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Do Fraternities Violate the Fair Housing Act? An Empirical Study of Segregation in the Greek Organizations

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INTRODUCTION

The American Greek system has long been the site of fierce resistance to integration.¹ Until quite recently, African Americans, Jews, Asians, and

1. See ALFRED M. LEE, FRATERNITIES WITHOUT BROTHERHOOD ix (1955) (“[T]he chief defect in . . . the social fraternity [can be] summed up as Aryanism—the acceptance and rejection of persons for membership on grounds of race religion and national origin.”); Kathleen E. Gillon, Cameron C. Beatty & Cristobal Salinas Jr., *Race and Racism in Fraternity and Sorority Life: A Historical Overview*, 165 NEW DIRECTIONS STUDENT SERVICES 9 (2019) (giving a history of the Greek organizations’ struggle to integrate); Matthew Hughey, *Crossing the Sands, Crossing the Color Line: Non-Black Members of Black Greek Letter Organizations*, 11 J. AFR. AM. STUD. 55, 59-63 (2007) (providing a brief history of racial conflict in the Greek system); Ryan P. Barone, *White Clauses in Two Historically White Fraternities: Documenting the Past & Exploring Future Implications*, ORACLE, Spring 2014, at 54 (discussing the rise and fall of official segregation policies in white fraternities); Thomas F.N. Laird, *College Students’ Experiences with Diversity and Their Effects on Academic Self-Confidence, Social Agency and Disposition Toward Critical Thinking*, 46 RSCH. HIGHER EDUC. 365, 373 (2005) (“Fraternities and sororities, particularly historically white fraternities and sororities on historically white campuses . . . through their structures and activities encourage homogeneity

other ethnic and religious minorities found themselves excluded from the bonds of membership.² Sororities at the University of Arkansas, for instance, remained entirely segregated until 2004,³ while the Greek system at the University of Alabama did not begin to desegregate until 2013.⁴ It is little wonder that students around the country increasingly view the Greek system as a deep cavity of racial isolation on otherwise diverse campuses.⁵

But can anything be done? Many observers remain skeptical that universities will adopt meaningful reform.⁶ They argue that administrators

and discourage interactions across difference.”). *See generally* NICHOLAS L. SYRETT, *THE COMPANY HE KEEPS: A HISTORY OF WHITE COLLEGE FRATERNITIES* (2009).

2. *See* Stephen Schmitz & Sean Forbes, *Choices in a No-Choice System: Motives and Biases in Sorority Segregation*, 35 J. COLL. STUDENT DEV. 103, 107 (1994) (arguing that there are “systematic and endemic” problems with the sorority recruitment process that lead to a “self-perpetuating” segregation); Matthew W. Hughey, *A Paradox of Participation: Nonwhites in White Sororities and Fraternities*, 57 SOC. PROBS. 653, 669 (2010) (stating that the white Greek organizations “engage in a racially segregated selection processes that helps to recreate hypersegregation”); Julie Park, *Race and the Greek System in the 21st Century: Centering the Voices of Asian American Women*, 45 NASPA J. 103, 106-08 (2008) (discussing the Greeks’ history of racial exclusion).
3. *See* Carrie Coppernoll, *Sorority to Pledge First Black*, ARK. TRAVELER, Aug. 25, 2003, at 1.
4. Kayla Webley Adler, *Revolution on Sorority Row*, MARIE CLAIRE (Aug. 6, 2014), <https://www.marieclaire.com/culture/news/a10379/revolution-on-sorority-row-september-2014> [<https://perma.cc/F3VS-6FBH>] (“In September 2013, the long-held, unofficial practice of barring black women from traditionally white sororities finally began to change.”).
5. *See, e.g.*, Komal Patel, *Calls to Abolish Greek Life are Sweeping the Nation. Now, They’re Growing Louder at Penn*, DAILY PENNSYLVANIAN (Aug. 3, 2017), <https://www.thedp.com/article/2020/08/abolish-greek-life-fraternities-sororities-nationwide-movement> [<https://perma.cc/P4CY-JST4>] (citing campus activists: “Greek life represents an institution that is intrinsically exclusionary, built on a history of reinforcing the privilege of wealthy, straight, white men at the expense of the safety and success of marginalized students across our campuses”); Ezra Marcus, *The War on Frats*, N.Y. TIMES, Aug. 1, 2020, <https://www.nytimes.com/2020/08/01/style/abolish-greek-life-college-frat-racism.html> [<https://perma.cc/287Z-AZQ2>] (reporting that students are turning against Greek life because it is “exclusionary, racist, and misogynist”).
6. *See, e.g.*, Terry Nguyen, *Why It’s So Difficult to Abolish Sororities and Fraternities*, VOX (Sept. 29, 2020, 9:30 AM), <https://www.vox.com/the->

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resist cracking down on segregated Greek organizations because the schools have become “bedeviling[ly]” dependent on the fraternities and sororities.⁷ The Greek system, for example, provides thousands of students with on-campus housing,⁸ Greek alumni donate generous sums during fundraising campaigns,⁹ and fraternities provide a kind of social programming that is “highly attractive to legions of potential students.”¹⁰ It takes little imagination to see how these entanglements might encourage universities to overlook the troubling racial composition of the Greek organizations.

This Article argues that, if colleges will not act, civil rights law can serve as a pressure point and a site of intervention. Specifically, I contend that

goods/21492167/abolish-greek-life-campus-covid [https://perma.cc/83K2-HRVK]; Caitlin Flanagan, *The Dark Power of Fraternities*, ATLANTIC (Sept. 9, 2019, 2:00 PM), <https://www.theatlantic.com/magazine/archive/2014/03/the-dark-power-of-fraternities/357580> [https://perma.cc/8UB3-XULH] (discussing the interdependence of the Greek chapters and the University); Eric Kelderman, *Why Colleges Don't Do More to Rein in Frats*, CHRON. HIGHER EDUC. (Mar. 27, 2015), <https://www.chronicle.com/article/why-colleges-dont-do-more-to-rein-in-frats> [https://perma.cc/7XER-MEB8] (stating that colleges resist disciplining Greek organizations because “members of Greek organizations are often reliable donors to the institution”); Peter Jacobs, *Why Fraternities Will Never Disappear From American College Life*, BUS. INSIDER (Dec. 3, 2014), <https://www.businessinsider.com/why-fraternities-will-never-disappear-from-american-college-life-2014-12> [https://perma.cc/6PM7-HCE6].

7. See Flanagan, *supra* note 6 (discussing the interdependence of the Greek chapters and the University).
8. *Id.* (“Today, one in eight American students at four-year colleges lives in a Greek house . . .”).
9. For instance, scholars found that while only nineteen percent of the alumni at Indiana University had participated in Greek life, they accounted for over sixty percent of gifts to the school. Kalhan Rosenblatt, *Colleges Are Suspending Greek Life. Don't Expect the Ban to Last*, NBC NEWS (Nov. 19, 2017, 4:58 AM), <https://www.nbcnews.com/storyline/hazing-in-america/colleges-are-suspending-greek-life-don-t-expect-ban-last-n821351> [https://perma.cc/3KKT-H29V]; Kelderman, *supra* note 6 (stating that colleges resist disciplining Greek organizations because “members of Greek organizations are often reliable donors to the institution”).
10. Flanagan, *supra* note 6. See also Jacobs, *supra* note 6 (“Fraternities offer a social outlet to college campuses that operates outside of the school’s budget and removes much of the potential liability that could threaten an administration.”).

fraternity and sorority housing violates the Fair Housing Act (FHA).¹¹ The consequences of this argument are significant. Across the country, there are thousands of buildings on university campuses dedicated to Greek life. In the SEC alone, there are almost 200 sorority houses. “A conservative estimate of the collective value of [the nation’s Greek] houses . . . is \$3 billion.”¹² If my argument holds, universities will need to integrate or shutter many of these stately homes, or else sever them from their campuses.

This Article begins by showing that the fraternities and sororities have accomplished what decades of Jim Crow rules could not; they have normalized a world where African American and white students inhabit completely different social worlds. In the pages that follow, I present the first large-scale study of the racial composition of fraternity and sorority chapters at American universities. This data has, until now, eluded higher education researchers. No government agency or nonprofit group compiles demographic information on the Greek chapters. Further, the national Greek organizations do not record statistics about the racial identity of their members. How then, can one forge a dataset and construct an accurate portrait of Greek life? This study employed a simple but powerful investigative tool—state FOIA laws. During the spring of 2020, I sent over a hundred FOIA requests to public universities in every region of the country asking for documents about their Greek system. This Article uncovered that many colleges quietly collect and synthesize information about the race of fraternity and sorority members.

The colleges’ data are irrefutable; Greek organizations remain profoundly segregated. Sixty-five years after *Brown v. Board of Education*, many fraternities and sororities still have no African American members and almost all remain “ethnic enclaves for White students.”¹³ The sorority chapters at the University of Toledo provide a stark example of the problem. Toledo is well-integrated. Black students make up 9.2% of the student body.¹⁴ However, they account for only 0.8% of the women in the

11. The FHA, as amended, is codified at 42 U.S.C. §§ 3601-3619.

12. Flanagan, *supra* note 6.

13. Jim Sidanius, Colette Van Laar, Shana Levin & Stacey Sinclair, *Ethnic Enclaves and the Dynamics of Social Identity on the College Campus: The Good, the Bad, and the Ugly*, 87 J. PERSONALITY & SOC. PSYCHOL. 96, 100 (2004).

14. *University of Toledo Racial/Ethnic Diversity of Undergraduates*, COLLEGE FACTUAL, <https://www.collegefactual.com/colleges/university-of-toledo/student-life/diversity> [<https://perma.cc/P9FX-W2FH>].

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Panhellenic sororities.¹⁵ To put that number in perspective, each year at Toledo, a few more than 630 women enroll in one of the traditionally white Greek organizations on campus. In the spring of 2020, five of those women were Black.¹⁶ Additionally, only one of the nine Panhellenic sorority chapters had at least two Black members.¹⁷ These numbers are not an anomaly, and Toledo is not the worst offender. At many universities, the Greek organizations seem even more committed to the tradition of segregation.

After establishing the whiteness of Greek life, this Article pivots and argues that the Fair Housing Act (FHA) applies to fraternity and sorority housing. More precisely, I allege that universities have violated the FHA by orchestrating the construction of Greek facilities on campus. The basic thrust of the Fair Housing Act is easy to grasp. The statute makes it illegal for landlords and other housing providers to discriminate based on race, national origin, religion, sex, disability, and familial status.¹⁸ Importantly, Supreme Court jurisprudence does not require a showing of discriminatory intent, and this Article makes no claim that universities have plotted to exclude racial minorities from campus. The focus, instead, is on the FHA's disparate impact provisions. Cases brought under the Fair Housing Act can target facially neutral policies that impose discriminatory effects on one of the protected classes.¹⁹ On its face, the erection of thousands of housing units intended to benefit white student groups seems like an obvious breach of the law.

Universities, of course, will not take lightly the claim that they or the Greek clubs have violated the civil rights of their students. Their response is easy to predict. The Fair Housing Act contains an exception that allows private organizations to give housing preferences to their own members.²⁰ For example, if a Catholic Diocese leases cabins at a church-owned summer retreat, it can favor Catholic renters.²¹ In the view of American universities,

15. Email from Stacey Jo Brown, Public Records Officer, University of Toledo, to author (June 26, 2020) (on file with author).

16. *Id.*

17. *Id.*

18. 42 U.S.C. § 3604.

19. *See Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project*, 576 U.S. 519, 545-46 (2015) (holding that disparate impact claims are cognizable under the Fair Housing Act).

20. *See* 42 U.S.C. § 3604(a).

21. *Id.*

fraternities and sororities are similar private entities.²² Therefore, under the terms of the FHA, the Greek organizations ultimately retain the right to build their own facilities and rent to their own members. University presidents have no legal responsibility for the actions of purely independent organizations.

These arguments are widely accepted by college administrators and remain deeply influential on campus.²³ However, they are wrong. This Article uncovers that Greek chapters are not private organizations immune from the weight of civil rights law. Rather, they are part of the official University ecosystem. During the last 20 years, colleges have become intimately involved in the governance of most sororities and fraternities.

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22. Sarah Brown, *What Responsibility Does a University Have to Regulate Fraternity Culture*, CHRON. HIGHER EDUC. (Feb. 12, 2019), <https://www.chronicle.com/article/what-responsibility-does-a-university-have-to-regulate-fraternity-culture> [https://perma.cc/P9FX-W2FH] (“Fraternities are private organizations governed by student leaders and national fraternity groups.”); Elizabeth A. Armstrong, *How Fraternities Dominate College Life*, N.Y. TIMES (May 6, 2011, 1:32 AM), <https://www.nytimes.com/roomfordebate/2011/05/05/frat-guys-gone-wild-whats-the-solution/the-threat-to-young-women> [https://perma.cc/37LN-72NA].
23. See, e.g., *University and Interfraternity Council Agree to Suspend All Social Functions*, PENN ST. U. (Feb. 8, 2017), <https://www.psu.edu/news/campus-life/story/university-and-interfraternity-council-agree-suspend-all-social-functions> [https://perma.cc/9Q2W-HVNH] (“Fraternities are private organizations governed by student leaders and national fraternity groups.”); *Parent/Family FAQs*, RUTGERS, <https://greeklife.rutgers.edu/join-our-community/parentfamily-faqs> (“Our fraternities and sororities are private membership organizations”); *Parent FAQs*, SUNY GENESO, <https://www.geneseo.edu/greek/parent-faqs> [https://perma.cc/UE4K-4K3L] (“Our fraternities and sororities are private membership organizations”); *Greek Life Info for Parents and Families*, ADELPHI U., <https://www.adelphi.edu/engage/greek-life-and-social-fellowship/information-for-parents-and-families> [https://perma.cc/99PP-QUTJ] (“Our fraternities and sororities are private membership organizations”); *Student Organizations and Activities*, U. ARK LITTLE ROCK, <https://ualr.edu/policy/home/student/student-orgs> [https://perma.cc/U89W-78G3] (“Social Greek fraternities and sororities are private organizations”); *UC Berkeley’s Community Efforts*, U.C. BERKELEY (Feb. 18, 2022), <https://news.berkeley.edu/2022/02/18/uc-berkeley-community-efforts> [https://perma.cc/56DH-DAJ7] (“Fraternities and sororities are private institutions and separate and independent from the university.”).

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Fraternity and sorority advising (FSA) has become an acknowledged subspecialty in the student affairs profession.²⁴ The University of Alabama, for example, employs ten people in its Office of Fraternity and Sorority Life: an executive director, a director of housing, a director of student life, three assistant directors, two coordinators, and two program assistants.²⁵

Perhaps more importantly, many Greek houses sit on land owned by the university. In some states, colleges have a policy of renting land to the national Greek organizations at deeply subsidized rates.²⁶ In other jurisdictions, the university builds, owns, and operates the Greek houses.²⁷ All of this is problematic under the Fair Housing Act. State universities across the country have, in practice, created publicly financed neighborhoods that exclude African Americans in violation of the law—a quintessential example of institutional racism.

This Article proceeds in five parts. Part I gives a brief primer on the Greek system and its role in University communities. Outsiders may not fully understand the political and social power that the Greek organizations wield—especially in the South. In Part II, I present results of the empirical study on segregation in American fraternities and sororities. The most important finding is that the Greek organizations have failed to build a cosmopolitan, multiethnic membership. Under the nose of university administrators, the sororities and fraternities have normalized a campus culture where African Americans and whites inhabit completely different social worlds. The fine-grained demographic data also offers some clues

24. See Kate Steiner, *Career Sustaining Factors for Campus-Based Fraternity/Sorority Advising Professionals: A Grounded Theory Study*, ORACLE, Winter 2019, at 49. Fraternity and sorority advisors also sustain their own professional journal, *Oracle*, published out of the College of William & Mary.

25. *Meet the Staff*, U. ALA., <https://ofsl.sa.ua.edu/about/staff> [<https://perma.cc/42EM-LQRV>].

26. See *Frequently Asked Questions Regarding the Sorority Village Project*, U. TENN. (July 17, 2012), <https://news.utk.edu/2012/07/17/frequently-asked-questions-sorority-village-project> [<https://perma.cc/7CRV-4DLT>] (“Just like the houses in Fraternity Park, the houses in Sorority Village hold a land lease agreement with the university.”); Lease Agreement Between Board of Trustees of the University of Arkansas and Alpha Chi Omega National Housing Corporation, (May 15, 2017) (on file with author).

27. See, e.g., *Husky Village & Affiliated On-Campus Housing Residents*, U. CONN., <https://greeklife.uconn.edu/housing> [<https://perma.cc/X8HP-45SS>] (“Consistent with providing world-class residential living options for students, the University of Connecticut built and manages housing for fraternities and sororities.”).

about the future of racial progress in America. Hispanic students far outnumber African Americans in the Greek system. This evidence suggests that, while African Americans remain confined to a separate racial caste, the dividing lines among non-Black Americans continue to erode. Part III explores whether the FHA applies to universities that host segregated fraternity and sorority houses. I make two related arguments. First, fraternities and sororities are not immune from the reach of the FHA. Second, one should understand the Greek systems as extensions of the university, as they are enmeshed in a deeply symbiotic relationship. In Part IV, I examine the Supreme Court's recent civil rights jurisprudence and provide an example of how plaintiffs could apply the FHA's disparate impact provisions against a university Greek system. Part V offers brief concluding remarks.

I. WHY SEGREGATION IN THE GREEK SYSTEM MATTERS

Before jumping into an analysis of the data, it will be useful to pause and provide some background on the Greek organizations. The purpose of this section is not to offer a detailed history of the fraternities and sororities. Rather, my intent is to explain why the demographics of the Greek chapters merit scrutiny. Evidence from campuses shows that the Greek clubs alter collegiate life in three significant ways. First and foremost, fraternities and sororities dictate the social climate of many colleges. Second, the tight organizational structure of the Greek chapters allows fraternity and sorority members to dominate student government elections. Finally, fraternities and sororities plug students into a loyal alumni network that shapes job placements and vocational outcomes. Given the power of Greek organizations, it is not difficult to understand why the exclusion of minority students undermines the quest for campus equality. Students who cannot access the bonds of Greek membership have less abundant cocurricular experiences, less influence on campus, and fewer opportunities to develop the kind of social capital that often determines professional success.

A. *Greeks Dominate the Social Scene*

Some outsiders still believe that little hinges on the composition of the fraternities and sororities. This view of the Greek system is naïve and outdated. In many college towns, Greek organizations have seized control

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of campus. Media have described their influence as “controlling,”²⁸ “socially dominant,”²⁹ “omnipresent,”³⁰ and “ubiquitous.”³¹ As a result, the makeup of Greek leadership matters; fraternity and sorority members have an outsized role in shaping student culture and controlling the social climate.³²

Two primary factors contribute to the Greek’s position atop the social pyramid. First, the sheer size of the fraternities and sororities ensures their influence over university mores. The Greek organizations now enroll over 750,000 undergraduate members at the country’s colleges and universities.³³ At large state schools, Greek life is particularly vibrant.

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28. Katie Reilly, *College Students Keep Dying Because of Fraternity Hazing: Why Is It So Hard to Stop?*, TIME (Oct. 11, 2017, 6:00 AM), <https://time.com/4976836/fraternity-hazing-deaths-reform-tim-piazza> [<https://perma.cc/J46T-MN5H>].
 29. Joshua Mendelson, *Vanderbilt Greek Life’s Money Problem*, VAND. POL. REV. (Feb. 15, 2017), <https://vanderbiltpoliticalreview.com/5563/campus/vanderbilt-greek-lifes-money-problem> [<https://perma.cc/8V55-LH5N>].
 30. Rekha Olsen, *Greek Life Changes Will Benefit Freshmen*, DAILY TROJAN (Oct. 10, 2017), <https://dailytrojan.com/2017/10/10/opinion-greek-life-changes-will-benefit-freshmen> [<https://perma.cc/5EJF-HFUA>].
 31. Charlotte Alter, *Before You Pick a College, Decide If You Want to Go Greek*, TIME (Mar. 23, 2015, 1:04 PM), <https://time.com/3751739/college-acceptances-april-greek-frats> [<https://perma.cc/3EY6-AWFE>].
 32. See Armstrong, *supra* note 22 (“Fraternities have considerable power to dictate social relations on many college campuses.”); Megan Fallon, *The Greek System and Its Effect on Dartmouth Women* 8-14 (May 2014) (M.A. thesis, Dartmouth College) (on file with author) (discussing how the Greek system became the dominant social structure on campus on how its values affect female students). See also Rebecca Torrence, *It’s Bigger Than Us’: Abolish Duke IFC & Panhel Fights to Get Rid of Two Dozen Greek Organizations*, DUKE CHRON., https://www.google.com/url?q=https://www.dukechronicle.com/article/2020/09/duke-university-abolish-fraternity-sorority-panhel-fight-greek-life&sa=D&source=editors&ust=1677632660376752&usg=AOvVaw2Th6019_iY-NvbGOHHPmqW [<https://perma.cc/NM3N-WGSQ>] (Sept. 17, 2020) (outlining efforts to break the socially dominant position of Greek life at Duke).
 33. P. Wesley Routon & Jay K. Walker, *The Impact of Greek Organization Membership on Collegiate Outcomes: Evidence from a National Survey*, 49 J. BEHAV. EXPERIMENTAL ECON. 63, 63 (2014). There is good reason to think that Greek membership has increased since the Routon and Walker Study. See, e.g., A. Chris Gajilan, *Greek Life More Popular Than Ever, Despite Recent Controversy and Deaths*, CNN (Dec. 8, 2018, 12:16 AM), <https://www.cnn.com/>

Arizona State,³⁴ Auburn,³⁵ Illinois,³⁶ LSU,³⁷ Mississippi,³⁸ Ohio State,³⁹ Oklahoma,⁴⁰ Oklahoma State,⁴¹ Purdue,⁴² Texas,⁴³ and Washington State⁴⁴ all have Greek communities with more than five thousand members. At Alabama, the gravitational pull of the Greek system is even stronger; over 10,000 undergraduates belong to one of the 68 different fraternities and

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- 2018/08/22/us/fraternity-hazing-tim-piazza-death/index.html [https://perma.cc/G9BN-3NC3] (relating that there almost 400,000 men in fraternities). *See also National Panhellenic Conference to Call for Critical Change in Greek Life*, NAT'L PANHELLENIC CONF. (Jan. 11, 2018), <https://www.npcwomen.org/2018/01/11/national-panhellenic-conference-to-call-for-critical-change-in-greek-life> [https://perma.cc/E8JP-QWY6] (“Nationwide, more than 418,000 undergraduate women are members of National Panhellenic Conference sororities.”).
34. Piper Hansen, *Greeks Dominate ASU’s “Democracy,”* STATE PRESS (Apr. 15, 2020, 5:38 PM), <https://www.statepress.com/article/2020/04/sppolitics-usg-candidates-and-greek-life> [https://perma.cc/MX3V-XS9N].
35. *See Student Life 2021*, AUBURN U. (Jan. 30, 2023), <https://auburn.edu/administration/ir/common-data-set/2021/section-f.html> [https://perma.cc/H3GR-7KN8].
36. *Illinois Fraternity & Sorority Affairs*, U. ILL., <https://fsaffairs.illinois.edu> [https://perma.cc/SR7Z-48GE].
37. *LSU Greek Life*, LA. STATE U., <https://www.lsu.edu/greeks/index.php> [https://perma.cc/68RU-W947].
38. *Fraternity & Sorority Life*, U. MISS., <https://greeks.olemiss.edu> [https://perma.cc/9R6Y-87HN].
39. *Membership Statistics*, OHIO STATE U., https://sfl.osu.edu/hq_alumni_campus_partn/membership_statistics [https://perma.cc/4HWL-PDFA].
40. *Community Overview*, U. OKLA., <https://www.ou.edu/studentlife/fsps> [https://perma.cc/TB5V-DXNQ].
41. *Welcome to Fraternity & Sorority Affairs*, OKLA. STATE U., <https://lcl.okstate.edu/gogreek> [https://perma.cc/Y8Z5-63BU].
42. *Welcome to Fraternity, Sorority and Cooperative Life at Purdue University!*, PURDUE U., <https://www.purdue.edu/fscl> [https://perma.cc/Y8Z5-63BU].
43. *Facts About the Sorority and Fraternity Community*, U. TEX., <https://deanofstudents.utexas.edu/sfl/quickfacts.php> [https://perma.cc/Q7WZ-C94R].
44. *See Go Greek*, WASH. STATE U., <https://admission.wsu.edu/life/student-experience/greek> [https://perma.cc/DH56-ZJ7H] (stating that nearly 26 percent of Washington State’s 25,000 undergraduates are members of a Greek organization).

