

Abolish DEI Bureaucracies and Restore Colorblind Equality in Public Universities

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Introduction

There is a lot that state legislatures can do to reverse the illiberal takeover of higher education through Diversity, Equity, Inclusion (DEI) offices that, ironically, stifle intellectual diversity, prevent equal opportunity, and exclude anyone who dissents from a rigid orthodoxy. Here are four proposals for reforming public universities:

1. Abolish DEI bureaucracies.
2. End mandatory diversity training.
3. Curtail political coercion.
4. End identity-based preferences.

These rather straightforward reforms would go far in pushing back on some of the negative trends that have afflicted higher education.¹

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Proposal 1: Abolish DEI Bureaucracies

SECTION 1. PURPOSE

So-called Diversity, Equity, and Inclusion (DEI) bureaucracies at public universities operate as divisive ideological commissariats, promulgating and enforcing Critical Race Theory and related political orthodoxies as official campus policy. Yet recent scientific surveys of universities in the Power Five athletic conferences demonstrate that students feel *less welcome*, not more welcome, at universities with larger DEI staffs.²

Administrative DEI offices within universities are not covered by norms of academic freedom and are in fact a threat to academic freedom and academic integrity. Administrators in public institutions of higher education should maintain institutional neutrality on controversial political questions extraneous to the business of educating students. Contrary to this obligation, DEI advances primarily political aims rather than educational aims. Additionally, the growth of DEI bureaucracies has fueled bureaucratic bloat and rising costs, contributing to the indebtedness of students and parents.

The purpose of this policy document is to ensure that public universities succeed in their mission to promote the search for truth and knowledge while maintaining academic freedom and integrity, without being transformed into factories of ideological conformity. To this end, the DEI bureaucracies within public universities must be dismantled.

SECTION 2. MODEL LEGISLATIVE TEXT

- A. Public or land-grant institutions of higher education in the state of [STATE] may not expend appropriated funds or otherwise expend any funds derived from bequests, charges, deposits, donations, endowments, fees, grants, gifts, income, receipts, tuition, or any other source, to establish, sustain, support, or staff a diversity, equity, and inclusion office or to contract, employ, engage, or hire an individual to serve as a diversity, equity, and inclusion officer.
- B. For the avoidance of doubt, nothing in this section shall be construed to cover or affect an institution of higher education's funding of:
1. Academic course instruction;
 2. Research and creative works by the institution's students, faculty, or other research personnel, and the dissemination thereof;
 3. Activities of registered student organizations;
 4. Arrangements for guest speakers and performers with short-term engagements;
 5. Mental or physical health services provided by licensed professionals.
- C. For purposes of this section, "diversity, equity, and inclusion" include:
1. Any effort to manipulate or otherwise influence the composition of the faculty or student body with reference to race, sex, color, or ethnicity, apart from ensuring colorblind and sex-neutral admissions and hiring in accordance with state and federal anti-discrimination laws;

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2. Any effort to promote differential treatment of or provide special benefits to individuals on the basis of race, color, or ethnicity.
 3. Any effort to promote or promulgate policies and procedures designed and/or implemented with reference to race, color, or ethnicity;
 4. Any effort to promote or promulgate trainings, programming, or activities designed and/or implemented with reference to race, color, ethnicity, gender identity, or sexual orientation;
 5. Any effort to promote as the official position of the administration, the college, the university, or any administrative unit thereof, a particular, widely contested opinion referencing unconscious or implicit bias, cultural appropriation, allyship, transgender ideology, microaggressions, group marginalization, anti-racism, systemic oppression, social justice, intersectionality, neo-pronouns, heteronormativity, disparate impact, gender theory, racial or sexual privilege, or any related formulation of these concepts.
- D. For purposes of this section, a “diversity, equity, and inclusion office” is any division, office, center, or other unit of an institution of higher education or component thereof which is responsible for creating, developing, designing, implementing, organizing, planning, or promoting policies, programming, training, practices, activities, and procedures relating to diversity, equity, and inclusion.
- E. For the purposes of this section, a “diversity, equity, and inclusion office” does not include:
1. An office staffed exclusively by licensed attorneys (except for paralegal and secretarial support) and certified by the attorney general of the state of [STATE] as operating with the sole and exclusive mission of ensuring legal compliance with the institution of higher education’s obligations under Title IX of the Education Amendments of 1972, as amended, the Americans with Disabilities Act, as amended, the Age Discrimination in Employment Act, as amended, Title VI of the Civil Rights Act of 1964, applicable court order, or other applicable state and federal law.
 2. An academic department defined as a unit of an institution of higher education that exists primarily for the purpose of offering courses for degree credit and that does not establish policy or procedures to which other units of the institution are subject.
 3. An office solely engaged in new student recruitment.
 4. A registered student organization.
- F. For purposes of this section, a “diversity, equity, and inclusion officer” is an individual:
1. Who is:
 - i. A full or part-time employee of an institution of higher education or component thereof; or
 - ii. An independent contractor of an institution of higher education.
 2. Whose duties for the institution include coordinating, creating, developing, designing, implementing, organizing, planning, or promoting policies, programming, training, practices, activities, and procedures relating to diversity, equity, and inclusion.

