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*pro hac vice pending

Counsel for Students for Fair Admissions

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

STUDENTS FOR FAIR
ADMISSIONS,

Plaintiff,

v.

TRUSTEES OF THE ESTATE OF
BERNICE PAUAHI BISHOP d/b/a
KAMEHAMEHA SCHOOLS,

Defendant.

Case No. 1:25-cv-450-MWJS-RT

**NOTICE OF CONSTITUTIONAL
CHALLENGE**

Judge: Honorable Micah W. J. Smith

Trial Date: None

Under Federal Rule of Civil Procedure 5.1(a), Students for Fair Admissions hereby notifies the Attorney General of the United States that this matter draws into question the constitutionality of 42 U.S.C. §1981, as interpreted by the en banc Ninth Circuit.

The two triggers in Rule 5.1(a)(1)(A) appear to be satisfied. The parties “do not include the United States, one of its agencies, or one of its officers or employees in an official capacity”; and “a federal statute is questioned.” In *Doe v. Kamehameha Schools*, the Ninth Circuit appeared to hold that, when Congress amended §1981 in 1991, it authorized a race-based “preference” in contracting “for Native Hawaiians.” 470 F.3d 827, 849 (9th Cir. 2006) (en banc). SFFA’s complaint contends that, if this portion of the Ninth Circuit’s opinion is an alternative holding that §1981 contains a special carveout for Native Hawaiians, then that carveout violates the Fifth Amendment’s equal-protection principle. Compl. (Doc.1) ¶¶104-06. SFFA thus provides this notice so the Attorney General can decide whether to intervene and defend §1981—by arguing that the Ninth Circuit’s decision contains no such holding, *see* ¶103; that the Ninth Circuit’s interpretation of §1981 is wrong, *see* ¶107; that the remainder of §1981 should be severed from this carveout, *see* ¶106; or that this carveout can survive strict scrutiny, *cf.* ¶105.

This notice, as well as SFFA’s complaint, will be served today on the U.S. Attorney General via certified mail.

Dated: October 23, 2025

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Respectfully submitted,

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