their students’ superior outcomes demonstrate this value proposition even in the absence of any robust causal claims.¹⁴⁸ These personal accounts are consistent in their praise of HBCUs as places where students feel supported, encouraged to achieve and excel, and affirmed in their cultural identity.¹⁴⁹ Black students cite deep connections to faculty, administrators and peers, robust learning opportunities, and a rich curriculum steeped in and oriented to Black culture as reasons why they thrive at HBCUs.¹⁵⁰

Among the most notable achievements notched by HBCUs relative to HWIs is their production of Black graduates in science, technology, engineering, and mathematics (STEM).¹⁵¹ All of the top producers of Black STEM graduates in the country are HBCUs.¹⁵² This is no small feat. Students transfer out of science and engineering programs at an alarmingly high rate generally, and the rate of transfer is especially high among Black students.¹⁵³ Against these odds, however, HBCUs have managed to provide Black STEM majors with an educational environment conducive to their

supportive learning environment, which is particularly beneficial in the Science, Technology, Engineering and Math (STEM) fields; a focus on teaching; and faculty and student diversity.” *Id.* at 90.

¹⁴⁵ See *id.* at 91 (citations omitted).

¹⁴⁶ See *id.* at 92–93 (“Some basic questions that remain unaddressed include: What is the value that is added at HBCUs? How is this value added? How does the “value-added” nature of HBCUs differ within public and private settings?”).

¹⁴⁷ These challenges include: (1) low retention and graduation rates; (2) lack of financial resources (including small endowments); (3) competition from HWIs; (4) the pressures of desegregation and holding true to mission. *Id.* at 90–91.

¹⁴⁸ This is not meant to suggest that anecdotal evidence is sufficient. Scholars should continue to research the causal factors contributing to HBCUs extraordinary success in educating Black students, particularly the advantage(s) they may provide in doing so over HWIs. This Article contributes to this project by aggregating existing research and drawing preliminary conclusions from it, but much more should be done to create an empirically sound model of success for use by all institutions of higher education seeking to better serve the educational needs of their Black students. See discussion *infra* Part V.

¹⁴⁹ See generally CONRAD & GASMAN, *supra* note 3.

¹⁵⁰ *Id.*

¹⁵¹ See McDonald, *supra* note 47.

¹⁵² To be exact, the top twelve producers of Black science graduates are HBCUs. Gasman & Commodore, *supra* note 40, at 4. The top eight producers of Black engineering graduates are HBCUs. Gasman & Arroyo, *supra* note 38, at 17.

¹⁵³ See XIANGLEI CHEN & MATTHEW SOLDNER, NAT’L. CTR. FOR EDUC. STAT., U.S. DEPT. OF EDUC., NCES 2014-001, STEM ATTRITION: COLLEGE STUDENTS’ PATH INTO AND OUT OF STEM FIELDS 18 (2013) (showing highest attrition rates out of STEM majors among Black students); see also Gasman & Commodore, *supra* note 40, at *2 (suggesting benefits of HBCUs for Black STEM majors in particular).

academic and professional success.¹⁵⁴ Xavier University, an HBCU in New Orleans, Louisiana with a “storied reputation” for producing future doctors, exemplifies this legacy of success among Black STEM graduates.¹⁵⁵

Xavier University is *the* leading producer of Black medical school graduates in the country.¹⁵⁶ Xavier has achieved this notable feat, besting all eight Ivy League schools and a host of other selective colleges and universities, despite having a first-year student body whose average high school GPA is a 3.37, average combined math and verbal SAT score is 985, and 57 percent of whom are Pell Grant recipients.¹⁵⁷ How is Xavier able to do what so many HWIs are not, despite less academically prepared students and fewer resources? Failure is simply not an option for students at Xavier. These students know this because it is drilled into them by the faculty and administration from the moment they enter as freshman.¹⁵⁸ Moreover, like other HBCUs, Xavier continues to nurture students’ self-confidence and cultivate their academic growth and development through a host of supportive interpersonal networks and academic and extracurricular resources.¹⁵⁹ This type of academic and social scaffolding ensures that students have what they need to succeed. These Xavier students succeed not in spite of their academic and social backgrounds, but because they are provided the kind of supportive and nurturing environment that allows them to realize their full potential in ways that HWIs often fail to do for Black (and FGLI) students.¹⁶⁰

II. THE HBCU PEDAGOGICAL MODEL

The research on HBCUs demonstrates their significant positive impact on both the academic and later professional success of their Black graduates (especially relative to HWIs). At the same time, it offers important insights into the causal factors underlying this success,¹⁶¹ revealing a set

¹⁵⁴ HBCUs unique pedagogical approach involves combining a supportive and nurturing educational environment with high expectations and culturally relevant instruction. *See* discussion *infra* Section II.B.

¹⁵⁵ Fryer & Greenstone, *supra* note 20, at 10.

¹⁵⁶ Gasman et al., *supra* note 119.

¹⁵⁷ *Id.* at 583. By comparison, the average admitted student credentials for Princeton University, the top ranked school among the Ivy League according to the most recent US News & World Report Rankings, include a SAT score of approximately at least 1450. *See Admissions Statistics*, PRINCETON UNIVERSITY (Sept. 9, 2020), <https://admission.princeton.edu/how-apply/admission-statistics> [<https://perma.cc/S2YK-GVZB>] (showing that the middle 50 percent of SAT scores are 740-800 for Math and 710-800 for Evidence Based Reading and Writing which indicates an average combined score of at least 1450).

¹⁵⁸ Gasman et al., *supra* note 119, at 585. Xavier’s former president Norman Francis remarked that while most schools tell their students everyone will not graduate, Xavier tells its students “everybody will graduate at the end of the four years . . . you don’t have a choice.” *Id.*

¹⁵⁹ Two programs in particular that fuel Xavier’s success are its instructor-led drill system and its peer-led student tutoring centers. *Id.* at 584.

¹⁶⁰ *See* discussion *infra* Section III.A.

¹⁶¹ *See* Gasman & Commodore, *supra* note 40, at 91 (noting the research showing the academic climate at HBCUs has a significant impact on the intellectual and social gains of students compared to African American students at HWIs). While there are other types of Minority Serving Institutions (MSIs), *see infra* notes 236-48 and accompanying text, there is not sufficient evidence that these other MSIs provide the same educational benefits for their minority students that HBCUs provide for Black students. *See, e.g., Gallup Report*, *supra* note 106, at 22 (observing that “the positive effect present for HBCUs is not as evident for HSI. HBCUs appear to have found a model that fits their mission — one that both addresses the need

of institutional factors common across HBCUs that seem to account for their superior achievement in educating Black students as compared to HWIs—including especially those students who are low-income, first-generation, and/or less prepared academically.¹⁶² The research on HBCUs sheds light on an institutional context defined by a student-centered pedagogical model that can be readily contrasted with the faculty-centered model typical of many HWIs.¹⁶³ The student-centered pedagogical model common among HBCUs has three key components: (1) substantial numbers of Black faculty and administrators;¹⁶⁴ (2) a culture of high expectations within a supportive and nurturing environment;¹⁶⁵ and (3) a curriculum rich in experiential learning and culturally relevant content.¹⁶⁶

This unique pedagogical approach is distinct from the dominant pedagogical model employed by many comparable HWIs, which centers faculty rather than students, and where there is a dearth of diversity among faculty and administrators who so often fail to reflect the increasing racial and ethnic diversity among their student bodies.¹⁶⁷ HWIs are settings where many Black students not only feel isolated from an overwhelmingly white faculty and their own peers, but also find themselves alienated by a heavily Eurocentric curriculum¹⁶⁸ that offers little to affirm their cultural identities or engage them directly in the learning process.¹⁶⁹ By studying HBCUs' unique pedagogical model, we can identify the formula for their success in effectively educating Black students. More importantly, given the limited number of HBCUs and the small share of students they enroll, we can attempt to replicate the HBCU pedagogical model for the benefit of HWIs that will inevitably continue to enroll the majority of Black students.

A. Black Educators and Administrators

The first and perhaps most notable feature of HBCUs is that their faculties more closely reflect the demographics of their student bodies than do HWIs.¹⁷⁰ A recent University of Pennsylvania report shows that 57 percent of HBCU professors with tenure are Black.¹⁷¹ The most recent NCES data show that 81 percent of their student bodies are Black.¹⁷² This racial congruence

for students to feel supported and provides them with experiential learning opportunities”). This makes HBCUs not only superior to HWIs in educating Black students, but also superior to other MSIs in educating their own target minority populations.

¹⁶² These factors are reflected in a comprehensive study of minority-serving institutions, *see generally* CONRAD & GASMAN, *supra* note 3, but they are also evident across a number of other studies designed to measure the performance of HBCU graduates relative to their Black peers attending HWIs, *see supra* note 110.

¹⁶³ The HBCUs profiled here are all four-year institutions.

¹⁶⁴ *See infra* Section II. A.

¹⁶⁵ *See infra* Section II. B.

¹⁶⁶ *See infra* Section II. C.

¹⁶⁷ *See infra* Section III. A.

¹⁶⁸ *See infra* Section III. C.

¹⁶⁹ *See infra* Section III. B.

¹⁷⁰ *See Gallup Report, supra* note 98, at 17; *see also* Bracey, *supra* note 21, at 690–91.

¹⁷¹ *See Gallup Report, supra* note 98, at 17.

¹⁷² *Id.*

between faculty and students is important: a host of research shows that teacher-student racial matching yields positive educational benefits for Black students in particular—including increased rigor and higher expectations, improved academic performance, and reduced levels of punitive discipline.¹⁷³ Much of this research has been done in the K-12 context, but there is new and encouraging data on the academic benefits to Black students of teacher-student racial congruence in the higher education context as well.

A recent Gallup study comparing the experiences and outcomes of Black students attending HBCUs with Black students attending HWIs showed that one of the most significant and predictive gaps arose when respondents were asked whether their professors cared about them as people.¹⁷⁴ Black students attending HBCUs were more than twice as likely to report this experience as Black students attending HWIs (58 percent vs. 25 percent, respectively).¹⁷⁵ As a result of these personal connections with faculty, “black HBCU graduates were nearly twice as likely as black graduates of [HWIs] to feel emotionally attached to their alma maters.”¹⁷⁶ Black HBCU graduates were also twice as likely as their HWI counterparts to be thriving across a range of indices measuring both personal and professional well-being.¹⁷⁷

The faculty composition at HWIs is still overwhelmingly white, despite an increasingly diverse student body.¹⁷⁸ By contrast, the faculty of HBCUs has always been, and remains,

¹⁷³ See, e.g., Kenneth J. Meier & Joseph Stewart, Jr., *The Impact of Representative Bureaucracies: Educational Systems and Public Policies*, in REPRESENTATIVE BUREAUCRACY: CLASSIC READINGS & CONTINUING CONTROVERSIES (Julie Dolan & David H. Rosenbloom eds., M.E. Sharpe, 2003) at 128-131 (suggesting that, in the K-12 context, we could narrow the existing racial achievement gap, increase the number of Black students in gifted classes, reduce the number in remedial education classes, and lower the rate of discipline for Black students simply by increasing the number of Black teachers and improving the rate of student/teacher racial congruence); see also Colleen M. Eddy & Donald Easton-Brooks, *Ethnic Matching, School Placement and Mathematics Achievement of African American Students from Kindergarten Through Fifth Grade*, 46 URBAN EDUC. 1230, 1290 (2011) (finding that student/teacher racial congruence had significant positive effects on Black students’ math performance); Dan Battey, Luis A. Leyva, Immanuel Williams, Victoria A. Belizario, Rachel Greco, & Roshni Shah, *Racial (Mis)Match in Middle School Mathematics Classrooms: Relational Interactions as a Racialized Mechanism*, 88 HARV. EDUC. REV. 455, 476-78 (2018) (attributing Black students’ performance improvements in math from student/teacher race matching to differences in student/teacher interactions in the classroom, especially the positive beliefs and encouragement expressed by Black teachers towards Black students). One of the most notable outcomes of teacher-student racial matching that is relevant to the higher education context is the increased likelihood of attending college for those Black students who have at least one Black teacher during elementary school. See Seth Gershenson et al., *The Long-Run Impacts of Same Race Teachers*, 28 (Nat’l. Bureau of Econ. Rsch., Working Paper No. 25254, 2018).

¹⁷⁴ See Seymour & Ray, *supra* note 16, at 15. The study found that the three most potent elements linked to long-term success for college graduates relate to emotional support: 1) they had at least one professor who made them excited about learning, 2) the professors cared about them as people and 3) they had a mentor who encouraged them to pursue their goals and dreams. *Id.* Black graduates of HBCUs were more than twice as likely as Black graduates of non-HBCUs to recall experiencing all three support measures and the gap between HBCU and non-HBCU Black graduates is widest when recalling having professors who cared about them as people (58 percent vs. 25 percent, respectively). See *id.*

¹⁷⁵ *Id.* at 18.

¹⁷⁶ *Id.* at 21.

¹⁷⁷ These measures include “finding fulfillment in daily work and interactions, having strong social relationships and access to the resources people need, feeling financially secure, being physically healthy and taking part in a true community.” *Id.* at 10.

¹⁷⁸ Despite increasing diversity among college students, full-time faculty remain overwhelmingly white (84 percent). *Gallup Report*, *supra* note 98, at 17. According to one report looking specifically at the composition of Black faculty at HWIs,

substantially diverse.¹⁷⁹ HBCUs have always hired white and other non-Black faculty,¹⁸⁰ but they maintain a high percentage of Black faculty.¹⁸¹ So it is not at all surprising, given the data on improved outcomes among Black students when there is racial congruence between teachers and students,¹⁸² that HBCUs better serve Black students and that Black HBCU graduates demonstrate higher levels of achievement than Black HWI graduates. Faculty are the key to student success,¹⁸³ and research consistently shows increasing Black faculty is integral to the success of Black students.¹⁸⁴

B. *High Expectations with Appropriate Academic Support*

Part of the reason why faculty diversity matters to Black student success is that Black faculty and administrators relate to Black students differently than non-Black faculty and administrators.¹⁸⁵ Teacher expectations and accompanying support for learning goals are primary drivers of student performance.¹⁸⁶ In an environment where teachers set high expectations for students and provide the

“black faculty members often make up less than two percent of the full-time faculties” and overall “the proportion of African-American faculty in white institutions stands at 2.3 percent, the same as it was 20 years ago.” See Stewart et al., *supra* note 49, at 27. Another report cites the data on Black faculty at HWIs as “[l]ess than 6% of full-time faculty” and observes that “[f]aculty diversity has proved harder to pull off than student body diversity.” Bracey, *supra* note 21, at 690.

¹⁷⁹ The faculties of HBCUs, where 57 percent of tenured professors are Black, more closely resemble the diversity of their student bodies, which are 81 percent Black. *Gallup Report*, *supra* note 98, at 17; see also Gasman and Arroyo, *supra* note 38, at 76 (alternately identifying “over 65% of the faculty at HBCUs” as Black and “76% of HBCU students” as Black).

¹⁸⁰ Unlike HWIs, HBCUs have always welcomed diverse students and faculty, and they have a long history of hiring white faculty and administrators, see Bracey, *supra* note 21, at 677–78, as well as international faculty of color, see Allen & Jewell, *supra* note 28, at 255.

¹⁸¹ See Bracey, *supra* note 21, at 691; see also *supra* note 190.

¹⁸² See *supra* note 173 and accompanying text; see also Merisotis & McCarthy, *supra* note 1, at 54 (“Minority students who are taught by educators of color in primary or secondary school are more likely to succeed academically because they are often able to see their own desires and experiences positively reflected in their teachers, feel more comfortable about discussing academics and personal issues with a person of color, and look to their teachers as role models.”). Notably, the Gallup study expressly rejects the conclusion that “increasing minority faculty would lead to an increase in minorities feeling supported.” *Gallup Report*, *supra* note 98, at 23. The study authors instead suggest that all faculty must learn to mentor students of color more effectively. *Id.* The reason for this conclusion is that given the disparities between the percentage of Black faculty and Black students overall, it would be problematic to suggest that “race matching is [] required for successful mentorship.” *Id.* This is a reasonable conclusion, but rather than conceding the lack of diversity among faculty, the suggestion here is to both improve the ability of HWIs (and white faculty) to serve diverse students and to increase the diversity of faculty at HWIs, which will bring them into greater alignment with the pedagogical model of HBCUs that has proven superior to the existing HWI model in educating Black students. See discussion *infra* Section V.B. (on improving faculty diversity at HWIs).

¹⁸³ See Gasman & Arroyo, *supra* note 38, at 75 (acknowledging that “faculty members [are] the most pivotal players for creating holistic institutional conditions that facilitate student success”).

¹⁸⁴ See *supra* note 173 and accompanying text.

¹⁸⁵ There is much literature on the heavy service demands placed on the few Black faculty at HWIs who are expected to and often do disproportionately mentor and advise the Black students in their school and/or department. See, e.g., Patricia A. Matthew, *What is Faculty Diversity Worth to a University?*, THE ATLANTIC, Nov. 23, 2016; Audrey Williams June, *The Invisible Labor of Minority Professors*, THE CHRONICLE OF HIGHER EDUC., Nov. 8, 2015.