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sororities.⁴⁵ Life in Tuscaloosa—and in many other college towns—has become completely entwined with the fortunes of the Greek chapters. The fraternity and sorority ecosystems are so large and so visible that they easily imprint their norms regarding drinking, dating, and academics on the university community.

A second force propels the Greek clubs even further toward the center of the collegiate social scene: many fraternity and sorority chapters have constructed privately owned residential buildings that universities decide not to police.⁴⁶ On some campuses, these fraternity houses are the only venues that host large parties where underage students can enjoy easy access to alcohol.⁴⁷ Monopoly power over the flow of cheap beer vests the Greeks with enormous power over their peers. The Greek community, without any supervision from the university, decides who has entrée to the spaces where undergraduates gather to relax, forge new connections, and develop relationships.⁴⁸

Students who find themselves outside of the Greek system—often racial minorities and those from lower socioeconomic backgrounds—suffer many

45. *Fraternity and Sorority Life*, U. ALA., <https://ofsl.sa.ua.edu> [<https://perma.cc/5NCP-56FF>].

46. See, e.g., Rashawn Ray & Jason Rosow, *Getting Off and Getting Intimate: How Normative Institutional Arrangements Structure Black and White Fraternity Men's Approaches Towards Women*, 12 *MEN & MASCULINITIES* 523, 540 (2010) (discussing how owning property allows white fraternity men to not worry about “drinking and driving, public intoxication, and police breaking up parties”).

47. See Armstrong, *supra* note 22 (arguing that the power of fraternities stems from their control over alcohol). See also Henry Wechsler, George Kuh & Andrea E. Davenport, *Fraternities, Sororities and Binge Drinking: Results From a National Study of American Colleges*, 46 *NASPA J.* 395, 400-13 (2009) (discussing the role of alcohol in the Greek community); Thomas Michael Crady, *Written and Unwritten Rules: The Use of Alcohol by Fraternities* 85 (2007) (Ph.D. dissertation, Iowa State University) (on file with author) (“[M]ost all large parties are sponsored by Greek Letter organizations . . .”).

48. Rashawn Ray & Jason A. Roscow, *The Two Different Worlds of Black and White Fraternity Men: Visibility and Accountability as Mechanisms of Privilege*, 41 *J. CONTEMP. ETHNOGRAPHY* 66, 79 (2012) (“Fraternity men act as doormen and gatekeepers to keep individuals out that the fraternity deems unworthy of entering.”).

disadvantages from the Greeks' dominant status.⁴⁹ Foremost, they do not have the same opportunities to influence the community norms that the fraternities and sororities impose on campus. Exclusion from the Greek system also limits students' abilities to forge peer relationships. Dylan Tucker, a student at Cornell, states the problem succinctly: "If you don't plan on being in a frat or sorority, people should be aware that it can affect your ability to make friends...you will be excluded from a lot of events and things."⁵⁰ Finally, without the shield of privately-owned frat houses to protect them, unaffiliated students face heightened scrutiny (and potential sanctions) when they engage in the kind of festivities that many Greek students take for granted.⁵¹ While campus police generally cannot enter a Greek house without permission, they "vigilantly police" social events in the dorms and impose discipline on students caught with alcohol.⁵² The Greek students, in short, have constructed a parallel social world from the rest of campus: the sororities and fraternities promise students more influence and a more boisterous kind of fun while exposing them to less risk.

B. *The Greeks Dominate Student Government*

The demographics of the Greek organizations also merit scrutiny because the fraternities and sororities have established near-hegemonic control over many student government associations (SGAs). The examples are legion. At the University of Arkansas, twenty percent of undergraduates join a Greek organization, yet nearly eighty percent of the student senators belong to a fraternity or sorority.⁵³ At Arizona State, only ten percent of students participate in Greek life, but Greeks hold about fifty percent of the

49. *See id.* at 79 ("Although these rigid social boundaries may partly be a matter of personal choice, the organizational structure of Greek and collegiate life inhibits much interaction across racial and status divides.").

50. Alter, *supra* note 31.

51. Ray & Rosow, *supra* note 46; *see also* Rashawn Ray, *Fraternity Life at Predominately White Universities in the U.S.: The Saliency of Race*, 36 ETHNIC & RACIAL STUD. 320, 321 (2013) ("[N]ormative institutional arrangements of higher education that structure how black and white fraternity men interact with women may also structure racial differences in interactions with university officials.")

52. Armstrong, *supra* note 22.

53. Ginny Monk, *ASGreek: The Continued Influence of Greek Life Upon UA ASG*, ARK. TRAVELER (Sept. 1, 2015), https://www.uatrav.com/news/article_104bef1e-d72e-11e4-9d5f-c32ae22419dc.html [<https://perma.cc/WW7E-3V4D>].

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seats in the undergraduate student government.⁵⁴ The pipeline from the fraternity and sorority houses to the student government is even more robust at the University of Alabama. In the last thirty-seven years, only one student from outside the Greek community has managed to win the presidency of the student government association,⁵⁵ while Greek candidates routinely sweep all of the executive offices and most of the senate seats.⁵⁶

54. Hansen, *supra* note 34.

55. Cliff Sims, *Down Goes The Machine! UA Elects First Black SGA President in Four Decades*, YELLOWHAMMER (Mar. 10, 2015), <https://yellowhammernews.com/down-goes-the-machine-ua-elects-first-black-sga-president-in-four-decades> [<https://perma.cc/XVQ9-FFXH>] (“For over a century the Machine has held almost total sway over Greek life and the SGA on UA’s Tuscaloosa campus.”). The Greeks at Alabama have constituted a secret society, know colloquially as “The Machine,” which dominates student government elections. See Isabel Hope, *How Does the Machine Survive at UA?*, CRIMSON WHITE (Nov. 18, 2021), <https://cw.ua.edu/84866/top-stories/how-does-the-machine-survive-at-ua> [<https://perma.cc/QA3Q-AHMS>]; Jessa Reid Bolling, *Tracking the Machine: A Timeline of UA’s “Underground” Greek Organization*, CRIMSON WHITE (Aug. 6, 2020), <https://cw.ua.edu/65356/news/tracking-the-machine-a-timeline-of-uas-underground-greek-organization> [<https://perma.cc/8JSZ-6C44>] (“The group has allegedly influenced how members of Greek life should vote in campus-wide elections, most notably Student Government Association elections, as well as affecting other activities both on and off campus.”) In 2018, Al.com put out a podcast detailing the history and influence of the Machine. *Greek Gods*, RECKON RADIO (Aug. 27, 2018).

56. Because the Machine is a secret society it is difficult to get precise information on the number of sitting student government members who are also affiliated with the machine. Nevertheless, it remains clear that the Machine still controls most student government races. In 2021, candidates running for office acknowledged that “the Machine is so powerful that these amazing student leaders are discouraged to run because they know that they may receive threats, harassment, or even be assaulted strictly off the basis that they are challenging the authority of the Machine.” That year, all the Machine candidates for the executive offices ran unopposed. See Kayla Solino, *“White Wealthy, and Greek”: This Year’s Uncontested SGA Races Draw Criticism from Senate Candidate*, CRIMSON WHITE (Mar. 1, 2021), <https://cw.ua.edu/79546/news/white-wealthy-and-greek-this-years-uncontested-sga-races-draw-criticism-from-senate-candidate> [<https://perma.cc/T5CS-VNFN>]. See also Tom Buckley, *In Alabama, Political Power Mostly Begins in a Fraternity House*, L.A. TIMES (Nov. 1, 1992) (noting that the Greek system “controls about 40 of the 50 student Senate seats”).

While fraternity brothers and sorority sisters insist that their innate charisma and leadership ability propels them into elected office,⁵⁷ those outside the system attribute the fraternities' dominance to more nefarious behaviors. Journalists have, for example, documented how the sororities and fraternities use coercive block-voting to influence SGA elections.⁵⁸ The University of Florida provides an illustrative example. Every year in Gainesville, a group of fraternity men and sorority women—known as “The System”—gathers together and agrees to support a particular slate of student politicians.⁵⁹ The leaders of “The System” then use bribery, intimidation, and fines to ensure that other Greeks vote for the anointed candidates.⁶⁰ This tactic has become brutally effective as universities have

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57. Kathleen Creedon, *SGA is More Than 50 Percent Greek. Here's Why that Isn't a Problem*, TRINITONIAN (Feb. 28, 2019), <https://trinitonian.com/2019/02/28/sga-is-more-than-50-percent-greek-heres-why-that-isnt-a-problem> [<https://perma.cc/GD3T-N9N9>] (reporting that some Greeks argue that fraternity and sorority members dominate student government because they “have the communication skills” and leadership qualities necessary to win elections).
58. See *Greek Gods*, RECKON RADIO (Aug. 27, 2018); Chris Cribbs, *The Machine*, in *THE TIDES OF TRADITION: CULTURE AND REFORM AT THE UNIVERSITY OF ALABAMA* 265-67 (Chad Caples ed., 2003) (detailing the tactics of The Machine at Alabama); Hope, *supra* note 55.
59. Tess Koman, *University of Florida Senior Speaks Out Against Student Government Practices in Troubling Viral Video*, COSMOPOLITAN (Feb. 17, 2016), <https://www.cosmopolitan.com/college/news/a53730/not-my-system-uf-student-government-video> [<https://perma.cc/6XJW-56LC>] (detailing how the System works); Tyler Richards, *Two Decades of UF Student Government Elections: Using Machine Learning for Deeper Insights*, TOWARDS DATA SCI. (Apr. 23, 2018), <https://towardsdatascience.com/two-decades-of-uf-student-government-elections-using-machine-learning-for-deeper-insights-c137c0586466> [<https://perma.cc/88TM-W3EB>] (“The System party has won every presidential election except for two . . .”).
60. See Koman, *supra* note 59 (“[F]raternities and sororities punished their new members until they’d voted for their student government representative.”); Editorial, *SG Elections and the Necessity to Vote with Integrity*, ALLIGATOR, <https://www.alligator.org/article/2016/02/editorial-sg-elections-and-the-necessity-to-vote-with-integrity> [<https://perma.cc/569Y-NF2E>] (“From withholding meals to restricting party privileges unless their members bring in ‘I Voted’ stickers, or even the obvious and simple-yet-effective method of stuffing the party ticket with members who belong to Greek organizations, UF’s fraternities and sororities are far more effectual at mobilizing their

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moved student government elections online; fraternity and sorority officers can now watch members vote on their phones to certify compliance.⁶¹ On many campuses, the size of the Greek community (coupled with low voter turnout among non-affiliated students) guarantees that fraternity brothers and sorority sisters dominate most elections.⁶²

The Greeks' control of student government has several deleterious effects. First, the sororities and fraternities can use the SGA's financial muscle to shape the university in their image. Student governments at large universities have budgets that run into the millions of dollars.⁶³ When fraternity and sorority members command the elected offices, they can divert these resources toward events that their members value.⁶⁴ They can (and do) fund things like homecoming dances, tailgates, and intramural sports—the kind of social activities that allow the Greek organizations to excel and set the tenor of campus life.⁶⁵ Second, participation in student

constituency to go to the ballot box.”); Elizabeth Behrman, *Unite Audio Reveals Campaign Tactics*, ALLIGATOR (Mar. 4, 2010), <https://www.alligator.org/article/2010/03/unite-audio-reveals-campaign-tactics> [<https://perma.cc/LQC2-CN6L>] (“The statements implicated Kappa Alpha Theta sorority for giving members alcohol for voting and Delta Phi Epsilon sorority for refusing to let pledges eat until they voted . . .”). *See also* Hope, *supra* note 55 (noting that at the University of Alabama there are punishments for candidates that defy the Machine).

61. At the University of Alabama, for example, students vote through the myBama internet portal. *See also* Hope, *supra* note 55 (“McGehee said every sorority involved with the Machine has a representative who reaches out to members to tell them who the Machine-backed candidate is in every election.”).
62. Hope, *supra* note 55 (reporting that both low voter turnout and the Greeks' superior organization give the Greek-backed candidates an enormous advantage).
63. *See, e.g.*, Koman, *supra* note 59 (“The University of Florida's student government has a \$21 million budget to be spent on any aspect of student life.”).
64. In 2015, a student government official at University of Alabama wrote an op-ed alleging that the Machine instructed her on how to cast her votes. Alex Smith, *Why I'm Leaving the Machine*, CRIMSON WHITE (Oct. 26, 2015), <https://cw.ua.edu/28300/opinion/why-im-leaving-the-machine> [<https://perma.cc/SN4P-NWNN>].
65. For example, the University of Florida student government spent over seven million dollars on recreational sports and an additional \$700,000 on “sorority and fraternity affairs.” *Amended Fiscal Year 2021-2022 Activity and Service Fee*

government, especially at flagship state schools, often serves as a launching pad for careers in local and state politics.⁶⁶ At universities where the sororities and fraternities have seized the reins of power, unaffiliated students—who are disproportionately ruralites, first-generation scholars, and racial minorities—are denied an important form of human-capital accumulation.

C. *The Greeks Control Access to Alumni Networks*

The composition of the fraternities and sororities matters not only because of their social and political dominance on campus, but also because they provide a pathway to economic prosperity that endures long after college ends. One of the longtime selling points of the fraternities and sororities is that their alumni networks will help students secure high-paying jobs after graduation.⁶⁷ Empirical evidence confirms that joining a Greek organization is strongly correlated to higher lifetime earnings. One widely cited study found that joining a fraternity “produces large gains in social capital” and “increases expected future earnings by approximately 36%.”⁶⁸ Research also substantiates the Greeks’ claims about the

Budget, U. FLA., <https://sg.ufl.edu/wp-content/uploads/2021/11/2021-1025-Amended-FY-21-22-Activity-and-Service-Fee-Budget-002.pdf> [<https://perma.cc/QG4X-RBA8>].

66. See Peter Jacobs, *10 Stories that Show the Power of “The Machine,” University of Alabama’s All-White Secret Society*, BUS. INSIDER (Oct. 3, 2013), <https://www.businessinsider.com/the-machine-university-alabama-all-white-secret-society-2013-10> [<https://perma.cc/X7AE-TEC3>] (noting that student government at the University of Alabama has served as “the primary vehicle” for success in Alabama politics). In 2013, for example, a school board member in Tuscaloosa filed a lawsuit claiming “UA sorority members were offered free drinks and limo rides if they voted in the City Board of Education elections.” *Id.* See also Koman, *supra* note 59 (“It’s important to recognize these [students involved in government] are future leaders and they’re being trained in dirty tactics and politics.”).
67. Hughey, *supra* note 2, at 665-66 (discussing how students join Greek organizations because they believe the fraternities and sororities are “conduits for post-college upward mobility”).
68. Jack Mara, Lewis Davis & Stephen Schmidt, *Social Animal House: The Economic and Academic Consequences of Fraternity Membership*, 36 CONTEMP. ECON. POL’Y 263, 368 (2018); Mary-Catherine McClain, *Greek Life Membership and Career Development Outcomes*, Presentation at National Career Development

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effectiveness of their career networks. Fraternity and sorority members who use their Greek contacts while job-hunting are thirty-eight percent more likely to land a high-paying position out of college than similarly situated non-Greeks.⁶⁹ The overriding point is that fraternities and sororities determine more than who presides over the homecoming court. Their influence is far reaching; on some campuses the shadow of the Greek organizations looms over nearly every aspect of student life. Those students denied access to the system lack the ability to tap the currents of power that propel the university.

D. A Note on the Structure and Governance of the Greek Community

One final piece of background information is needed to understand the Greek community. The national Greek organizations require that any college with more than one sorority or fraternity must establish a pan-Greek government.⁷⁰ These bodies coordinate activities among Greek organizations, adjudicate disputes, and ensure that individual chapters

Conference (2014) (transcript available at <https://career.fsu.edu/sites/g/files/imported/storage/original/application/e167264766f427524f1b8e325de6c292.pdf> [<https://perma.cc/ER24-Z6CD>]) (arguing that “members of Greek-letter organizations reported higher levels of vocational identity, career decision-making self-efficacy, and goal directedness than non-Greek members”); *Fraternities and Sororities: Understanding Life Outcomes*, GALLUP, <https://www.gallup.com/services/176279/fraternities-sororities-understanding-life-outcomes.aspx> [<https://perma.cc/F9K2-QRA3>] (showing that members of Greek organizations are more likely than other college graduates to report being engaged in the workplace). *But see* William E. Even & Austin Smith, *Greek Life, Academics, and Earnings*, 57 J. HUM. RES. (forthcoming), (manuscript at 20) (2020). Even and Smith find that Greeks have higher starting salaries. However, the authors question whether the differential can be attributed to Greek life or other variables. In particular, they question whether low-performing fraternity men earn higher salaries than low-performing non-Greeks.

69. David Marmaros & Bruce Sacerdote, *Peer and Social Networks in Job Search*, 46 EUR. ECON. REV. 870, 875-76 (2002).
70. See MANUAL OF INFORMATION, NAT’L PANHELLENIC CONF. 35 (2022) (“A College Panhellenic Association shall be established where two or more NPC sororities have installed undergraduate chapters.”); *About Interfraternity Council* (IFC), N. AM. INTERFRATERNITY CONF., <https://nicfraternity.org/about-interfraternity-council-ifc> [<https://perma.cc/VTA5-DCPR>] (“An IFC exists where there are two or more NIC member (or non-member) fraternities on a campus.”).

conform to national standards of behavior. Adding to the complexity, not all Greek organizations on campus belong to the same governing council. There are four separate bodies, divided along race and gender lines, that oversee the Greek community.⁷¹ At most universities, the Panhellenic Association supervises the traditionally white sororities.⁷² Although the Panhellenic organizations have all formally embraced multiculturalism, they largely refused admission to Black and Jewish students before the Civil Rights Era.⁷³ The Interfraternity Council (IFC) governs the traditionally white fraternities.⁷⁴ On the other side of the color line, the National Pan-Hellenic Council oversees the nine historically Black fraternities and sororities,⁷⁵ while the Multicultural Greek Council serves a coalition of eleven organizations made up of Latino, Asian, and LGBTQ chapters.⁷⁶

71. See generally Anthony DiChara, *Fraternal Leadership: Differences in Leadership Practices Among Four Governing Councils*, 4 ORACLE 16 (2009).

72. See Ray, *supra* note 51, at 323 (2013) (discussing the racial identity of the IFC, PHC, and NPHC); Danielle Ford, “Fifty Shades of Black”: The Black Racial Identity Development of Black Members of White Greek Letter Organizations in the South 18 (May 2018) (M.A. thesis, Louisiana State University) (on file with author) (defining White Greek-Letter Organizations as “a fraternity or sorority that is historically, traditionally, and predominately White; may belong to one of two umbrella organizations—IFC and NPC/PHC.”).

73. See Hughey, *supra* note 1, at 61 (2007) (“Today, none of the Greek organizations have exclusionary official structure, but the symbolic boundary of the color line persists.”). See also Alexandra Johansen & Snejana Slantcheva-Durst, *Governing Councils and Their Defining Role in the Development of Campus Greek Communities: The Case of the University of Toledo, 1945-2006*, 45 AM. EDUC. HIST. J. 1, 4-6 (2018) (discussing the rise of segregated Greek councils).

74. Hannah Blankenship, “Outright, It’s Segregated;” A Look at Greek Life on MSU’s Campus, REFLECTOR (Nov. 7, 2021), http://www.reflector-online.com/news/article_dd9b9746-4039-11ec-bbe7-67c86c3d6123.html [<https://perma.cc/66XU-VXHX>] (“Simply put, Panhellenic sororities and IFC fraternities are white, and National Panhellenic sororities and fraternities are Black.”).

75. *About the NPHC*, NAT’L PAN-HELLENIC COUNCIL, <https://nphcq.com/millennium1/about> [<https://perma.cc/7992-XZB2>].

76. See Eric Atkinson, Laura A. Dean, & Michell M. Espino, *Leadership Outcomes Based on Membership in Multicultural Greek Council (MGC) Organizations*, 5 ORACLE 34, 34 (2010) (discussing the formation of the MGC organizations).

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Scholars have emphasized the inherent problems with this governing structure.⁷⁷ The use of multiple councils ingrains a gender divide in the Greek community, while enforcing the idea that white and Black students do not need to work with one another on an organizational level.⁷⁸ Nevertheless, the fraternity and sorority members continue to insist that this design best preserves their autonomy and advances the interests of their members.⁷⁹

Going forward, this study focuses solely on the racial composition of the traditionally white Greek organizations—the Panhellenic sororities and the IFC fraternities. Have these large campus groups become more integrated since the end of the 1960s? Does their membership reflect the growing diversity of American college campuses?

II. THE GREEK SYSTEM IS SEGREGATED

Critics of Greek life routinely attack the fraternities and sororities for their lack of diversity.⁸⁰ Commentators have, for example, accused the

77. Ray, *supra* note 51, at 323 (“Scholars highlight that the organizational structure of the white Greek system promotes a systematic racial and gender divide and establishes a precedent that black and white fraternities and sororities do not have to interact with each other organizationally.”).

78. *Id.* See also Monica Hiller, *Gender Stereotypes Upheld by Greek Recruitment*, OBSERVER (Apr. 21, 2016), <https://observer.case.edu/gender-stereotypes-upheld-by-greek-recruitment> [https://perma.cc/757C-NC9T] (discussing how different sets of rules imposed by the different councils encode a gender divide on campus).

79. See, e.g., Andres Salerno, *In Greek Life’s Governing Bodies, Gender Feels Stratified*, BUTLER COLLEGIAN (Dec. 5, 2018), <https://thebutlercollegian.com/2018/12/in-greek-lifes-governing-bodies-gender-feels-stratified> [https://perma.cc/9B4C-6FA5] (interviewing a Panhellenic sorority woman about the problems with the IFC council); Edante Bourjolly, *Greek System—Divisive or Unifying*, DAILY PENNSYLVANIAN (Dec. 3, 1993, 5:00 AM), https://www.thedp.com/article/1993/12/greek_system_divisive_or_unifying [https://perma.cc/8A8H-B9YH] (“Outgoing Panhel President and Delta Delta Delta sister Allison Marinoff described each Greek group as a ‘support system’ that serves a different purpose for its members.”).