G. For the purposes of this section, “diversity, equity, and inclusion officer” does not include:

1. Any full or part-time employee who is a licensed attorney and whose sole job duties related to diversity, equity, and inclusion are to ensure compliance with the institution of higher education’s obligations under Title IX of the Education Amendments of 1972, as amended, the Americans with Disabilities Act, as amended, the Age Discrimination in Employment Act, as amended, Title VI of the Civil Rights Act of 1964, applicable court order, or other applicable state and federal law.
2. Any faculty member while engaged in teaching, research, and the production of creative works; the dissemination of their research and creative works; or advising a registered student organization.
3. A guest speaker or performer with a short-term engagement.

H. For the purposes of this section, “diversity equity, and inclusion office” includes at least the following offices:

1. [DEI Division at Public University A.]
2. [DEI Division at Public University B.]

I. For the purposes of this section, “diversity, equity, and inclusion officer” includes at least the following positions:

1. [VP for DEI at Public University A.]
2. [VP for DEI at Public University B.]

J. Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public higher education.

K. Any funds that would otherwise have been expended on diversity, equity, and inclusion offices or diversity, equity, and inclusion officers in Fiscal Year 2023 may be reallocated, at the discretion of the governing board of the institution of higher education, to merit scholarships for lower- and middle-income students, and to reduce tuition for in-state students.

L. None of the funds appropriated by this Act for Fiscal Year [20XX] may be expended by an institution of higher education until its governing board has filed a report with the Department of Education, which discloses (i) the steps taken to comply with this section by the governing board and its staff, the administration, staff, and faculty of the institutions under the board’s governance, (ii) the number and job titles of the individuals deemed to be required by the institution of higher education’s obligations to comply with Title IX of the Education Amendments of 1972, as amended, the Americans with Disabilities Act, as amended, the Age Discrimination in Employment Act, as amended, Title VI of the Civil Rights Act of 1964, applicable court order, or other applicable state and federal law; and (iii) certifies that the institutions of higher education under the board’s governance are fully compliant with this section. The institution of higher education shall also make such report available for the public on its website.

M. Attorney General.

1. Any person may notify the attorney general of a violation or potential violation of this chapter by an institution of higher education.

2. The attorney general may file suit for a writ of mandamus compelling the institution of higher education to comply with this section.

N. Cause of Action.

1. Any student enrolled in a degree program at an institution of higher education, any faculty member of an institution of higher education, or any alumnus/alumna of an institution of higher education may bring an action against that institution of higher education if it violates this section.
2. If the claimant shows that the institution of higher education violated this section, the claimant is entitled to injunctive relief.

O. Venue.

1. Notwithstanding any other law, a civil action brought under this section may be brought in:
 - i. The county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
 - ii. The county of residence in this state for any one of the natural person defendants at the time the cause of action accrued;
 - iii. The county of the principal office in this state of any one of the defendants that is not a natural person; or
 - iv. The county of residence for the claimant if the claimant is a natural person residing in this state.