¹⁸⁶ The educational literature is rife with examples of this axiomatic claim. See, e.g., ADAM GRANT, GIVE AND TAKE (2013); AMANDA RIPLEY, THE SMARTEST KIDS IN THE WORLD AND HOW THEY GOT THAT WAY (2013); David Scott Yeager et al., *Breaking the Cycle of Mistrust: Wise Interventions to Provide Critical Feedback Across the Racial Divide*, 143 J. EXPERIMENTAL

accompanying feedback and support necessary for meeting these expectations students will thrive.¹⁸⁷ Thus, an important feature of the HBCU pedagogical model is the presence of faculty and other administrators who set a high academic bar for students and then provide students with the nurturing and support necessary to achieve these goals.¹⁸⁸

Rob Shorette and Robert Palmer, for instance, observed that HBCUs heightened students' personal and academic aspirations "by designing their programs with graduate school in mind and reinforcing the idea that graduate school was the natural next step for the student."¹⁸⁹ These high expectations are continuously reinforced through regular interactions among faculty, administrators and students at HBCUs.¹⁹⁰ Given this emphasis on graduate study, it is no wonder that HBCUs produce a disproportionate share of Black graduates with advanced and professional degrees.¹⁹¹

Conversely, research shows that non-Black faculty can internalize negative stereotypes about Black students' intellectual and academic abilities that suppress their expectations of Black students' performance.¹⁹² Teachers overall are much less likely to expect Black and Hispanic students to graduate college, and even after controlling for other factors (such as socioeconomic status and prior academic achievement), the impact of student-teacher racial mismatch on this disparity in expectations remains statistically significant.¹⁹³ Because teacher expectations so heavily influence student outcomes, this stigma of low expectations can be damaging to Black students' ability to realize their full academic potential.¹⁹⁴ Indeed, studies "consistently find evidence of arguably causal,

PSYCH. 804, 806 (2014).

¹⁸⁷ See Yeager, *supra* note 186, at 806.

¹⁸⁸ Importantly, the encouragement and support provided to Black students must be sincere to have its intended effect. See Kent D. Harber, *Feedback to Minorities: Evidence of a Positive Bias*, 74 J. PERSONALITY & SOC. PSYCH. 622, 626 (1998) (finding that insincere praise of Black students has negative performance consequences).

¹⁸⁹ Shorette & Palmer, *supra* note 3, at 24.

¹⁹⁰ See *infra* note 213 and accompanying text.

¹⁹¹ See *supra* notes 47–55 and accompanying text.

¹⁹² See Regina Austin, *Back to Basics: Returning to the Matter of Black Inferiority And White Supremacy in the Post-Brown Era*, 6 J. APP. PRAC. & PROC. 79, 90 (2004) (citing to findings about teachers' "[i]nternalization of the belief that Blacks are not as intelligent as Whites" and these beliefs affecting teachers' treatment of students and students' performance). There is an entire literature on this phenomenon, described as stigma threat. See, e.g., Daniel Solorzano, Miguel Ceja, & Tara Yosso, *Critical Race Theory, Racial Microaggressions and Campus Racial Climate: The Experiences of African American College Students*, 69 J. NEGRO EDUC. 60, 60–62 (2000) (explaining the phenomenon of stigma threat and the related harm of hostility/resentment in terms of racial "microaggressions" defined as "stunning, automatic acts of disregard that stem from unconscious attitudes of white superiority and constitute a verification of black inferiority") (citing Peggy C. Davis, *Law as Microaggression*, 98 YALE L. J. 1559, 1559–1577 (1989)); Deirdre Bowen, *Meeting Across the River: Why Affirmative Action Needs Race & Class Diversity*, 88 DENV. L. REV. 751, 781 (2011) (documenting widespread stigma that minority students attending HWIs were beneficiaries of affirmative action even in states where such policies were unlawful); Angela Onwuachi-Willig, *Cracking the Egg: Which Came First – Stigma or Affirmative Action?* 96 CAL. L. REV. 101 (2008) (observing that diversity can reduce minority stigma).

¹⁹³ See Seth Gershenson, Stephen B. Holt, & Nicholas Papageorge, *Who Believes in Me? The Effect of Student-Teacher Demographic Match on Teacher Expectations* 9-10 (Upjohn Institute, Working Paper No. 212–231, 2015).

¹⁹⁴ The research on stigma threat suggests that "nonblack teachers have significantly lower educational expectations for Black students than Black teachers do" offering "causal evidence that demographic mismatch affects teachers' expectations for students' long-run educational attainment." See Seth Gershenson et al., *supra* note 193, at 3. Consequently, it might be possible to extrapolate from these two established premises that non-Black teachers' lowered expectations of Black students'

modest negative effects of demographic mismatch on both academic achievement and teacher perceptions of student ability.”¹⁹⁵ However “modest,” the negative effects of teacher expectations on student performance are made more significant by their long-term impact.¹⁹⁶

Educator Lee Ann Stephens explored this research on stigma threat by speaking with Black students about their teachers’ expectations of them.¹⁹⁷ Describing what she has termed the “belief gap,” her report offered the following gut-wrenching personal accounts of how these Black students perceived their teachers’ lowered expectations:¹⁹⁸

“I am smarter than my teachers think I am.”

“The expectation is that the white students will do well and I won’t.”

“I hold myself to a higher standard than my teachers do.”

Stephens further observed that “[i]t is not only unfair, but also tragic that these students must carry the burden of constantly trying to prove they belong, persistently working against the false narrative that African American and Hispanic students are not academically motivated.”¹⁹⁹

Stephens’s findings stand in stark contrast to accounts of HBCU faculties’ expectations of their Black students. In a program designed to increase the number of Black students pursuing STEM degrees, the faculty at Morehouse College “refer to students as scholars, addressing them in emails and during interactions as such so that they immediately see themselves as intelligent and in the role of scientists.”²⁰⁰ In the Morehouse program, “[f]aculty members . . . are willing to share their mistakes and failures with students because they feel this vulnerability leads to learning and helps students to see the capabilities and accomplishments of faculty as the product of hard work.”²⁰¹ A Morehouse student described faculty-student relations in the following terms: “I feel that all of my teachers kind

prospects for educational attainment is a contributing factor to Black student’s academic underachievement. Another study found “teacher expectations were more predictive of college success than many [other] major factors, including student motivation and student effort” more powerful even than expectations of the students’ parents.” Ulrich Boser, Megan Wilhelm, & Robert Hanna, *The Power of the Pygmalion Effect: Teachers Expectations Strongly Predict College Completion*, CTR. FOR AM. PROGRESS (Oct. 6, 2014), <https://cdn.americanprogress.org/wp-content/uploads/2014/10/TeacherExpectations-brief10.8.pdf> [https://perma.cc/66TY-8UMS].

¹⁹⁵ See Gershenson et al., *supra* note 193, at 6.

¹⁹⁶ *Id.* A Center for American Progress study found that teacher expectations of student performance have long-term effects and can predict student achievement for as many as six years into the future. See Boser et al., *supra* note 194. It is worth noting that these positive correlations between student teacher racial congruence and student academic achievement have not been similarly identified for other racial and ethnic groups, which makes this intervention especially salient for Black students. See Gershenson et al., *supra* note 193, at 31.

¹⁹⁷ Lee-Ann Stephens, *The “Belief Gap” Prevents Teachers from Seeing the True Potential of Students of Color*, FOR HARRIET (May 28, 2015).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ CONRAD & GASMAN, *supra* note 3, at 163.

²⁰¹ *Id.* This is particularly important in helping students develop a growth mindset, which education researchers have shown enhances student performance. See generally CAROL DWECK, *MINDSET: THE NEW PSYCHOLOGY OF SUCCESS* (2006).

of push me. They have some kind of influence on me to basically be better than I am and to go to the next level.”²⁰² Students and faculty alike describe a similar dynamic at Norfolk State University, where students are encouraged early in their academic career to cultivate a scholarly identity that is reinforced by faculty and administration until the students believe it themselves and live into those expectations.²⁰³

The President of Paul Quinn College, an HBCU in South Dallas, Texas, explained his approach to education and his belief in the possibilities of every individual: “I have always believed that if you teach people and you tell them you believe in them, they will outperform whatever the normal predictors of their success will be.”²⁰⁴ A faculty member at Paul Quinn similarly described a teaching approach in which the faculty and staff “don’t give up on people, because students deserve to have someone believe in them,” they “fundamentally reject the notion that underresourced communities can’t perform at a high level,” and they seek “to convince [our] student[s] that [they] can be [a] leader and that success is inevitable.”²⁰⁵ The approach to students at Paul Quinn is much like the approach at Xavier.²⁰⁶ According to Paul Quinn’s provost, “[t]he basic premise of the program is that we do not accept that any student will not be successful in four years.”²⁰⁷

A Paul Quinn student from Detroit, Michigan who graduated high school with only a 1.8 GPA would likely have been rejected by most selective colleges and left to struggle in any HWI willing to admit him. Yet, he found notable success at Paul Quinn, where he “boast[ed] a 3.4 GPA.”²⁰⁸ Asked how he went from underperforming in high school to academic success in college, the student credited his faculty and administrative mentors, whom he said “believe[d] in [him] when [he] didn’t even believe in [him]self.”²⁰⁹ Not unlike so many Black students who attend HBCUs, this encouragement from faculty and administrators, who believe deeply in their students’ ability to succeed in school and in life, inspired this student to pursue a graduate degree in law.²¹⁰

Given the importance of teacher expectations on student performance, and the demonstrated difference between Black faculty and non-Black faculty in their interactions with Black students, it becomes clearer how and why Black students attending HBCUs are able to exceed the academic performance of their Black peers attending HWIs.²¹¹ But high expectations are not all that matter. A key adjunct to the high expectations HBCUs set for their students is the supportive and

²⁰² CONRAD & GASMAN, *supra* note 3, at 161.

²⁰³ The faculty members describe the students as initially “stunned” by this scholarly identity that is imposed on them, CONRAD & GASMAN, *supra* note 3, at 172, which is not surprising given that many of them have likely encountered lowered teacher expectations throughout their educational careers. *See supra* notes 196-97 and accompanying text (describing Black students’ experience with low teacher expectations). However, these students eventually begin to see themselves as scholars and to live into this identity. CONRAD & GASMAN, *supra* note 3, at 172.

²⁰⁴ CONRAD & GASMAN, *supra* note 3, at 180.

²⁰⁵ *Id.* at 185-86.

²⁰⁶ *See supra* notes 158-59 and accompanying text.

²⁰⁷ CONRAD & GASMAN, *supra* note 3, at 199.

²⁰⁸ *Id.* at 198.

²⁰⁹ *Id.*

²¹⁰ *Id.* HBCUs have produced 50 percent of Black lawyers and 80 percent of Black judges. Fryer & Greenstone, *supra* note 20, at 1.

²¹¹ *See supra* notes 111, 115, 116, 119, and accompanying text (describing the data on the superior performance of Black students attending HBCUs relative to their Black peers attending HWIs).

nurturing environment these schools cultivate.²¹² In fact, this is the most widely-noted feature of the HBCU pedagogical model across the literature.²¹³ HBCUs are known for creating “a warm, nurturing, family-like environment, which helps to facilitate Black students’ self-efficacy, racial pride, psychological wellness, academic development, and persistence.”²¹⁴ These traits are critical for all students to excel academically, but they may be particularly important for Black students.²¹⁵ One study of HBCU students observed that “[the participants] all felt that the institutional climate of HBCUs was critical in helping to facilitate a set of non-cognitive skills that contributed to their success not only at HBCUs, but in society as well.”²¹⁶ Describing the difference in institutional climate, Allen remarked that HBCUs do for Black students what HWIs do for white students—create a sense of belonging that cultivates their academic success and personal well-being.²¹⁷

Black students echo these sentiments, describing the supportive and nurturing environment of HBCUs as a critical part of their appeal. The most common descriptor of these institutions is as engendering a sense of the familial:²¹⁸

“I started seeing the close-knit family relations that you can gain with people and professors and your friends on campus. . . . It’s like a family bond that you can’t find everywhere.”²¹⁹

“They check your grades, they know if we are doing well, . . . They love us.”²²⁰

“Spelman College . . . felt like home. I was surrounded by people who embraced

²¹² Gasman & Commodore, *supra* note 40, at 11–12, 91 (pointing to the academic and social benefits that accrue to Black students attending HBCUs versus those attending HWIs).

²¹³ See, e.g., Gasman & Arroyo, *supra* note 38, at 64 (“A supportive environment is theorized to form the foundation of HBCUs’ contributions to Black student success.”); Gasman and Commodore, *supra* note 40, at 91 (“[T]he academic climate at HBCUs has a significant impact on the intellectual and social gains of students compared to African American students at HWIs.”); Allen, *supra* note 109, at 39 (describing HBCUs as places where Black students “feel valued, protected, accepted, and socially connected”); Bracey, *supra* note 21, at 678 (“An important feature of HBCUs has been their provision of a welcoming environment for Black students, who are able to thrive in a context of acceptance and mutual support.”); see also Stewart et al., *supra* note 49, at 26 (noting research suggesting “HBCUs provide campus environments designed to nurture Black students”). Cf. Bracey, *supra* note 21, at 689 (observing that “[w]here an emotionally and financially supportive environment fails to materialize, college graduation rates of Blacks are generally about 20 percentage points lower than for whites”).

²¹⁴ Shorette & Palmer, *supra* note 3, at 18 (citations omitted).

²¹⁵ *Id.* at 20 (“Many have argued that success, especially for college students, has less to do with grade point average (GPA) and standardized test scores and more to do with less tangible and quantifiable qualities, such as self-esteem, determination, and grit Non-cognitive development is particularly important when considering students of color.”). Possessing a positive self-concept is critical for any student, but the importance is magnified for students of color and nontraditional students who must navigate systems not designed with their success in mind. *Id.* at 26.

²¹⁶ Shorette & Palmer, *supra* note 3, at 26.

²¹⁷ See Allen, *supra* note 109, at 40.

²¹⁸ CONRAD & GASMAN, *supra* note 3, at 152 (describing the operation of HBCUs as “like families” where students receive “unprecedented support”).

²¹⁹ CONRAD & GASMAN, *supra* note 3, at 165.

²²⁰ CONRAD & GASMAN, *supra* note 3, at 171.

me and didn't treat me as an 'other.'"²²¹

The culture of academic support permeating HBCUs—from the encouragement and high expectations of faculty and administrators, to the mentoring and tutoring from peers—provides the educational scaffolding necessary to bridge these students from their first year as uncertain and often under-prepared freshman to confident and successful college graduates.²²² Gasman has profiled a number of HBCU programs designed to provide students with the co-curricular support necessary to successfully adjust to the rigors of college and to persist through graduation.²²³ At Morehouse, there is the Peer-Led Team Learning (PLTL) program, in which faculty and students provide instructional support through co-curricular workshops.²²⁴ Content is developed by faculty but delivered by students, who receive intensive training on how to aid their peers to self-discover concepts, rather than spoon-feeding them answers, with the goal that student participants achieve mastery for themselves.²²⁵ Another key feature of the PLTL program is that participation is normalized rather than stigmatized as remedial.²²⁶ The program operates more as organized study groups than as individualized tutoring sessions, and has the benefit of being tied directly to the course content for each professor.²²⁷ As a result, the program has had broad and tangible impacts on student learning, raising completion rates for difficult STEM prerequisite courses like chemistry from 48 percent to 70 percent and increasing individual student performance on standardized tests such as the MCAT.²²⁸

For students who just meet the academic requirements for admission, Norfolk State University has an academic support program that begins the summer before freshman year.²²⁹ The Summer Bridge Program (SBP) is an acknowledgment that these students will require additional support to succeed, but it offers a different kind of peer support than PLTL. SBP uses a cohort model to acclimate these students to college life and ensure they have the academic and social support necessary to succeed in their freshman year and beyond.²³⁰ Leveraging the positive benefits of peer

²²¹ Kirsten West Savali, *Why I Chose My HBCU: Love Letters to Our Institutions of Higher Learning*, ESSENCE (Nov. 27, 2019), <https://www.essence.com/education/hbcu-love-letters/> [https://perma.cc/3Q5P-C7CA] (quoting Dr. Kia Baldwin).

²²² At Morehouse, two STEM-based academic support programs have helped to significantly raise completion rates in key courses such as chemistry (from 48 to 70 percent), improve students' grades, and increase the number of students applying to graduate programs. CONRAD & GASMAN, *supra* note 3, at 156-59. It is no wonder that Morehouse is the top producer of Black male graduates in the biological sciences, math and statistics, and physics, and the number-two producer of Black male graduates in chemistry. *Id.* at 164. Fifty-two percent of students in just one of the programs pursues a graduate degree in science, and another 10 percent receive postbaccalaureate degrees. *Id.*

²²³ *Id.* at 152-200.

²²⁴ *Id.* at 156.

²²⁵ One student instructor analogized the process to the experience of learning how to drive a car: "If somebody else tries to tell you how to drive a car then that doesn't give you mastery. . . . you'll crash if you go out the first time and try to drive on your own." *Id.* at 156-57. Instead, student instructors are taught "how to involve students so they are actively participating in doing things themselves." *Id.*

²²⁶ *Id.* at 158.

²²⁷ *Id.* at 156.

²²⁸ *Id.* at 159.

²²⁹ *Id.* at 167, 169 (noting that the requirements for admission are a 2.75 UGPA, and an 18 on the ACT or a combined SAT score of 850).