80. See, e.g., Anna Tingley, *Greek Life’s History of Racism Is Catching Up to It*, TEEN VOGUE (Aug. 25, 2020), <https://www.teenvogue.com/story/greek-life-colleges-racism-reform> [https://perma.cc/933B-T78M]; Mary Bowerman, *Sorority Recruitment Videos Show Lack of Diversity*, USA TODAY (Aug. 20, 2015,

Panhellenic and IFC organizations of being “largely divided by race,”⁸¹ “hyperracialized,”⁸² “hyper-white[],”⁸³ “racially privileged,”⁸⁴ “exclusionary,”⁸⁵ and “largely separated along racial and ethnic lines.”⁸⁶ Given the vigor of these claims, it is surprising how little data exists on the demographics of the Greek system. The vast majority of research on fraternity and sorority life addresses subjects like substance abuse, sexual misconduct, and hazing, while ignoring the Greeks’ role in “the maintenance of segregated campuses and communities.”⁸⁷ This Article attempts to fill the gap.

In the pages that follow, I present the first large-scale study of the racial composition of the Greek system. The results confirm what cynics have long suspected: the Panhellenic sororities and IFC fraternities remain deeply segregated organizations. On nearly all campuses, in all regions of the country, white students dominate the Greek chapters. The sororities in particular give the impression that they are little more than “ethnic clubs

8:47 AM), <https://www.usatoday.com/story/news/nation-now/2015/08/19/university--alabama-alpha-phi-sorority-racial-backlash-diversity/31995231> [<https://perma.cc/64MD-CT5J>]; Clio Chang, *At Sororities, Likeness Becomes A likeness*, U.S. NEWS & WORLD REPORT (Feb. 25, 2015, 11:20 AM), <https://www.usnews.com/opinion/economic-intelligence/2015/02/25/sorority-segregation-is-a-serious-issue> [<https://perma.cc/8AFJ-XH5N>].

81. John Sutter, *Are Frats ‘A Form of American Apartheid’?*, CNN (Mar. 10, 2015), <https://www.cnn.com/2015/03/10/opinions/sutter-oklahoma-fraternity-racist/index.html> [<https://perma.cc/JKB3-CHN3>].
82. Hughey, *supra* note 2, at 663.
83. LAWRENCE ROSS, *BLACKBALLED* 147 (2017).
84. Matthew W. Hughey, *Syracuse Suspends Fraternities Racism, but Greek System’s Prejudice is a National Problem*, NBC NEWS (Nov. 21, 2019, 3:49 PM), <https://www.nbcnews.com/think/opinion/syracuse-suspends-fraternities-racism-greek-system-s-prejudice-national-problem-ncna1087111> [<https://perma.cc/2JBZ-DQBN>].
85. Clio Chang, *Separate but Unequal in College Greek Life*, CENTURY FOUND. (Aug. 12, 2014), <https://tcf.org/content/commentary/separate-but-unequal-in-college-greek-life/?agreed=1> [<https://perma.cc/D3XQ-JXLW>].
86. Beth Kassab, *University Greek Houses Often Segregated*, ORLANDO SENTINEL (Apr. 10, 2015, 8:09 PM), <https://www.orlandosentinel.com/opinion/os-fraternity-segregation-beth-kassab-20150410-column.html> [<https://perma.cc/XY88-LMLP>].
87. Hughey, *supra* note 2, at 654.

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for white students.”⁸⁸ The on-the-ground evidence also reveals that a deep strain of anti-Blackness courses through the Greek community. Many fraternities and sororities still have no African American members, and Black students remain severely underrepresented in nearly all Greek-letter organizations. Asian students, too, rarely join the Greek clubs. Amid these bleak findings, there is one scrap of good news for champions of the system: across the board, Latinos—the largest minority group in the country—have become increasingly well-integrated into the fraternity and sorority scene.

A. Methodology

Data on the racial composition of the Greek system has long eluded scholars. The national fraternity and sorority organizations claim that they are private clubs and, as a result, have no obligation to release demographic information about their members. Moreover, colleges do not publish this data in their brochures, “nor does anyone measure it nationally.”⁸⁹ As one commentator lamented, “there is no straightforward way to prove” that the Greek clubs remain acutely segregated.⁹⁰

To overcome the lack of empirical evidence, this study employed an oft-neglected but powerful investigative tool: state FOIA laws. During the spring of 2020, I sent FOIA requests to one hundred and fifteen state-run universities around the country, asking for “[a]ny information about the ethnic or racial make-up of the Panhellenic Council (PHC) sororities and the Interfraternity Council (IFC)” from the “most recent year that the University has statistics.”⁹¹ This Article uncovered that many colleges quietly collect

88. Sidanius et al., *supra* note 18, at 107.

89. Allie Grasgreen, *It's Not Just Alabama*, INSIDE HIGHER ED (Sept. 19, 2013), <https://www.insidehighered.com/news/2013/09/19/segregated-sororities-not-limited-alabama-experts-say> [<https://perma.cc/2GZY-LDBU>].

90. Chang, *supra* note 85.

91. Here is the text of a sample message that I sent to the University of Kansas: “This is a request under the Kansas Open Records Act (Code of Laws § 45-215). I know such requests are often burdensome and I appreciate your time. I kindly request: Any information about the ethnic or racial make-up of the Panhellenic Council (PHC) sororities and the Interfraternity Council (IFC) fraternities. I request the information from the most recent year that the University has statistics. In order to help determine my status to assess fees, you should know that I am affiliated with the University of Arkansas and this request is made for a scholarly purpose. I am doing research on the history of

and synthesize demographic information about registered student groups, including the fraternities and sororities. In response to the FOIA requests, fifty schools turned over previously unpublished records about the racial composition of their Greek clubs.

Although largely effective, this method of data collection has a handful of drawbacks. First, American universities use self-reported data to identify the race of their students. This information is rarely audited by independent sources, and some observers suggest that white students lie about their racial identity to gain advantages in the college admission process. One study claimed that 16% of white applicants lie about being Native American.⁹² Although experts think that number is a gross overestimate, most commentators acknowledge that some deceit occurs.⁹³ Therefore, it is possible that this study actually overstates the amount of diversity in the Greek system.

A second concern is that almost every college designated “Hispanic” as a distinct racial category. This methodology is very different from how the U.S. Census reports information about Hispanic communities. The Census defines Hispanic as a cultural identity rather than a race. Specifically, a Hispanic is a “person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin.”⁹⁴ The universities’ decision to use Hispanic as an independent racial category means it is not possible to differentiate the experiences of white and non-white Hispanics.

Third, the universities in this study did not send uniform data sets. For instance, not all the statistics compiled in the Appendix come from the same

the American Greek system. Thank you for your consideration of this request. Sincerely, Stephen Clowney” Email from author to Jen Arbuthnot, Custodian of Public Records (Jan. 30, 2020) (on file with author).

92. Kristen Scatton, *34% of White College Students Lied About their Race to Improve Chances of Admission, Financial Aid Benefits*, INTELLIGENT (Oct. 13, 2021), <https://www.intelligent.com/34-of-white-college-students-lied-about-their-race-to-improve-chances-of-admission-financial-aid-benefits/?adfa> [https://perma.cc/EN6Z-3TDH].
93. See Gwen Aviles, *Experts are Questioning a Viral Study on White College Applicants Lying About Race. Is the Phenomenon a Trend?*, INSIDER (Nov. 4, 2021, 4:06 PM), <https://www.insider.com/experts-question-study-on-white-college-applicants-lying-about-race-2021-11> [https://perma.cc/HYL2-PQA9].
94. *Why We Ask Questions About Hispanic or Latino Origin*, UNITED STATES CENSUS BUREAU (last visited Jan 18, 2022, 11:47 AM), <https://www.census.gov/acs/www/about/why-we-ask-each-question/ethnicity/> [https://perma.cc/86F7-SDLL].

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semester. Colleges commonly shared information from the Fall of 2019, Spring of 2019, and the Fall of 2020, but some data went back as far as Fall of 2017. Moreover, not all universities classify students into precisely the same racial categories. Many institutions divide undergraduates into eight different racial groups: white, Black, Asian, Hispanic, American Indian, multi-racial, unknown, and non-resident alien. Ohio State, for example, reported the composition of its Panhellenic sororities as follows:⁹⁵

Race / Ethnicity	#	Percent
American Indian/Alaska Native/Native Hawaiian/Other Pacific Islander/Undisclosed	51	2.1%
Asian	68	2.8%
Black or African American	20	0.8%
Hispanic / Latinx	86	3.5%
International Student	10	0.4%
Two or More Races	70	2.9%
White	2130	87.5%
Total	2435	100.0%

Other universities take slightly different approaches. Some split “Native Hawaiians and Pacific Islanders” into a distinct category from “American Indians and Alaska Natives.”⁹⁶ Others separate Mexicans from Central Americans,⁹⁷ or Filipinos from other Asians.⁹⁸ Although not ideal for producing a comparative data set, these small differences should not have any sizable effect on the results of this study. Upon receipt of the statistics from the colleges, racial categories were easily standardized by combining disparate Hispanic or Asian groups.

The final drawback of my methodology is that FOIA laws only apply to publicly funded universities. This study obtained no data from private colleges, as they have no legal obligation to turn over documents when they receive an open records request. Does the lack of information from private schools undermine the results of the study? Almost certainly not. The fraternities and sororities are national organizations that operate under a series of uniform policies that impact chapters at both public and private

95. Email from Scott Hainer, Director of Public Records in the Office of University Compliance and Integrity, to author (Mar. 9, 2020) (on file with author).

96. Email from Dominoe Franco, Senior Risk Analyst, to author (June 12, 2020) (on file with author).

97. *Id.*

98. *Id.*

schools.⁹⁹ Furthermore, it seems unlikely that small private institutions would have more integrated Greek systems than their public counterparts. Public institutions enroll larger percentages of non-white students,¹⁰⁰ giving their Greek chapters a larger pool of minority students to recruit. Additionally, at flagship state schools, the actions of the powerful fraternities and sororities are often scrutinized by university administrators, student newspapers, local politicians, and community watchdogs.¹⁰¹ High-profile Greek chapters on these campuses have the sharpest incentives to mind their public image and ensure the diversity of their membership. If an ethos of integration has taken hold among American fraternities and sororities, we should expect to see its imprint in the Greek communities of large state schools.

Relatedly, critics could quibble with the sample of schools that I contacted. In this study, I sent FOIA requests to all the public schools that belong to the high-level athletic conferences. Specifically, I emailed all the public institutions that compete in the Atlantic Coast (ACC), Big Ten, Big 12, Pac-12, Southeastern (SEC), American Athletic (AAC), C-USA, Mid-American (MAC), Mountain West, and Sunbelt conferences. Analyzing universities through the lens of conference affiliation offers two notable advantages for a study of this type. First, the data center schools where the fraternities and sororities remain a focal point of campus life. The presence of big-time college sports—particularly football—serves as a rough proxy for a vibrant Greek scene. Division I athletics and Greek organizations appeal to the same type of potential students and provide colleges with a similar type of social programming. As one writer summarized, “[the] typical college experience

99. See, e.g., *Manual of Information*, NATIONAL PANHELLENIC COUNCIL (last visited Jan. 18, 2022, 12:52 PM), <https://www.npcwomen.org/wp-content/uploads/2017/11/NPC-Manual-of-Information.pdf> [<https://perma.cc/L8GF-FDYF>] (discussing rules and standards that apply to all Panhellenic Sororities).

100. *Characteristics of Postsecondary Students*, NAT'L CENTER EDUC. STAT. (May 2021), <https://nces.ed.gov/programs/coe/indicator/csb> (reporting that private non-profit schools are 63% white, while public institutions are 55% white).

101. Alabama provides an excellent example of the microscope the Greek organizations at large state universities often find themselves under. When reports surfaced that sororities at Alabama had engaged in discriminatory conduct, reporters from national outlets descended on campus. See, e.g., Kayla Webley Adler, *Revolution on Sorority Row*, MARIE CLAIRE (Aug. 6, 2014), <https://www.marieclaire.com/culture/news/a10379/revolution-on-sorority-row-september-2014/>.

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[is] Saturday afternoon football games, great teachers, diverse courses, and, of course, fraternity and sorority life.”¹⁰²

Second, the conference heuristic provides a shorthand method of comparing Greek chapters from similar schools. Scholars have confirmed that universities within the same athletic conference generally share a common geography, student culture, and academic profile.¹⁰³ The schools of the Big Ten, for example, are largely flagship universities in the Midwest with top-tier scholarly programs.¹⁰⁴ These similarities allow for a more robust appraisal of the individual Greek systems. Evaluating the sororities at Ohio State against their Big Ten counterparts at Michigan and Indiana reveals far more than comparing Ohio State to Wyoming or UNLV. While the data set gathered for this study is not perfect, it does provide a clear snapshot of Greek Life at the nation’s large public institutions.

B. Results

The central finding of this Article is that white students dominate the fraternity and sorority chapters, while Black students remain almost completely isolated from the system. The typical Greek chapter remains overwhelmingly white, even though white students constitute only a slim majority of undergraduates at American universities. Among the schools in this study, whites make up, on average, 55% percent of full-time undergraduates,¹⁰⁵ while the typical Panhellenic sorority system is more

102. ALAN D. DESANTIS, *INSIDE GREEK U.: FRATERNITIES, SORORITIES, AND THE PURSUIT OF PLEASURE, POWER, AND PRESTIGE* 10 (2007). Another similar sentiment: “There’s nothing more indelible to the college experience than football and Greek life. The two have coexisted in a symbiotic relationship of ritual bonding and school pride — with a side of braggadocio — since they were both introduced to campuses generations upon generations ago.” Chris Wuensch, *Examining Student Involvement in Greek Life on SEC Campuses*, SATURDAY DOWN S., <https://www.saturdaydownsouth.com/sec-football/greek-life-involvement-sec-schools/> (last visited Feb. 23, 2022).

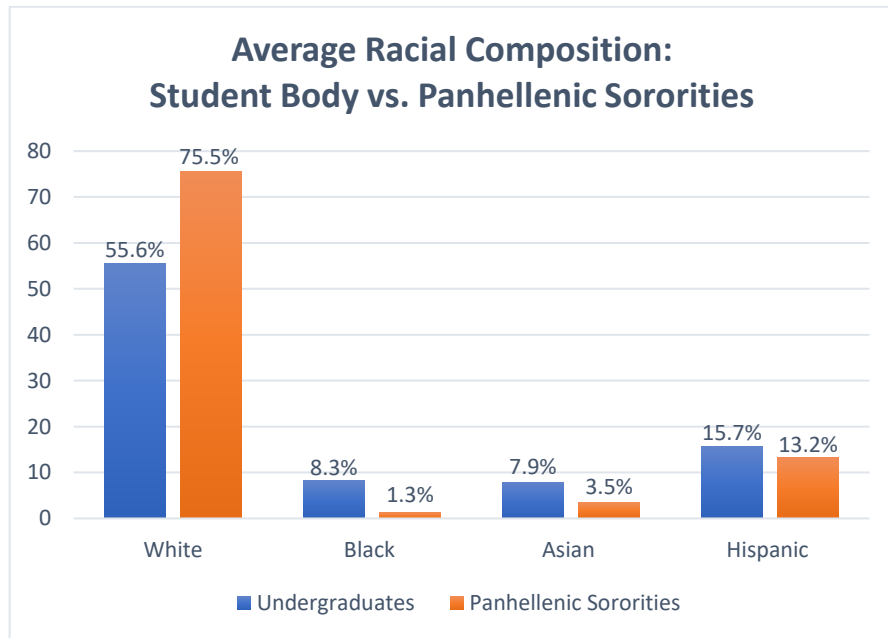
103. Arik Lifschitz, Michael Sauder & Mitchell L. Stevens, *Football as a Status System in U.S. Higher Education*, 87 SOC. EDUC. 204, 213 (arguing that conferences choose members based on “football performance, geographic location, and academic status”).

104. *See, e.g., What is a Big Ten School?*, U. MINN., <https://gominnnesota.umn.edu/news/what-big-ten-school/> (last visited Feb 23, 2022).

105. *See* Appendix A.

than 75% white and the standard IFC fraternity council is 72% white.¹⁰⁶ Almost everywhere, the Greek population is at least fifteen percent whiter than the general student body.¹⁰⁷

On many campuses, white students have an even larger influence in the chapter houses than the averages suggest. Nineteen schools in this study host sorority communities that are at least eighty-five percent white.¹⁰⁸ Additionally, Auburn, Ole Miss, Nebraska, Clemson, and Alabama all have Greek systems that exceed ninety percent white.¹⁰⁹ At these universities, the IFC fraternities and Panhellenic sororities have an unambiguous racial identity—they are white social organizations that serve a nearly all-white clientele.



The data also reveal a deep strain of anti-Blackness in Greek life. There are virtually no African American students enrolled in the Panhellenic sororities and IFC fraternities.¹¹⁰ This is not an exaggeration. On average,

106. *Id.*

107. *See* Appendix A & B.

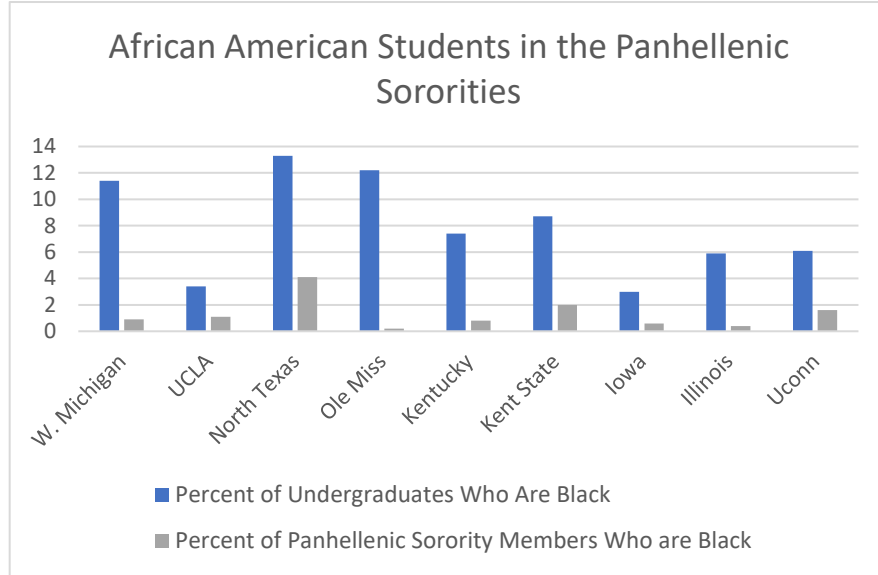
108. *Id.*

109. *Id.*

110. *Id.*

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Black students constitute a little more than 1% of the women in the Panhellenic sororities and about 2% of the men in the IFC fraternities,¹¹¹ even though African Americans make up 13% of undergraduates in the United States.¹¹²



Moreover, fine-grain data on the racial composition of individual Greek chapters reveals that the problem of segregation is even more insidious than the averages indicate. Fourteen schools in this study turned over chapter-level demographic information. On these campuses, almost half of the fraternities and sororities (79 of the 168 chapters) had zero Black members.¹¹³

The numbers in the Southeast are especially gloomy. Despite having the highest percentage of Black students on campus, Southern universities have Greek systems that are almost completely devoid of Black members. At Ole

111. *Id.*

112. *Characteristics of Postsecondary Students*, NAT'L CENTER EDUC. STAT. (May 2022), <https://nces.ed.gov/programs/coe/indicator/csb>. The percentage is higher at for-profit schools. *Id.*

113. *See* Appendix A & B.

Miss the sororities are .2% Black,¹¹⁴ at Auburn .3%,¹¹⁵ at Clemson .4%,¹¹⁶ at Texas A&M .6%,¹¹⁷ at Kentucky .7%,¹¹⁸ at LSU .8%,¹¹⁹ and at Tennessee .9%.¹²⁰ To put these numbers in context, consider this; at Clemson University, roughly 900 women join one of the Panhellenic sororities each year.¹²¹ On average, three of those women identify as African American.¹²² These numbers paint an ominous portrait of Greek life. It is difficult to think of another mainstream American institution that has done as little to promote the integration of African Americans into its membership.

Black students are not the only underrepresented group in the Greek system. At the schools in this study, Asian students make up, on average, nearly 8% of undergraduate students, but only 3.5% of the women in the Panhellenic sororities and 4.5% of the men in the IFC fraternities.¹²³ Even at schools with robust Asian American student populations, the shadow of racial exclusion still hangs over Greek life. For instance, at the four California schools in this study—UCLA, Fresno State, San Jose State, and San Diego State—Asian students comprise an average of 23% of the undergraduate students. However, they account for only 8% of students enrolled in the Panhellenic sororities. These statistics make clear that race is relevant outside of the Black/white binary that often drives debate in American higher education.

114. Email from Office of General Counsel, University of Mississippi, to author (Dec. 11, 2019) (on file with author).

115. Email from Open Records Office, Auburn University, to author (Aug. 16, 2019) (on file with author).

116. Email from Robert W. Wilkins, Assistant General Counsel, Clemson University, to author (Jan. 24, 2020) (on file with author).

117. Email from Knesha Brashear, Open Records Office, Texas A&M University, to author (Nov. 15, 2019) (on file with author).

118. Email from Amy Renee Spagnuolo, Director of Open Records, University of Kentucky, to author (Nov. 6, 2019) (on file with author).

119. Email from Johanna A. Posada, Assistant General Counsel, Louisiana State University, to author (Nov. 25, 2019) (on file with author).

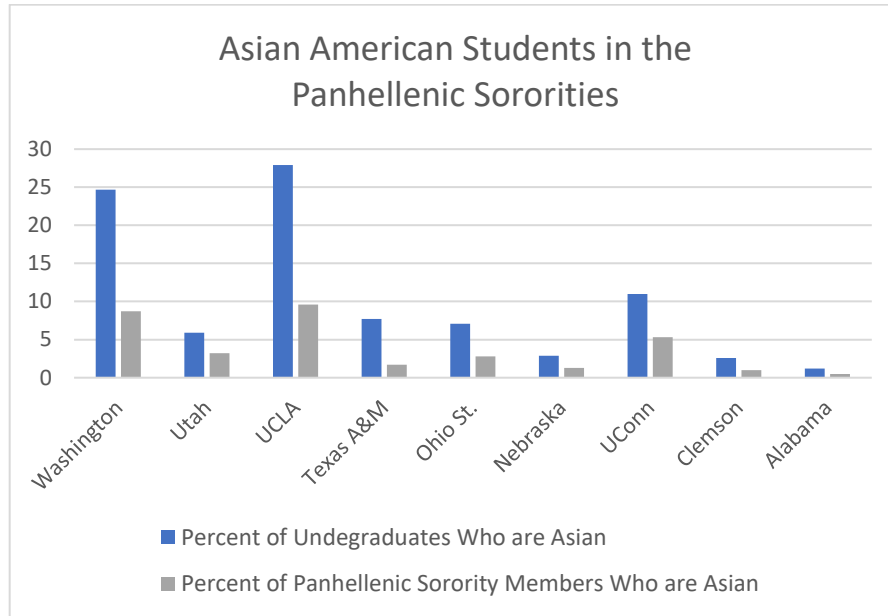
120. Email from Charles Primm, Public Records Request Coordinator, University of Tennessee, to Leah Fitzgerald (Nov. 25, 2019) (on file with author).

121. Email from Robert W. Wilkins, Assistant General Counsel, Clemson University, to author (Jan. 24, 2020) (on file with author).

122. *Id.*

123. *See* Appendix A & B.