- P. If any provision of this chapter, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this chapter and the application of its provisions to any other person or circumstance shall not be affected thereby.

SECTION 3: RATIONALE

There is a widespread consensus among conservative academics and higher education experts, as well as many centrist faculty, that university DEI offices are the nerve center of woke ideology on university campuses. DEI officers form a kind of revolutionary vanguard on campuses; their livelihood can only be justified by discovering—*i.e.*, manufacturing—new inequities to be remedied.

The absurdity of the status quo can be illustrated by way of a simple counterfactual: Imagine a world in which UC Berkeley had an administrative division, funded at \$25 million per year, whose sole purpose was to train students, faculty, and staff in conservative ideology; to create political tests in faculty hiring; and to publicly shame students or faculty who violated traditionalist pieties. California's Democratic state legislators would abolish this bureaucracy before breakfast on their first day in session. Republican legislators, by contrast, have allowed analogous bureaucracies to emerge and metastasize at nearly all their public universities.

There is no reliable evidence to support the view that large DEI offices have a positive impact on minority students' sense of belonging. In fact, the standard DEI narrative aims to persuade minority students that they are oppressed and unwelcome. Research has shown that the presence of this bureaucracy has *no positive impact*, and potentially a negative impact, on minority students'

sense of belonging at universities. Comparing DEI headcount against campus climate survey data, one analysis found that “student reports on campus climate are no better—and often worse, especially for minority students—at universities with larger DEI staff levels.”³

In addition to these fundamental problems, it is worth noting that much of the growth in administrative bloat at universities has come from bloated DEI bureaucracies.⁴ Cutting this unnecessary bureaucracy down to size is just good government.

Proposal 2: End Mandatory Diversity Training

SECTION 1. PURPOSE

The state of [STATE] is committed to ending discrimination in all its forms; critical to this commitment is the obligation to treat citizens as individuals, not simply as components of a racial, religious, sexual, or national class. As part of this obligation, the state of [STATE] is dedicated to providing higher education to all on equal terms.

Across American academia, a discriminatory ideology antithetical to the state’s commitment to nondiscrimination, has grown popular under the guise of “diversity, equity, and inclusion,” or DEI. Although DEI sounds innocuous and even salutary, it’s an Orwellian phrase that in reality prevents intellectual diversity, impedes equal opportunity, and excludes those who don’t conform to progressive orthodoxy. Students and employees have the constitutional right to adopt such a discriminatory ideology on their own, but the state of [STATE] will not make adherence to any ideology, let alone a discriminatory one, a prerequisite to equal access to public institutions of higher education as a student or as an employee.

Public institutions of higher education are strengthened, not weakened, by diversity of thought, ideas, and expression. Furthermore, since the speech made by employees of public institutions of higher education while conducting mandatory training sessions is speech made in the performance of their duties as employees of the State, the legislature must ensure that this speech is not discriminatory.

SECTION 2: MODEL LEGISLATIVE TEXT

A. A public or land-grant institution of higher education may not make diversity training mandatory.

B. For the purposes of this section:

1. “Institution of higher education” has the meaning assigned by [appropriate section in the state code].
2. “Mandatory” means a requirement of any kind imposed on a student, employee, or applicant for employment, including but not limited to:
 - i. A requirement, the nonfulfillment of which, may adversely affect the status, salary, or benefits of an employee or applicant for employment at the institution of higher education or component thereof;