²³⁰ *Id.* Another program that uses a cohort model for their minority students to generate extraordinary academic

effects, participants in SBP hold each other accountable academically, support each other socially, and even engage in tutoring amongst themselves.²³¹ Through a system of mutual support and accountability, SBP fosters the self-discipline necessary for students to succeed in college.²³² As a result, participants in SBP who entered college with lower than average academic credentials have a 90 percent retention rate into their sophomore year (compared with the university's total retention rate of 70 percent) and higher average GPAs than the freshman class overall.²³³

The success of peer support programs as a means of aiding student learning and fostering their successful integration into college is evident not just in these anecdotes from Morehouse and Norfolk State. The efficacy of this pedagogical approach is equally evident in the education literature generally.²³⁴ Among the “Seven Principles for Good Practice in Undergraduate Education” are student-faculty contact, cooperation among students, and an inclusive and affirming environment in which “performance expectations are clearly communicated and set at reasonably high levels.”²³⁵ All these factors and more are evident in the unique pedagogical model employed by HBCUs. This approach offers students attending HBCUs unique learning environments that exemplify the best pedagogical practices in higher education.

C. Culturally Relevant Curricula with Opportunities for Applied Learning

Although aspects of this same pedagogical model have been observed in operation at other types of minority serving institutions (MSIs),²³⁶ the positive effects shown by HBCUs are less evident at, for instance, Hispanic Serving Institutions (HSIs), which do not share HBCUs' same unique history or cultural mission.²³⁷ Among MSIs, HBCUs appear to stand alone in integrating a tailored

success for participants is the Posse Foundation program. *See* Hawkins, *supra* note 131, at 889–91 (discussing The Posse Foundation program which enrolls over 63 percent minority students who attend selective HWIs where most of them have entering credentials below the median, but who outperform their peers by graduating at a rate of 90 percent, 24 percent with honors).

²³¹ CONRAD & GASMAN, *supra* note 3, at 168.

²³² *Id.* at 168–69.

²³³ *Id.* at 170. It is worth noting that Norfolk State's overall retention rate after freshman year of 70 percent is well above the national average and even far above the average retention rate for Black students, *see* NCES DATA, *supra* note 94, suggesting that notwithstanding the success of the SBP, the university's overall pedagogical approach is more effective than that of other schools in educating Black students.

²³⁴ *See* Bracey, *supra* note 21, at 689 (“Peer-group support is an important part of success in higher education. Where an emotionally and financially supportive environment fails to materialize, college graduation rates of Blacks are generally about 20 percentage points lower than for whites.”).

²³⁵ Steven D. Mobley, Jr., Nina Daoud, & Kimberly Griffin, *Re-Coloring Campus: Complicating the Discourse About Race and Ethnicity at Historically Black Colleges and Universities*, 14 ADVANCES IN EDUC. IN DIVERSE CMTIES.: RESCH., POLICY AND PRAXIS 29, 29–30 (2018).

²³⁶ *See, e.g.*, CONRAD & GASMAN, *supra* note 3 (reporting on the unique pedagogical approaches at Hispanic Serving Institutions, Tribal Colleges and Universities, and Asian American and Pacific Islander Serving Institutions, as well as HBCUs, and noting common themes among them all).

²³⁷ *See* CONRAD & GASMAN, *supra* note 3, at 29 (noting that most HSIs were not established for the purpose of educating Hispanic students, but are designated based on the school's high concentration of Hispanic students). Some HWIs, however, have used aspects of this pedagogical model to improve the academic performance and educational attainment of both minority and first-generation students. *See, e.g.*, Hawkins, *supra* note 131, at 889–91 (discussing the Posse Foundation's use

pedagogical approach with their culturally driven missions, allowing them to leverage these unique program features for the benefit of their students.²³⁸ The mission of HBCUs is the education of Black students.²³⁹ In particular, HBCUs seek to uplift the Black community through education by “enroll[ing] students who otherwise might not be able to attend college because of social, financial, or academic barriers.”²⁴⁰ HBCUs succeed in taking even these financially disadvantaged and academically underprepared Black students and turning them into college students who make intellectual gains at rates unmatched by their HWI peers.²⁴¹

Situated in their unique mission, HBCUs have a history of instilling cultural pride and fostering civically engaged learning.²⁴² They have a legacy of connecting their students and their curricula to the broader communities they serve.²⁴³ This connection was perhaps most evident during the Civil Rights Movement of the 1950s and 1960s when Black college students attending HBCUs became integral to the Movement’s rapid expansion and success.²⁴⁴ Indeed, well before service learning and civic engagement became “buzz words” in higher education, HBCUs championed these efforts as a critical part of their institutional missions.²⁴⁵ This unique tradition persists today, as HBCUs continue to play a vital role in the uplift of their communities by engaging students in various opportunities for experiential learning and other forms of civic engagement that combine cultural uplift with curricular instruction.

of a cohort model for minority students attending HWIs to improve persistence and academic achievement). David Laude, the Senior Vice Provost for Enrollment and Graduation Management at the University of Texas at Austin, piloted a program several years ago in which he identified those students who were most at risk of low academic performance based on profile factors including their race/ethnicity, socioeconomic status, and SAT scores, and provided them with smaller class sections, academic advisors, and peer mentors, among other things. *See* Paul Tough, *Who Gets to Graduate?*, N.Y. TIMES (May 15, 2014), <https://www.nytimes.com/2014/05/18/magazine/who-gets-to-graduate.html> [<https://perma.cc/NS3Q-QHWH>]. Notwithstanding these additional resources, Laude said he held the students to the same rigorous academic standards as all other students and reinforced his belief in their ability as “high-achieving scholars.” *Id.* The result was that despite a 200-point gap in SAT scores, these students had academic performance on par with those of their peers and had both retention and graduation rates above the UT average over the course of their tenure. *Id.*

²³⁸ *See Gallup Report*, *supra* note 98, at 22.

²³⁹ Merisotis & McCarthy, *supra* note 1, at 46 (“The amended Higher Education Act of 1965 defines HBCUs as any historically Black college or university established before 1964, whose principal mission was (and is) the education of Black Americans.”).

²⁴⁰ Allen, *supra* note 109, at 28; *see also* Gasman & Arroyo, *supra* note 38, at 65 (describing the mission of HBCUs as one of “racial uplift . . . [through] the provision of social capital to traditionally marginalized persons”).

²⁴¹ *Id.* at 29; *see also* FLEMING, *supra* note 38, at xiv (contrasting the cognitive gains made by Black students attending HBCUs with the intellectual stagnation of Black students attending HWIs).

²⁴² Although HBCUs initially were steeped in a Eurocentric model of instruction that valued the indoctrination of white, protestant values over instilling Black cultural pride, the shift to the latter emphasis occurred first in the 1920s and accelerated in the 1960s. *See supra* notes 30-31 and accompanying text. Today, the mission of HBCUs remains firmly focused on Black uplift and empowerment through education. *See supra* note 239 and accompanying text.

²⁴³ *See infra* notes 244-45 and accompanying text.

²⁴⁴ *See* Gasman & Commodore, *supra* note 40, at 95.

²⁴⁵ *See id.* at 94–95. Many of the leaders of the movement were themselves graduates of HBCUs. *See* Bracey, *supra* note 21, at 679 (“Some HBCUs were themselves the locus of events that were at the forefront of the modern-day civil rights movement.”).

Paul Quinn College embodies this mission through its motto “We over Me,”²⁴⁶ personified in four values that define the college’s ethos:

1. Leave places better than you found them.
2. Lead from wherever you are.
3. Live a life that matters.
4. Love something greater than yourself.²⁴⁷

This collectivist spirit is materially different from the broader public’s atomistic sensibility and the competitive individualism that pervades most HWIs.²⁴⁸ One tangible manifestation of Paul Quinn’s commitment to civic engagement is an experiential learning program in the form of a community farm. Paul Quinn is located in a poor area of South Dallas, Texas that is, as is common among poor communities, a food desert.²⁴⁹ The college decided to tackle this community problem while also providing its students with an opportunity for applied learning in agriculture and nutrition, as well as entrepreneurship and political activism. Paul Quinn converted the playing field of its losing football team into an organic farm.²⁵⁰ In addition to allowing students to learn about the difficulties of farming without pesticides and connecting local problems to global issues within agribusiness, the students also seized an opportunity for contemporary community organizing and social activism. The college’s students, faculty, and staff successfully organized a protest to shift support within the city council away from expanding a nearby landfill, which would have harmed the surrounding community, in favor of efforts to attract grocery stores to the local area.²⁵¹

Civic engagement not only offers students an opportunity for experiential learning, it also gives them a sense of pride of effort and institutional belonging, both of which are important to student success.²⁵² HBCUs treat their students as whole individuals, not as merely academic automatons. They recognize that students bring their whole selves to the school campus—including their cultural identities, insecurities, families, and personal struggles, as well as their aspirations and desire for a life outside the classroom. HBCUs do more than offer Black students an education; they offer Black students a sense of belonging, of identity, of purpose, and of accomplishment.²⁵³

²⁴⁶ See CONRAD & GASMAN, *supra* note 3, at 180.

²⁴⁷ *Id.* at 183.

²⁴⁸ See *id.* at 185 (acknowledging that this ethos runs “counter to the current ethos of the nation, which is fixated on self-promotion and individualism”).

²⁴⁹ *Id.* at 186. For a discussion of the phenomenon of “food deserts” in the United States, see generally Julie Beaulac, Elizabeth Kristjansson, & Steven Cummins, *A Systematic Review of Food Deserts, 1966-2007*, 6 PREVENTING CHRONIC DISEASE 1-5 (2009).

²⁵⁰ See CONRAD & GASMAN, *supra* note 3, at 186.

²⁵¹ *Id.* at 188–89.

²⁵² *Id.* at 189; see also Bridges et al., *supra* note 11, at 30 (“Although students leave college prematurely for multiple reasons, the NCES found that . . . students who were less able to engage with their academic program were more likely to leave early, even when controlling for such other factors as low GPAs.”).

²⁵³ For instance, HBCUs link academic affairs and student affairs in a way that is unique in higher education by recognizing that “it’s not appropriate to refuse to help students because their issues fall under academic rather than student affairs.” See CONRAD & GASMAN, *supra* note 3, at 166 (quoting an administrator from Norfolk State that “We treat the whole student”).

HBCUs' success is not simply about Black students attending Black schools; the advantage for Black students is not merely cultural but pedagogical.²⁵⁴ This advantage is, moreover, a function of a pedagogical model uniquely responsive to the educational needs of Black students. By assembling faculty who are deeply and personally invested in students and who believe in their ability to succeed, by offering robust academic and social supports including critical peer networks, and by connecting the learning to a sense of identity-driven purpose, HBCUs respond to the unique needs of Black students in higher education. It is important to emphasize that HBCUs' success is a function of more, not less, academic rigor,²⁵⁵ resulting in their unparalleled success relative to HWIs in graduating Black students who pursue advanced degrees (most often at other institutions) and go on to high-status occupations such as law, medicine, business, and the professoriate.²⁵⁶ In sum, HBCUs provide a valuable pedagogical model uniquely designed to support the success of Black students.

III. THE FAILURES OF HWIS

The uncommon success of HBCUs in educating Black students can be contrasted with our country's inability to effectively educate Black students generally, and the failures of HWIs in particular.²⁵⁷ It is no secret that public education in the United States has failed Black students.²⁵⁸

²⁵⁴ It is important to distinguish here between a claim that HBCUs offer a cultural advantage to Black students rather than a pedagogical advantage. A cultural advantage suggests that only Black institutions can provide the requisite support to Black students. Instead, the claim is a pedagogical advantage, which suggests that any institution can be structured appropriately towards this model of education. *See* discussion *infra* Sections V.B-C (offering prescriptions for how HWIs might adapt the HBCU pedagogical model).

²⁵⁵ The argument that Black students are more likely to excel at schools with less academic rigor, typified by "mismatch theory," has at times suggested HBCUs are among those schools considered less academically rigorous. *See, e.g.,* SANDER AND TAYLOR, *supra* note 131, at 34–36, 47. The basis for this argument is largely the lower average academic credentials for those attending HBCUs than those attending more selective HWIs. *Id.* at 34. However, the conclusion that HBCUs offer less academic rigor simply because their students have lower academic credentials is belied by a number of facts, including but not limited to: (1) the extensive educational and social scaffolding provided by HBCUs to bridge their students from pre-college to college, *see* discussion *supra* Sections III.A-B; (2) the superior academic and professional achievements of HBCU graduates relative to Black students attending HWIs, *see* discussion *supra* Section I.D; and (3) the overreliance of HWIs on academic credentials to predict students' academic achievement, *see* Hawkins, *supra* note 131, at 901–02 (describing a program at various HWIs that identifies Black and other underrepresented minority students with lower entering academic credentials than their peers who nevertheless outperform their peers academically in college).

²⁵⁶ *See supra* notes 50–57 and accompanying text.

²⁵⁷ *See* Austin, *supra* note 192, at 93 (observing that due to structures of white supremacy that continue to undergird American education, including the presumption of white intellectual superiority, HWIs "simply are not structured to produce successful, competent, and confident Black students"). Particularly germane to the arguments made in this Section, Austin suggests "there is an absence of spaces or programs in [HWIs] that are organized to forge the identities of African-American students as achievers, literate, and a people with a rich intellectual tradition." *Id.* at 94 (quoting Theresa Perry, *Up from the Parched Earth: Toward a Theory of African-American Achievement*, in YOUNG, GIFTED, AND BLACK: PROMOTING HIGH ACHIEVEMENT AMONG AFRICAN-AMERICAN STUDENTS 75 (Theresa Perry, Claude Steele & Asa G. Hillard, III, eds., 2003)).

²⁵⁸ Allen, *supra* note 131, at 41 ("African-American . . . problems associated with access, retention, and achievement in U.S. higher education . . . have been stubbornly persistent, defying long-term, effective solutions. . . . [T]he overall record of Black exclusion and failure in higher education gives more reason for despair than for celebration."). Michelle Alexander and others point out that our criminal justice system is not broken, it works exactly how it was designed—to criminalize Blackness and incarcerate Black people. *See generally* MICHELLE ALEXANDER, *THE NEW JIM CROW* (2010). So too our educational system

Evidence of this failure abounds in the K-12 context, from the unrelenting academic achievement gap, to the low educational attainment of Blacks relative to other racial and ethnic groups, and the concentration of Black students in remedial education while facing disproportionate exclusion from gifted education.²⁵⁹ This same pattern of failure is reflected in higher education, where the academic achievement gap also persists²⁶⁰ and Black students have lower rates of college completion²⁶¹ and degree attainment.²⁶² While there has been some progress on all of these fronts, stubborn racial gaps persist at every turn.²⁶³ Black students hover at the bottom of most indices of educational achievement from primary through post-secondary schooling.²⁶⁴

But this failure has not always manifested in the same way. It is fair to say that the history public education failing Black students can be divided into pre-*Brown* and post-*Brown* periods. Prior to the fight for educational equality in *Brown*, the predominant complaint on behalf of Black students was the inequality of resources allocated to their education relative to that of white students.²⁶⁵ This was as true of higher education as it was of primary and secondary education, perhaps more so.²⁶⁶ HBCUs, where they existed, were inferior to HWIs in both resources and curriculum.²⁶⁷ Notwithstanding these deficits, even pre-*Brown* HBCUs managed to educate many Blacks who eventually became lawyers, doctors, preachers, and most often teachers themselves.²⁶⁸ However, Black students attending HBCUs undoubtedly suffered from the inadequate resources provided to

is not broken; HWIs are working according to their design—for the benefit of wealthy, white (and not Black or other) persons. They do not, therefore, need to be fixed; they need to be redesigned.

²⁵⁹ See NAT'L. CTR. FOR EDUC. STAT., U.S. DEP'T. OF EDUC. STATUS & TRENDS IN THE EDUCATION OF RACIAL AND ETHNIC GROUPS 2016 iv, 38 (2016) (summarizing achievement gap and disparities in discipline, as well as disparities in special education).

²⁶⁰ See Days, *supra* note 67, at 71 (observing about HWIs that “[e]ven though Black enrollment in these institutions has increased over the years, the schools generally have not succeeded in retaining and graduating Blacks in proportions equal to those for white students”).

²⁶¹ See *id.*; HUSSAR ET AL., NAT'L. CTR. FOR EDUC. STAT., U.S. DEP'T. OF EDUC., THE CONDITION OF EDUCATION 2020 144, 205 (2020).

²⁶² See Bridges et al., *supra* note 11, at 30 (“[D]espite the progress made over the last thirty-five years in enrolling more students from historically under-represented groups, a significant gap in degree attainment remains. Compared with 22 percent of white adults who have earned at least a bachelor’s degree and 37 percent of Asian Americans, only 16 percent of African American adults, 11 percent of Hispanic adults, and 9 percent of American Indian–Alaskan Native adults have earned postsecondary degrees Of those entering four-year colleges, 20 percent of African Americans and 12.5 percent of Hispanic Americans do not persist in college beyond the first year.”).

²⁶³ HUSSAR ET AL., *supra* note 261, at 204–06.

²⁶⁴ On most measures, only Native American and Hispanic students fare worse than Black students. *Id.*

²⁶⁵ See OGLETREE, *supra* note 4, at 102, 120–123.

²⁶⁶ The very first cases challenging educational inequality litigated by Thurgood Marshall and the NAACP Legal Defense Fund were directed to institutions of higher education. See, e.g., *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 233 (1938) (challenging the failure of Missouri to provide a law school for Black students in violation of the guarantee of equal protection); *Sweatt v. Painter*, 339 U.S. 629, 849 (1950) (challenging the failure of Texas to provide an equal legal education for Black students in violation of the guarantee of equal protection); *McLaurin v. Oklahoma State Regents*, 339 U.S. 637, 852 (1950) (challenging the failure of Oklahoma to provide graduate education to Black students in violation of the guarantee of equal protection).