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Given the deep racial divides in the Greek organizations, how can university administrators continue to accept the presence of fraternities and sororities on campus? Defenders of the system may try to argue that, despite the paucity of African American and Asian students, the Greek community is more diverse than skeptics have acknowledged. The data gathered here provide some limited support for this claim. While the Greek houses do not reflect the flowering diversity of American college campuses, they are not quite temples of Aryanism either. Hispanic Americans, the largest minority group in the country, have become increasingly well integrated into college Greek life. In every area of the country, and at nearly every school, the proportion of Hispanics in the Greek system closely mirrors the overall enrollment numbers of Hispanic students.¹²⁴

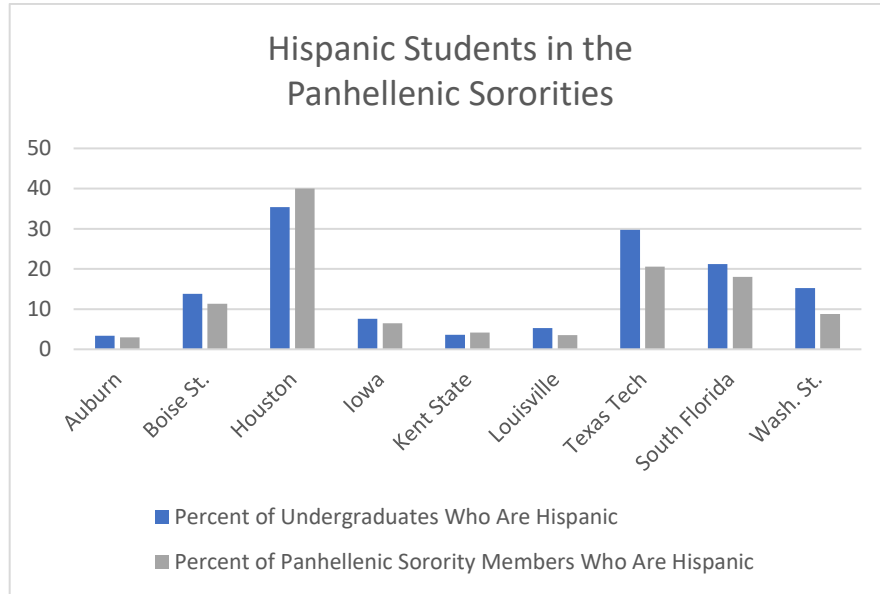
On average, Hispanic Americans make up 16% of the undergraduates at each school in this study.¹²⁵ The demographics of the chapter houses look fairly similar; Hispanic men account for roughly 14% of IFC fraternity members and Hispanic women constitute 13% of the Panhellenic sorority sisters.¹²⁶ Moreover, at a significant minority of schools (11 of 50), the

124. See Appendix A & B.

125. *Id.*

126. *Id.*

fraction of Hispanic students in the Greek system now exceeds the share of Hispanics in the student body.¹²⁷



Does the growing presence of Hispanic students shield the chapters from the claim that racial homogeneity is baked into the DNA of the Greek system? Almost certainly not. The data gathered in this study broadly support the conclusion that Greek life is segregated. On nearly every single campus, white students exert a degree of control over the IFC fraternities and Panhellenic sororities that far exceeds their influence on the rest of campus, while Black and Asian students remain outside these centers of power.

C. Causes

The data from this study offer strong evidence that the Greek system in the United States remains starkly segregated. This finding raises a natural follow-up question: “Why?” What causes the racial divisions in the IFC fraternities and the Panhellenic sororities? Providing a comprehensive account of segregation within the American Greek system is both beyond the scope of this Article and unnecessary to bring a successful claim under the FHA’s disparate impact provisions. Nevertheless, the statistics

127. *Id.*

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generated from this study shed new light on the racial gaps that have formed in fraternity life. The data touch on: (1) the debate over self-segregation in the Greek system, and (2) the growing success of Hispanic students in the chapter houses. These issues deserve brief mention before moving into the material on the Fair Housing Act.

The causes of segregation in any institutional setting are complex, and the Greek houses are no exception. Scholars have long argued that structural barriers—charging high membership fees, requiring letters of recommendation from alumni, and scheduling rush before the start of classes—keep many students of color from fully participating in the Greek system.¹²⁸ Additionally, observers suggest that minority students do not rush the historically white Greek organizations because they do not feel a sense of belonging in the chapter houses. For example, Edith Chen, one of the few academics to study the social lives of Asian American college students, argues that Asians have failed to embrace Greek life because the chapters subtly pressure minority students to downplay their ethnic identities.¹²⁹ Other researchers have pointed to circumstantial evidence indicating that historically white Greek clubs continue to exclude minority students because of their perceived inferiority.¹³⁰

128. See, e.g., Stephen Clowney, *Sororities as Confederate Monuments*, 108 Ky. L.J. 617, 628-32 (2020) (discussing the structural barrier that keep low-income and minority students out of the Greek system); Julie J. Park, *Asian American Women's Perspectives on Historically White Sorority Life: A Critical Race Theory and Cultural Capital Analysis*, ORACLE, Fall 2012, at 1, 7-13 (discussing the structural barriers that keep Asian American women from joining sororities).

129. See Edith Wen-Chu Chen, *Asian Americans in Sororities and Fraternities: In Search of a Home and Place*, BROTHERS AND SISTERS: DIVERSITY IN COLLEGE FRATERNITIES AND SORORITIES 83, 92 (Craig L. Torbenson & Gregory S. Parks, eds. 2009) (“[T]he participation of Asian American women in these arenas is *not* based upon principles of multicultural democracy, but is conditioned upon submitting to an elite white cultural model of womanhood . . .”). See also Park, *supra* note 128, at 16 (arguing that Asians have failed to embrace Greek life “because of how class, race, and nativity interact to send messages about who is welcome and unwelcome.”); Park, *supra* note 2, at 126 (“[R]ace continues to shape Asian American women’s access to sororities in subtle, yet significant ways.”).

130. In his book on fraternities, Alan DeSantis reports, “I have been in deliberative meetings . . . where blocs of members have convinced their chapters to exclude blacks because of the ‘dangerous’ precedent it would set.” *Supra* note 102, at 22. DeSantis continued, “At one such rush meeting, Mark, a senior Kappa, asserted that, if the chapter extended a bid to Jason, a young black man

A more controversial explanation for the lack of diversity in the chapter houses is that minority students engage in high levels of voluntary self-segregation. According to this argument, the IFC and Panhellenic chapters have few nonwhite members because minority students prefer to join their own cultural affinity groups. In the abstract, this claim has some force. Take, for example, the role of the nine historically Black Greek organizations. For over a hundred years, the Black Greek chapters have helped nurture a sense of identity and belonging among African American university students.¹³¹ If large numbers of African American students join a Black Greek organization, the IFC fraternities and Panhellenic sororities may end up with few people of color in their ranks—even if the chapters value diversity. The director of Greek life at the University of Arkansas, Parice Bowser, puts it this way, “[One] factor that contributes to the segregation of Greek Life is that students go where they feel most at home.”¹³²

The statistics assembled during this study undermine the narrative of Black self-segregation. According to the data, most of the Black Greek clubs have very few members and, thus, do not appreciably alter the demographics of the IFC fraternities or Panhellenic sororities.¹³³ Among the schools that responded to this study, the average Panhellenic sorority has

from Chicago, the floodgates would soon open, and the chapter would become ‘one big ghetto . . .’” *Id.*; see also Matt Ford & Abbey Crain, *The Final Barrier: 50 Years Later, Segregation Still Exists*, CRIMSON WHITE, (Sept. 11, 2013) (describing racism at Alabama rush events); Adler, *supra* note 4 (same); Anonymous, *UGA Greek Life: Silence, Rumors, Race and Misogyny*, INFUSION MAG. (Apr. 20, 2015), <https://infusionmagazine.com/2015/04/20/uga-greek-life-silence-rumors-race-and-misogyny-2> (“[S]ome sororities unofficially prefer not to extend membership to non-white students out of fear that it will keep them from having social events with certain fraternities. Some also worry that alumni will cut funding and donations if they extend membership to African American students.”).

131. See generally AFRICAN AMERICAN FRATERNITIES AND SORORITIES: THE LEGACY AND THE VISION (Tamara L. Brown, Gregory S. Parks & Clarenda M. Phillips, eds., 2005); LAWRENCE C. ROSS, *THE DIVINE NINE: THE HISTORY OF AFRICAN AMERICAN FRATERNITIES AND SORORITIES* (2000).
132. Berkeley Anderson, *Discrimination and Racism Not a Problem for UA Greek Life*, ARK. TRAVELER (Oct. 1, 2013), https://www.uatrav.com/news/campus/article_d8f0135a-2aff-11e3-b977-001a4bcf6878.html [<https://perma.cc/3GFW-YDJM>].
133. See, e.g., Ray, *supra* note 51, at 325 (discussing a study at an anonymous state university where the average white fraternity had 100 members and the average Black fraternity had 10 members).

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almost two hundred sisters.¹³⁴ In contrast, the average Black sorority has just sixteen members.¹³⁵ On some campuses, the community of Black Greeks is even smaller.¹³⁶ At West Virginia University, for example, the historically Black Greek organizations have roughly five members per chapter—hardly more than one student per class year.¹³⁷

Critics may respond that although the Black Greeks enroll a small absolute number of students, they may very well initiate a significant *percentage* of the African American students on campus. This argument, too, founders when confronted by facts on the ground. University of Maryland provides a fine example. Maryland has a large number of Black students and a very robust Greek community; roughly 4,600 undergraduates participate in 57 active fraternities and sororities.¹³⁸ However, less than 3% of African American students join one of the five Black Greek organizations.¹³⁹ In contrast, over twenty percent of white students participate in an IFC sorority or Panhellenic fraternity.¹⁴⁰ No matter how the data are sliced, this study suggests that Black Greek organizations attract a different and smaller crowd of Black students than do the IFC fraternities and Panhellenic sororities.

134. See Appendix A.

135. *Id.*

136. Email from FOIA Officer, West Virginia University, to author (Jan. 30, 2020) (on file with author).

137. *Id.*

138. See *University of Maryland Fraternity and Sorority Life: Spring 2019 Academic Report*, U. MD., <https://docs.google.com/spreadsheets/d/13EKJEZmskdT4pu6-edVmeQamOkK3j5E6wl-49nwp29g/edit?usp=sharing> [<https://perma.cc/NEU5-922Y>] (last visited Feb. 24, 2022).

139. *Id.*; Email from R. Danielle Brown, Office of General Counsel, University of Maryland, to author (Feb 7, 2020) (on file with author). There are about 3,500 Black undergraduates at the University of Maryland. *UMD Enrollments by Gender & Race/Ethnicity*, U. MD., https://irpa.umd.edu/CampusCounts/Enrollments/enroll_by_raceandgender.pdf [<https://perma.cc/RBJ2-QHVZ>] (last visited Feb 24, 2022).

140. *Supra* note 139; Email from R. Danielle Brown, Office of General Counsel, University of Maryland, to author (Feb 7, 2020) (on file with author). There are roughly 6800 white female undergraduates and 7900 white male undergraduates. *UMD Enrollments by Gender & Race/Ethnicity*, U. MD., https://irpa.umd.edu/CampusCounts/Enrollments/enroll_by_raceandgender.pdf [<https://perma.cc/T8GX-X8S4>] (last visited Feb 24, 2022).

In addition to providing some answers to an old debate, this Article sparks new questions about the ascent of Hispanic students in the Greek system. How have Hispanic students managed to scale the social ramparts that keep other minorities out of the traditional fraternities and sororities? Unfortunately, very little academic work examines the contemporary experiences of Hispanic students inside the historically-white Greek system.¹⁴¹ In the absence of strong empirical data, the remainder of this section responds to a few theories about what may be happening. To start, some observers suggest that Hispanic students join the white Greek chapters because their schools do not host historically Latino/a Greek organizations.¹⁴² This hypothesis is demonstrably wrong. Almost every school in this study has Greek clubs that primarily recruit Hispanic students. For example, UCLA has eight Latino/a interest organizations,¹⁴³ the University of Georgia has four,¹⁴⁴ and the University of Connecticut offers four.¹⁴⁵ Even colleges with largely white student bodies, like Kansas and Nebraska, now host multiple Greek organizations with ties to the Hispanic community.¹⁴⁶ It is simply not the case that Hispanic students have

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141. There is some scholarship about Hispanic fraternities and sororities. *See, e.g.,* Susana M. Munoz & Juan R. Guardia, *Nuestra Historia y Futuro (Our History and Future): Latino/a Fraternities and Sororities*, in *BROTHERS AND SISTERS: DIVERSITY IN COLLEGE FRATERNITIES AND SORORITIES* 83, 92 (Craig L. Torbenson & Gregory S. Parks, eds. 2009); Juan R. Guardia & Nancy J. Evans, *Factors Influencing the Ethnic Identity Development of Latino Fraternity Members at a Hispanic Serving Institution*, 49 *J. COLL. STUDENT DEV.* 163 (2008).
142. *See* Edith Wen-Chu Chen, *The Continuing Significance of Race: A Case Study of Asian-American Women in White, Asian-American, and African American Sororities* 59-62 (1998) (Ph.D. dissertation, UCLA) (on file with author).
143. *Learn More About UCLA's Greek Councils*, UCLA, <https://fsl.ucla.edu/councils/overview> (last visited Feb. 25, 2022).
144. *See MGC Chapters*, U. Ga., <https://greeklife.uga.edu/multicultural-greek-council/mgc-chapters/> (last visited Feb. 25, 2022). Lambda Theta Alpha, Lambda Theta Phi, Lambda Upsilon Lambda, and Sigma Lambda Upsilon are all Latino Greek organizations.
145. *See Councils & Chapters*, U. CONN., <https://greeklife.uconn.edu/councils-chapters/> (last visited Feb. 25, 2022). Lambda Theta Alpha, Lambda Theta Phi, Lambda Upsilon Lambda, and Sigma Lambda Upsilon are all Latino Greek organizations.
146. At Kansas, Kappa Delta Chi and Phi Iota Alpha are the historically Latino chapters. *See KU Multicultural Greek Council (KUMGC)*, U. KAN., <https://kusfl.ku.edu/mgc> (last visited Feb. 25, 2022). At Nebraska, Kappa

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integrated the Panhellenic sororities and IFC fraternities because they lack other options.

A more provocative theory suggests that the higher representation of Hispanics “may be due to their ability to pass as Whites . . .”¹⁴⁷ This explanation, too, is suspect. As an initial matter, this view seems to assume that a critical mass of Hispanic students interested in Greek life wish to be seen as ethnically and racially white. The evidence for that is murky at best. Additionally, this theory ignores the many ways in which ethnic identity is expressed or perceived. By way of example, some common surnames—Rodriguez, Martinez, Garcia—are readily identifiable as Hispanic in origin.¹⁴⁸ A undergraduate with a Latino-sounding family name may find it difficult to forge an Anglo identity for rush events. Moreover, the idea that a large swath of Hispanic students could conceal their heritage during Greek recruitment overlooks the physical diversity of the Spanish-speaking community. While a bi-racial Cuban American may easily pass as Anglo, the same is not true for a dark-skinned student whose parents hail from an indigenous community in Mexico. Many Hispanic students cannot easily pass as English, or German, or Irish. Given how ethnicity is communicated in the United States, it seems unlikely that the pool of students with both the desire and ability pass as white can account for the on-going ascendancy of Hispanics in the Greek organizations.¹⁴⁹

There is another, even more controversial interpretation of the data from the Greek organizations. Viewed from a certain angle, the assimilation of Hispanic students into the Panhellenic sororities and IFC fraternities could support the contentious theory that Hispanic Americans are

Delta Chi, Lambda Theta Nu, and Sigma Lambda Beta have links to the Latino community. See *Multicultural Greek Council*, U. NEB., <https://www.unl.edu/greek/multicultural-greek-council> (last visited Feb. 25, 2022).

147. Chen, *supra* note **Error! Bookmark not defined.**, at 52.

148. See Sam Roberts, *Hispanic Surnames on the Rise in U.S. as Immigration Surges*, N.Y. TIMES (Dec. 15, 2016), <https://www.nytimes.com/2016/12/15/us/census-data-hispanic-surnames.html>.

149. See Tanya Golash-Boza & William Darity Jr., *Latino Racial Choices: The Effects of Skin Colour and Discrimination on Latinos' and Latinas' Racial Self-Identifications*, 31 ETHNIC & RACIAL STUD. 899, 926-29 (2008) (finding a “clear relationship” between skin color and the racial self-identification of Latinos and Latinas).

“becoming white.”¹⁵⁰ Right now, most commentators still categorize Hispanics as a group apart from the white mainstream. However, scholars who study race have demonstrated, conclusively, that racial and ethnic categories are quite fluid.¹⁵¹ American history has witnessed many immigrant groups that were once the targets of racial suspicion and violence—the Jews, Slavs, Irish Catholics—become gradually incorporated into the dominant social group.¹⁵² The integration of the Greek system might be vanguard evidence that a similar path has emerged for some Hispanic Americans. But again, this theory carries with it unverified assumptions and simplifies the complicated nature of ethnic identification. Like the previous theory, it too seems to assume that Hispanic students are seeking out the markers of white, middle-class life. It further ignores the vastly different experiences of Hispanics and the treatment they receive from the white mainstream, as well as the various ways that race and ethnicity interact. For instance, some students may identify as both white and Hispanic. A more thoughtful version of this theory—though perhaps less descriptively precise—would simply emphasize that the racial lines between Anglos and Hispanics, which have never been rigid, may be further dissolving among university students. While not the subject of this Article, future research on the drivers of this integration could illuminate lessons for addressing segregation in universities and beyond.

150. See Jamelle Bouie, *Demography is Not Destiny*, DEMOCRACY (2014), <https://democracyjournal.org/magazine/31/demography-is-not-destiny> (arguing that Latinos are rapidly assimilating into the white mainstream); William Darity, *The Latino Flight to Whiteness*, AM. PROSPECT (Feb. 11, 2016), <https://prospect.org/civil-rights/latino-flight-whiteness>; but see Gabriel Arana, *Why Latinos Won't Become White*, ALJAZEERA, (Oct. 22, 2014), <http://america.aljazeera.com/opinions/2014/10/why-latinos-won-tbecomewhiteraceethnicitygop.html> (arguing that Latinos are too diverse for them to become white as a group); Manuel Pastor & Pierrette Hondagneu-Sotelo, *Why Did Few Latinos Identify as White in the 2020 Census?*, L.A. TIMES, (Sept. 9, 2021) <https://www.latimes.com/opinion/story/2021-09-09/south-los-angeles-immigration-displacement-latinos-blacks-2020-census> (discussing why the percentage of Latinos self-identifying as white in the 2020 census dropped).

151. See NOEL IGNATIEV, *HOW THE IRISH BECAME WHITE* (1995); KAREN BRODKIN, *HOW JEWS BECAME WHITE FOLKS & WHAT THAT SAYS ABOUT RACE IN AMERICA* (1998); DAVID R. ROEDIGER, *WORKING TOWARD WHITENESS: HOW AMERICA'S IMMIGRANTS BECAME WHITE* (2005).

152. See NELL IRVIN PAINTER, *THE HISTORY OF WHITE PEOPLE* (2011).

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This Article substantiates allegations that the traditional Greek organizations perpetuate racial stratification on America's college campuses. The numbers provide clear, smoking-gun evidence that white students continue to exert dominion over the Panhellenic sororities and IFC fraternities. Moreover, while Hispanic Americans have made some inroads into the Greek community, it appears that the chapters have done very little to incorporate Black and Asian students into the bonds of membership. Asian Americans are deeply underrepresented, and many Greek houses still have no Black residents. Importantly, this information is not a secret. The FOIA requests gathered for this study demonstrate that university administrators are keenly aware of the deep segregation within the Greek community. Yet, despite the troubling demographics of the chapter houses, colleges continue to throw their support behind the Panhellenic sororities and the IFC fraternities. Hundreds of nearly all-white Greek houses still loom over the campuses of flagship state schools. Can anything be done?

III. APPLYING THE FHA TO GREEK HOUSING

The foregoing sections of this Article reveal the dark side of the Greek system. At almost all universities, the IFC fraternities and Panhellenic sororities sort college freshmen into racially segregated enclaves before the start of classes, and then keep them sequestered during the next four years. Students who join the white Greek chapters live in separate housing facilities, create separate friend groups, and join separate social activities from their similarly situated Black and brown peers. With very little pushback, the sororities and fraternities have built a remarkably efficient system of racial apartheid at the heart of the American university.

For years, activists have questioned why university administrators have refused to address the segregation on fraternity row.¹⁵³ As this Article has uncovered, many institutions of higher learning know the IFC fraternities and Panhellenic sororities have firm racial identities. Yet they do nothing.¹⁵⁴

153. See Nguyen, *supra* note 6; Flanagan, *supra* note 6; Kelderman, *supra* note 6.

154. See Libby Nelson, *Colleges Depend on Greek Life. That's Why It's So Hard to Control*, Vox (Mar. 27, 2015, 9:30 AM), <https://www.vox.com/2015/3/27/8297469/fraternity-culture-penn-state-oklahoma> [<https://perma.cc/463Q-GTDH>] (arguing that "college presidents' hands are tied" regarding the Greek system).

The conventional wisdom among scholars is that colleges fail to intervene in the Greek system because they have become heavily dependent on the benefits that fraternities and sororities provide. The Greek organizations, for instance, provide cheap accommodations to tens of thousands of students each semester.¹⁵⁵ According to some recent estimates, almost one in eight college students lives in a building operated by the Greek chapters.¹⁵⁶ And it's not just the housing. Fraternities and sororities also provide much of the social programming on campus,¹⁵⁷ and many colleges remain beholden to wealthy Greek alumni for donations.¹⁵⁸ All told, the symbiotic relationship that the Greeks have forged with the American university system makes it exceptionally unlikely that college presidents will push for reform.

This Article argues that if universities will not act, civil rights law can serve as a point of intervention against the segregated Greek chapters. Specifically, I contend that many American universities have violated the FHA by financing and managing segregated on-campus fraternity and sorority houses. On its face, the erection of thousands of housing units intended to benefit disproportionately white student groups seems like an obvious breach of both fair housing law and higher education's espoused commitment to diversity. At the University of Alabama alone, there are just under 50 Greek houses that accommodate thousands of students—a group that is overwhelmingly and disproportionately white.¹⁵⁹ It is not an exaggeration to say that the University hosts a segregated neighborhood on state land—a casebook example of institutional discrimination.

University administrators, Greek chapters, and their powerful alumni will all resist these claims. They will insist that the FHA does not apply for two reasons. First, they will try to make the case that fraternities and

155. *Id.*

156. Flanagan, *supra* note 6. This number represents students at four-year colleges and universities.

157. *See* Nelson, *supra* note 154; Flanagan, *supra* note 6.

158. Flanagan, *supra* note 6.

159. *See Fraternity and Sorority Housing*, U. ALA., <https://ofsl.sa.ua.edu/current-members/housing/> [<https://perma.cc/Y8S8-PGVE0>] (last visited Feb. 26, 2022); *infra* Appendix A. Only two small houses on the Alabama campus serve Black Greek chapters. Joseph King & Javon Williams, 'Sometimes It's Like We're Not There': Black Students Reflect on Exclusion in Greek Community, CRIMSON WHITE (Dec. 3, 2020), <https://cw.ua.edu/69998/news/sometimes-its-like-were-not-there-black-students-reflect-on-exclusion-in-greek-community> [<https://perma.cc/MVP7-YBMB>].

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sororities are completely private organizations, separate from the university. Then, they will argue that the Greek clubs are exempt from the FHA. These arguments are wrong. My case that Greek housing must comply with the FHA proceeds in three parts. Section A provides a brief overview of the Fair Housing Act. Section B argues that the Greek chapters are not truly private organizations but rather a vital part of the university. Section C then makes the case that the FHA regulates Greek housing—there is no exception under existing law for the chapters.