- ii. A requirement to participate in any administrative process or decision-making body of the university, such as a hiring committee;
 - iii. A requirement to participate in any otherwise available program sponsored by the institution of higher education or component thereof;
 - iv. A requirement to receive any generally available benefit offered by the institution of higher education or component thereof;
 - v. A requirement to live in any residential facility used exclusively for housing or boarding students or faculty;
 - vi. A requirement for the application or receipt of any scholarship, loan, grant, financial aid, or forgiveness program.
3. “Diversity, equity, and inclusion” refer to interrelated concepts:
- i. Purporting to describe or expose structures, systems, or relations of power, privilege, or subordination on the basis of race, sex, color, gender, ethnicity, gender identity, or sexual orientation; or
 - ii. Purporting to describe methods to identify, dismantle, or oppose such structures, systems, or relations; or
 - iii. Justifying differential treatment or special benefits conferred on the basis of race, sex, color, gender, ethnicity, gender identity, or sexual orientation;
 - iv. Including unconscious or implicit bias, cultural appropriation, allyship, transgenderism, microaggressions, micro-invalidating, group marginalization, anti-racism, systemic oppression, ethnocentrism, structural racism, structural inequity, social justice, intersectionality, neo-pronouns, inclusive language, heteronormativity, disparate impact, gender identity, gender theory, racial or sexual privilege, or related formulations of these concepts.
4. “Diversity training” includes a training, seminar, discussion group, workshop, or other instructional program, whether provided in-person, online, or by any other means, with a purpose of advising, counseling, demonstrating, explaining, instructing, or teaching participants about diversity, equity, and inclusion.
5. “Diversity training” does not include:
- i. An academic course offered for credit;
 - ii. Activities of a registered student organization affecting only its members.

C. Attorney General.

- 1. Any person may notify the attorney general of a violation or potential violation of this chapter by an institution of higher education.
- 2. The attorney general may file suit for a writ of mandamus compelling the institution of higher education to comply with this section.

D. Cause of Action.

1. Any student enrolled in a degree program at an institution of higher education, any faculty member of an institution of higher education, or any alumnus/alumna of an institution of higher education may bring an action against that institution of higher education if it violates this section.
2. If the claimant shows that the institution of higher education violated this section, the claimant is entitled to injunctive relief.

E. Venue.

1. Notwithstanding any other law, a civil action brought under this section may be brought in:
 - i. The county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
 - ii. The county of residence in this state for any one of the natural person defendants at the time the cause of action accrued;
 - iii. The county of the principal office in this state of any one of the defendants that is not a natural person; or
 - iv. The county of residence for the claimant if the claimant is a natural person residing in this state.

F. This section shall not be construed to:

1. Limit the academic freedom of any individual faculty member to direct the instruction within his or her own course;
2. Prohibit any program or training scripted by licensed attorneys and required to comply with the institution of higher education's obligations under Title IX of the Education Amendments of 1972, as amended, the Americans with Disabilities Act, as amended, the Age Discrimination in Employment Act, as amended, Title VI of the Civil Rights Act of 1964, applicable court order, or other applicable state and federal law, provided the institution of higher education makes the materials for the program publicly available on the institution of higher education's website.

G. If any provision of this chapter, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this chapter and the application of its provisions to any other person or circumstance shall not be affected thereby.

SECTION 3. RATIONALE

DEI ideology shapes a campus largely through mandatory training. DEI training is required for students, faculty, and staff. Even when DEI officials claim their training is "voluntary," it is often in fact required for faculty who wish to perform the most basic roles on campus. For example, at most leading public universities, DEI training is mandatory for faculty who wish to serve on any hiring committee, which is a function nearly all faculty perform. Typical DEI training includes unscientific claims about so-called microaggressions and implicit bias, and it rejects the basic American premise that everyone should be treated equally.

DEI has morphed into a state-subsidized ideology of grievance, racial division, and anti-Americanism.

Proposal 3: Curtail Political Coercion

SECTION 1. PURPOSE

The use of so-called “diversity statements” in university employment processes serves as a political litmus test to exclude applicants who do not adhere to CRT and other favored beliefs about American social systems and history.⁵

The U.S. Supreme Court determined that requiring loyalty oaths in public education is unconstitutional, stating in *Keyishian v. Board of Regents* (1967) that the First Amendment “does not tolerate laws that cast a pall of orthodoxy over the classroom.”⁶ Despite that ruling, a University of California Berkeley self-survey of the 2018–19 academic year found that 76% percent of applicants for faculty positions in the life sciences were eliminated on the basis of their diversity statements alone.⁷ More recently, a 2021 survey by the Center for the Study of Partisanship and Ideology found that over one third of U.S. faculty openly admit that they would discriminate on the basis of political ideology in a professional context.⁸

The purpose of this policy document is to maintain the spirit of free inquiry that lies at the heart of the liberal arts. Banning mandatory diversity statements at public institutions of higher education would protect students, faculty, and classrooms against political orthodoxy.