²⁶⁷ See OGLETREE, *supra* note 4, at 102.

²⁶⁸ See discussion *supra* Section I.A.

these schools relative to HWIs.²⁶⁹ It is not surprising then that the earliest legal challenges to educational inequality on behalf of Blacks focused on the differences between Black and white schools, rather than their integration.²⁷⁰

During the *Brown* litigation, however, the claim for equality of resources on behalf of Black schools was abandoned in favor of a claim for integrated public education.²⁷¹ Rather than pursue equal educational resources for Black children under the then-prevailing “separate but equal” doctrine, *Brown* challenged the doctrine itself. At the urging of Thurgood Marshall and the NAACP, the Supreme Court held in *Brown* that “*in the field of public education the doctrine of ‘separate but equal’ has no place.*”²⁷² The consequence of *Brown*’s declaration that separate schools for Black and white children are “inherently unequal” was a mandate for public school integration.²⁷³ The inferior conditions of many Black schools all but guaranteed that white schools would serve as the primary, if not exclusive, vehicle of integration.²⁷⁴ Post-*Brown*, Black schools and Black teachers were all but abandoned in the integration process.²⁷⁵

Although data on the effects of integration in the primary and secondary school context is mixed to favorable,²⁷⁶ the data on integration efforts in higher education is less encouraging.²⁷⁷ As early as the 1970s, not long after the most aggressive post-*Brown* integration efforts began,²⁷⁸ studies revealed the failure of HWIs to effectively serve the educational needs of newly integrated Black students.²⁷⁹ The education literature documents a series of challenges faced by the Black students who

²⁶⁹ See OGLETREE, *supra* note 4, at 102.

²⁷⁰ See *id.* at 120–23.

²⁷¹ See *id.* at 7–8.

²⁷² 347 U.S. 483, 495 (1954) (emphasis added).

²⁷³ OGLETREE, *supra* note 4, at 10.

²⁷⁴ *Id.* at 234–35; 309–10.

²⁷⁵ *Id.*

²⁷⁶ Some claim that these integration efforts were an unmitigated success. See, e.g., RUCKER C. JOHNSON & ALEXANDER NAZARYN, CHILDREN OF THE DREAM: WHY INTEGRATION WORKS (2019) (acknowledging, however, that integration efforts were limited in time and, having been abandoned, segregation has recurred and even worsened, necessitating the renewal of integration efforts). Other research and data are more equivocal, see, e.g., Valerie Strauss, *How, After 50 Years Brown v. Board of Education Succeeded, and Didn’t*, WASH. POST (Aug 24, 2014), <https://www.washingtonpost.com/news/answer-sheet/wp/2014/04/24/how-after-60-years-brown-v-board-of-education-succeeded-and-didnt/> [<https://perma.cc/4XL6-RJEP>], and some decry these past integration efforts as a failure, see, e.g., SHERYLL CASHIN, THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM (2004).

²⁷⁷ See FLEMING, *supra* note 38, at 18–19, 162; Allen, *supra* note 109, at 26–27.

²⁷⁸ Despite the Supreme Court’s 1954 decision in *Brown*, most colleges and universities did not adopt widespread integration efforts until the late 1960s and early 1970s as a part of affirmative action efforts designed to benefit both minorities and women; serious integration efforts did not begin in primary and secondary schools until the early to mid-1970s. See Swann v. Charlotte-Mecklenburg Bd. Of Ed., 402 U.S. 11, 13 (1971) (observing the “dilatory tactics” by school districts that had delayed implementation of *Brown*’s desegregation mandate).

²⁷⁹ FLEMING, *supra* note 38, at 18–19 (citing numerous studies documenting the experiences of Blacks with early integration into HWIs, observing such findings as “social isolation” and “racial mistrust” which lead to negative effects on students’ “academic lives,” with one study finding the predominant response to this racial hostility by Black students was “withdrawal” leading to academic failure).

first integrated HWIs during the 1970s, including “isolation, alienation, and lack of support.”²⁸⁰ The current literature shows that many of these same challenges continue to define the experience of Black students attending HWIs today.²⁸¹

Across both K-12 and higher education, integration failed to provide the hoped for panacea to educational inequality for Black students long disserved by public education.²⁸² Achievement gaps have persisted, as have complaints of racial tensions where Black students have integrated HWIs.²⁸³ Moreover, it was not long before integration efforts were abandoned in the K-12 context and resegregation began to take shape.²⁸⁴ In the higher education context, integration efforts have not been similarly abandoned, but persistent legal challenges have rendered them far less effective today than at their height in the 1970s and 1980s.²⁸⁵

To the extent the persistent racial disparities in educational outcomes reflect institutional failures on the part of HWIs, rather than the individual failings of Black students,²⁸⁶ they are especially concerning and demand effective policy intervention.²⁸⁷ Among other systemic causes for the racial achievement gap, researchers cite the possibility that those tasked with educating Black students simply fail or refuse to undertake this charge with adequate sensitivity to the particular educational needs of Black students.²⁸⁸ In other words, the focus on integration did indeed eclipse the concern for effective educational equality for Black students. Effectively redressing the causes of Black student underachievement requires a clear understanding of and attention to the drivers of student achievement generally and those of Black students specifically.

Racial integration is not an unimportant consideration in effectively educating both Black

²⁸⁰ See Allen, *supra* note 109, at 29.

²⁸¹ Fleming’s study comparing the experiences of Black students attending HBCUs and HWIs in the 1980s reflect these challenges, *see generally* FLEMING, *supra* note 38, as do other studies from the 1990s, *see* Allen, *supra* note 109, at 28-29, and the 2000s, *see* Gasman and Commodore, *supra* note 40, at 92–93.

²⁸² See *supra* note 271 (discussing K-12 failures); *supra* note 280 (discussing higher education failures).

²⁸³ See Allen, *supra* note 109, at 27.

²⁸⁴ See JOHNSON & NAZARYN, *supra* note 276.

²⁸⁵ The first challenge to integration efforts at HWIs came in the 1970s in cases like *DeFunis v. Odegaard*, 416 U.S. 312, 314 (1974) and *Regents of the University of Calif. v. Bakke*, 438 U.S. 265, 276 (1978), both of which were brought by white male applicants challenging their denial to the respective universities in favor of minority applicants admitted pursuant to post-*Brown* integration efforts. These cases have continued unabated to the present. *See, e.g.*, *Fisher v. Texas*, 579 U.S. ____ (2016) (challenging admissions plans designed to, among other things, increase the number of Black and Hispanic students admitted to the University of Texas). Recent challenges, filed by the non-profit Student for Fair Admission against both the University of North Carolina and Harvard University, continue to threaten the ability of HWIs to enroll significant numbers of Black students. *See* *Students for Fair Admission v. Univ. of N.C.*, 319 F.R.D. 490 (M.D.N.C. 2017); *Students for Fair Admission v. Harvard*, 397 F. Supp. 3d 126 (D. Mass. Sept. 30, 2019). The newest of these lawsuits reprises a lost challenge to the University of Texas race-conscious admissions policy previously upheld by the Supreme Court in *Fisher v. Texas* (2016). *See generally* Plaintiff’s Complaint, *Students for Fair Admissions FFASFFA v. Univ. of Texas*, No. 1:20-cv-763, (W.D. Tx, filed Jul. 20, 2020).

²⁸⁶ See *supra* notes 129-30, 137–138 (discussing Allen’s findings on the superiority of HBCUs and inadequacy of HWIs for supporting Black student success).

²⁸⁷ See Gershenson et al., *supra* note 193, at 1 (“[S]ociodemographic gaps in educational attainment . . . are especially concerning if they reflect underinvestments in human capital among traditionally disadvantaged groups.”).

²⁸⁸ *Id.*

and white students, but it is hardly the most important.²⁸⁹ Education scholars have identified at least five factors that influence student learning and achievement: (1) aptitude, (2) perseverance, (3) quality of instruction, (4) opportunity to learn, and (5) ability to understand instruction.²⁹⁰ Of these, the first two (aptitude and perseverance) are individual, while the remaining three (opportunity to learn, quality of instruction, and ability to understand instruction) take on larger institutional dimensions. These three institutional factors may explain HBCUs' unparalleled success in effectively educating Black students, including those with limited pre-collegiate academic preparation.²⁹¹

HBCUs, consistent with their mission, are uniquely designed to foster Black student success in a number of ways that find resonance with the institutional factors influencing student learning and achievement. First, HBCUs offer their students quality instruction through faculty who believe in their ability to succeed and who set appropriately high expectations for their performance. Second, HBCUs ensure students have the opportunity to learn by providing them the academic and social support necessary to aid in student achievement.²⁹² Finally, HBCUs promote students' ability to learn with curricular content that is culturally enriching and civically engaged, thereby ensuring that students become active learners who are invested in the academic enterprise. Each of these factors are in many ways comparatively lacking for Black students attending HWIs, and their absence may explain, at least in part, why HWIs fail Black students where HBCUs succeed.²⁹³

A. Student-Teacher Mismatch

Since the classic Pygmalion study of the 1960s we have known that “teachers’ beliefs can affect student performance.”²⁹⁴ One study found that teacher expectations exert such significant influence on student performance that “teacher expectations were more predictive of college success than many [other] major factors, including student motivation and student effort,” more powerful even than expectations of the students’ parents.²⁹⁵ Numerous studies in the education literature have confirmed that “nonblack teachers have significantly lower educational expectations for black students than black teachers do.”²⁹⁶ The research on student-teacher race-matching also finds that Black teachers have positive effects on Black student achievement, even if there are no comparable effects for race-matching between teachers and students of other racial or ethnic groups.²⁹⁷ This

²⁸⁹ For more on the benefits of racial integration in education for both Black and white students, see discussion *infra* Section IV.C.

²⁹⁰ John B. Carroll, *The Carroll Model: A 25-year Retrospective and Prospective View*, 18 EDUC. RSCHER. 26, 26 (1989).

²⁹¹ See discussion *supra* Sections II.A-C (discussing the unique HBCU pedagogical model).

²⁹² See discussion *supra* Section II.B.

²⁹³ Black students attending HWIs have complained of isolation, alienation, and disengagement. See *supra* note 138.

²⁹⁴ Gershenson et al., *supra* note 193, at 1. In the Pygmalion study, Harvard psychologist Robert Rosenthal studied the effect of teacher expectations by administering the Harvard cognitive ability test to students in a San Francisco elementary school. See Hawkins, *supra* note 131, at 894–95. Rosenthal selected 20 percent of the students at random and told their teachers they had shown “potential for intellectual blooming or spurring” based on their test scores. *Id.* During the course of the school year, the designated “bloomers” gained an average of twelve IQ points compared with average gains of only eight points for their peers, despite having been selected at random. *Id.*

²⁹⁵ Boser et al., *supra* note 196, at 3; see also Gershenson et al., *supra* note 193, at 22–23.

²⁹⁶ Gershenson et al., *supra* note 193, at 3.

²⁹⁷ *Id.* at 3–6.

research offers “causal evidence” that demographic mismatch can negatively impact Black student performance while student-teacher race-matching can positively impact Black student performance.²⁹⁸

Given the data, Stephens’s documentation of a “belief gap” among non-Black teachers (based on the self-reported experiences of students of color) is unsurprising.²⁹⁹ Stephens has described the students’ palpable “disappointment, frustration, and anger” with their teachers’ low expectations, observing that “[i]t is not only unfair, but also tragic that these students must carry the burden of constantly trying to prove they belong, persistently working against the false narrative that African American and [Hispanic] students are not academically motivated.”³⁰⁰ Ultimately, her conclusion is that “until we address what we really believe, we will have not only a belief gap or a teaching gap, but also an achievement gap . . . and students will continue to find themselves in an environment of low expectations.”³⁰¹

It is important to point out that teacher diversity matters not just to the academic performance of Black students, but in fact improves the educational experience of *all* students.³⁰² In a study of over 16,000 faculty members at 159 HWIs across the country, researchers at UCLA’s Higher Educational Research Institute found several pedagogical differences among faculty based on gender and race.³⁰³ For instance, African American faculty were more likely than faculty of other racial and ethnic backgrounds to report required readings on racial/ethnic issues.³⁰⁴ Moreover, the researchers found that Hispanic and African American faculty were most likely to require cooperative learning techniques,³⁰⁵ and Native American faculty were most likely to employ experiential learning techniques.³⁰⁶

These differences in pedagogical approach impacted students’ educational experience in meaningful ways. The researchers found that students who reported having had the opportunity during college to engage with people or content from a racial/ethnic background different from their own reported growth in a number of important areas of learning and development.³⁰⁷ Not only was this curricular instruction on race/ethnicity positively associated with improved cultural knowledge

²⁹⁸ See, e.g., *id.* at 6 ([S]tudies consistently find evidence of arguably causal, modest negative effects of demographic mismatch on both academic achievement and teacher perceptions of student ability, behavior, and noncognitive skills.”).

²⁹⁹ Stephens, *supra* note 208.

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² See Bracey, *supra* note 21, at 689 (noting that “[t]he context in which education occurs is just as important as the content of the curriculum,” and “white administrators often lack sensitivity to the educational needs of their Black students”).

³⁰³ See Sylvia Hurtado, *Linking Diversity and Educational Purpose: How Diversity Affects the Classroom Environment and Student Development*, in DIVERSITY CHALLENGED: EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION 187, 192 (Gary Orfield ed., Harvard Education Publishing Group 2001).

³⁰⁴ Although the explanations for the variance were unclear, Asian American faculty were least likely (23 percent) to require these readings in some or most of their courses. *Id.* at 196. Female faculty were also significantly more likely than male faculty to require readings on racial/ethnic issues in their courses, and a similar pattern across gender, race and ethnicity was observed among faculty with respect to required readings on gender. *Id.* at 194.

³⁰⁵ *Id.* at 195. Asian American faculty were again least likely, without clear explanation, to require these techniques in the classroom. *Id.*

³⁰⁶ *Id.*

³⁰⁷ The strongest effects were associated with civic outcomes such as the acceptance of people of different races/cultures, cultural awareness, tolerance of people with different beliefs, and leadership abilities.” *Id.* at 196–98.

and awareness,³⁰⁸ it was also positively associated with improved critical thinking skills.³⁰⁹ Thus, the researchers concluded, the gender, racial, and ethnic composition of faculty is likely to impact students' classroom experiences at HWIs and can generate positive educational outcomes.³¹⁰

Despite strong empirical evidence demonstrating the importance of faculty diversity, and Black faculty representation in particular, to the successful education of Black students (and improved educational experiences for all students), faculty diversity is sorely lacking at most HWIs.³¹¹ Full-time faculty at HWIs remain overwhelmingly white (84 percent).³¹² The proportion of Black faculty at HWIs, according to one report, “stands at 2.3 percent, the same as it was 20 years ago.”³¹³ Another report, offering an equally bleak picture of faculty diversity at HWIs, observed that “[f]aculty diversity has proved harder to pull off than student body diversity.”³¹⁴ Over the same twenty-year period, diversity among students generally has increased significantly, and the representation of Black students in particular has also grown.³¹⁵ So while the diversity of faculty has remained stubbornly frozen in time, the diversity of students has increased by almost 50 percent.³¹⁶

Integration may also explain why faculty diversity lags significantly behind student bodies. Just as Black schools bore the brunt of desegregation efforts, so too did Black teachers.³¹⁷ Although data is unavailable for the impact of desegregation efforts in higher education, at least one survey on the impact of desegregation on Black teachers in the K-12 context concluded that by 1972 almost 40,000 Black teachers had lost their jobs because of *Brown*.³¹⁸ According to one account, as late as 1966, not one Black teacher in the states of Alabama, Mississippi, or Louisiana taught in a *de jure* white school, even though such schools had by then admitted African American students.³¹⁹ As Black schools were shuttered, Black teachers were not absorbed into newly integrated schools; they were simply pushed out of teaching altogether.³²⁰ Moreover, even after desegregation, teachers remained

³⁰⁸ *Id.* at 198.

³⁰⁹ *Id.*

³¹⁰ *Id.* at 199.

³¹¹ See *supra* notes 297 (discussing the benefits of Black student-teacher race matching), 302 (discussing the benefits of diverse faculty for all students), and accompanying text.

³¹² See *Gallup Report*, *supra* note 98, at 17.

³¹³ See Stewart et al., *supra* note 49, at 27.

³¹⁴ See Bracey, *supra* note 21, at 690 (estimating “full-time” Black faculty at HWIs at “less than six percent”). The discrepancy between these two figures is probably attributable to different groups of faculty being counted in each with the larger figure reflecting both tenure-track and non-tenure track faculty and the smaller number reflecting tenure-track faculty only. The 2 percent figure has been cited elsewhere. See Gasman & Arroyo, *supra* note 38, at 69.

³¹⁵ Over a comparable period, the diversity of undergraduate enrollment has increased significantly overall, and modestly (after some regression) among Black students. See NAT'L CTR. FOR EDUC. STAT., U.S. DEP'T OF EDUC., NCES 2019-038, STATUS AND TRENDS IN THE EDUCATION OF RACIAL AND ETHNIC GROUPS 126–27 (2019) (showing decline in white student enrollment (70 to 56 percent) from 2000 to 2016, but increases in enrollment among both Black (12 to 14 percent) and Hispanic students (10 to 19 percent)).