A. *The Fair Housing Act*

Before diving into the legal status of the Greek houses, a brief primer on the Fair Housing Act is necessary. The FHA, enacted as Title VIII of the Civil Rights Act of 1968, aspires to promote the integration of America’s residential neighborhoods and eradicate housing discrimination based on an individual’s race, color, religion, national origin, sex, disability, and familial status.¹⁶⁰ To achieve the twin goals of integration and nondiscrimination, American courts recognize two broad theories of liability under the FHA: disparate treatment and disparate impact.¹⁶¹ Disparate treatment occurs when a housing provider acts with a discriminatory motive or fashions a policy that facially discriminates against the members of a protected class.¹⁶² For example, if a landlord announces that they will not rent to Muslims, the landlord has clearly engaged in an act of intentional discrimination and could be sued for disparate treatment.

160. Civil Rights Act of 1968, Pub. L. No. 90-284, tit. VIII, 82 Stat. 73, 81-89 (codified as amended at 42 U.S.C. §§ 3601-3619).

161. *See* Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, 576 U.S. 519, 524, 533-39 (2015) (recognizing both disparate treatment and disparate impact claims). *See also* Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 78 Fed. Reg. 11460, 11469-70 (Feb. 15, 2013) (to be codified at 24 C.F.R. pt 100) (noting that an FHA “plaintiff may bring a claim alleging either or both intent and effect as alternative theories of liability.”). As the agency primarily responsible for administering the FHA, *see* 42 U.S.C. § 3608(a), the U.S. Department of Housing and Urban Development’s (HUD) regulations interpreting the FHA are entitled to substantial deference.

162. *See Inclusive Cmty.*, 576 U.S. at 524 (defining a disparate treatment case as one in which the “plaintiff must establish that the defendant had a discriminatory intent or motive” (quoting *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009))).

Disparate impact cases, by contrast, allow litigants to confront policies, practices, or other systems that appear neutral on paper but, in fact, have adverse effects on minority groups.¹⁶³ In a 2015 case, *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, the Supreme Court endorsed impact liability and established a three-part burden-shifting approach for these claims.¹⁶⁴ To win a disparate impact case, the plaintiff must first demonstrate—with strong statistical evidence—that a defendant’s policy produces a disproportionate effect on one of the protected classes.¹⁶⁵ It is worth reemphasizing that plaintiffs are not required to prove that the defendant *intended* to discriminate; it is enough to show that the defendant’s actions caused a discriminatory effect against a racial group. If the plaintiff makes the *prima facie* case, the defendant then has the burden to show that the contested policy has a legally sufficient justification.¹⁶⁶ To escape liability, the Court requires defendants to demonstrate that their actions are “necessary to achieve a valid interest.”¹⁶⁷ Finally, if the defendant meets their burden, the plaintiff may still prevail by showing that a less discriminatory policy would meet the defendant’s goals.¹⁶⁸

The availability of disparate impact liability significantly broadens the reach of the FHA. Since the decision in *Inclusive Communities*, courts have found that seemingly neutral housing policies can undermine the nation’s civil rights commitments. For example, the Second Circuit recently held that zoning changes that block the construction of multi-family housing can violate the FHA because such limitations have a disproportionately negative

163. *Id.* at 524 (defining disparate impact as a case where plaintiffs challenge “practices that have a ‘disproportionately adverse effect on minorities’ and are otherwise unjustified by a legitimate rationale” (quoting *Ricci*, 557 U.S. at 577 (2009))).

164. *Id.*

165. *See* 24 C.F.R. § 100.500(c)(1) (2022); *Inclusive Cmty.*, 576 U.S. at 527, 542.

166. *See Inclusive Cmty.*, 576 U.S. at 541. The HUD regulation states that the defendant must prove that “the challenged policy or practice advances a valid interest (or interests) and is therefore not arbitrary, artificial, and unnecessary.” 24 C.F.R. § 100.500(c)(2) (2022).

167. *Inclusive Cmty.*, 576 U.S. at 541.

168. *See* 24 C.F.R. § 100.500(c)(3); *Inclusive Cmty.*, 576 U.S. at 527; *see also* *Mhany Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 617-19 (2d Cir. 2016) (overturning prior Second Circuit precedent that had put the burden of proof in the third step on the defendant).

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impact on minority home-seekers.¹⁶⁹ Additionally, in the aftermath of *Inclusive Communities*, the Department of Housing and Urban Development (HUD) has issued guidance that apartment complexes likely violate the law if they issue a blanket ban on tenants with minor criminal convictions.¹⁷⁰ These bans, too, create arbitrary barriers for minority renters with few attendant benefits to property owners. While it is often difficult to gather the necessary statistical evidence to advance disparate impact claims, the record shows that the FHA remains a powerful tool for dismantling policies and practices that cause racial disparities. The remainder of this Article puts forth an argument that disparate impact claims under the Fair Housing Act could serve as a needed check against the rise of Greek housing.

B. The FHA's Applicability to the University

Defenders of the Greek system will surely argue that neither universities nor fraternities and sororities have violated the Fair Housing Act. Universities, in particular, will vigorously resist the suggestion that they have facilitated the growth of segregated housing on campus. Their first, and perhaps best, defense is that they are not responsible for the actions of the fraternities and sororities. University administrators will assert that the Greek chapters are separate legal entities, chartered by their national organizations, and supported by outside funding. Just as they would not be liable for the actions of a private apartment complex, colleges will argue that they cannot be on the hook for housing decisions of private Greek chapters.

This argument is wrong. Universities are liable for what happens in the chapterhouses because the Greeks and the university system have become wholly entwined. It is difficult to know where the authority of the administration ends and the sovereignty of the fraternities begins. While the Greek organizations may have once been independent of the

169. *Mhany*, 819 F.3d at 616-20. The plaintiffs in *Mhany* brought both disparate treatment and disparate impact claims. The Second Circuit affirmed liability on the disparate treatment claim. Additionally, it upheld the findings below on the first two steps of the disparate impact claim, remanding for further proceedings on the third element.

170. See U.S. DEP'T HOUS. & URB. DEV., OFFICE OF GENERAL COUNSEL GUIDANCE ON APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL ESTATE-RELATED TRANSACTIONS (2016). See also *Jackson v. Tryon Park Apartments, Inc.*, No. 6:18-CV-06238 EAW, 2019 WL 331635, at *4 (W.D.N.Y. Jan. 25, 2019) (discussing HUD guidance).

university,¹⁷¹ they are now best understood as a formal part of the higher education ecosystem. Fraternities and sororities—like bands, swim teams, or French clubs—are recognized student groups under the supervision and control of the administration. This designation matters because universities can be held liable for civil rights violations that occur within an official academic program or extracurricular activity. Imagine, for instance, that members of college track team unfairly harass or discriminate against a student. If officials do not remedy the problem, the affected student can sue the university—not just the team members—for a civil rights violation.¹⁷² Similarly, I argue that colleges can be held liable under the FHA for the construction of segregated Greek facilities on campus.

This position is supported by caselaw. In the last five years, federal courts have begun to recognize that universities' growing control over the Greek chapters makes them accountable for civil rights violations committed by fraternities and sororities. For example, in *Weckhorst v. Kansas State University*, a federal district court in Kansas held that the Plaintiff, Sara Weckhorst, could sue KSU under Title IX after she suffered an alleged sexual assault at an off-campus fraternity house.¹⁷³ The court reasoned that the fraternity should be considered a part of Kansas State because the university exercised control over the chapters:

KSU allegedly devotes significant resources to the promotion and oversight of fraternities through its websites, rules, and Office of Greek Affairs. Additionally, although the fraternity is housed off campus, it is considered a "Kansas State University Organization," is open only to KSU students, and is directed by a KSU instructor. . . . Presented with these allegations, the Court is convinced that the fraternity is an "operation" of the University¹⁷⁴

Similarly, in *Gruver v. Louisiana Through the Board of Supervisors of Louisiana State University*, a district court in Louisiana found that LSU could be sued under Title IX for hazing incidents that occurred in a fraternity over

171. See SYRETT, *supra* note 1, at 13-51 (discussing the rise of fraternities as secret groups, independent of the university).

172. See *Doe v. Morgan State Univ.*, 544 F. Supp. 3d 563 (D. Md. 2021).

173. *Weckhorst v. Kan. State Univ.*, 241 F. Supp. 3d 1154 (D. Kan. 2017). See also *Farmer v. Kansas State Univ.*, 918 F.3d 1094 (10th Cir. 2019).

174. *Weckhorst*, 241 F. Supp 3d at 1168.

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which the university exercised substantial control.¹⁷⁵ The Greek chapters' formal independence from the university system did not bar liability.

Would the same reasoning apply to FHA cases? In short, yes. One court has already applied the disability provisions of the Fair Housing Act to university-controlled Greek chapters. In *Entine v. Lissner*, the Southern District of Ohio held Ohio State University responsible for violations of the Fair Housing Act and the Americans with Disabilities Act that occurred in a private sorority house.¹⁷⁶ The court stated that Ohio State's control over the sorority house and its requirement that the Greek chapters follow its "policies and decisions relating to disability discrimination and compliance" opened the university to legal scrutiny.¹⁷⁷

The thread that runs through all these recent decisions is that when universities exercise substantial control over the fraternities and sororities, the chapters become part of the university for the purposes of civil rights law.¹⁷⁸ Plaintiffs, therefore, can sue colleges and universities for their role in creating and administering segregated housing. On most campuses, evidence of the universities' authority over the Greeks is unmistakable. Universities exert deep and sustained control over the internal governance of the Greek chapters. They dictate almost every facet of Greek life. On most campuses, university-employed bureaucrats—not the Greek chapters themselves—make decisions about who can apply for membership, the training of members, the structure of social events, and the construction and operation of Greek housing.

1. Universities Control Greek Membership Requirements

The strongest evidence that the Greek chapters are not independent entities is that universities regulate who can join the clubs, then limit how

175. *Gruver v. La. Through Bd. of Supervisors of La. State Univ.*, 401 F. Supp. 3d 742, 758 (M.D. La. 2019).

176. *Entine v. Lissner*, No. 2:17-CV-946, 2017 WL 5507619, at *1 (S.D. Ohio Nov. 17, 2017).

177. *Id.* at *2.

178. See *Weckhorst*, 241 F. Supp 3d at 1168-69 (“[T]he determination whether Title IX is implicated turns on whether the education institution ‘exercises substantial control over both the harasser and the context in which the known harassment occurs’” (quoting *Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 645 (1999)); *Gruver*, 401 F. Supp 3d at 756 (arguing that universities can be held liable under Title IX when they exercise “substantial control over both the harasser and the context in which the known harassment controls”).

the organizations can interact with new members. Almost all universities, for example, restrict membership in Greek organizations to full time students—generally undergraduates.¹⁷⁹ Many colleges also require students to achieve a minimum high school GPA—generally between 2.50 and 2.75—before they rush a Greek chapter.¹⁸⁰ The conditions at Georgia Southern are standard. “In order to join a fraternity or sorority at Georgia Southern University,” the university declares, “incoming freshmen must have a 2.75 or higher high school GPA, as calculated by the Georgia Southern University Office of Admissions.”¹⁸¹ A few colleges impose additional restrictions, limiting membership to students who have completed a certain

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179. See, e.g., *How to Join*, U.S. FLA., <https://www.usf.edu/student-affairs/involvement/fraternity-and-sorority-life/how-to-join/faq.aspx> [<https://perma.cc/58ZM-KG4P>] (last visited Feb. 27, 2022) (“As long as the member is an enrolled undergraduate, matriculated, student at the university, they are eligible to join.”); *How to Join*, ARIZ. ST. U., <https://eoss.asu.edu/fsl/join/FAQ> [<https://perma.cc/T2GR-9MWL>] (last visited Feb. 27, 2022) (“All students who are enrolled in undergraduate courses at ASU are eligible to participate in fraternity or sorority recruitment activities.”); *How to Join a Fraternity*, U. GA., <https://greeklife.uga.edu/interfraternity-council/join-a-fraternity/> [<https://perma.cc/9DFW-WGLU>] (last visited Feb. 27, 2022) (“Students not enrolled at UGA are NOT eligible to join a fraternity at UGA or participate in any events or activities related to new member education.”); *Frequently Asked Questions About Fraternity and Sorority Life*, U. TOLEDO, <https://www.utoledo.edu/getinvolved/greek/faq.html> [<https://perma.cc/58ZM-KG4P>] (last visited Feb. 27, 2022) (“The basic requirements for all organizations are a minimum of 2.5 GPA and be enrolled as a full-time student at the University of Toledo.”).
180. See, e.g., *IFC Fraternity Recruitment*, U. ARIZ., <https://eoss.asu.edu/fsl/join/fraternity> [<https://perma.cc/AJF3-QBJY>] (last visited Feb. 27, 2022) (requiring 2.75); *Frequently Asked Questions About Fraternity and Sorority Life*, U. TOLEDO, <https://www.utoledo.edu/getinvolved/greek/faq.html> [<https://perma.cc/6TXB-L73S>] (last visited Feb. 27, 2022) (requiring 2.5); *FAQ*, U. NEB., <https://www.unl.edu/greek/faq-0> [<https://perma.cc/2B6Q-ZRNP>] (last visited Feb. 27, 2022) (requiring 2.5); *How to Join*, PENN ST. U., <https://studentaffairs.psu.edu/involvement-student-life/greek-life-penn-state/how-join> [<https://perma.cc/C2DT-HJSZ>] (last visited Feb. 27, 2022) (requiring 2.5); *Fraternity & Sorority Life*, U. N. TEX., <https://www.untdallas.edu/sa/student-life/fraternity-sorority-life.php> [<https://perma.cc/Y4PZ-W4P6>] (last visited Feb. 27, 2022) (requiring 2.5).
181. *Joining A Chapter*, GA. S. U., <https://students.georgiasouthern.edu/greeklife/joining-a-chapter/> [<https://perma.cc/Q8AN-SF3U>] (last visited Feb. 27, 2022).

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number of credit hours at the university.¹⁸² West Virginia University's policy is typical of this approach: students at WVU are not eligible to join a fraternity or sorority unless they have "earned a minimum of twelve (12) credits as a full-time student at the University in Morgantown."¹⁸³

Aside from regulating who can join the Greek organizations, universities also structure the relationship between the chapters and their pledge classes. Rutgers, for example, enforces a rule that fraternity and sorority pledges cannot spend more than ten hours per week on Greek activities.¹⁸⁴ The University of Pittsburgh takes a different approach; it sets no minimum number of hours, but restricts new member activities to between 12:00pm and 8:00pm each day.¹⁸⁵ Colleges also routinely limit the duration of the new member pledge period. The rules at SUNY Buffalo are strict: by university mandate, the length of the new member period "cannot exceed six weeks."¹⁸⁶ The thick web of regulation imposed by the university has consequences. Most obviously, the rules constrain how fraternity and sorority chapters choose members and initiate new recruits. But more importantly, the restrictions also undermine the Greeks' claim to "self-

182. *See, e.g., Fraternity and Sorority Life*, U. BUFFALO, <https://www.buffalo.edu/studentlife/life-on-campus/clubs-and-activities/search/fraternity-and-sorority-life.html> [<https://perma.cc/P6ER-NNY3>] (last visited Feb. 27, 2022) (requiring 12 credits to join a chapters); *How to Join*, PENN ST. U., <https://studentaffairs.psu.edu/involvement-student-life/greek-life-penn-state/how-join> [<https://perma.cc/D43U-JLAB>] (last visited Feb. 27, 2022) (requiring 14 credits). In 2007, the University of Miami reported that 156 colleges deferred recruitment from the fall for freshmen. Greg Linch, *Deferred Recruitment in '08 for IFC, Panhellenic*, MIAMI HURRICANE (Mar. 9, 2007), <https://www.themiamihurricane.com/2007/03/09/deferred-recruitment-in-08-for-ifc-panhellenic/> [<https://perma.cc/7M3N-TNE2>].

183. *Greek Terminology*, W. VA. U., <https://greeklife.wvu.edu/about-us/greek-terminology> [<https://perma.cc/436A-TPWT>] (last visited Feb. 27, 2022).

184. *Potential New Member FAQs*, RUTGERS U., <https://greeklife.rutgers.edu/join-our-community/potential-new-member-faqs> [<https://perma.cc/R43A-BQQW>] (last visited Feb. 27, 2022).

185. , U. PITT., OFFICE OF FRATERNITY & SORORITY LIFE POLICIES AND PROCEDURES MANUAL (2017), http://www.studentaffairs.pitt.edu/wp-content/uploads/2017/07/OFSL_Policies_and_Procedures_2017.pdf [<https://perma.cc/PV6R-Z74D>].

186. *Fraternity and Sorority Life*, U. BUFFALO, <https://www.buffalo.edu/studentlife/life-on-campus/clubs-and-activities/search/fraternity-and-sorority-life.html> [<https://perma.cc/4LM5-CXSF>] (last visited Feb. 27, 2022).

government and member-ownership.”¹⁸⁷ An organization that cannot freely elect its own members on its own schedule is not independent.

2. Universities Control Trainings for Greek Members

There are many other examples of university behavior that erode the claim that the Greeks are autonomous private organizations. For instance, it is increasingly common for college administrators to mandate a set of educational trainings for all fraternity and sorority members. On many campuses, instruction on the dangers of hazing and alcohol abuse have become standard.¹⁸⁸ Other universities require more. At Texas Tech, for example, all Greek chapters “receive mandatory training in bystander intervention and sexual misconduct.”¹⁸⁹ Further, the fraternities must complete additional training in “manhood and masculinity,” which includes discussions on appropriate gender discourse.¹⁹⁰ Mandatory instruction on diversity and inclusion has also been established in some university Greek communities.¹⁹¹ While these trainings may well improve campus safety, the requirements further dismantle the claim that the Greeks are independent from educational institutions. Universities have seized the power to educate fraternity and sorority members about the most sensitive issues facing their organizations. The chapters that do not submit to these mandatory instructional sessions—because they find them unnecessary, politically motivated, or objectionable—face discipline or expulsion from campus.

187. *Ring v. Boca Ciega Yacht Club Inc.*, 4 F.4th 1149, 1158 (11th Cir. 2021).

188. See Danielle Hernandez, *Entwinement: Why Sororities and Fraternities Should Be Subject to the Constitution*, 6 EMORY CORP. GOVERNANCE & ACCOUNTABILITY REV. PERSPS. 1043, 1062-63 (2019) (“Of the various required educational training programs, three that are customary are alcohol, drug, and hazing training.”).

189. Ally Mutnick, *After Student Death, Texas Tech Overhauls Greek Life*, TEX. TRIB. (Aug. 23, 2015), <https://www.texastribune.org/2015/08/23/after-student-death-texas-tech-overhauls-greek-lif/> [<https://perma.cc/L6T5-5YQT>].

190. *Id.*

191. See, e.g., Nate Muramatsu, *Greek Life Requires Ongoing Diversity Training*, GW HATCHET (Oct. 4, 2018, 2:15 AM), <https://www.gwhatchet.com/2018/10/04/greek-life-requires-ongoing-diversity-training/> [<https://perma.cc/29WV-2Z63>]; Kenneth Niemeyer, *Fraternity Enrollment Up Following Diversity Training, Hazing Legislation*, DAILY MISSISSIPPIAN (Sept. 26, 2019), <https://thedmonline.com/fraternity-enrollment-up-following-diversity-training-hazing-legislation/> [<https://perma.cc/HRT5-D58M>].

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3. Universities Control Greek Social Events

Yet another form of control is exercised by regulating social events hosted by the fraternities and sororities. It is standard practice for universities to require “that any events put on by the Greek Organization satisfy criteria outlined by the University.”¹⁹² These policies are often remarkably comprehensive. At the University of Arkansas, for example, any fraternity or sorority that desires to host a social function must first obtain permission from the Office of Greek Life.¹⁹³ The administration at Arkansas has rules that govern the maximum number of social events for each Greek chapter (nine per semester), the schedule of events (Greeks can only hold social functions on Thursday through Saturday), party themes (the name of the social function cannot contain any reference to alcohol or disparage a cultural group), the policing of events (both campus police and student marshals must attend all social functions), the use of building entrances (only one main entrance can be used during social events), cleanup procedures after an event (trash must be removed by 8:00am), and even the amount of water that the Greeks must provide to guests (two eight-ounce bottles of water per person).¹⁹⁴ Arkansas’ rules—which dramatically limit the autonomy of the fraternities and sororities—are typical. In fact, every university in the SEC has adopted a similar set of regulations to govern the social apparatus of the Greek community.¹⁹⁵

192. Hernandez, *supra* note 188, at 1063.

193. U. ARK., 2020-2021 GREEK SOCIAL POLICY 5 (2021), <https://uagreeks.uark.edu/greek-life-solcial-policy-2020-2021.pdf> [<https://perma.cc/C64V-NPBT>].

194. *Id.* at 5-11.

195. *Id.*; *Event Procedures*, U. ALA, <https://ofsl.sa.ua.edu/current-members/housing/event-procedures/> [<https://perma.cc/2XCV-QE9N>] (last visited Feb. 19, 2022); *Student Organization Social Event Policy*, AUBURN U., https://sites.auburn.edu/admin/universitypolicies/Policies/Student_Organization_Social_Event_Policy.pdf [<https://perma.cc/XN7Z-KHQ3>] (last visited Feb. 19, 2022); *Event Guidelines for Social Fraternities and Sororities*, U. FLA, <https://greeks.ufl.edu/wp-content/uploads/2019/10/Event-Guidelines-Policy.pdf> [<https://perma.cc/XCQ6-7LSM>] (last visited Feb. 19, 2022); *Greek Life Office Policy on Social Event Responsibility*, U. GA., <https://greeklife.uga.edu/wp-content/uploads/sites/9/2021/05/Greek-Life-Office-Policy-on-Social-Event-Responsibility-Final-Spring-21.pdf> [<https://perma.cc/FDJ7-T356>] (last visited Feb. 19, 2022); *UK Event Policies and Procedures*, U. KY., <https://getinvolved.uky.edu/uk-event-policies-and-procedures> [<https://perma.cc/FDJ7-T356>] (last visited Feb. 19, 2022); *Greek*

University control over the chapters' social rituals matters. In *Ring v. Boca Ciega Yacht Club*, the Fourth Circuit reiterated the common understanding of an independent club as a space "[s]equestered from [the] company or observation" of others.¹⁹⁶ Modern fraternities and sororities do not meet this definition. Outsiders have taken control over what happens inside the club. Administrators, not club officials, dictate what events take place and how they are regulated.