SECTION 2. MODEL LEGISLATIVE TEXT

- A. No diversity statement shall ever be required or solicited as part of an admissions process, employment application process, hiring process, contract renewal process, or promotion process; or as a condition of participation in any administrative or decision-making function of any public or land-grant post-secondary educational institution of the state.
- B. For the purposes of this section, “diversity statement” means any written or oral statement discussing:
1. The applicant or candidate’s race, sex, color, ethnicity, gender identity, or sexual orientation; or
 2. The applicant or candidate’s views on, experience with, or contributions to diversity, equity, and/or inclusion; marginalized groups; anti-racism; social justice; intersectionality; confessing one’s race-based privilege; or related concepts; or
 3. The applicant or candidate’s views on or experience with the race, sex, color, ethnicity, gender identity, or sexual orientation of students and co-workers; or
 4. The applicant or candidate’s views regarding any theory or practice that advocates for the differential treatment of any individual or groups of individuals based on race, sex, color, gender, ethnicity, gender identity, or sexual orientation.
- C. No public or land-grant institution of higher education shall grant preferential consideration to an applicant, teacher, employee, or student for opinions expressed or action taken pertaining to another individual or a group of individuals in which the institution’s consideration is based on race, sex, color, ethnicity, gender identity, or sexual orientation of those other individuals.
- D. For avoidance of doubt, nothing in this law shall be construed to:

1. Prevent an institution requiring applicants and candidates:
 - i. To disclose or discuss the content of their scholarly research or creative works;
 - ii. To certify compliance with state and federal anti-discrimination law;
 - iii. To discuss pedagogical approaches or experience with students with mental or physical disabilities;
 - iv. To affirm fidelity to or provide an oath to uphold the Constitution and laws of the state of [STATE] and the United States.
 2. Prevent an applicant or candidate from providing, of his or her own initiative, any information described in subsection (2) of this law.
- E. Every public university's Office of General Counsel shall annually transmit a report on compliance with this law in writing to the speaker of the House and president of the Senate.
- F. Attorney General.
1. Any person may notify the attorney general of a violation or potential violation of this chapter by an institution of higher education.
 2. The attorney general may file suit for a writ of mandamus compelling the institution of higher education to comply with this section.
- G. Cause of Action.
1. Any student enrolled in a degree program at an institution of higher education, any faculty member of an institution of higher education, or any alumnus/alumna of an institution of higher education may bring an action against that institution of higher education if it violates this section.
 2. If the claimant shows that the institution of higher education violated this section, the claimant is entitled to injunctive relief.
- H. Venue.
1. Notwithstanding any other law, a civil action brought under this section may be brought in:
 - i. The county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
 - ii. The county of residence in this state for any one of the natural person defendants at the time the cause of action accrued;
 - iii. The county of the principal office in this state of any one of the defendants that is not a natural person; or
 - iv. The county of residence for the claimant if the claimant is a natural person residing in this state.

- I. If any provision of this chapter, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this chapter and the application of its provisions to any other person or circumstance shall not be affected thereby.

SECTION 3. RATIONALE

Through their use of diversity statements, public universities across the country increasingly require the equivalent of political loyalty oaths in their faculty hiring processes.

These loyalty oaths compromise our constitutional protections and the very spirit of intellectual freedom that lies at the foundation of the liberal arts. A bill banning the requirement of diversity statements at public institutions of higher education would defend the classroom against orthodoxy while protecting arenas in which faculty applicants can exercise the very freedom of mind cultivated in their own classrooms. (Legislatures should also consider instituting such a prohibition in any state government or government-funded agency, for that matter.)

The American Enterprise Institute reported in 2021 that 19% of postings on leading university job boards require diversity statements. The figure is 40% for universities ranked in the top 100 by *U.S. News & World Report*.⁹ It is clear that many universities condition their hiring decisions on the applicant's conformity (or a lack thereof) to DEI-shaped ideologies.