³¹⁶ *Id.*

³¹⁷ Wendy Parker, *Desegregating Teachers*, 86 WASH. U. L. REV. 1, 6 (2008).

³¹⁸ *Id.* at 15.

³¹⁹ *Id.* at 9.

³²⁰ Days, *supra* note 67, at 55 (observing that “the black community has paid, in some instances, a high price for desegregation,” given how “black teachers and administrators have been dismissed and demoted disproportionately”).

highly racially segregated.³²¹ It is reasonable to presume that the disproportionate loss of Black teachers and continued teacher segregation were similarly reflected in higher education,³²² and further, the closure of HBCUs in the aftermath of integration significantly restricted the pipeline for new Black faculty, as HBCUs were the primary conduit into the professoriate for Black faculty and remain so today.³²³ Given the demonstrated benefit of Black teachers for Black students, the dearth of Black faculty significantly curtails the educational prospects of Black students attending HWIs.

B. Stereotyping and Other Climate Threats

Beyond faculty, another key factor in the educational experience of students is the academic environment, or campus climate, which can impact students' opportunity to learn.³²⁴ Undoubtedly many factors contribute to students' ability to excel academically, but a student's sense of belonging and well-being within the campus environment critically influences student performance.³²⁵ When the campus climate is perceived as nurturing and supportive students excel—not just socially but academically as well.³²⁶ Conversely, when students perceive the campus climate as hostile or threatening, not only does it impair their social and emotional well-being, but it also undermines their academic performance.³²⁷ Although all students experience some unease associated with the adjustment to campus life, and some can even be vulnerable to social isolation in college, these challenges are more acute for minority students attending HWIs.³²⁸ As a consequence, the lower graduation rates among Black students attending HWIs may be partially attributable to a host of environmental factors, including “poor race relations among students, a lack of cultural and social activities geared toward [Black students], or a surrounding community that is inhospitable to blacks.”³²⁹

Each of these climate threats has been well-documented on HWI campuses across the

³²¹ See Parker, *supra* note 317, at 7.

³²² In the aftermath of desegregation, the number of HBCUs has been cut nearly in half, see *supra* note 30, and the faculties of HBCUs remain predominantly Black, see *supra* note 170, just as those of HWIs remain predominantly white, see *supra* note 312.

³²³ HBCUs have produced 75 percent of Black PhD graduates. FLEMING, *supra* note 38, at 8-9.

³²⁴ See Allen, *supra* note 109, at 41 (“[L]ittle doubt exists over the negative impact of hostile racial and social relationships on Black student achievement. When Black students are made to feel unwelcome, incompetent, ostracized, demeaned, and assaulted, their academic confidence and performance understandably suffer.”). For an extended discussion of the importance of campus climate to the experiences of Black and other minority students, see generally Vinay Harpalani, *Safe Spaces and the Educational Benefits of Diversity*, 13 DUKE J. CONST. L. & PUB. POL’Y 117 (2017).

³²⁵ See Bracey, *supra* note 21, at 678.

³²⁶ See discussion *supra* Section II.B (discussing the positive academic benefits of school climate at HBCUs for Black students).

³²⁷ See Gregory M. Walton & Geoffrey L. Cohen, *A Brief Social-Belonging Intervention Improves Academic and Health Outcomes of Minority Students*, 331 SCIENCE 1447, 1447 (2011) (observing that social isolation, loneliness, and low social status harm not only subjective well-being but also intellectual achievement and that uncertainty about belonging, especially when chronic, can undermine minorities’ performance in particular).

³²⁸ See Allen, *supra* note 109, at 29.

³²⁹ *Id.* at 21.

country.³³⁰ Indeed, the worsening racial climate nationally following Donald Trump's presidency has only exacerbated these campus hostilities.³³¹ HWIs continue to be places where Black students routinely face threats to their physical safety and well-being,³³² inhospitable environments,³³³ culturally insensitive treatment,³³⁴ and exclusion from institutional histories.³³⁵ In stark contrast to these stories of exclusion and threat at HWIs is a narrative of nurturing and support at HBCUs that borders on the familial.³³⁶ Although often trivialized because the exact relationship between school climate and student success is not well-documented or fully understood, the impact of campus

³³⁰ For a few recent, high-profile examples, see, e.g., Erik Ortiz & Daniel Arkin, *University of Missouri Authorities Apprehend Suspect Behind Social Media Threats*, NBC NEWS (Nov. 11, 2015), <https://www.nbcnews.com/news/us-news/university-missouri-authorities-apprehend-suspect-behind-social-media-threats-n461311> [https://perma.cc/8RGA-2VFZ] (discussing the protest actions of Concerned Black Students 150 at the University of Missouri and the violent online threats aimed against them in response); Jolie Lee, *I, Too, Am Harvard' photos tell Black students' stories*, USA TODAY (Mar. 5, 2014), <https://www.usatoday.com/story/news/nation-now/2014/03/05/Black-students-harvard-tumblr/6013023/> [https://perma.cc/483N-Z3E6] (describing the advocacy of the “I, Too, Am Harvard” photo campaign to challenge the hostile campus climate); Akane Otani, *Black UCLA students decry lack of diversity in video*, USA TODAY (Nov. 14, 2013), <https://www.usatoday.com/story/news/nation/2013/11/14/youtube-ucla-lack-diversity/3518373/> [https://perma.cc/9C46-LH2T] (reporting the video titled “The Black Bruins [The Spoken Word]” which highlighted the hostile environment that Black students face at UCLA); Stanley Augustin, *National Civil Rights Organization Wins Lawsuit Against Daily Stormer and White Supremacists Engaging in Online Threats and Harassment*, LAWYERS’ COMMITTEE FOR CIVIL RIGHTS UNDER LAW (AUG. 9, 2019), <https://lawyerscommittee.org/national-civil-rights-organization-wins-lawsuit-against-daily-stormer-and-white-supremacists-engaging-in-online-threats-and-harassment/> [https://perma.cc/Q6U8-XU7T] (describing incidents of harassment directed against American University’s first African American student body president, Taylor Dumpson, including hanging nooses on campus and violent online threats); Paula Rogo, *Napping While Black? White Yale Student Called Cops On Black Student Sleeping In Common Room*, ESSENCE (May 10, 2018), <https://www.essence.com/news/white-yale-student-called-cops-Black-sleeping/> [https://perma.cc/J379-JR67] (describing a white student who called police on a Black student for sleeping in a Yale dormitory space); Teri Weaver, *#NotAgainSU: A timeline of racist incidents at Syracuse University*, SYRACUSE.COM (Nov. 22, 2019), <https://www.syracuse.com/syracuse-university/2019/11/notagainsu-a-timeline-of-racist-incidents-at-syracuse-university.html> [https://perma.cc/TC9L-ZM6R] (detailing numerous racist incidents within two weeks at Syracuse University); Kamala Kelkar, *Three dead after white nationalist rally in Charlottesville*, PBS (Aug. 12, 2017) <https://www.pbs.org/newshour/nation/state-emergency-charlottesville-va-fights-erupt-white-nationalist-rally> [https://perma.cc/47YM-AN7W].

³³¹ See, e.g., Scott Jaschik, *Tensions, Protests, Incidents*, INSIDE HIGHER EDUC. (Nov. 14., 2016), <https://www.insidehighered.com/news/2016/11/14/protests-and-incidents-spread-following-trump-election-victory> [https://perma.cc/VG56-2NFW].

³³² See Ortiz & Arkin, *supra* note 330 (reporting incidents of physical threats made to students of color at the University of Missouri); Kelkar, *supra* note 330 (reporting the violence and threats at the Unite the Right Rally at the University of Virginia).

³³³ See, e.g., Justin Worland, *Why a Free Speech Fight is Causing Protests at Yale*, TIME (Nov. 10, 2015), <https://time.com/4106265/yale-students-protest/> [https://perma.cc/Y9UB-WUXC]; Jamiles Latery, *Harvard 'Black tape' vandalism brings law school's controversial past to fore*, THE GUARDIAN (Nov. 21, 2015), <https://www.theguardian.com/education/2015/nov/21/harvard-law-school-black-tape-vandalism-royall-must-fall-movement> [https://perma.cc/J97P-DYJ2].

³³⁴ See, e.g., Colleen Walsh, *Harvard announces Committee to Articulate Principles on Renaming*, HARVARD GAZETTE (Oct. 26, 2020), <https://news.harvard.edu/gazette/story/2020/10/harvard-announces-committee-to-articulate-principles-on-renaming/> [https://perma.cc/SE92-8DYU] (describing institutional response to building naming controversy at Harvard and other schools).

³³⁵ See, e.g., *id.* (noting push for inclusion of Black institutional history at Harvard and other schools to include the renaming of buildings currently named for slaveholders).

³³⁶ See *supra* notes 214–21 and accompanying text.

climate on student achievement (or lack thereof) cannot be discounted.³³⁷ At the very least, we know that hostility towards the presence of Black students from both faculty and peers can contribute to the well-documented phenomena of stereotype and stigma threat, both of which suppress academic performance in ways that are distinct from individual measures of ability or achievement.³³⁸

C. *Lack of Curricular Engagement*

The final institutional factor contributing to student success, as articulated in the education literature, is support for students' ability to understand instruction. Another way to think about this factor is the extent to which institutions engage students deeply and meaningfully in the learning process. One approach for supporting student learning is to offer instructional models and curricular content that engages students. Research has shown that Black student achievement increases when the curriculum contains content that is both responsive to and reflective of their cultural identity and interests.³³⁹ While HBCUs are steeped in this type of cultural learning, many HWIs offer limited curricular content responsive to the unique cultural identities and interests of Black students.³⁴⁰ For instance, notwithstanding the fact that many HWIs do offer courses, and some even offer majors, in disciplines such as African American Studies, most HWIs have limited offerings in this regard.³⁴¹ Moreover, this content is often siloed in ways that limit its impact and exposure to students.³⁴² Ensuring that the curriculum is suffused with diverse content that reflects the breadth of cultural

³³⁷ See Gasman & Commodore, *supra* note 40, at 91. Part of the reason why environmental factors are less well-documented and understood is that research has focused inordinately on the individual factors contributing to student achievement, rather than on these institutional factors. See Hawkins, *supra* note 131, at 863–68.

³³⁸ For a discussion of these phenomena and their impact on student performance, see Hawkins, *supra* note 131, at 871–75.

³³⁹ See Ray Von Robertson & Cassandra Chaney, “I Know it [Racism] Still Exists Here:” *African American Males at Predominantly White Institutions*, 1 HUMBOLDT J. SOC. RLTS. 260, 275 (2017); see also Hurtado, *supra* note 303, at 191 (connecting more expansive curricular content to enhanced learning in diverse college environments). Similar findings have been documented with regard to male students in the K-12 literature, which suggest that boys' reading achievement improves as engagement with preferred texts increases. See, e.g., William G. Brozo, Gerry Shiel & Keith Topping, *Engagement in Reading: Lessons Learned from Three PISA Countries*, 51 J. ADOL. & ADULT LIT. 304, 312 (2008). Moreover, culturally relevant interventions in curriculum have also been recommended as a means of better serving diverse K-12 students. See Cummings, *supra* note 14, at 741–43 (identifying various curricular interventions designed to increase academic achievement among Black males, including expanding content about African-American history and culture).

³⁴⁰ See powell, *supra* note 14, at 682 (describing the curriculum of “mainstream” (read: white) schools as “purporting to be objective, [while] often eurocentric” which “perpetuates feelings of superiority and fear in white students and feelings of inferiority and anger in students of color”).

³⁴¹ The emergence of African American Studies courses at HWIs can be traced to the 1960s and 1970s when Black students staged protests on college and university campuses across the country demanding that HWIs diversify both their faculty and their curricula by hiring more Black faculty and offering Black studies courses. See generally GLASKER, *supra* note 38 (describing the student activism that led to the creation of the first Black studies course at Penn in 1968 and later expansion of the course into the Afro-American Studies Program in 1972). By contrast, this period represented the second wave of student activism around Afro-centric curriculum at HBCUs, which experienced the first such wave of student activism in the 1920s. See *supra* note 38 and accompanying text.

³⁴² Research has shown, for instance, that Black faculty are much more likely than other faculty to include this type of culturally relevant content in their courses. See Hurtado, *supra* note 303, at 196.

knowledge is key to engaging all, but especially Black, students. Yet, many HWIs lack this important curricular feature. Instead, their curriculum is heavily Eurocentric, with only limited and often isolated opportunities for students to engage content, knowledge, and materials from non-white cultures and perspectives.³⁴³

Additionally, an experiential model of instruction activates student learning in meaningful ways.³⁴⁴ HBCUs approach instruction as an opportunity to uplift the community through experiential learning.³⁴⁵ It is a core tenet of the mission of HBCUs to be outwardly focused, giving students a sense of purpose that grounds their education.³⁴⁶ By contrast, HWIs approach learning in an individualistic way, focusing on classroom instruction as a means of cultivating student knowledge, without the accompanying sense of community purpose.³⁴⁷ The models of civic engagement that have more recently developed at HWIs are part of the DNA of HBCUs. Rather than a mere appendage to core teaching, civic engagement is a central feature of the HBCU pedagogical model. HWI students' opportunities for civic-minded learning are limited precisely because the experience is not otherwise congruent with their educational enterprise in a way that facilitates students' deep engagement with community purpose. As a result, Black students at HWIs report less attachment to their institutions and less personal satisfaction with their educational experiences.³⁴⁸

In sum, despite the presumption that HWIs are superior institutions of higher education, HWIs in fact fail Black students in a variety of ways. They offer an inferior pedagogical model for Black students, as compared to HBCUs, with respect to each of the institutional factors identified in the educational literature as critical for student achievement. Namely, fewer Black faculty at HWIs results in lower quality of instruction for Black students due to issues of stigma threat.³⁴⁹ Varied climate threats on HWI campuses compromise not only Black students' physical and emotional well-being, but also diminishes their learning opportunities.³⁵⁰ Finally, the lack of culturally relevant curricular content, and the comparatively limited opportunities for experiential learning, impair Black students' ability to engage deeply and meaningfully in the learning process.³⁵¹ Addressing educational

³⁴³ See Merisotis & McCarthy, *supra* note 1, at 52 (“[A] fundamental flaw of many [HWIs] for minority students is their continued operation from a monocultural, mainstream view, based on Eurocentric norms. This causes colleges and universities to ignore the cultural traditions, norms, and perspectives of other racial and cultural groups who continue to represent a growing percentage of the college-going population.”); see also Gasman and Arroyo, *supra* note 38, at 61–62 (critiquing the Eurocentric orientation of HWIs for Black and other minority students).

³⁴⁴ See *supra* note 264 and accompanying text (discussing the interpersonal and educational benefits of experiential models of instruction); see also *Gallup Report*, *supra* note 98, at 18 (noting how experiential learning enhances the educational experience and promotes students' emotional attachment to their schools).

³⁴⁵ See *supra* note 251 and accompanying text.

³⁴⁶ *Id.* Recall Paul Quinn College's motto of “We Over Me” and its value of “leav[ing] places better than you found them.” See *supra* note 257 and accompanying text.

³⁴⁷ Given that Black and Native American faculty are most responsible for experiential learning at HWIs, see Hurtado, *supra* note 303, at 195, and given their low representation among HWI faculty, it is reasonable to conclude these experiences are not widely available to students at HWIs.

³⁴⁸ See *Gallup Report*, *supra* note 98, at 5 (noting that experiential learning was positively associated with emotional attachment to one's alma mater).

³⁴⁹ See *supra* note 327.

³⁵⁰ See *supra* note 316.

³⁵¹ See *supra* note 330 and accompanying text.

deficits like this on behalf of Black students has been one of the central projects of the Supreme Court's equal protection doctrine for more than half a century—a project that has, by many measures, failed.

IV. REASSESSING *BROWN*'S INTEGRATION STRATEGY

A. The “True” Meaning of Educational Equality

Despite the guarantee of educational equality recognized in *Brown* and its progeny,³⁵² the persistence of racial disparities in academic achievement across a range of measures³⁵³ demonstrate much unfinished business in the quest for educational equality. It remains to be seen what it will take to finally and fully realize true educational equality on behalf of Black students.³⁵⁴ Part of the challenge in realizing educational equality on behalf of Black students is that during the fight to dismantle the system of separate and unequal education that culminated in *Brown*, the desire for equal educational opportunities was sacrificed in service to the vision for integrated schools. While the presumption was that integration would necessarily bring with it educational equality for Black students, the focus on integration left the goal of educational equality unattended. The unfortunate consequence was integration without meaningful educational equality for Black students.³⁵⁵ Particularly in higher education, Black students were integrated into HWIs at an often high cost.³⁵⁶ Today, even the most ardent civil rights advocates admit that the integration project has largely failed to deliver on its promise of educational equality.³⁵⁷

One reason for the failure to achieve educational equality, especially for Black students, is the dogged pursuit of a particular form of integration—one that prioritized the preservation of presumptively superior white schools, including HWIs, at the expense of presumptively inferior Black

³⁵² 347 U.S. 483 (1954); *Green v. Cnty. Sch. Bd.*, 391 U.S. 430 (1968); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971).

³⁵³ Black (and Hispanic) students consistently lag behind white (and Asian American) students in academic achievement. See *supra* notes 261–62 and accompanying text.

³⁵⁴ The focus should also be on other students who are equally disserved by the dominant pedagogical model of HWIs, including in particular first-generation and low-socioeconomic status students. For a discussion of why these students are important to the future of higher education and how the interventions suggested here for Black students may be equally effective in raising educational attainment and academic achievement for FGLI students, see discussion *infra* Part V.