4. Universities Control the Greek Houses

The universities' control over the Greeks' physical space also demonstrates how subordinate the fraternities and sororities have become to university administrations. Outsiders may not realize how thoroughly enmeshed American colleges have become in the development and operation of on-campus fraternity and sorority houses. Without support from the universities, many Greek organizations could not afford chapter houses near campus. These subsidies take three forms. First, some universities lend money to the Greek organizations to finance the construction of fraternity and sorority houses. Alabama, for example, used public debt to pay for the construction or expansion of thirty Greek houses

Life Social Event Planning, LA. ST. U., https://www.lsu.edu/greeks/standards/policies/documents/Social_Event_Planning_Resource.pdf (last visited Feb. 19, 2022); *Registration of Student Organization Activities*, U. MISS., <https://greeks.wp2.olemiss.edu/wp-content/uploads/sites/42/2014/08/400.004RegistrationOfActivities.pdf> [<https://perma.cc/J2DH-G4NZ>] (last visited Feb. 19, 2022); *Fraternity and Sorority Life Resource Manuel*, MISS. ST. U., <https://www.union.msstate.edu/files/21%20Resource%20Manual-Updated%202020%20-%20Final%20Print.pdf> [<https://perma.cc/LZZ3-JVHC>] (last visited Feb. 19, 2022); *Event Management*, U.S.C., https://sc.edu/about/offices_and_divisions/fraternity_and_sorority_life/leadership-and-service/event-notification/index.php [<https://perma.cc/V28H-CCUR>] (last visited Feb. 19, 2022); *Social Event Policy*, U. TENN., <https://gogreek.utk.edu/wp-content/uploads/sites/45/2019/07/Social-Event-Policy.pdf> [<https://perma.cc/X2JJ-VRYP>] (last visited Feb. 19, 2022); *Common Events Guide*, TEX. A&M U., <https://studentactivities.tamu.edu/wp-content/uploads/2021/08/Common-Events-Guide-Updated-Summer-2021.pdf> [<https://perma.cc/W5V3-BEK6>] (last visited Feb. 19, 2022).

196. *Ring v. Boca Ciega Yacht Club Inc.*, 4 F.4th 1149, 1157 (11th Cir. 2021) (alterations in original).

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in the last decade.¹⁹⁷ Records indicate that the fraternity and sorority building boom cost more than \$200 million.¹⁹⁸

Second, many universities in this study lease state-owned property to the fraternities and sororities and allow them to build houses on these rented campus lots.¹⁹⁹ Among the universities in the SEC, nine schools—Alabama, Arkansas, Auburn, Florida, Kentucky, LSU, South Carolina, Mississippi, and Mississippi State—currently lease land to a majority of the recognized sorority houses. The universities generally rent space to the Greek organizations on favorable long-term contracts.²⁰⁰ Sororities at the University of Arkansas, for instance, generally sign a renewable 50-year lease and pay \$10 rent each calendar year.²⁰¹ The Greek organizations, in turn, submit to a throng of university rules. On many campuses, the administration mandates that each Greek house hires a live-in house director who monitors the behavior of the chapter and enforces university rules.²⁰² Others require proof of liability insurance from the chapters or

197. Associated Press, *'Bama Greeks in \$202 Million Building Boom*, USA TODAY (Nov. 9, 2013, 3:35 PM), <https://www.usatoday.com/story/news/nation/2013/11/09/bama-greeks-in-202-million-building-boom/3483981/> [<https://perma.cc/Y7L5-LZ5U>].

198. *Id.* See also Joe Mason, *Frat Houses Offered Relocation Deal*, RED & BLACK (Aug. 16, 2006), https://www.redandblack.com/news/frat-houses-offered-relocation-deal/article_273cbdab-61e4-5640-8285-a703a8ac58ce.html [<https://perma.cc/CF2Q-SAMW>] (reporting that the University of Georgia would finance the construction of five fraternity houses on campus).

199. See Robert Manley & Tim Burke, *Greek Houses on University Land*, FRATERNAL L. (Jan. 2004), <https://fraternallaw.com/newsletter2/greek-houses-on-university-land> [<https://perma.cc/YE5Q-B4EC>] (“For the last hundred years, many fraternities have built houses on university property, or leased space in university buildings.”).

200. *Id.* (noting that many of the leases to Greek organizations are “substantially under the market”).

201. See, e.g., Lease Agreement Between Board of Trustees of the University of Arkansas and Alpha Chi Omega National Housing Corporation, 6 (May 15, 2017) (on file with author).

202. See, e.g., *Sorority and Fraternity Housing Policies*, U. TENN. (May 2021), <https://gogreek.utk.edu/wpcontent/uploads/sites/45/2021/06/OSFL-Housing-Policies-7.13.20.pdf> [<https://perma.cc/V8UQ-BZ7K>] (“All identified on-campus fraternity and sorority facilities are required to have a live-in House Director . . .”).

impose special fees on Greek members.²⁰³ Still others regulate the weeding of flower beds,²⁰⁴ the screening of who conducts repairs to the house,²⁰⁵ the fire drill schedule,²⁰⁶ the mowing of the yard,²⁰⁷ kitchen inspections,²⁰⁸ fire pit regulations,²⁰⁹ and sidewalk painting rules.²¹⁰

Universities have also seized design control of the Greek houses built on campus property. Many schools have a building review board tasked with approving new construction on campus.²¹¹ Documents show that the review process often subjects proposed Greek houses to an exacting level of scrutiny. Phi Mu sorority at the University of Arkansas, for example, required fifteen meetings with the committee over a two-year period before

203. *Construction, Modification, Maintenance, Care, and Operation of Sorority and Fraternity Houses Located on University Property*, LA. ST. U. (June 27, 2019), <https://www.lsu.edu/administration/policies/pmfiles/pm-68.pdf> [<https://perma.cc/UH7J-NLXC>].

204. *See, e.g., Fraternity and Sorority Chapter Occupancy Agreement*, U. KY. (June 11, 2018), <https://uky.campuslabs.com/engage/organization/fsl/documents/view/825340> [<https://perma.cc/QM8E-L8JV>].

205. *Id.*

206. *Id.*

207. *Id. See also Fraternity Policy & Procedures Guidebook*, GETTYSBURG COLL., <https://www.gettysburg.edu/offices/student-activities-greek-life/pdfs/2019/2017-Fraternity-Handbook.pdf> (last visited Apr. 1, 2022) (discussing yard maintenance).

208. *University Recognized Housing Policy*, IND. U. (July 27, 2022), <https://beinvolved.indiana.edu/organization/osfl/documents/view/2092078> [<https://perma.cc/8XH6-F3MT>] (discussing yard trash rules, proof of liability insurance, kitchen inspections, fire pit regulation, sidewalk painting rules).

209. *Id.*

210. *Id.*

211. *See, e.g., Architectural Design Guidelines*, U. MISS. (Dec. 2009), <https://greeks.wp2.olemiss.edu/wp-content/uploads/sites/42/2014/08/University-of-Mississippi-Architectural-Design-Guidelines-Handbook.pdf> [<https://perma.cc/X39J-F6LZ>]; *UA Design & Construction Guidelines: Architectural Heritage, Character and Design*, U. ALA. (Mar. 1, 2018), <https://constructionpublicinfo.ua.edu/wp-content/uploads/Design-Guidelines/Section-I/01-Architectural-Heritage-Character-and-Design.pdf> [<https://perma.cc/KJ5F-YX6X>].

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securing construction approval.²¹² Committee members discussed details as minute as the bedroom finishes, countertops, cupola shape, and exterior siding.²¹³

Finally, a handful of colleges have sought even more influence over the fraternities and sororities than a loan or a leasehold can provide. In recent years, several public universities have begun to build and operate their own Greek houses.²¹⁴ In 2020, the University of Kentucky spent \$4.9 million to build a new house for the Alpha Gamma Rho fraternity and \$2.4 million to renovate the Delta Delta Delta sorority house.²¹⁵ Kentucky owns and manages at least six Greek houses on campus.²¹⁶ Similarly, the University of Connecticut built twelve fraternity and sorority buildings on its grounds,²¹⁷ while Arizona State recently completed a massive \$70 million project that houses students from twenty-seven fraternity and sorority chapters in a “Greek Leadership Village.”²¹⁸ Universities like Kentucky, Connecticut, and Arizona State can exercise fiat control over these buildings: they set the house rules, dictate the design, clean the rooms, and complete all the

212. Email from Rebecca Morrison, Public Information Officer, U. Ark., to author (July 25, 2019) (on file with author).

213. *Id.*

214. *University Concludes Settlements for Two More Lumpkin Street Greek Houses*, U. GA. (Aug. 13, 2007), <https://news.uga.edu/two-more-lumpkin-street-greek-houses/> [<https://perma.cc/7TCP-5K34>] (noting that the University planned to build houses for the Tau Epsilon Phi, Phi Delta Theta, and Pi Kappa Alpha fraternities).

215. *Capital Construction Report*, U. KY. (May 5, 2020), https://www.uky.edu/trustees/sites/www.uky.edu.trustees/files/FCR%208%20CapiCap%20Construction%20Report_2.pdf [<https://perma.cc/DBT6-9KWD>]. *See also University of Kentucky Alpha Gamma Rho (AGR) Fraternity (Design-Build)*, MARRILLIA, <https://marrillia.com/project-gallery/ukagr/> [<https://perma.cc/PQM9-RKSE>] (discussing the design of the Alpha Gamma Rho house).

216. *UK Park*, U. KY., https://studentsuccess.uky.edu/sites/default/files/2023-02/Greek%20Park%20Map_2022.%20%281%29.pdf (last visited Mar. 31, 2023).

217. *Husky Village - Fraternity and Sorority Housing*, U. CONN., <https://reslife.uconn.edu/husky-village-greek-housing/> [<https://perma.cc/PE8F-BXSL>].

218. *ASU Marks Greek Leadership Village Grand Opening*, ARIZ. ST. U. (Feb 26, 2019), <https://news.asu.edu/20190226-sun-devil-life-greek-leadership-village-grand-opening> [<https://perma.cc/BV8Q-EEZE>].

maintenance orders. Importantly, they also retain the right to police these spaces.

The Greeks' complete surrender of autonomy over their chapter houses quite clearly encapsulates the status of the fraternities and sororities in the university ecosystem. They are not independent groups outside the reach of the university. Private clubs require a quantum of independence and self-government. That simply does not describe the chapters. On campuses around the country, universities exert control over every aspect of Greek life. Universities prescribe who can join the chapters, dictate how members are trained, heavily regulate all social events, and control the conditions of the Greeks' living quarters. Unlike an exclusive golf club, the Greeks do not (and cannot) make key decisions or undertake major initiatives without the approval of their parent organization—the university. As a result, the Universities cannot make the claim that the Greeks are independent private organizations with a straight face. American colleges and universities can be sued under the Fair Housing Act for their role in facilitating segregated Greek housing.

C. *The FHA's Applicability to Greek Houses*

Although not the focus of this Article, it is worth highlighting that student plaintiffs can also bring suit directly against the Greek clubs for violations of the FHA. The clubs, of course, will argue that the FHA does not apply to Greek housing. Although the FHA covers most housing options, the text of the statute does include some exemptions.²¹⁹ Most pertinently, the

219. Some champions of the Greek system may be tempted to point out that the protections of the Fair Housing Act only extend to “dwellings.” The text of the Fair Housing Act makes it unlawful “[t]o sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person” based on membership in a protected class. In theory, someone could argue that fraternity houses do not qualify as dwellings and, therefore, remain outside the reach of modern civil rights law. This argument is weak. Courts have interpreted the meaning of dwelling broadly. Most pertinently, federal courts have held that both boarding schools and university dorm rooms implicate the Fair Housing Act. *See Franchi v. New Hampton Sch.*, 656 F. Supp. 2d 252, 260 (D.N.H. 2009); *United States v. Mass. Indus. Fin. Agency*, 910 F. Supp. 21, 26 n.2 (D. Mass. 1996). In *United States vs. University of Nebraska at Kearney*, for example, the court concluded that a college dormitory is a dwelling because it “resembles nothing more than an apartment building which would clearly be covered by the FHA. . . . [S]tudents live in university housing for a significant time period,

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FHA does not cover private clubs that offer lodgings.²²⁰ Truly private entities, like churches and exclusive golf clubs, remain free to discriminate in favor of their own members. For example, if the Ivy Club of New York City rents short-term lodgings in its building, it can give preferences to club members—even if they’re overwhelmingly white Protestants. The Greek organizations will likely argue that fraternities and sororities also qualify for this exception. Like other private clubs, the chapters ultimately retain the right to build their own facilities and rent rooms to their own members—even if they, too, remain overwhelmingly white.

The difficulty with this argument is two-fold. First, the exemption only applies to private clubs that offer short-term “lodgings.”²²¹ The Greek chapters offer housing options that are far more substantial. Second, the Greek chapters are not truly private clubs as contemplated by the statute.

1. Greek Houses Do Not Qualify for an FHA Exemption *Because They Do Not Offer Mere “Lodgings”*

Section 3607(a) of the FHA carves out the exemption for housing offered by private clubs. The statute reads, “[The FHA does not] prohibit a private club . . . which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.”²²² The text of the statute makes clear that the exemption does not protect all private entities from liability under the FHA. It only shields private clubs that offer lodgings.²²³ But what housing options count as “lodgings”?

The leading case on section 3607(a) is *United States v. Columbus Country Club*,²²⁴ a Third Circuit opinion from 1990. In *Columbus Country Club*, the

and while they do, they treat it like a home.” 940 F. Supp. 2d 974, 979 (D. Neb. 2013). The same is true of Greek houses.

220. See 42 U.S.C. § 3607(a) (“Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.”).

221. *Id.*

222. *Id.*

223. *Id.*

224. *United States v. Columbus Country Club*, 915 F.2d 877 (3d Cir. 1990).

court found that “lodgings” are short-term accommodations.²²⁵ Private clubs do not qualify for an exemption if they offer more permanent housing types. To illustrate, in *Columbus Country Club*, the defendant private club remained subject to the FHA because it offered tenants a long-term housing option—it rented summer cabins for months-long periods.²²⁶ The Third Circuit reached this conclusion after examining both the text and legislative history of the FHA.²²⁷ It found that Congress intentionally used the word lodgings to “tighten” the private club exemption “as much as possible.”²²⁸

According to this logic, the Greeks, too, must abide by federal civil rights law. They do not offer mere lodgings, but rather longer-term accommodations to members. Almost all fraternities and sororities require that students sign nine- or twelve-month housing contracts. These are not transient rooms for rent, but homes that students occupy during the school year. Thus, the chapter houses do not qualify for an exemption under § 3607(a).

2. Greek Houses Do Not Qualify for an FHA Exemption Because They are Not “Private Clubs”

A larger hurdle for Greek chapters hoping to escape liability is that they are not truly “private clubs.” This argument is less straightforward because there are no reported decisions that interpret the definition of “private club” under the FHA.²²⁹ However, other civil rights statutes provide similar exemptions for private organizations and a rich vein of caselaw has emerged that delineates the characteristics of “private” space. For example, both the Americans with Disabilities Act (which imposes accessibility

225. *Columbus Country Club*, 915 F.2d at 884-85. “Although the district court recognized that a distinction might be drawn between ‘dwelling’ and ‘lodging’ on the basis of the duration of contemplated occupancy, it did not agree that Congress intended this distinction to have any significance. We do not think that this conclusion comports with Congress’ deliberate substitution of the word ‘lodging’ for ‘dwelling’” *Id.* at 885.

226. *Columbus Country Club*, 915 F.2d at 884-85.

227. *Id.*

228. *Id.* (citing Senator Kuchel, the sponsor of the amendment that modified the wording of § 3607).

229. *See Ring v. Boca Ciega Yacht Club Inc.*, 4 F.4th 1149, 1157 (11th Cir. 2021) (“The Supreme Court and our predecessor circuit have never endeavored to provide a general definition of a ‘private club,’ but their decisions sharpen our understanding.”).

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requirements on public buildings) and the Civil Rights Act of 1964 (which prohibits discrimination in many contexts, including in places of public accommodation) contain limited carve outs for “private” entities.²³⁰ According to the sweep of the cases from these fields, private clubs share a few key traits.²³¹ First, they are genuinely exclusive—they limit their facilities and services to members and their guests.²³² Second, private clubs generally do not advertise when soliciting new members.²³³ Third, and finally, the Supreme Court has articulated that a private club must have “the attributes of self-government” traditionally associated with a private

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230. The Americans with Disabilities Act contains an exemption for private clubs. “The provisions of this subchapter shall not apply to private clubs or establishments” 42 U.S.C. § 12187. The Civil Rights Act of 1964 also contains carve outs for private clubs. The rules governing public accommodations do not apply to “a private club or other establishment not in fact open to the public” 42 U.S.C. § 2000a(e). The employment provisions, too, contain an exception, which reads, “[t]he term ‘employer’ . . . does not include . . . a bona fide private membership club” 42 U.S.C. § 2000(e).
231. Although courts largely agree on how to define “private” there are, unsurprisingly, some small differences at the margins. *Compare* Ring v. Boca Ciega Yacht Club Inc., 4 F.4th 1149, 1158-59 (11th Cir. 2021) (rejecting a multi-factor test in favor of a general rule) *with* United States v. Lansdowne Swim Club, 713 F. Supp. 785, 796-97 (E.D. Pa. 1989) (using a multi-factor test).
232. *See, e.g.*, EEOC v. Chi. Club, 86 F.3d 1423, 1436 (7th Cir. 1996) (examining the extent to which an allegedly private club employed meaningful conditions of limited membership); Kalani v. Castle Village, L.L.C., 14 F. Supp. 3d 1359, 1372 (E.D. Cal. 2014) (“[P]rivate clubs exhibit a plan or purpose of exclusiveness.”) (internal citations omitted); Martin v. PGA Tour, Inc., 984 F. Supp. 1330, 1325 (D. Or. 1998) (discussing “genuine selectivity” as criteria of private club); Lobel v. Woodland Golf Club of Auburndale, 260 F. Supp. 3d 127, 144 (D. Mass. 2017) (discussing the “genuine selectivity in admission of members”).
233. *See, e.g.*, Lobel v. Woodland Golf Club of Auburndale, 260 F. Supp. 3d 127, 144 (D. Mass. 2017) (“Establishments that advertise and solicit new members do not fall within the [ADA’s] private club exemption.”) (internal citations omitted); Martin v. PGA Tour, Inc., 984 F. Supp. 1330, 1325 (D. Or. 1998) (same); Wright v. Salisbury Club, Ltd., 632 F.2d 309, 312-13 (4th Cir. 1980) (same); Pappion v. R-Ranch Prop. Owners Ass’n, 110 F. Supp. 3d 1017, 1025 (E.D. Cal. 2015).

entity.²³⁴ Members of a private club must exercise ownership and control over the operation of the organization.²³⁵

An example may help illuminate the issues. The Garden City Golf Club on Long Island would almost certainly qualify as a private club under U.S. civil rights law. Garden City is incredibly selective. It has only 400 members and controls one of the best golf courses in the world. Moreover, it never advertises for new members.²³⁶ In fact, the club does not even have a website.²³⁷ Garden City also engages in self-government—its members control all rule changes and make policy decisions about the future of the club. Because Garden City is truly a private entity, it can discriminate.²³⁸ The club, for example, does not admit female members.

Unlike Garden City, the fraternities and sororities do not qualify as private clubs. Although most Greek clubs remain selective, they face two challenges. First, there is abundant evidence that many of the Greek chapters advertise. In the competition for new members, sororities and fraternities put out recruitment videos,²³⁹ post banners,²⁴⁰ and create

234. In *Daniel v. Paul*, the Supreme Court held that a recreation area open to 100,000 white members was “simply a business operated for a profit,” not a private club, because it lacked “the attributes of self-government and member-ownership traditionally associated with private clubs.” 395 U.S. 298, 301–02 (1969).

235. See, e.g., *Ring v. Boca Ciega Yacht Club Inc.*, 4 F.4th 1149, 1158 (11th Cir. 2021) (“A private club is an organization that uses self-government and member-ownership”) (internal citations omitted); *Kalani v. Castle Village, LLC*, 14 F. Supp. 3d 1359, 1372–73 (E.D. Cal. 2014) (stating that members of private clubs must have “control” over the club); *Martin v. PGA Tour, Inc.*, 984 F. Supp. 1330, 1325 (D. Or. 1998) (discussing “membership control” as criteria of private club); *Lobel v. Woodland Golf Club of Auburndale*, 260 F. Supp. 3d 127, 143–44 (D. Mass. 2017) (discussing importance of “membership control of operations”).

236. Jim Baumbach, *Male-only Garden City Golf Club Stands by “Tradition”*, *NEWSDAY* (June 14, 2018), [<https://perma.cc/W788-V34X>].

237. *Id.*

238. *Id.*

239. *15 Impressive Sorority Recruitment Videos*, A-LIST [<https://perma.cc/JTT9-Q86M>].

240. See, e.g., Mason Patrick, *DIY Fraternity Gear: Banners*, *MEDIUM* (Oct. 28, 2018), [<https://medium.com/@masonpatrick1801/diy-fraternity-gear-banners-a513f268298b>] [<https://perma.cc/MMD7-V6B8>].

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graphics to post on social media.²⁴¹ Second, the IFC fraternities and panhellenic sororities lack the required quantum of independence and autonomy needed to qualify as private organizations. As articulated in the previous section, universities exert substantial control over most Greek organizations. Administrators dictate who can apply for Greek membership, impose mandatory trainings, control social events, and oversee the day-to-day operation of the Greek clubs' houses. The full sweep of the evidence shows that the relationship between the university and the Greek system is one of integral connection and interdependence. The Greek clubs fail to qualify as "private clubs". They are better understood as a part of the official University community.

IV. AN EXAMPLE OF UNIVERSITY LIABILITY UNDER THE FHA

This Article concludes with a brief example of how student plaintiffs can use the FHA's disparate impact provisions to disrupt the expansion of segregated Greek housing on college campuses. In the pages that follow, this paper puts a spotlight on the University of Kentucky. Over the last ten years, the administration at Kentucky has become intimately involved with the construction and management of the fraternity and sorority houses. Arguably no university has done more to assist the growth of the predominately white Greek clubs on campus. Kentucky has acquired property on behalf of the chapters, loaned money to the chapters, built houses for the chapters, and it continues to operate a handful of the Greek buildings.²⁴² While the conditions in Lexington are not necessarily representative of what is happening on other campuses, the situation provides a strong test case for litigation against the fraternity system. The actions of Kentucky's administration seem like a crystal-clear violation of the FHA.

Recent Supreme Court jurisprudence further buttresses the prospects of impact litigation against the Greeks. Recall that in *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, the Court demonstrated a commitment to integrating the country's traditionally

241. See, e.g., Maggie Shifflett, *Sigma Kappa Delta*, Pinterest (last visited Jan. 27, 2023), <https://www.pinterest.com/pin/473933560790533857/> [https://perma.cc/P8WU-N26X].

242. See *infra* notes 257-263.

segregated spaces.²⁴³ Writing for the majority, Justice Kennedy affirmed that a plaintiff bringing an FHA case does not need to prove that a defendant acted with an intent to discriminate. Rather, the plaintiff can prevail by showing only that the defendant's actions impose a disparate burden on minority groups.²⁴⁴ Critics of the Court's opinion worried that recognizing disparate impact claims would open a floodgate of litigation against housing providers.²⁴⁵ That prediction has proven false. The *Inclusive Communities* opinion includes several guardrails that protect against excess litigation. Most importantly, Justice Kennedy articulated a burden shifting test to determine liability.²⁴⁶ To prove that a university like Kentucky and its administrators have violated the FHA, a plaintiff must first identify a policy that creates a statistical disparity between members of the protected groups.²⁴⁷ If the plaintiff makes the *prima facie* showing, the burden then shifts to the defendant to prove that the challenged practice is necessary to achieve a legitimate interest.²⁴⁸ The burden shifting analysis would then swing to the third and final element—plaintiffs can triumph by demonstrating that the defendant's goals could be accomplished through less discriminatory means.²⁴⁹

A. *The First Step: A Neutral Policy Must Cause a Statistical Disparity*

In *Inclusive Communities*, the Supreme Court stated that in the initial phase of an FHA claim, the plaintiff has the burden to prove that a challenged policy has caused a discriminatory effect. This requires plaintiffs

243. See *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project*, 576 U.S. 519, 546-47 (2015) ("The Court acknowledges the Fair Housing Act's continuing role in moving the Nation toward a more integrated society."). See also Daniel Sheehan, *Disparate Impact Liability Under the Fair Housing Act After Inclusive Communities*, 25 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 391, 406 (2017) (discussing Justice Kennedy's "full-throated commitment" to building a more integrated society).