As Kenin M. Spivak reported, such loyalty oaths often require that applicants "state their belief in the importance of DEI, cite prior efforts to promote DEI, and pledge to integrate DEI into their role as a faculty member." DEI efforts are also required or being proposed at institutions like the National Science Foundation, the National Institutes of Health, most college accreditation agencies, the American Bar Association, and the American Medical Association.¹⁰

In *Wooley v. Maynard* (1977), the Supreme Court held that the "government cannot compel individuals to subscribe to political doctrines, even if broadly acceptable."¹¹ Diversity statements, which have been criticized as political tests by the Academic Freedom Alliance and the Foundation for Individual Rights in Education, cannot meet even that basic constitutional standard.

This proposal for curtailing political coercion in public universities builds on the work of the Martin Center and Goldwater Institute.¹²

Proposal 4: End Identity-Based Preferences

SECTION 1. PURPOSE

The purpose of this policy document is to ensure that public institutions of higher education in the state of [STATE] will not discriminate based on identity in admissions or employment.

SECTION 2. MODEL LEGISLATIVE TEXT

- A. Notwithstanding any other provision of law, no public or land-grant institution of higher education shall grant preference to any applicant for admission or employment on the basis of race, sex, color, ethnicity, or national origin.

B. Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are conducive to the normal operation of institutions of public education.

C. Attorney General.

1. Any person may notify the attorney general of a violation or potential violation of this chapter by an institution of higher education.
2. The attorney general may file suit for a writ of mandamus compelling the institution of higher education to comply with this section.

D. Cause of Action.

1. Any student enrolled in a degree program at an institution of higher education, any faculty member of an institution of higher education, or any alumnus/alumna of an institution of higher education may bring an action against that institution of higher education if it violates this section.
2. If the claimant shows that the institution of higher education violated this section, the claimant is entitled to injunctive relief.

E. Venue.

1. Notwithstanding any other law, a civil action brought under this section may be brought in:
 - i. The county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
 - ii. The county of residence in this state for any one of the natural person defendants at the time the cause of action accrued;
 - iii. The county of the principal office in this state of any one of the defendants that is not a natural person; or
 - iv. The county of residence for the claimant if the claimant is a natural person residing in this state.

SECTION 3. RATIONALE

This simple legislation is based on California's Proposition 209,¹³ a constitutional ban on racial quotas and preferences in public higher education (among other areas).

Endnotes

- ¹ This model legislation was developed in close cooperation with the National Association of Scholars.
- ² Jay Greene and James Paul, “Diversity University: DEI Bloat in the Academy,” Heritage Foundation, July 27, 2021.
- ³ Ibid.
- ⁴ American Council of Trustees and Alumni, “How Colleges Spend Money,” 2020.
- ⁵ See, e.g., Abigail Thompson, “The University’s New Loyalty Oath,” *Wall Street Journal*, Dec. 19, 2019.
- ⁶ *Keyishian v. Board of Regents*, 385 U.S. 589 (1967).
- ⁷ Rebecca Heald and Mary Wildermuth, “Year End Summary Report: 2018-2019,” Initiative to Advance Faculty Diversity, Equity and Inclusion in the Life Sciences.
- ⁸ Eric Kaufmann, “Academic Freedom in Crisis: Punishment, Political Discrimination, and Self-Censorship,” Center for the Study of Partisanship and Ideology, March 1, 2021.
- ⁹ James D. Paul and Robert Maranto, “Other Than Merit: The Prevalence of Diversity, Equity, and Inclusion Statements in University Hiring,” American Enterprise Institute, November 2021.
- ¹⁰ Kenin M. Spivak, “The New Loyalty Oaths,” *National Review*, Nov. 13, 2021.
- ¹¹ *Wooley v. Maynard*, 430 U.S. 705 (1977).
- ¹² See, e.g., “End Political Litmus Tests in Education Act: Model Legislation,” James G. Martin Center for Academic Renewal and the Goldwater Institute, February 2022.
- ¹³ Proposition 209: Prohibition Against Discrimination or Preferential Treatment by State and Other Public Entities