³⁵⁵ This is not to say that the project of integration was an entirely failed project for educational equality. At the height of integration efforts, between the early 1970s and the early 1990s, the academic achievement gap did narrow in K-12 education. See RUCKER & NAZARYN, *supra* note 276, at 55–62. However, as integration efforts have receded, this K-12 progress has stagnated. *Id.* at 3. It is not entirely clear that any such comparable narrowing of achievement gaps occurred in higher education at any time post-*Brown*. What the fight for integration of higher education did accomplish was access to graduate education for Black students by allowing admission to HWIs and improving the rigor of the curriculum at HBCUs. See Fryer & Greenstone, *supra* note 20, at 4 (describing the early curricula of HBCUs as comparable to high school instruction).

³⁵⁶ Black students attending HWIs continue to experience feelings of isolation, hostility and threat, factors which likely contribute to lowered academic performance and higher achievement gaps relative to their peers. See *supra* note 327 and accompanying text.

³⁵⁷ See Nancy Levit, *Embracing Segregation: The Jurisprudence of Choice and Diversity in Race and Sex Separatism in Schools*, 2005 U. ILL. L. REV. 455, 490–91 (2005).

schools, including HBCUs.³⁵⁸ This approach dismissed any meaningful role for historically Black institutions in the process of achieving educational equality, and it continued to do so despite mounting evidence that, at least in the context of higher education, newly integrated Black students were not as well-served by HWIs as their more advantaged white peers and that Black students benefited from the unique pedagogical model employed by HBCUs.³⁵⁹ These historic failures and enduring oversights invite us to reimagine what it will take to achieve true educational equality on behalf of Black students, rather than merely continuing to blindly pursue racial integration no matter the cost. With the benefit of hindsight, it is clear that instead of centering HWIs, this new vision ought instead to center HBCUs and cultivate an expanded and more meaningful role for these important institutions in the pursuit of educational equality for Black students.

A recent report directed to state education chiefs by the Aspen Institute offers one possibility for this reimagined vision; it defined educational equality as “every student ha[ving] access to the resources and educational rigor they need at the right moment in their education, despite race, gender, ethnicity, language, disability, family background, or family income.”³⁶⁰ The report noted that in relation to this benchmark, gaps in educational equality persist “at all levels of the educational system.”³⁶¹ Although many critics of existing educational inequalities, including those seeking novel solutions to the racial achievement gaps, have tried to emphasize socioeconomic status as a more pressing concern than race, the Aspen Institute report acknowledges that racial gaps in educational equality persist even after accounting for all other demographic factors.³⁶² Thus, closing these racial gaps will not be achieved without specific and deliberate attention to race.³⁶³ The unique challenges that Black students (and other racial minorities) face in the educational system must necessarily be confronted in racial terms.³⁶⁴

³⁵⁸ See Austin, *supra* note 192, at 98 (observing that “separate but equal” was abandoned in favor of integration, leaving many with regrets and renewed calls for “segregated” education that is “Afrocentric”).

³⁵⁹ See discussion *supra* Sections II.A-C.

³⁶⁰ THE ASPEN INSTITUTE & THE COUNCIL OF CHIEF STATE SCHOOL OFFICERS, LEADING FOR EQUITY: OPPORTUNITIES FOR STATE EDUCATION CHIEFS 3 (2017).

³⁶¹ *Id.*

³⁶² *Id.* at 8.

³⁶³ See powell, *supra* note 14, at 682–83. (“School systems in the United States have generally responded well to the needs of both smart children and slow learners. However, we have yet to recognize that social and cultural location may also necessitate special attention.”).

³⁶⁴ See *id.* at 683 (“The issue, then, is not whether Blacks and whites are inherently different, but whether the structure of the current public education system addresses the needs of Blacks, particularly poor Blacks, to the extent that their needs are unique.”). Many of the ideas offered in Part V for improving equality in higher education for Black and other disadvantaged students are consistent with the types of recommendations offered for primary and secondary education in the Aspen Institute report. For instance, the report urges State Education Chiefs to increase funding and support for schools serving majority-minority populations, to ensure the inclusion of culturally relevant content in the K-12 curriculum, and to recruit more diverse teachers and staff who will provide a more supportive and nurturing environment for minority students. ASPEN INSTITUTE, *supra* note 360, at 8–9.

B. *The Integration / Segregation Debate*

In this effort to generate new solutions to persistent social problems, it is worth revisiting early debates over how best to achieve educational equality in public education. These debates date back to the fight for school desegregation in *Brown* and largely centered on whether to integrate Black students into HWIs or to educate them separately in historically Black institutions. The lawyers and litigants in *Brown* faced the decision of whether to pursue a strategy of *segregation*, i.e., equal education for Black students in separate schools, or *integration*, i.e., education of Black and white students in the same schools.³⁶⁵ The arguments in favor of segregation were animated by concerns over the expected resistance to integration, the need to preserve “Black schools,” and the desire to protect Black teachers against professional exclusion in integrated schools, as well as reflecting early notions about sound pedagogical practice.³⁶⁶ The sentiment that perhaps best captures the opposition to integration on behalf of Black parents and activists at the time of *Brown* was the fact that integration was seen as a unilateral strategy of Black assimilation into HWIs, rather than as a bilateral strategy of merging Black and white schools into truly integrated institutions.³⁶⁷ This concern was well-founded, as Black schools and Black teachers overwhelmingly came to bear the brunt of integration.³⁶⁸

The fact that integration efforts came at such a high cost to Black schools and Black teachers, without a commensurate educational benefit for Black students, has generated calls for revisiting *Brown*’s integration strategy.³⁶⁹ Coupled with a resurgence in racial segregation among public schools—arising from, among other things, the withdrawal of judicial oversight and enforcement of desegregation orders, in tandem with a conservative ideological turn on the federal bench—the disillusionment with integration efforts has come full circle.³⁷⁰ The new anti-integrationists have both

³⁶⁵ For a discussion of these debates, see Derrick Bell, *Brown and the Interest Convergence Dilemma*, in SHADES OF BROWN, *supra* note 61, at 99.

³⁶⁶ The high costs of integration paid by Black communities included, among other things: the closure of schools that served not only as educational institutions but as community centers in predominantly Black neighborhoods; the burden of busing that fell disproportionately upon Black children; the disproportionate dismissal and demotion of Black teachers and administrators; and increased disciplinary action against Black students in recently desegregated schools. See Days, *supra* note 67, at 55; see also Parker, *supra* note 317, at 29 (“Desegregation orders subjected children of color to long bus rides to schools that were hostile or indifferent to their learning and asked them to assimilate to succeed; desegregation destroyed segregated schools that were points of community pride; and integration assumed that sitting next to white children would guarantee children of color educational attainment.”).

³⁶⁷ See Cummings, *supra* note 14, at 733 (The integration strategy ultimately involved integration as “assimilation to the white world, presupposing that it was worth integrating into. In this pre-multicultural society, there was only one valid culture: the bland, homogenized, assimilationist culture in which humans were primarily consumers”).

³⁶⁸ *Id.*

³⁶⁹ See Cummings, *supra* note 14, at 726 (“[T]he post-modern anti-integrationists, who as the result of disillusionment with the promises of a truly interracial society, have sought to find solutions through the established constitutional order that legitimize separate educational institutions based on race and gender.”); see also Levit, *supra* note 369, at 445 (explaining that the “growing national impulse toward resegregation . . . stems from a peculiar alliance of conservative forces who have long believed that separation of the races and sexes is natural and appropriate and liberal groups who, recently and particularly with respect to gender, see separatism either as a tool of liberation or as the lesser of bad alternatives compared to a flawed coeducational system”).

³⁷⁰ For an analysis of rising resegregation of public schools, see Ericka S. Weathers & Victoria E. Seline, *Separate Remains Unequal: Contemporary Segregation and Racial Disparities in School Districts* (Stanford Ctr. for Educ. Pol’y Analysis, Working

accepted the failures of the integration approach and championed anew the merits of segregated education.³⁷¹ But these recent calls for segregation among Black parents and activists, who see it as a tool of liberation from failing schools, have found common cause with those conservatives who have long advocated for racial segregation for its own sake.³⁷² The mere fact of this “unholy alliance” is troubling and counsels caution in pursuing a purely segregationist approach to educational equality.³⁷³

C. *The Harms of Segregation and the Benefits of Integration*

There is, after all, a reason the Supreme Court concluded in *Brown v. Board of Education* that:

Segregation of white and colored children in public schools has a detrimental effect upon [Black] children. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of [Blacks as a group]. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [impair] the educational and mental development of [Black] children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.³⁷⁴

Countless studies have documented the detrimental effects of segregation on Black schoolchildren, beginning with the infamous “Dolls Study” conducted by Kenneth and Mamie Clark, which informed the Supreme Court’s decision in *Brown*.³⁷⁵ However, the underlying social problem is not just that segregation “with the sanction of law,” as the Court put it in *Brown*, has a detrimental effect on Black schoolchildren.³⁷⁶ Nor is it the fact of segregation itself, even when *de facto*, that has

Paper No.19-02, 2019); *see also* Parents Involved in Comty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 748 (2007) (“The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”).

³⁷¹ Cummings, *supra* note 14, at 765 (“This approach accepts the separation of the races as an inevitability that should be looked on as an opportunity for growth and radical self-knowledge by African Americans.”). Some critics of the new separatist/anti-integration movement misunderstand it as an endorsement of natural or inherent difference between the races. *See* Levit, *supra* note 357, at 499 (arguing that “the segregative alternative is premised on a foundational idea of inherent or natural differences . . . [that has] been thoroughly discredited by genetic anthropologists, psychologists, ethnographers, and evolutionary biologists”). This critique misunderstands this movement and its primary motivations.

³⁷² *See* Levit, *supra* note 357, at 459.

³⁷³ Other historic alliances between progressive Blacks and conservative whites have proved equally problematic, such as on voting rights issues. *See, e.g.,* Desmond S. King and Rogers M. Smith, *Strange Bedfellows? Polarized Politics? The Quest for Racial Equality in Contemporary America*, 61 POL. RESCH. QTRLY 686, 694 (2008) (referring to the “unholy alliance” between Republicans and Democrats to secure majority minority voting districts).

³⁷⁴ 347 U.S. 483, 494 (1954).

³⁷⁵ *See* Sara Lawrence Lightfoot, *Families and Educators: The Forgotten People of Brown*, in SHADES OF BROWN, *supra* note 61, at 5.

³⁷⁶ Because of law’s expressive value, when racial segregation has the force of law, denoting the inferiority of a single racial group, it sanctions an ideology of white supremacy that renders racial minorities not only outside the protection of law, but outside the enforcement of social norms of equal dignity and mutual respect as well. *See* ELIZABETH ANDERSON, THE IMPERATIVE OF INTEGRATION 84 (2010) (discussing the expressive harms of segregation).

proven most detrimental to Black children in the educational context.³⁷⁷ Instead, the cause of the most detrimental harm, and the chief impediment to realizing equal educational opportunities, is the inequality of resources afforded to Black children attending segregated schools.³⁷⁸

Today, even with the elimination of *de jure* segregation, school funding formulas based on local property taxes, combined with redlining and other decades-long discriminatory real estate practices, have led to lower property values and larger wealth gaps that in turn translate into wide racial disparities in K-12 educational resources for Black (and Hispanic) children.³⁷⁹ In the higher education context, decades of underfunding have left HBCUs with far fewer resources and greater financial precarity than their HWI counterparts, with attendant effects on academic programming.³⁸⁰

But it is equally important to note that Black students are not the only ones harmed by segregation. It also harms white children by fomenting racial hatred and division while engendering notions of white supremacy.³⁸¹ These concerns caution against a complete reversal of course from the integration strategy to a full-throated embrace of segregation, given its known deleterious effects. However, we must be willing to reckon with, and work to mitigate, the costs of an integration strategy that has proven enormously harmful to Black students, especially in the higher education context.

However uneven its historical impact, integration—notwithstanding the huge costs it has wrought for many Black schools, teachers, and students—has undeniably produced benefits as well. Not only does integration make it more likely that Black students will attend well-resourced schools, it also has important social and educational benefits for all students.³⁸² Among other benefits, integration allows for the types of interracial contacts important for “mediating stereotypes and promoting understanding and tolerance” across racial groups to which we all aspire.³⁸³ Given the potential benefits of integration and the notable drawbacks of segregation, the proposals that follow attempt to reconcile these two opposing strategies by combining the lessons learned from the failures of integration with some modest proposals drawn from the successful legacy of HBCUs. The proposals aim to reimagine what it will take to realize true educational equality on behalf of Black students, and may entail important benefits for FGLI students as well. Although the focus on HBCUs might suggest that the scope of these proposals is limited to higher education, there is reason

³⁷⁷ Some have even argued that schools designed for and dedicated to the education of Black students offer superior educational benefits. *See, e.g.,* Days, *supra* note 67, at 60; Powell, *supra* note 14, at 683.

³⁷⁸ This was precisely the basis for the argument originally put forward in *Brown* in support of equal treatment for Black schools, rather than integration of Black students into white schools. *See* OGLETREE, *supra* note 4, at 4; Alan David Freeman, *School Desegregation law: Promise, Contradictions, Rationalization*, in SHADES OF BROWN, *supra* note 61, at 77.

³⁷⁹ The Supreme Court’s decision in *Milliken v. Bradley* ensured that such funding inequities are difficult, if not impossible, to remedy. 418 U.S. 717 (1974) (striking down an inter-district remedy for educational inequality such as redrawing school district lines).

³⁸⁰ *See* discussion *infra* Section V.A.

³⁸¹ *See* Cummings, *supra* note 14, at 731. The Social Science Statement submitted in *Brown* argued that “segregation, prejudices and discriminations, and their social concomitants potentially damage the personality of all children” but do so in different ways and with different impacts for white and Black children.” Angela Onwuachi-Willig, *Reconceptualizing the Harms of Discrimination: How Brown v. Board of Education Helped to Further White Supremacy*, 105 VA. L. REV. 343, 351 (2019) (citations omitted).

³⁸² *See* Onwuachi-Willig, *supra* note 381, at 361.

³⁸³ *See* Fryer & Greenstone, *supra* note 20, at 6.

to believe that some elements of this approach are adaptable even in the K-12 context.³⁸⁴

V. INVESTING IN AND EXPANDING THE HBCU MODEL

Although some consider HBCUs as anachronistic, that is, as simply a vestige of the now defunct dual system of segregated education struck down in *Brown*,³⁸⁵ the data convincingly show that HBCUs continue to outperform HWIs in effectively educating Black students.³⁸⁶ HBCUs are not without their challenges,³⁸⁷ but they have much to offer higher education in finding new solutions for addressing the stubborn gaps in academic achievement and educational attainment for Black students. Established for the express purpose of educating Black students, HBCUs have continually embraced their missions to ensure these students' academic and professional success.³⁸⁸ HBCUs already serve as critical institutions of higher education for Black students, in particular Black FGLI students, and they can likewise serve as a helpful guide for HWIs on how to better serve their own Black, first-generation, and/or low-income students.³⁸⁹ With Black and FGLI students both representing a growing share of higher education, and as HWIs currently underserve both groups, the implications of improved educational outcomes for this diverse student population cannot be overstated.³⁹⁰

HWIs were neither intended, nor are they currently designed, to educate this new and diverse composition of students.³⁹¹ Their predominantly white (and overwhelmingly male) faculties and administration cultivate an institutional ethos of individualism marked by competition, rather than one of mutual support and collaboration most conducive to these students' success.³⁹² Similarly, hostile campus climates can threaten minority students' sense of belonging and further suppress their academic achievement.³⁹³ Finally, HWIs offer a curriculum that is often devoid of cultural inquiry (outside of narrow disciplinary silos) and that fails to fully engage diverse students intellectually.³⁹⁴

³⁸⁴ Many of these ideas have already been tried in the K-12 context; for instance, there have already been efforts to improve teacher diversity and increase attention to culturally relevant content in the K-12 context. See THE ASPEN INSTITUTE, *supra* note 360, at 9, 12, 19.

³⁸⁵ Some also believe them to be inferior to HWIs. See Bracey, *supra* note 20, at 690.

³⁸⁶ See *supra* notes 40, 47-52.

³⁸⁷ Perhaps the most significant of these challenges is financial. See Allen & Jewell, *supra* note 28, at 247; see also Gasman & Commodore, *supra* note 40, at 99-105.

³⁸⁸ See *supra* notes 48, 52.

³⁸⁹ Students at HBCUs are more likely than those attending HWIs to be first-generation college students come from lower-SES households. See Gasman & Arroyo, *supra* note 38, at 66 (noting that "70% of HBCU students are considered low income," while "85% of all public HBCU students qualify for some form of financial aid and [m]any are first-generation college students").

³⁹⁰ A number of HWIs are already adopting strategies to try to improve their performance FGLI students. See Gallup Report, *supra* note 98, at 23.

³⁹¹ CONRAD & GASMAN, *supra* note 3, at 7.

³⁹² See discussion *supra* Sections III.C (discussing the individualism of HWIs), II.C (observing the different pedagogical approach of MSIs generally); see also Conrad & Gasman, *supra* note 3, at 23 (discussing the differences in pedagogical approach at all MSIs that are designed to better serve their unique student populations, including Black, Hispanic, Asian American, and Native American students).

³⁹³ See *supra* note 327 and accompanying text.