244. *Inclusive Cmty.*, 576 U.S. at 545-46.

245. *Id.* at 584-87 (Alito, J., dissenting).

246. *Id.* at 541-45.

247. *Id.* at 542 (discussing safeguards in the *prima facie* test). See also 24 C.F.R. § 100.500(c)(1).

248. *Inclusive Cmty.*, 576 U.S. at 541 (2015). See also 24 C.F.R. § 100.500(c)(2).

249. See *Inclusive Cmty.*, 576 U.S. at 527. See also 24 C.F.R. § 100.500(c)(3).

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to: (1) identify a specific policy or practice of the defendant; (2) show a sufficiently large disparity in outcomes between a group protected by the FHA and others; and, (3) prove that this imbalance is caused by the defendant's actions.²⁵⁰ The Court has warned that this "robust causality requirement . . . protects defendants from being held liable for racial disparities they did not create."²⁵¹

In the aftermath of *Inclusive Communities*, the plaintiff's first task is to identify a specific policy used by the defendant that limits housing opportunities.²⁵² The Justices made clear that disparate impact claims only challenge neutral policies and practices; one-time decisions—even harmful ones—do not implicate the FHA.²⁵³ Courts have found that a variety of policies violate of the FHA, including "a zoning ordinance that disallowed apartments and required one acre lot sizes, a policy that granted tax credits only in primarily African-American neighborhoods, . . . and an ordinance placing a temporary moratorium on construction of multi-family dwellings."²⁵⁴

Plaintiffs attempting to disrupt the Greek system will have no difficulty finding university policies regarding fraternity row. Many colleges have publicly broadcast plans to expend resources in support of Greek houses on campus. In 2011, for example, administrators at the University of Kentucky announced a long-term plan to construct a "Greek Park" on a block of state-owned property.²⁵⁵ The university's master plan describes the proposed

250. See *Inclusive Cmty.*, 576 U.S. at 542-44; Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11482.

251. See *Inclusive Cmty.*, 576 U.S. at 542.

252. Robert G. Schwemm & Calvin Bradford, *Proving Disparate Impact in Fair Housing Cases After Inclusive Communities*, 19 N.Y.U. J. LEGIS. & PUB. POL'Y 685, 693 n.32 (2016) (citing post-*Inclusive Communities* cases as examples).

253. *Inclusive Cmty.*, 576 U.S. at 542 (stating that "a disparate-impact claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity").

254. Bernadette Atuahene, "Our Taxes Are Too Damn High": *Institutional Racism, Property Tax Assessments, and the Fair Housing Act*, 112 NW. U. L. REV. 1501, 1528 (2018).

255. See Morgan Eads, *Master Plan Update Suggests Pedestrian-Friendly, Community-Centered Campus*, KY. KERNEL (Apr. 12, 2013), http://www.kykernel.com/news/master-plan-update-suggests-pedestrian-friendly-community-centered-campus/article_1c91c36a-5681-551f-8fd4-8a5f1c54da21.html [<https://perma.cc/2SZL-CG53>]. The first mention of

fraternity and sorority houses as part of its strategy to increase the number of beds on-campus.²⁵⁶ To effectuate the growth of the Greek Park, the University has—in the last decade—acquired land for Greek houses,²⁵⁷ implemented design standards for the Greek buildings,²⁵⁸ funded infrastructure to make the area more desirable,²⁵⁹ loaned money to the chapters,²⁶⁰ leased land to the fraternities,²⁶¹ and paid for the construction and renovation of several Greek buildings.²⁶² The university administration also controls the day-to-day operation of several Greek facilities.²⁶³ Quite

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- Greek Park in the local media came in 2011. At that time, it was unclear how firm the University's plans were. See Anne Marie Sanderson, *Alpha Phi in Pursuit of Math House*, KY. KERNEL (Sept. 7, 2011), <https://kykernel.com/70079/news/alpha-phi-in-pursuit-of-math-house/> [<https://perma.cc/VFE8-N92J>].
256. THE U. OF KY., CAMPUS MASTER PLAN 39, 81, 99 (2013).
257. Jay Blanton, *UK Board Approves Budget that Invests in People*, U. KY. (June 16, 2017), <https://uknow.uky.edu/campus-news/uk-board-approves-budget-invests-people> [<https://perma.cc/N3JL-ZNSW>].
258. See THE U. OF KY., DESIGN GUIDELINES FOR GREEK PARK (2016).
259. *Higher Education Experience*, SHERMAN CARTER BARNHART ARCHITECTS, <https://www.scbarchitects.com/wp-content/uploads/2021/06/2021-higher-ed-booklet-style.pdf> [<https://perma.cc/LBK7-C3W6>] (last visited Mar. 8, 2022) (discussing the improvements in the Greek Park area, including pedestrian corridors, green spaces, and a “Spanish Steps” feature).
260. THE U. OF KY., GREEK PARK TRANSFORMATION 16, 19 (2015) (noting that the Alpha Gamma Rho fraternity house was built with a loan from the University).
261. Rick Childress, *Renovation of Memorial Coliseum, Other Campus Buildings Move Forward*, KY. KERNEL (Feb. 22, 2019), http://www.kykernel.com/news/renovation-of-memorial-coliseum-other-campus-buildings-move-forward/article_17145e10-36cc-11e9-a067-4326a9b58a35.html [<https://perma.cc/Z2T5-LM5R>].
262. THE U. OF KY., GREEK PARK TRANSFORMATION 16, 18, 19 (2015) (noting that the Sigma Alpha Epsilon and Alpha Gamma Ro fraternity buildings were built by the University).
263. *Id.* at 18 (showing that the University provides maintenance and custodial services in some Greek buildings, and collects the rent through university procedures). See also *Greek Park Map*, U. KY., https://studentsuccess.uky.edu/sites/default/files/2022-10/Greek_Park_Map_2020_05-11_1.pdf [<https://perma.cc/8PF4-2JU9>] (last visited Mar. 8, 2022) (showing which Greek houses are owned and operated by the University of Kentucky).

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literally, the University of Kentucky has assembled a small neighborhood on the periphery of campus that houses only fraternity and sorority members.

The second prong of the *prima facie* case demands that the plaintiff present statistical evidence that the challenged policy has caused a sizeable disparate impact on one of the protected groups.²⁶⁴ Modern impact cases under the FHA often turn on this element because plaintiffs generally struggle to produce the required data. Student claimants, however, should be able to overcome this hurdle in most cases. For instance, there is strong evidence that Kentucky's Greek Park scheme has sharply limited the housing options of minority students, particularly African Americans. The University of Kentucky currently has 7275 beds in university-operated dormitories for its 22,000 undergraduates—demand for housing far exceeds supply.²⁶⁵ The twenty-one segregated fraternity and sorority facilities in Greek Park house approximately 850 additional students.²⁶⁶ Accordingly, Greek Park accounts for more than 10% of the on-campus accommodations at the University of Kentucky. But living in Greek Park is not accessible to all undergraduates, even though the University owns the land and operates many of the fraternity and sorority buildings. The chapter

264. See *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 524 (2015) (stating that “a plaintiff bringing a disparate-impact claim challenges practices that have a disproportionately adverse effect on minorities”) (internal citations omitted); Schwemm & Bradford, *supra* note 252, at 697.

265. See *Residence Halls*, U. KY., <https://wildcatliving.uky.edu/residence-halls> (last visited Mar. 31, 2023).

266. University documents show that there are twenty-one active Greek houses in the Greek Park area. See *Greek Park*, U. KY., https://studentsuccess.uky.edu/sites/default/files/2023-02/Greek%20Park%20Map_2022.%20%281%29.pdf (last visited Mar. 31, 2023). In 2015, the university disclosed the number of beds in eighteen of the twenty-one chapter houses currently in use. See U. KY., GREEK PARK TRANSFORMATION 9 (2015). Four new Greek houses have been built in Greek Park since 2015 and one has been converted into a university dorm. See *Alpha Chi Omega Sorority*, SHERMAN CARTER BARNHART ARCHITECTS, <https://scbarchitects.com/projects/alpha-chi-omega-sorority/> (last visited Mar. 31, 2023) (stating that the new building has twenty-three beds); *Kappa Alpha Theta House*, EOP, <https://www.eopa.com/work/residential/kappa-alpha-theta-house/> (last visited Mar. 31, 2023) (Fifty beds); *Kappa House Progression*, PHI KAPPA TAU, <https://www.phikappatau.org/news/2020/7/1/kappa-house-progression> (last visited Mar. 31, 2023) (Fifty-five beds); *The Beta House: Kentucky*, BETA THETA PHI, <https://www.beta.org/the-beta-house-kentucky/> (last visited Mar. 31, 2023) (Forty beds).

houses accommodate approximately 870 white students and 10 Black students.²⁶⁷ Put another way, over five percent of white undergraduates live in Greek Park, but only .6% of Black undergraduates call the area home. This is the definition of a disparate impact. University policy has created a large, racialized barrier to housing that negatively impacts Black students. Although the university's administration may not have intended to build a segregated neighborhood, it has done just that. Kentucky has created a system where the 23 houses in Greek Park are reserved for members of overwhelmingly white student groups, while the remaining undergraduates compete for beds in the 19 other dorm buildings.

B. The Second and Third Steps: Is the Challenged Policy Needed to Advance a Valid Interest?

Once a plaintiff has established a *prima facie* violation of the FHA, the case moves to the second step. In this phase, the defendant must prove that the challenged policy advances a valid interest.²⁶⁸ Specifically, in *Inclusive Communities*, the Court stated that the defendant must present evidence that the disputed practice is “necessary to achieve one or more substantial, legitimate, nondiscriminatory interests.”²⁶⁹ The court also held that the policy cannot be an “artificial, arbitrary, and unnecessary barrier[.]”²⁷⁰ If a defendant meets the requirements of step two, the plaintiff can still carry the day in step three by showing that the defendant's goals could be met in an equally effective manner by “a less discriminatory policy or practice.”²⁷¹

Under the burden-shifting framework, universities may feel that their policy of supporting Greek houses advances numerous legitimate goals. The University of Kentucky, for example, will almost certainly advance three arguments to rebuff FHA liability. First, the University may justify its policies of working with the Greek chapters as an efficient method of constructing on-campus housing for as many students as possible. Second, administrators may contend that putting Greek housing on-campus allows the University to better compete for students. Finally, the University

267. These numbers assume that a proportional number of black members of the historically white fraternities live in the chapter houses.

268. *Inclusive Cmty's*, 576 U.S. at 541. See also 24 C.F.R. § 100.500(c)(2).

269. *Inclusive Cmty's*, 576 U.S. at 527 (quoting 24 C.F.R. § 100.500(c)(2) (2014)).

270. *Inclusive Cmty's*, 576 U.S. at 543 (citing *Griggs v. Duke Power Co.*, 401 U.S. 424, 431(1971)).

271. 24 C.F.R. § 100.500(c)(3).

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leadership has a strong argument that hosting the Greeks on campus gives the university some quantum of control over the fraternities and increases student safety.

1. Providing Housing to as Many Students as Possible

The administration at the University of Kentucky will surely argue that it has a legitimate interest in supporting the fraternities and sororities. First and foremost, the Greek Park project improves Kentucky's limited student housing options. In Kentucky, state budget cuts left the residence halls in disrepair. Higher education administrators have been forced to scramble for ways to "maintain facilities and find less costly and more efficient ways to build and modernize the dorms."²⁷² For a university "in [a] still challenging economy," public-private partnerships with the Greek chapters are an expedient method of financing new infrastructure.²⁷³ The University can contribute land that it already owns, while the national fraternity and sorority organizations fund construction of the residences. Colleges around the country have built many residences through such partnerships.²⁷⁴ Thus, in a world of limited resources, the University of Kentucky can make the case that the Greek Park project allows for the development of housing facilities that it otherwise could not afford.

But do the state's budget woes justify a disparate impact on the housing opportunities of minority students? Almost certainly not. The University of Kentucky's Greek Park plan likely fails the second step of the disparate impact test and certainly fails the third step. To start, Kentucky's leadership will have difficulty showing that their policies advance a substantial, legitimate, and nondiscriminatory interest because the Greek Park plan is an "unnecessary" and "arbitrary" approach to building student housing. History shows that universities—especially flagship state universities—are capable of updating their housing schemes without violating federal antidiscrimination statutes. Colleges and universities across the country

272. Leonard Gilroy, *University of Kentucky Smart to Explore Private Sector for New Campus Housing*, REASON (Dec. 15, 2011), <https://reason.org/commentary/university-of-kentucky-smart-to-exp/> [<https://perma.cc/854K-XK4L>].

273. Jay Blanton, *Board Approves Continued Housing Transformation*, U. Ky. (Oct. 15, 2012), <https://uknow.uky.edu/campus-news/board-approves-continued-housing-transformation> [<https://perma.cc/H6PN-ADGA>] (discussing Kentucky's limited ability to raise its debt capacity to fund new housing).

274. Gilroy, *supra* note 272.

modernized their housing portfolios after the beginning of integration,²⁷⁵ the start of co-education,²⁷⁶ the boom in enrollment following passage of the GI Bill,²⁷⁷ and the passage of the Americans with Disabilities Act (ADA).²⁷⁸ The ADA, in particular, imposed a series of burdensome requirements. Universities had to “adjust much of the housing they provide[d] to ensure that students with disabilities have an array of choices in housing comparable to students without disabilities.”²⁷⁹ Similar expenditures could be made to ensure that Black and Latino students are integrated into the community of scholars who live on campus.

Even if Kentucky manages to convince a court that the Greek Park project has a legally sufficient justification, the university will stumble at the

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275. The earliest example of a college constructing a new dorm in the face of integration occurred at Harvard in the 1600s. The Harvard Indian College was built “so that white students wouldn’t have to live with Native students.” Elyse Martin, *The Evolution of the College Dorm Chronicles How Colleges Became Less White and Male*, SMITHSONIAN MAG. (Feb. 11, 2019), <https://www.smithsonianmag.com/history/history-college-dorms-180971457/> [<https://perma.cc/6RX2-GA69>].
276. See, e.g., Carla Yanni, *The Coed’s Predicament: The Martha Cook Building at the University of Michigan*, 24 BUILDINGS & LANDSCAPES 26, 33-35 (2017) (discussing the spate of dorm construction at the University of Michigan after the start of coeducation).
277. Martin, *supra* note 275 (reporting that the GI Bill led to the growth of inexpensively built modernist dorms).
278. See, e.g., Arianna Schmidt & Oren Williams, *Renovations Set to Increase, Improve ADA Accessibility on Campus*, DAILY BAROMETER (Feb. 18, 2018), <https://dailybaro.orangemedianetwork.com/7210/daily-barometer-news/renovations-set-to-increase-improve-ada-accessibility-on-campus/> [<https://perma.cc/2QXG-66MY>] (“Since 2010, OSU has added 206 accessible parking spaces, 61 accessible ramps, 273 accessible restrooms, 34 elevators and 298 automatic door openers.”); Marsha Gilbert, *Schools Make Adjustments To Comply With Updated Standards To Make Campuses More Accessible to the Disabled*, DIVERSE ISSUES HIGHER EDUC. (Mar. 11, 2013), <https://www.diverseeducation.com/demographics/disabilities/article/15092873/schools-make-adjustments-to-comply-with-updated-standards-to-make-campuses-more-accessible-to-the-disabled> [<https://perma.cc/FKZ2-QFQQ>] (quoting university official who estimated that Cal State Northridge spends \$250,000 a year on ADA upgrades like ramps, sidewalk repairs, installation of braille signage, and upgrades to restrooms).
279. Alison Tanner, *Live and Learn: Using the Fair Housing Act to Advance Educational Opportunity for Parenting Students*, 105 GEO. L.J. 1453, 1476 (2017).

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third step of the *Inclusive Communities* test. Plaintiffs can easily demonstrate that there are less discriminatory methods of building on-campus housing. Many companies compete for university contracts to build student dormitories, and administrators remain free to engage in public-private partnerships to modernize their residence halls.²⁸⁰ Kentucky's own experience reveals that Greek organizations are not the only outside groups that can successfully fund housing renovations. In 2011, administrators at the University of Kentucky entered into an agreement with Education Realty Trust (EdR), one of America's largest developers of college housing,²⁸¹ to privatize the construction and operation of fourteen dormitories.²⁸² EdR (now owned by Greystar) currently manages over 6,800 beds on Kentucky's Lexington campus.²⁸³ Administrators at Kentucky have already demonstrated that the University can build new dorms without imposing artificial housing barriers on minority students.

2. Winning the Competition for Students

The University may also argue that it has a legitimate interest in supporting fraternity row because on-campus Greek houses give universities an edge in attracting prospective students. Writing in *the Atlantic*, Caitlin Flanagan summarized the issue: "When Mom is trying . . . to

280. BRAILSFORD & DUNLAVEY, *Higher Education Public Private Partnerships State of the Industry Report* (2022), https://p3resourcecenter.com/wp-content/uploads/2022/09/P3-State-of-the-Industry-2022_Interactive.pdf [<https://perma.cc/LB3M-ARNJ>] (listing universities that do public-private partnerships with companies).

281. Christopher Sheffield, *Education Realty Trust, University of Kentucky Ink Ambitious Deal*, MEMPHIS BUS. J. (Dec. 14, 2011), <https://www.bizjournals.com/memphis/news/2011/12/14/education-realty-trust-university-of.html> [<https://perma.cc/GZQ4-28AU>] ("Education Realty Trust Inc. is one of America's largest owners, developers and managers of college housing.").

282. Linda B. Blackford, *UK Negotiates with Real Estate Company to Build, Run Student Housing*, LEXINGTON HERALD-LEADER (Nov. 10, 2015 5:23 PM), <https://www.kentucky.com/news/local/education/article44143494.html> [<https://perma.cc/Y8FE-PANH>].

283. EdR was purchased by Greystar in 2018. See Sarah Michels, *Kernel Finds No Evidence that Greystar had Power in Campus Reopening Decision*, KY. KERNEL (Dec. 2, 2020), <https://kykernel.com/15506/news/kernel-finds-no-evidence-that-greystar-had-power-in-campus-reopening-decision/> [<https://perma.cc/D7RJ-V8LL>].

persuade lackluster Joe Jr. to go to college, she gets a huge assist when she drives him over to State and he gets an eyeful of frat row [O]ne look at the Fiji house and he gets the message: . . . kids are having fun.”²⁸⁴ An official at the University of Arkansas echoed this sentiment, “We’re competing to attract a kind of student who’s looking for big time football, a business major, and an active Greek scene. The fraternities and sororities are a real draw.”²⁸⁵

The problem for Kentucky’s leadership is that competing for students who want to join a Greek chapter does not justify the disparate impact that its policies impose on African Americans. As summarized above, in step two of the disparate impact test, only a “substantial” interest can excuse a housing practice that creates discriminatory effects. HUD regulations define substantial as “a core interest of the organization that has a direct relationship to the function of that organization.”²⁸⁶ Would any court find that vying for undergraduates who want a rowdy Greek scene amounts to a core interest of the university? It seems unlikely. Kentucky’s own mission statement reads: “The University of Kentucky: -- Facilitates learning, informed by scholarship and research. -- Expands knowledge through research, scholarship and creative activity. -- Serves a global community by disseminating, sharing and applying knowledge.”²⁸⁷ Promoting the Greek system seems purely incidental to these goals.

This justification also fails because, once again, there are far less discriminatory recruitment strategies that Kentucky could undertake to attract high school seniors. Rather than expending millions of dollars on the construction and maintenance of Greek Park, the University could increase scholarships, lower class sizes, enhance co-curricular programming like intramural sports, host more on-campus social events, build a better student center, or create opportunities for informal social engagement with faculty. There are numerous approaches that college and universities can take to make their campuses attractive to potential students. As a result, institutions of higher should not be allowed prioritize the recruitment of future fraternity and sorority members over the housing opportunities of Black students.

284. Flanagan, *supra* note 6.

285. Interview with Melissa Harwood-Rom, Dean of Students, University of Arkansas, in Fayetteville, Ark. (Sept. 2019).

286. Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 78 Fed. Reg. 11460, 11470 (Feb. 15, 2013) (promulgating 24 C.F.R. § 100.500).

287. *Mission Statement*, U. KY., <https://www.uky.edu/hr/employment/working-uk/our-university> [<https://perma.cc/4J3T-9DX2>] (last visited Mar. 9, 2022).

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3. Improving Student Safety

Universities like Kentucky will also argue that funding the construction of Greek houses improves student safety. This may be the University's most convincing rationale to avoid FHA liability. Greek houses—and fraternities in particular—are notoriously dangerous spaces.²⁸⁸ On many campuses, large numbers of binge drinking episodes, sexual assaults, and violent hazing incidents “cluster at fraternity houses.”²⁸⁹ A university could plausibly claim that hosting the Greek organizations on campus gives administrators additional leverage over the fraternities and reduces the volume of risky behaviors. For example, in lease negotiations with the fraternities, colleges could demand additional safety protocols or insist that the organizations hire a house manager.

Caselaw provides some support for the argument that safety concerns justify policies that impose disparate impacts. In *Sierra v. City of New York*, the U.S. District Court for the Southern District of New York upheld a city ordinance that banned minors from living in single-room occupancy (SRO) buildings.²⁹⁰ The court stated that this rule did not violate the FHA's protections for families with children because the housing provider introduced evidence that units without private bathrooms subject minors to unacceptable risks.²⁹¹ Kentucky could make a similar argument. In theory, its support of segregated Greek housing does not undermine the FHA because the policy increases student safety.

The difficulty with any potential argument about safety is two-fold. First, Kentucky's argument that the Greek Park project is justified by concerns about student welfare is not “legitimate,” as required by the FHA.

288. See Wechsler et al., *supra* note 47, at 396 (“Virtually every study of drinking in college shows fraternity members tend to drink more heavily and more frequently, and to have more alcohol-related problems than their fellow students.”); Elizabeth J. Allan & Mary Madden, *The Nature and Extent of College Student Hazing*, 24 INT’L J. ADOLESCENT MENTAL HEALTH 1, 2 (2011) (“[W]e found hazing occurred across a range of student membership groups, with highest rates among varsity athletes and members of social fraternities and sororities.”); Sarah K. Murnen & Marla H. Kohlman, *Athletic Participation, Fraternity Membership, and Sexual Aggression Among College Men: A Meta-Analytic Review*, 57 SEX ROLES 145 (2007) (finding that multiple features of fraternity culture lead to higher rates of sexual assaults).

289. Flanagan, *supra* note 6.

290. *Sierra v. City of New York*, 579 F. Supp. 2d 543, 554 (S.D.N.Y. 2008).

291. *Id.* at 549-51.