³⁹⁴ See Allen, *supra* note 109, at 42 ("A host of barriers calculated to ensure the perpetuation of a status quo rooted in

The assumption is that these students must adapt to the culture and curriculum of HWIs, rather than HWIs finding ways to account for and adapt to this new student diversity.³⁹⁵ The predictable result is that these students often struggle to find the same success at HWIs as their more advantaged white peers.³⁹⁶ The problem of HWIs providing equal educational opportunities for all students is not new, but it has taken on increasing urgency as student demographics have shifted in recent years.³⁹⁷

The shifting demographic tide in the United States is ubiquitous,³⁹⁸ but these changes are occurring most rapidly among young people.³⁹⁹ Due to migration patterns and differences between white and minority birthrates, these demographic shifts are being felt most acutely in public elementary and secondary schools, where minority students now comprise a numerical majority.⁴⁰⁰ Colleges and universities too are experiencing dramatically increased rates of student diversity.⁴⁰¹ Early predictions of the increase in college enrollment during the first decade of the twenty-first century estimated an increase of 1.6 million students by 2015.⁴⁰² Eighty percent of these students were projected to be nonwhite; almost half were projected to be Hispanic, with a large portion of these students coming from low-income backgrounds.⁴⁰³ Yet, many of these minority, low-income, and often first-generation students are not graduating at the same rate as their more advantaged white peers.⁴⁰⁴

an unfair system of racial stratification is reproduced within the university. Among these barriers are . . . faculties dominated by middle-class, White males . . . destructive pedagogical styles that emphasize ‘dog eat dog’ competition; the embrace of exclusionary ethics that undercut attempts to achieve cultural pluralism and diversity; and norms that elevate ‘sorting-out’ procedures over approaches that emphasize student learning, such as value-added, remedial strategies.”).

³⁹⁵ CONRAD & GASMAN, *supra* note 3, at 9 (noting the expectation that these students will “assimilate into traditional higher education [HWIs] and adapt to the norms of the dominant culture”).

³⁹⁶ *Id.* at 7–9.

³⁹⁷ *Id.* at 17–18 (observing that HWIs “have long struggled to provide equal access to educational opportunities” for diverse students and to provide them with “equal opportunities to learn”). Notably, this disparity in opportunity can also be found in primary and secondary education, where “deeply disparate opportunities and outcomes that persist for low-income students, students of color, English learners, and students with disabilities.” See ASPEN INSTITUTE, *supra* note 360, at 3. Therefore, the prescriptions offered here might also be useful for improving equal educational opportunities in K-12 education as well.

³⁹⁸ See generally WILLIAM H. FREY, DIVERSITY EXPLOSION (2018).

³⁹⁹ See CONRAD & GASMAN, *supra* note 3, at 14–15.

⁴⁰⁰ See NAT’L. CTR. FOR EDUC. STAT., U.S. DEP’T OF EDUC., NCES 2019-038, STATUS AND TRENDS IN THE EDUCATION OF RACIAL AND ETHNIC GROUPS 52 (2019).

⁴⁰¹ See Gallup Report, *supra* note 98, at 9 (noting that between 1976 and 2012, the percentage of Hispanic college students nearly quadrupled (from 4 to 15 percent), and the percentage of Asian/Pacific Islander students tripled (from 2 to 6 percent), while the percentage of Black college students increased by fifty percent (rising from 10 to 15 percent); see also CONRAD & GASMAN, *supra* note 3, at 15 (citing changes in undergraduate enrollment between 1980 and 2011, with declining white enrollment (26 percent) accompanied by increasing enrollment among Hispanics (500 percent), Asian and Pacific Islanders (336 percent), Blacks (165 percent), and American Indians and Alaskan Natives (118 percent)).

⁴⁰² See Merisotis & McCarthy, *supra* note 1, at 56.

⁴⁰³ *Id.*

⁴⁰⁴ See Gallup Report, *supra* note 98, at 9 (“NCES data show about 40% of all students who begin four-year degree programs fail to complete those programs within six years. The non-completion rates are considerably higher among blacks (59%) and Hispanics (47%) than they are among whites (37%) and Asians (29%). These gaps demonstrate the ongoing need for organizations to continue investing in initiatives that help students clear the hurdles necessary to complete their degrees.”).

Insofar as the role of higher education is to train a future workforce that can economically sustain communities and forge relationships across the diverse populations that make up American society, the question of how to effectively educate an increasingly diverse student population becomes paramount.⁴⁰⁵ Reflecting and maintaining this diversity not only among students, but among faculties as well as across curricula, while also cultivating an environment of inclusion, are all critical to the effective functioning of colleges and universities and to achieving their educational missions.⁴⁰⁶

In addition to outperforming HWIs in graduating Black and first-generation, low-income students, HBCUs also have a strong tradition of educating their students on issues of inequality generally and race relations specifically.⁴⁰⁷ While HBCUs should be applauded for ensuring their graduates are well-prepared to navigate a diverse workforce and pluralist society, they should not bear the “sole responsibility [for] educating college students about race and inequality in the US.”⁴⁰⁸ Indeed, all colleges and universities “should be encouraging the development of critical perspectives on race and inequality within their student bod[ies].”⁴⁰⁹

HWIs should be encouraged to labor alongside HBCUs so that they may more effectively equip all their students—their Black and FGLI students among them—with the knowledge and skills necessary to successfully navigate a diverse global society. Importantly, HWIs should not seek to supplant HBCUs in this work. Instead, in recognition of their historic legacy and ongoing record of success, the first priority should be to strengthen the role of HBCUs in continuing to serve a unique and vital role in our higher education ecosystem. However, recognizing that HWIs continue to educate the vast majority of American students, including Black students,⁴¹⁰ they too must be encouraged to adopt more effective pedagogical practices by drawing from the lessons of HBCUs.

A. Strengthening HBCUs

Despite their venerable history and continued success in producing highly accomplished Black graduates, HBCUs have struggled to achieve a status befitting their legacy. Even after enduring the threat of extinction posed by desegregation challenges like those litigated in *Fordice*, HBCUs have failed to regain their former glory as the premier institutions of higher education for Black students. Although HBCU alumni tend to be loyal to their own alma maters,⁴¹¹ HBCUs have failed to expand their appeal either to newer generations of Black students or to non-Black students who might

⁴⁰⁵ See Hurtado, *supra* note 303, at 187.

⁴⁰⁶ *Id.* at 188–89.

⁴⁰⁷ See Shorette & Palmer, *supra* note 3, at 23 (noting among the unique pedagogical and structural features of HBCUs that students are “exposed to aspects of racism at HBCUs that inform[] the way they now navigate racist systems”). This follows also from the UCLA study showing Black faculty are more likely than other faculty to include content on race and ethnicity in their courses, given the difference is representation between HWI and HBCU faculty. See Hurtado, *supra* note 303, at 195.

⁴⁰⁸ Shorette & Palmer, *supra* note 3, at 26; see also Allen, *supra* note 131, at 42 (“A major challenge confronting U.S. higher education is how best to replicate and expand examples of Black student college success.”).

⁴⁰⁹ Shorette & Palmer, *supra* note 3, at 26.

⁴¹⁰ Prior to desegregation the overwhelming majority of Black college students were enrolled in HBCUs, but by 1973 that percentage had declined to roughly one-fourth; today, three-fourths of Black students attend HWIs. See Allen, *supra* note 109, at 27–28.

⁴¹¹ See *Gallup Report*, *supra* note 98, at 21.

benefit from their unique pedagogical model.⁴¹² Among the many challenges HBCUs face, perhaps the most pressing are lack of financial resources, low reputational standing, and declining enrollment.⁴¹³ There are several policy and market responses that can help HBCUs effectively overcome these challenges.

First, we must increase public funding of HBCUs.⁴¹⁴ From their very inception under the Morrill Act, HBCUs have been grossly underfunded relative to HWIs.⁴¹⁵ These disparities, compounded for more than a century, have left many HBCUs in dire financial straits.⁴¹⁶ Title III of the Higher Education Act of 1965 was instrumental in saving HBCUs from extinction in the desegregation era by allocating critical federal funding.⁴¹⁷ Nevertheless, the financial position of HBCUs has continued to decline since the 1970s, and public funding of HBCUs remains considerably below that of HWIs.⁴¹⁸ Although Congress has continued to renew federal funding for HBCUs, it is far below the levels necessary to close the century-long funding gap between HBCUs and HWIs.⁴¹⁹ The most recent federal renewal allocates a mere \$85 million to HBCUs.⁴²⁰ This figure pales in comparison to recent individual state settlements over HBCU underfunding, in which, for

⁴¹² HBCUs have always enrolled non-Black students, and some HBCUs have even expanded enrollment of non-Black students in recent years, but most continue to enroll overwhelmingly Black students. See Mobley et al., *supra* note 235, at 32–33 (discussing the changes in the percentage of non-Black vs. Black students attending HBCUs since the 1950s).

⁴¹³ Gasman & Commodore, *supra* note 40, at 90–91. The periodic bumps in enrollment experienced at unique historic moments have not been sustained. See *supra* notes 97–98 and accompanying text.

⁴¹⁴ Public funds are the largest source of financial support for HBCUs, but the philanthropic community should also be encouraged to increase their support of HBCUs because of the significant social returns on this investment in the form of increased degree attainment among Black students, and in particular FGLI students, who currently have one of the lowest rates of degree attainment. See, e.g., Kathryn Palmer, *3 Foundations Join Forces to Support Black Colleges*, 66 THE CHRONICLE OF HIGHER EDUC. A20 (Nov. 18, 2019) (reporting that the Carnegie Corporation, Mellon Foundation, and Rockefeller foundation agreed to collectively donate three million dollars to three HBCUs to support the education of Black students, while also noting the disproportionate contributions HBCUs make in educating Black students). Many foundations and other philanthropic organizations donate large sums of money to HWIs to support efforts that serve minority students, but few direct their substantial financial resources directly to HBCUs. *Id.*

⁴¹⁵ See discussion *supra* Section 1.A.

⁴¹⁶ The NAACP on behalf of Maryland's four HBCUs—Morgan State University, Coppin State University, Bowie State University, and the University of Maryland, Eastern Shore—is suing the State for decades of underfunding relative to HWIs in the state system of higher education. Danielle Douglas-Gabriel, *Maryland Gov. Hogan Makes a Final Offer of \$200 Million to Settle Lawsuit Involving Historically Black Schools*, WASH. POST (Sept. 26, 2019), <https://www.washingtonpost.com/education/2019/09/26/hogan-makes-final-offer-million-settle-lawsuit-involving-historically-black-schools/> [https://perma.cc/6AR6-VEZV]; see also Talia Richman, *Coalition of Maryland HBCUs Seeks \$577 Million to Drop Lawsuit, Avoid Litigating for the Next 10 Years*, BALTIMORE SUN, Sept. 1, 2019.

⁴¹⁷ Fryer & Greenstone, *supra* note 20, at *5.

⁴¹⁸ *Id.* at *23. Public HBCUs remain disproportionately underfunded. Bracey, *supra* note 21, at 674 (“White land-grant institutions [] receiv[ed] state appropriations at a rate of 26 times more than Black colleges . . . [and] the per-pupil state expenditure rate for African Americans equaled about one-fourth the rate for whites.”).

⁴¹⁹ The most recent bipartisan legislation signed by President Trump in December 2019 allocates a mere \$85 millions to HBCUs, while allocating \$100 million to HSIs, \$30 million to TSIs, and another \$40 for other MSIs. See Collin Binkley, *Trump Signs Bill Restoring Funding for Black Colleges*, ASSOCIATED PRESS (Dec. 19, 2019), <https://apnews.com/article/c4834e48841d97c5a93312b1bf75302a> [https://perma.cc/AAY4-GAVU].

⁴²⁰ *Id.*

instance, Mississippi alone has paid out nearly \$500 million over the last thirty years, and Maryland is proposing to pay \$200 million over the next ten years.⁴²¹ In recognition of these continued funding disparities, some legislators have proposed increasing federal allocations for HBCUs by billions, not millions.⁴²² This is more commensurate with the obligation to close existing funding disparities, as well as with the recognition of HBCUs' vital role in educating Black and FGLI students. At the very least, those states with obligations to remedy the vestiges of their dual systems of education should commit to funding HBCUs at levels that eliminate the funding gap with their corresponding HWIs.⁴²³ Moreover, the federal government should fund HBCUs at a level that recognizes the disproportionate burden these institutions shoulder in educating our nation's most vulnerable students.⁴²⁴

Second, we can promote HBCUs as venerable institutions of higher education and desirable schools for students of all races, but especially for Black and FGLI students. *US News & World Report* (*USNWR*) rankings dominate the college selection process for many students, and despite a constant barrage of criticism from higher education experts,⁴²⁵ the publication continues to shape popular opinions about the quality and desirability of colleges and universities. There are no HBCUs among *USNWR*'s top-ranked national universities.⁴²⁶ The failure to publicly recognize the unique value

⁴²¹ Mississippi settled its suit dating back to the *Fordice* litigation in 2002. The plaintiffs in the Maryland litigation estimate the cost to close the gap in funding between the state's HBCUs and HWIs at \$1 billion, but are seeking \$577 million to settle the litigation. To date, however, Maryland has only offered \$200 million to settle the case. See Douglas-Gabriel, *supra* note 416.

⁴²² Several 2020 Democratic presidential candidates, including Senators Booker, Sanders and Warren, released proposals for HBCU funding and support. Senator Sanders, for instance, proposed spending billions to support HBCUs in the form of direct grants to reduce or eliminate tuition (\$1.3 billion), create or expand teacher training programs (\$5 billion), and fund minority-serving medical and dental schools (\$5 billion). See Sara Weissman, *Sen. Bernie Sanders Proposes Plan to Support HBCUs*, DIVERSE ISSUES IN HIGHER EDUC. (Dec. 2, 2019), <https://diverseeducation.com/article/161180/> [<https://perma.cc/B62B-8RD9>]. As the Democratic presidential nominee, Joe Biden pledged \$70 billion to fund HBCUs and other MSIs in his platform on higher education. See Lauren Camera, *Biden Outlines His Higher Education Plan*, U.S. NEWS & WORLD REPORTS, Oct. 8, 2019.

⁴²³ Insofar as states have to make decisions about allocation of funding across state institutions of higher education, they should privilege HBCUs over HWIs in consideration of the longstanding history of underfunding HBCUs. Moreover, states should consider eliminating the duplication of educational programs between HBCUs and HWIs, a key concern of underfunding litigation since the desegregation era. See *U.S. v. Fordice*, 505 U.S. 717, 738 (1992) (finding the unnecessary duplication of educational programs suspect). Eliminating duplicative programs at HWIs will shift enrollment to HBCUs. This too will help to alleviate funding disparities.

⁴²⁴ See Gasman & Arroyo, *supra* note 38, at 66.

⁴²⁵ See, e.g., Scott Jaschik, *To Find the Best Fit, Ignore the Rankings*, INSIDE HIGHER ED. (Oct. 15, 2018), <https://www.insidehighered.com/admissions/article/2018/10/15/stanford-study-says-rankings-do-not-point-students-best-college-fit> [<https://perma.cc/YV5Y-3SHW>]; Scott Jaschik, *More Momentum Against 'U.S. News'*, INSIDE HIGHER ED. (Jun. 20, 2007), <https://www.insidehighered.com/news/2007/06/20/more-momentum-against-us-news> [<https://perma.cc/TFS7-KYC9>].

⁴²⁶ No HBCUs appear in the top seventy-five ranked universities in the nation. See *2021 Best National University Rankings*, U.S. NEWS & WORLD REPORT, <https://www.usnews.com/best-colleges> (last visited Mar. 7, 2021). Among national universities, Howard University is the highest ranked HBCU at number eighty, and among liberal arts colleges, Spelman College is ranked number fifty-four. *Id.* Both Xavier and Tuskegee Universities rank among the top twenty-five universities in the South. *Best Regional Universities South Rankings*, U.S. NEWS & WORLD REPORT, <https://www.usnews.com/best-colleges/rankings/regional-universities-south> (last visited Mar. 7, 2021). Xavier University has also been acknowledged as the nation's leading institution for the production of Black undergraduates who enter medical school, and for several consecutive

HBCUs offer their students is a tremendous impediment to their continued growth and ability to attract new students in the competitive landscape of higher education.⁴²⁷ We can attempt to remedy this by changing HBCUs are perceived. Rather than being seen as undesirable vestiges of segregation—or worse, inferior to HWIs—we should acknowledge that HBCUs are diverse and vibrant institutions that provide their students with a unique and in many ways superior educational experience. A shift in popular perception would, in turn, help bolster the reputational standing of HBCUs and align public consciousness with HBCUs’ actual contributions to American higher education.

Finally, we should encourage all students, but especially Black FGLI students, to consider attending HBCUs. Students should be aware that if they are in need of a supportive and nurturing environment, where both faculty and students alike take a collaborative rather than competitive approach to learning, and where they will see themselves reflected in the classroom and curriculum, they would be well-advised to consider an HBCU for their post-secondary education. Importantly, although not well-studied, research suggests that non-Black students suffer little disadvantage and may stand to gain much by attending HBCUs.⁴²⁸ Many non-Black students, including some white students, would benefit from HBCUs’ unique pedagogical approach, and the diversity of faculty, students, and curricular offerings these students would encounter may nurture important skills and experiences to enhance their ability to navigate our complex, multiracial society.⁴²⁹

Even if we are able to fortify HBCUs and extend their impact to a greater number of students, given the small number of such institutions, the vast majority of Black students will still be

years Florida A&M University held the record for the largest number of National Merit Achievement Scholars enrolled. *See* Allen and Jewell, *supra* note 36, at 254.