The word “legitimate” is intended to ensure that a defendant’s justification “is genuine and not false.”²⁹² If administrators truly wanted to reduce binge drinking, hazing, and sexual assault, the University could easily take a harder institutional line against alcohol consumption by students. Yet rather than tackling the root cause of misbehavior in Greek life, Kentucky has instead enacted policies that require the university to construct segregated housing so it can monitor its most rambunctious students. Federal courts have consistently voided such overinclusive safety rules under the FHA.²⁹³ In *Iniestra v. Cliff Warren Investments, Inc.*, for example, a federal district court struck down a landlord’s policy that children under 18 could not use the common pool without adult supervision.²⁹⁴ Although the landlord argued that the rule saved lives, the court held that the regulation imposed a discriminatory burden on families with children and was “not an efficient method of achieving pool safety.”²⁹⁵ “[I]t is entirely possible,” the court reasoned, “that younger children might be more adept swimmers than their older counterparts.”²⁹⁶ In *Mathews v. Arrow Wood LLC*, FHA plaintiffs won a similar lawsuit against a landlord who prohibited children from playing anywhere on the grounds of an apartment complex.²⁹⁷ While the court found that the health and safety of children are a legitimate focus for housing regulation, it determined the breadth of the rule was arbitrary.²⁹⁸ Under the FHA, safety rules that impose disparate impacts must have a close tie to the perceived dangers. Kentucky’s policies do not.

Kentucky’s safety rationale for supporting the Greek Park project has a second significant weakness: there are less discriminatory policies that would achieve the University’s goals. Administrators can impose stringent health and welfare regulations on the chapters without leasing land to

292. See Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 78 Fed. Reg. at 11470.

293. See, e.g., *Iniestra v. Cliff Warren Invs., Inc.*, 886 F. Supp. 2d 1161, 1167 (C.D. Cal. 2012); *Mathews v. Arrow Wood LLC*, No. EDCV-07-1316, 2009 WL 8659593, at *9 (C.D. Cal. Apr. 2, 2009); *Pack v. Fort Washington II*, 689 F.Supp.2d 1237, 1246 (E.D. Cal. 2009); *Fair Housing Congress v. Weber*, 993 F.Supp. 1286, 1292 (C.D. Cal.1997).

294. *Iniestra v. Cliff Warren Invs., Inc.*, 886 F. Supp. 2d 1161, 1167 (C.D. Cal. 2012).

295. *Id.*

296. *Id.* at 1167-68.

297. *Mathews v. Arrow Wood LLC*, No. EDCV-07-1316, 2009 WL 8659593, at *9 (C.D. Cal. Apr. 2, 2009).

298. *Id.*

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Greek organizations or making financial contributions toward the construction of their facilities. Texas A&M, for example, does not rent land to any of the sororities or financially contribute to the construction of their housing. Yet, the administration in College Station still imposes a fleet of regulations on the sororities pursuant to its authority over recognized student groups.²⁹⁹ Texas A&M regulates new member recruitment, alcohol use, tailgating, and diversity education all without directly subsidizing the Greek system.³⁰⁰ Kentucky could do the same.

C. Remedies

If a university Greek system violates the FHA, what is the appropriate remedy? Some observers will argue that the FHA should be used to completely dismantle Greek life. As one commentator argued in the pages of *Time* magazine, “Abolition is the only answer. All social fraternities — alongside the sycophantic sorority life that they exploit — must go. They must go permanently and forever . . . Reform is simply not possible.”³⁰¹ However well intentioned, those seeking to destroy the Greek system with the FHA face numerous legal hurdles. Public universities—even if they wanted to—cannot ban students from joining fraternities and sororities. The Supreme Court has held, repeatedly, that undergraduates have the right to freedom of association.³⁰² Recent decisions from the federal courts also cast doubt on both public and private universities’ ability to punish students

299. Common Events Guide, TEX. A&M, <https://studentactivities.tamu.edu/wp-content/uploads/2021/08/Common-Events-Guide-Updated-Summer-2021.pdf> [<https://perma.cc/7QPL-TJC2>] (last visited Mar. 9, 2022).

300. *Id.*

301. Lisa Wade, *Why Colleges Should Get Rid of Fraternities for Good*, TIME (May 19, 2017), <https://time.com/4784875/fraternities-timothy-piazza/>.

302. *See* Healy v. James, 408 U.S. 169, 181 (1972) (“There can be no doubt that denial of official recognition, without justification, to college organizations burdens or abridges [the] associational right.”); *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) (“[O]ur cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities.”); *Christian Legal Soc. Chapter of the Univ. of Cal., Hastings Coll. of the L. v. Martinez*, 561 U.S. 661, 680 (2010) (describing the outer limits of the right of association on campus settings).

who join single-sex organizations.³⁰³ Moreover, in *Inclusive Communities*, the Supreme Court set limits on remedial orders in disparate impact cases. The Court counseled that FHA remedies “should concentrate on the elimination of the offending practice” and be designed “to eliminate racial disparities through race-neutral means.”³⁰⁴

So what can be done? According to Supreme Court precedent, if universities entwine themselves with the Greek system, plaintiffs can legally target the construction and maintenance of segregated housing. A court could issue an order that: (1) declares that the defendants’ policies violate the Fair Housing Act, and (2) enjoins the defendants from discriminating in the provision of housing based on race.³⁰⁵ In practice, that

303. See *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020); *Kappa Alpha Theta Fraternity, Inc. v. Harvard Univ.*, 397 F. Supp. 3d 97, 108-09 (D. Mass. 2019). See also Christine Scherer, *Rushing to Get Rid of Greek Life and Social Clubs: The Impact of Bostock on Single-Sex College Organizations*, 71 CASE W. RES. L. REV. 1165 (2021).

304. *Tex. Dep’t of Hous. & Cmty. Affs. V. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 544-45 (2015).

305. The biggest drawback of suing state universities under the FHA is that the Constitution limits the types of remedies available to plaintiffs. Under the FHA, victims of discrimination can normally seek actual damages, punitive damages, equitable relief, and legal costs from defendants. See 42 U.S.C. § 3612(g), 3613(c). However, the Eleventh Amendment grants state governments immunity from suits brought by individual citizens. See *Papasan v. Allain*, 478 U.S. 265, 276 (1986) (“In the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment.’ This bar exists whether the relief sought is legal or equitable.” (quoting *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 100 (1984))). These protections are robust—they extend to FHA plaintiffs seeking both legal and equitable relief from state governments. See, e.g., *McCardell v. U.S. Dep’t of Hous. & Urban Dev.*, 794 F.3d 510, 521-22 (5th Cir. 2015) (state defendants had Eleventh Amendment immunity with respect to FHA claims brought by private person). Further, American courts have ruled that public universities, as agents of the state, sit firmly under the umbrella of the Eleventh Amendment’s safeguards. See, e.g., *Brooks v. Oakland Univ.*, No. 13-10701, 2013 WL 6191051, at *2 (E.D. Mich. Nov. 26, 2013) (holding that the Eleventh Amendment barred FHA claims asserted by a private person against a state university); *Est. of Ritter v. Univ. of Mich.*, 851 F.2d 846, 848-852 (6th Cir. 1988) (holding that the Eleventh Amendment barred suit against University of Michigan Board of Regents); *Martin v. University of Louisville*, 541 F.2d 1171, 1173-76 (6th Cir. 1976)

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means universities could no longer lease land to segregated student clubs, or collect rent on their behalf, arrange financing for the construction of segregated housing, or provide the day-to-day management of housing divided along racial lines. Such a remedy would force university officials to make a choice. Administrators would need to enact measures to better integrate their Greek housing or withdraw support from the chapter houses.

(holding that a Kentucky state university was immune from suit under Eleventh Amendment).

Despite these limitations, plaintiffs are not without recourse. The Constitution is not a perfect shield for colleges and universities to hide behind. The Eleventh Amendment does not bar actions for equitable remedies against state officers in their official capacity. *See Ex parte Young*, 209 U.S. 123, 160 (1908). Thus, individual plaintiffs can sue university administrators if they seek prospective injunctive relief. The power of the Eleventh Amendment also does not apply to suits brought by the federal government against the states. *See United States v. Mississippi*, 380 U.S. 128, 140–41 (1965) (stating that Eleventh Amendment, by its terms, only bars suits against a state brought by citizens of that state, other states, or subjects of any foreign state); *Demery v. Kupperman*, 735 F.2d 1139, 1145 n.3 (9th Cir. 1984) (“The [E]leventh [A]mendment does not bar suits against a state brought by the United States”); see also *United States v. City of Parma*, 661 F.2d 562, 572 (6th Cir. 1981) (stating in dicta that Congress intended to provide for Fair Housing Act actions against states). The FHA in section 3614 explicitly authorizes the Attorney General to enforce the statute’s terms on behalf of aggrieved citizens. *See* 42 U.S.C. § 3614(a).

In recent years, the Justice Department has demonstrated both its willingness and its ability to successfully sue schools that violate the FHA. For example, in the last decade, the Justice Department forced both Kent State and the University of Nebraska-Kearney into settlements—that included monetary damages—for refusing to allow support animals in university dormitories. Karen Farkas, *Kent State University Agrees to \$145,000 Settlement of Federal Lawsuit Over Assistance Animals*, CLEVELAND.COM (Jan. 4, 2016, 6:30 PM), https://www.cleveland.com/metro/2016/01/kent_state_university_agrees_t.html [https://perma.cc/2VSY-YNFN]; Todd Gottula, *UNK, Dept. of Justice Resolve Housing Case on Assistance Animals; Will Adopt New Policies*, UNIV. OF NEBRASKA-KEARNEY NEWS (Sept. 3, 2015), <http://unknews.unk.edu/2015/09/03/unk-dept-of-justice-resolve-housing-case-on-assistance-animals-will-adopt-new-policies/> [https://perma.cc/C3R4-4R2E]. In theory, a student who felt that a university’s policies toward the Greek organizations created a disparate housing impact could work with the Department of Justice and skirt the strong constitutional protections that sometimes inhibit individual plaintiffs.

University officials may try to argue that this cure is worse than the disease. They will, almost certainly, focus their concerns on the issue of student safety. Universities have more power and control over the Greek organizations located on campus. Administrators can, for example, put Greek groups on probation or withdraw official recognition from chapters that do not follow required safety protocols. However, if the Greeks are forced off campus by an FHA lawsuit, universities would lose this tool for combating alcohol abuse, violent hazing, and sexual misconduct. The universities will claim, in short, that they need to keep their good students close and their troublemakers closer.

The argument has several significant flaws. Foremost, it misconstrues the scope of the proposed remedy. The FHA only bars colleges from contributing to the construction or maintenance of segregated housing. Universities remain free to subsidize *integrated* housing and they can still punish fraternity and sorority members who violate the student code of conduct—even if they live off campus. Further, the administrators' concerns about safety assume that students will still flock to the sororities and fraternities if the chapters are forced to disaffiliate from the university. That seems unlikely. Membership in the Greek chapters is desirable, at least in part, because of their close relationship with the universities. The Greeks' houses sit on well-located plots owned by the universities,³⁰⁶ state employees help them resolve their disputes,³⁰⁷ and university regulations help assure parents that the houses are safe.³⁰⁸ Students, and especially their parents, might not be drawn to unregulated social clubs that lack access to university resources in quite the same numbers.

Other observers may attack the proposed order from a different angle. Alumni of the historically Black Greek fraternities, for example, might worry that an FHA lawsuit could damage their organizations, which are also highly segregated. In theory, the remedy could cause two problems for the Black Greeks. First, universities would need to withdraw support from all segregated housing facilities—including the homes of the Black fraternal organizations. This would cause few problems for the nine historically Black Greek organizations. There are virtually no historically Black Greek groups

306. *See, e.g.*, THE U. OF KY., GREEK PARK TRANSFORMATION 7, 8 (2015) (showing location of Greek houses at the University of Kentucky).

307. *See, e.g.*, THE U. OF KY., CHAPTER PRESIDENT RESOURCE MANUAL (2021) (on file with author) (detailing of the University's role in Greek life).

308. *See, e.g.*, *Hazing Prevention*, U. KY., <https://studentsuccess.uky.edu/fraternity-and-sorority-life/hazing-prevention> (last visited Mar. 31, 2023).

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that operate on-campus housing.³⁰⁹ In the SEC, for example, there are over 180 sorority houses controlled by Panhellenic organizations, but only one Black sorority chapter owns its own structure.³¹⁰ A second issue could arise if universities enact policies to better integrate their Panhellenic sororities and IFC fraternities. In theory, that could draw African-American undergraduates away from the historically Black Greek organizations. But is that a problem at all? The decision to join a historically white or Black Greek chapter is a choice that African-American students deserve to make for themselves. The entire point of civil rights law and the FHA is to ensure they have equal access to integrated spaces if they desire.

CONCLUSION

This Article makes three contributions to the literature about the Greek system. First, it empirically confirms what observers have long suspected but never proved: the Panhellenic sororities and IFC fraternities remain profoundly segregated institutions. At universities across the country, white students dominate the membership rolls, very few Asian Americans successfully navigate the rush process, and many chapters have no Black members. The near complete exclusion of African Americans from such a mainstream feature of undergraduate life remains startling and makes a mockery of the universities' professed values.

Second, this Article also demonstrates that fraternities and sororities are not immune from the remedial power of American civil rights law. Universities and the traditionally white Greek chapters have become so thoroughly entangled that it is impossible to regard the Greeks as independent organizations. On many campuses, the fraternities and sororities have become fully subservient to the higher education bureaucracy. As a result of this entwinement, both the Greek organizations and their parent universities can be sued for facilitating segregated neighborhoods on campus.

309. See, e.g., McKenzie Richmond, *NPHC Greek Houses Absent on Fraternity and Sorority Row*, DAILY MISSISSIPPIAN (Oct. 11, 2018), <https://thedmonline.com/black-fraternity-houses/> ("To this day, there is no black fraternity or sorority house on the Ole Miss campus.").

310. This information was compiled by calling the Office of Greek Life at each SEC school (notes on file with author). The Alpha Kappa Alpha (AKA) sorority at the University of Alabama owns its house. See *Alpha Kappa Alpha*, U. ALA., <https://ofsl.sa.ua.edu/chapters-list/alpha-kappa-alpha/> (last visited Mar. 31, 2023).

Finally, this paper argues that universities are particularly vulnerable targets for impact litigation under the Fair Housing Act. Administrators at many large colleges have openly subsidized the construction of on-campus fraternity and sorority houses for these traditionally white organizations. The universities' role as financiers, builders, and operators of these facilities has imposed a clear discriminatory burden on the housing opportunities of minority students. As a first step toward greater inclusion, universities should be forced to integrate these housing units or unwind their involvement with the Greek organizations. The ideology underlying the status quo is untenable.

APPENDIX A: SORORITY COMPOSITION

	% Sor. Black	% Uni. Black	% Sor. Asian	% Uni. Asian	% Sor. Hisp.	% Uni. Hisp.	% Sor. White	% Uni. White
ACC								
Clemson	0.4	6.5	1	2.6	4.5	4.8	90.6	81.4
Louisville	1.6	11.9	3.2	4.1	3.5	5.3	87.3	71.2
BIG 10								
Illinois	0.4	5.9	5.5	18.6	8.2	11.8	81.7	43.8
Iowa	0.6	3	1.9	4.2	6.5	7.6	85.5	72.4
Maryland	1	11.6	N/A	17.3	N/A	9.5	83	49.2
Nebraska	0.4	2.7	1.3	2.9	3.6	6.6	91	74.4
Ohio State	0.8	6.3	2.8	7.1	3.5	4.4	87.5	66.6
Purdue	0.7	2.9	3	8.5	4	5.2	85.8	64
BIG 12								
Kansas	0.4	4.2	1.6	4.7	5.6	8.4	87.8	70.4
Oklahoma	0.42	4.6	1.9	6.4	7.3	10	78	60
Ok. State	0.3	4.3	1.2	1.9	6	8	81.2	67.5
Texas	0.5	4.2	3.7	22	12.9	23.4	76.8	40.1
Texas Tech	0.74	6.5	0.89	3	20.6	29.7	74.1	54.3
W. Virginia	0.9	4.1	1	1.6	0.9	3.8	89.1	80
PAC 10								
Arizona	1	3.9	2.5	5.2	14.6	26.6	75	49.6
Az. State	2	3.7	3	8	16	21.4	72	49.8
UCLA	1.1	3.4	9.6	27.9	12.9	22.1	61.5	26.6
Utah	1	1.4	3.2	5.9	11.2	12.7	76.3	67
Washington	0.4	2.9	8.7	24.7	6.6	8.1	67.6	37.8
Wash. State	1.8	3.2	5.9	6	8.8	15.2	76.8	60.8
SEC								
Alabama	1.2	10.1	0.5	1.2	5	4.9	90	77.4
Auburn	0.3	5.4	1	2.3	3	3.4	93.6	79.2
Kentucky	0.8	7.4	1.4	2.8	3.5	4.9	88.1	75.2
LSU	0.8	12.6		4.4		6.6		69.6
Ole Miss	0.2	12.2	0.5	1.9	3.8	3.5	92.9	77.1
Tennessee	0.9	6.1						
Texas A&M	0.6	2.8	1.7	7.7	13.8	24.1	81.1	60.3
AAC								
UConn	1.6	6.1	5.3	11	12.2	11	75.5	56.1
East Carolina	2	16.1	1	2.5	5	6.8	87	66.2
Houston	3.5	9.9	8.8	22.3	40	35.4	40.1	23
South Florida	2	10	3	7	18	21.2	70.1	46.9
Wichita State	0.6	6.1	5.3	6.5	8.4	12	78.8	58.3
C-USA								
Florida Atlantic	2.1	19.5	0.6	4.4	19	27.3	72.8	40.6
North Texas	4.1	13.3	5	6.4	21.2	25.6	66.8	43.7
S. Mississippi	1.7	28.6	0.9	1.3	3.6	3	91.9	61.1
UTEP	0	2.3	0	0.9	92	83.3	8	5.9
MAC								
Kent State	2	8.7	1.6	1.8	4.2	3.6	86	75.2

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Toledo	0.8	10.6	3.5	2.1	1.3	5.2	89.6	68.5
W. Michigan	0.9	11.4	1.5	2.1	8.6	7.1	84.1	68.6
MOUNTAIN WEST								
Boise State	0.3	1.6	1.3	2.4	11.3	13.8	81.7	72.4
Colorado St.	0.5	2.4	1.7	2.9	10.7	13.9	81.4	70.9
Fresno St.	1	2.6	2.6	13.3	39.4	52.7	49.6	17.8
New Mexico	0.8	2.6	4.2	13.3	43.9	52.7	44.2	17.8
San Diego St.	1.21	3.9	4.1	13.3	10.2	31.1	60.1	33.2
San Jose St.	2.5	3.3	15.9	35.9	34.5	28.4	33.2	15
UNLV	2.7	7.6	9.4	15.8	28.5	30.2	46.8	30.1
Wyoming	0.3	1	1.2	1.1	7	7	85.3	71.7
SUNBELT								
GA Southern	0.9	24.8	0.9	2.3	3.8	6.7	91.4	59.8
Georgia State	8.6	41.4	13.1	14	14.4	11.4	57	23.1
ULAR	2.7	24.7	6.8	2.2	10.8	4.3	68.9	53.9
Misc.								
Binghamton	1.4	5.1	6.6	14.4	9.5	11.5	81.3	57.2
Westchester	1.1	11.3	1.2	2.5	4.5	6	88.7	74.8

APPENDIX B: FRATERNITY COMPOSITION

	% Frat. Black	% Uni. Black	% Frat. Asian	% Uni. Asian	% Frat. Hisp.	% Uni. Hisp.	% Frat. White	% Uni. White
ACC								
Clemson	1	6.5	0.9	2.6	5.6	4.8	89.6	81.4
Louisville	2.7	11.9	4.4	4.1	3.8	5.3	83.6	71.2
Big 10								
Illinois	1.5	5.9	7.6	18.6	10.2	11.8	74.9	43.8
Iowa	1.2	3	2	4.2	6.9	7.6	87.4	72.4
Maryland	2	11.6	N/A	17.3	N/A	9.5	79	49.2
Nebraska	0.6	2.7	0.9	2.9	4.2	6.6	91.5	74.4
Ohio State	1.5	6.3	4.9	7.1	3.9	4.4	83.6	66.6
Purdue	1.3	2.9	5.2	8.5	5.6	5.2	77	64
Big 12								
Kansas	0.6	4.2	1.7	4.7	7	8.4	86.4	70.4
Oklahoma	1.6	4.6	2.9	6.4	8.1	10	75.2	60
Ok. State	0.6	4.3	0.8	1.9	6.2	8	81.3	67.5
Texas	0.5	4.2	3.7	22	12.9	23.4	76.8	40.1
Texas Tech	1	6.5	1.2	3	21.6	29.7	72.8	54.3
West Virginia	1	4.1	1.6	1.6	2	3.8	87.2	80
Pac 10								
Arizona	1	3.9	2.5	5.2	14.6	26.6	75	49.6
Arizona State	3	3.7	5	8	17	21.4	68	49.8
UCLA	1.7	3.4	11.4	27.9	12.9	22.1	57.1	26.6
Utah	1	1.4	3.2	5.9	11.2	12.7	76.3	67
Washington	0.8	2.9	9.1	24.7	6.9	8.1	66.6	37.8
Washington State	3	3.2	6.1	6	8.1	15.2	73.9	60.8
SEC								
Alabama	0.8	10.1	0.4	1.2	4.7	4.9	90.7	77.4
Auburn	0.7	5.4	0.7	2.3	2.3	3.4	93.9	79.2
Kentucky	1.2	7.4	1.6	2.8	4.5	4.9	86.4	75.2
LSU		12.6		4.4		6.6		69.6
Ole Miss	0.8	12.2	0.8	1.9	3.9	3.5	92.7	77.1
Texas A&M	0.8	2.8	2.1	7.7	15.2	24.1	79.1	60.3
AAC								
Uconn	2.2	6.1	6	11	9.6	11	77.2	56.1
East Carolina	5	16.1	1	2.5	6	6.8	81	66.2
Houston	3.2	9.9	14.1	22.3	35.2	35.4	38	23
South Florida	3	10	16.6	7	4.3	21.2	64.3	46.9
Wichita	1.9	6.1	5.4	6.5	10.1	12	74.4	58.3
C-USA								
Fl. Atlantic	2.1	19.5	0.6	4.4	19	27.3	72.8	40.6
North Texas	4.9	13.3	6.6	6.4	28.2	25.6	57.3	43.7
Southern Mississippi	3.5	28.6	1.3	1.3	4	3	86.3	61.1
UTEP	0	2.3	0	0.9	100	83.3	0	5.9

MAC								
Kent State	3.1	8.7	0.8	1.8	3.5	3.6	87.4	75.2
Toledo	2.3	10.6	4.4	2.1	0.1	5.2	85.1	68.5
Western Michigan	2.6	11.4	2	2.1	6.6	7.1	84.5	68.6
Mountain West								
Boise State	0.5	1.6	1.7	2.4	11.8	13.8	78.2	72.4
Colorado State	0.6	2.4	1	2.9	11.1	13.9	80.9	70.9
Fresno State	2.8	2.6	4.6	13.3	53.6	52.7	32.1	17.8
New Mexico	1.6	2.6	3.7	13.3	52.5	52.7	34.4	17.8
San Diego State	2.3	3.9	5.9	13.3	17.2	31.1	55.5	33.2
San Jose State	4.9	3.3	21.4	35.9	38.9	28.4	24.4	15
UNLV	3.7	7.6	11.6	15.8	27.1	30.2	43.1	30.1
Wyoming	0.3	1	1.2	1.1	7	7	85.3	71.7
Sunbelt								
Georgia Southern	1.7	24.8	1.5	2.3	3.8	6.7	87.6	59.8
Georgia State	8.6	41.4	13.1	14	14.4	11.4	57	23.1
ULAR	0	24.7	0	2.2	10	4.3	65	53.9
Misc.								
Binghamton	2.3	5.1	8.3	14.4	13.6	11.5	74.2	57.2
Westchester	3.4	11.3	0.6	2.5	5.7	6	84	74.8