⁴²⁷ The problem with the rankings is that certain measures on which the rankings are based are not a primary focus for HBCUs. For example, Norfolk State noted that it is focused not on accumulating research dollars but on providing access. *See* Bridges et al., *supra* note 11, at 39.

⁴²⁸ For example, studies of white students attending HBCUs reveal that they generally have positive academic and social experiences and are not generally subject to toxic campus cultures like many Black students attending HWIs. *See* Mobley et al., *supra* note at 235, at 35. However, the research has been mixed on the latter point with some showing that white students’ experiences at HBCUs may mirror those of Black students at HWIs, including “feeling . . . hyper-visible, facing expectations that they will be the spokesperson for their race and engaging in self-censorship in academic and social settings . . . an uneasiness when engaging controversial topics in the classroom like racism and slavery, and [they] appear to be especially uncomfortable when there are not other White peers present to mitigate their uneasiness.” *Id.* at 36. Research suggests the experiences of Hispanic students attending HBCUs is similarly positive, with comparable challenges to the extent they exist. *Id.* at 37. Presumably, however, some of these negative experiences could be mitigated by increasing non-Black student enrollment at HBCUs, just as others argue for mitigating these effects for Black students at HWIs by increasing the enrollment of diverse students. *See infra* note 444 and accompanying text; *see also* discussion *infra* Section V.C.

⁴²⁹ This proposal for increasing white and non-Black minority enrollment at HBCUs is not unrealistic, as there are already six HBCUs where white students make up more than 40 percent of the student body, and approximately a fifth of all HBCUs have white populations that are in excess of 10 percent of the student body. *See* Mobley et al., *supra* note 235, at 32. Moreover, at least one HBCU, St. Phillips College, is also designated an HSI, and two HBCUs are now majority-white (Bluefield State College and West Virginia State University). *Id.* Overall, less than 80 percent of all students attending HBCUs today are Black. *Id.* at 32. Approximately 8 percent of HBCU students are white, roughly 1 percent are Asian American, and nearly 5 percent are Hispanic, although graduate and professional programs are more diverse than undergraduate programs. *Id.* at 33. While Asian and Hispanic student enrollment at HBCUs has been growing steadily over time, white student enrollment at HBCUs peaked in the early 1990s, possibly due to desegregation efforts designed to preserve HBCUs in the wake of *Fordice*, and has since declined. *Id.* at 33.

educated at HWIs.⁴³⁰ So, if we are to truly ensure educational equality for Black students, and improve educational outcomes for FGLI students as well, we cannot simply focus on HBCUs. We must also focus on improving the experiences and outcomes of those students attending HWIs. In doing so, we can draw on the unique pedagogical model of HBCUs to identify those features most conducive to student success and most capable of replication. HWIs may not be able to replicate the familial environment of HBCUs for all students, but they can improve the diversity of their faculty; they can foster a sense of belonging by increasing student body diversity; and they can more deeply engage students in the educational enterprise by expanding the curriculum to better reflect the diversity of students and to offer students more meaningful experiential learning opportunities.

B. *Improving Faculty Diversity at HWIs*

Most HWIs have difficulty hiring and retaining Black faculty. According to one estimate, only about 2 percent of faculty at four-year HWIs are Black.⁴³¹ Increasing faculty diversity has proven much harder for most HWIs than increasing student body diversity.⁴³² The problem lies not only in hiring and retention, but also in the pipeline for new faculty.⁴³³ One result of the current lack of faculty diversity at HWIs is the difficulty of cultivating future faculty members from non-white students who fail to see themselves reflected in the professoriate.⁴³⁴ An added benefit of encouraging the growth and expansion of HBCUs is that they produce a disproportionate number of Black faculty,⁴³⁵ thereby increasing the pipeline for greater faculty diversity.

As discussed *infra*, Black faculty are important to the academic success of Black students in particular because Black faculty have higher expectations for Black students than do non-Black faculty.⁴³⁶ The kind of support that HBCU faculty provide to Black students, by encouraging them to cultivate a scholarly identity and to struggle against their academic and social challenges, has proven instrumental to Black student success. One research study found that Black students who were provided even modest support for their academic ability improved their academic performance so significantly that it cut the racial achievement gap by 79 percent.⁴³⁷ The treatment intervention, which encouraged students to see adversity not as unique to themselves or their ethnic group, but common

⁴³⁰ Currently there are only 105 HBCUs in operation, and the vast majority of those are in the South and Southwest regions of the country due in part to their formation under the post-Reconstruction Morrill Act. *See* CONRAD & GASMAN, *supra* note 3, at 31. The limited number and geographic footprint of HBCUs prevent them from serving the vast majority of students who attend college.

⁴³¹ *See* Stewart et al., *supra* note 49, at 27.

⁴³² *Id.* (“The proportion of African-American faculty in white institutions stands at 2.3 percent, the same as it was 20 years ago.”).

⁴³³ *See* Bracey, *supra* note 22, at 690. This makes support for strengthening HBCUs, which produce a disproportionate number of Black PhDs, even more important. *See supra* note 49 and accompanying text.

⁴³⁴ *See* Parker, *supra* note 317, at 6.

⁴³⁵ *See supra* note 54 and accompanying text.

⁴³⁶ *See supra* notes 189 (addressing the high expectations of Black faculty), 192 (addressing the low expectations of white teachers), and accompanying text.

⁴³⁷ *See* Gregory M. Walton & Geoffrey L. Cohen, *A Brief Social-Belonging Intervention Improves Academic and Health Outcomes of Minority Students*, 331 SCIENCE 1447, 1448 (2011). The treatment condition merely consisted of delivering a script to students that framed social adversity in college as a universal, but short-lived experience. *Id.*

to everyone in the college adjustment process, led to a three-fold increase in the percentage of Black students earning GPAs in the top quartile of their class while also reducing the percentage of Black students performing in the bottom quartile.⁴³⁸

Recall too that this increase in faculty diversity at HWIs will also inure to the benefit of white and other non-Black students.⁴³⁹ The UCLA study of the effects of faculty diversity on student learning and outcomes at HWIs found positive gender and race/ethnicity effects.⁴⁴⁰ Not only were female faculty more likely to require cooperative and experiential learning, both associated with improved student performance, but the study also found that Black and Hispanic faculty were more likely to employ cooperative learning techniques in the classroom and to require readings on race/ethnicity as a part of the curriculum.⁴⁴¹ These educational experiences generated positive benefits for students in the form of improved critical thinking and problem-solving skills, greater tolerance for difference, and enhanced leadership abilities.⁴⁴² Increased faculty diversity, especially Black faculty, would likely improve academic outcomes for Black students in particular, but would nevertheless benefit students of all racial and ethnic identities.

C. Ensuring Critical Mass of Diverse Students at HWIs

It is well established that in addition to teacher expectations, institutional climate affects student performance.⁴⁴³ Among the features of climate that contribute most to academic performance is whether a student experiences belonging (associated with success) or isolation (associated with failure).⁴⁴⁴ Researchers find that “[o]ne of the single biggest factors at many of the postsecondary schools with high graduation rates among blacks is the fact that they make up a significant portion of the student body. Those schools have ‘overcome tokenism.’”⁴⁴⁵ Black students are able to thrive academically when they avoid social isolation on campus, but “[w]here an emotionally . . . supportive environment fails to materialize, college graduation rates of blacks are

⁴³⁸ *Id.* at 1449.

⁴³⁹ Two practical complications arise from deeming minority teachers the best teachers for minority students: first, white students benefit from teachers of color as well; and second, teachers today are overwhelmingly white. Parker, *supra* note 317, at 33 (“Successful school integration will depend on translating the benefits teachers of color provide to children of color to all teachers, for all students.”).

⁴⁴⁰ See Hurtado, *supra* note 303, at 199 (“the gender and race/ethnicity of the instructor are likely to have an impact on the educational experiences of undergraduates in predominantly white selective institutions.”). The study analyzed data from over 16,000 faculty members at 159 medium and highly selective predominantly white institutions across the country. *Id.* at 192.

⁴⁴¹ *Id.* at 194–95.

⁴⁴² *Id.* at 198.

⁴⁴³ See *supra* notes 145 (observing the positive climate of HBCUs), 330 (noting the negative climate of HWIs), 327 (demonstrating that climate threats suppress academic performance), and accompanying text.

⁴⁴⁴ See Harpalani, *supra* note 324, at 131–32 (discussing the benefit of peer support among Black and other minority students in the context of “safe spaces” on college and university campuses); see also Elijah Anderson, *The White Space*, 1 SOC. RACE & ETHNICITY 10, 13 (2015) (addressing the larger social phenomenon of Blacks navigating public spaces raced as “white”).

⁴⁴⁵ See Bracey, *supra* note 21, at *20.

generally about [twenty] percentage points lower than for whites.”⁴⁴⁶

HWIs have achieved greater success in improving student diversity than faculty diversity, but continued legal challenges to race-conscious admissions plans,⁴⁴⁷ along with the adoption of several state bans on the consideration of race in college admissions,⁴⁴⁸ have taken a toll on these efforts. In particular, Black students remain among the least represented groups in many HWIs’ student bodies, particularly at the most selective institutions where research shows they have the highest chances of success.⁴⁴⁹ Yet, if HWIs are to improve Black student outcomes, it is imperative that they improve Black student representation.

The irony of low Black student enrollment at HWIs is that the Supreme Court has repeatedly sanctioned race-conscious admissions in higher education and has even justified doing so at least in part because enrolling a “critical mass” of minority students at HWIs is necessary precisely so that these students do not feel isolated.⁴⁵⁰ HWIs should continue to pursue race-conscious admissions and should give special consideration to admitting diverse students of all races and ethnicities in numbers sufficient to constitute a critical mass.⁴⁵¹ This will reduce the sense of isolation that can occur when there are sparse numbers of students belonging to a particular racial or ethnic group, will help improve students’ sense of belonging, and will ultimately aid in their academic success.⁴⁵² HWIs would also do well to ensure that their campuses are “safe spaces” for Black and other minority students.⁴⁵³ Beyond enrolling a critical mass, HWIs can foster safe spaces by creating conditions for all students to feel welcomed and included on campus, while nurturing positive social relations between students of different races and ethnicities.⁴⁵⁴

⁴⁴⁶ See *id.*

⁴⁴⁷ Since the Supreme Court first upheld the use of race in college and university admissions in *Grutter v. Bollinger*, 539 U.S. 306 (2003), multiple additional legal challenges have been filed, although all of them have been unsuccessful to date. See *Fisher v. Texas*, 579 U.S. ____ (2016) (upholding the University of Texas race-conscious admissions plan against challenge); *Students for Fair Admissions v. Harvard*, 14-cv-14176, slip op. (upholding Harvard University’s race-conscious admissions plan against challenge). Another case filed by Students for Fair Admission (SFFA), the same plaintiff in the Harvard suit, is currently pending against the University of North Carolina in the Middle District of North Carolina. See *Students for Fair Admissions, Inc. v. Univ. of N.C.*, No. 1:14CV954 (M.D.N.C. Sep. 30, 2019).

⁴⁴⁸ State ballot initiatives banning the consideration of race in admissions have been passed in California (1996), Washington (1998), Florida (1999), Michigan (2006), Nebraska (2008), Arizona (2010), New Hampshire (2011), and Oklahoma (2012). Michael Long & Nicole Bateman, *Long-Run Changes in Underrepresentation After Affirmative Action Bans in Public Universities*, 42 EDUC. EVAL. & POLICY ANAL. 188, 189–90 (2020). Most of these states have experienced precipitous declines in Black student enrollment following these ballot initiatives. See David R. Colburn, Charles E. Young, & Victor M. Yellen, *Admission and Public Higher Education in California, Texas and Florida: The Post Affirmative-Action Era*, 4 UCLA J. EDUC. & INFO. STUD. 1, 5 (2008) (noting the decline in Black students in each state, but some mitigating effects in Texas and Florida from the adoption of top-ten percent programs in those states).

⁴⁴⁹ See Hawkins, *supra* note 131, at 880, n. 86.

⁴⁵⁰ *Grutter*, 539 U.S. 306, 318.

⁴⁵¹ The Supreme Court has explained that achieving “critical mass” is not a goal that can be reduced to “pure numbers,” but instead must be measured by success in achieving that level of student body diversity necessary to obtain the desired educational benefits, including reduced isolation of minority students. See *Fisher*, 579 U.S. at *12 and *14–15.

⁴⁵² See *supra* note 324 and accompanying text.

⁴⁵³ See Harpalani, *supra* note 324, at 123.

⁴⁵⁴ Even when colleges have diverse student bodies, interracial student interactions are neither commonplace nor guaranteed without institutional interventions. See Nicholas A. Bowman & Julie J. Park, *Interracial Contact on College Campuses*:

D. *Offering Diverse Students Culturally Relevant Instruction at HWIs*

Finally, HWIs must expand curricular diversity. Even when schools are focused on faculty and student diversity, curricular interventions are often overlooked in higher education. In fact, the inattention to offering curricular content reflective of the student body and their diverse identities and interests is a common failure of the U.S. education system writ large. “Not only is it important for Black students to learn more about their own history,” writes John A. Powell, “but it is also important that white students learn more about Black history.”⁴⁵⁵ When a college curriculum excludes the broad experiences, ideas, and cultures that the world has to offer in educating students, it “fails to prepare students to live in a multicultural and multiethnic society,” and “it also distorts or neglects the life experiences and histories of many students.”⁴⁵⁶ Perhaps the most problematic result of the Eurocentric emphasis of curricula at HWIs is that it “perpetuates feelings of superiority and fear in white students and feelings of inferiority and anger in students of color.”⁴⁵⁷

Some movement towards a more inclusive pedagogy occurred in the 1960s when HWIs for the first time welcomed more minorities and women into the classroom, but this movement achieved only modest progress.⁴⁵⁸ Overall, Eurocentrism remains dominant throughout the curriculum at HWIs.⁴⁵⁹ While many HWIs offer courses in ethnic studies, and some have even established departments or interdepartmental programs dedicated to things like African American studies, these offerings are usually limited, exist in silos, and fail to attract broad administrative support in the form of resources or designation as core curricular requirements. Expanding these curricular offerings, elevating their stature within departmental structures, and imposing curricular requirements focused on diversity can improve minority students’ sense of belonging and make all students more culturally competent.⁴⁶⁰

Finally, HWIs should expand their experiential learning and civic engagement offerings. HBCUs have proven that these educational experiences aid in deepening students’ scholarly identities and institutional attachments by connecting learning to issues that are meaningful to the students and

Comparing and Contrasting Predictors of Cross-Racial Interaction and Interracial Friendship, 85 J. HIGH. EDUC. 660, 684 (2014). For ideas about how HWIs can cultivate these safe spaces for minority students generally, and Black students in particular, see generally Harpalani, *supra* note 324.

⁴⁵⁵ Powell, *supra* note 14, at 682. The same can be said about white students learning about other racial and ethnic histories.

⁴⁵⁶ *Id.*; see also Hurtado, *supra* note 303, at 190. (“Active pedagogical approaches that stimulate classroom interaction and curricula that attend to the histories and traditions of diverse groups would probably be fundamental features of colleges and universities that capitalize on the potential benefits of diversity.”).

⁴⁵⁷ See Powell, *supra* note 14, at 682.

⁴⁵⁸ See Hurtado, *supra* note 303, at 191 (“[D]iversification of the student body dictated that faculty develop a more expansive repertoire of approaches to curriculum and pedagogy.”).

⁴⁵⁹ See Powell, *supra* note 14, at 682 (observing that the mainstream curriculum of HWIs, while purporting to be “objective,” is often “Eurocentric, and the perspective of the conquering European nations dominates”).

⁴⁶⁰ These types of curricular interventions were also pursued in the primary and secondary contexts as a way to remedy the failures of integration and improve educational equality on behalf of Black students, with schools featuring ethnic curricula and culturally relevant pedagogy established in Milwaukee, Detroit, San Diego, and Prince George’s County, Maryland. See Cummings, *supra* note 14, at 741–42; see also Powell, *supra* note 14, at 680 (discussing all-Black male “immersion schools”).

the world around them.⁴⁶¹ HWIs have more recently embraced this pedagogical approach, but it too remains ancillary, rather than integral, to their curricula. By offering students more opportunities to connect their education to their lives outside of school, these experiences not only expand students' educational horizons, it also bridges them to their future professional careers. Ensuring that students remain engaged and committed to the educational journey through a variety of dynamic academic experiences also promotes perseverance.⁴⁶²

CONCLUSION

Achieving educational equality, especially on behalf of Black students (the original beneficiaries of *Brown*) has proven an elusive goal. The failure to achieve racial equality in higher education may in part be attributable to the integration strategy of *Brown* itself. The post-desegregation era's myopic focus on integrating Black students into HWIs has led us to ignore the vital role that HBCUs have played (and continue to play) in educating Black students, especially those who are low-income and/or first-generation. In the quest for educational equality, a reconsideration of the post-*Brown* integration strategy in favor of strengthening and renewing our commitment to HBCUs offers an opportunity for leveraging their unique pedagogical model to achieve greater educational equality for Black and FGLI students across the entire higher education landscape.

⁴⁶¹ See discussion *supra* Section II.C.

⁴⁶² See CONRAD & GASMAN, *supra* note 3, at 273–75.