



September 19, 2023

SENT VIA E-MAIL & U.S. MAIL

Fred DuVal, Chairman
Arizona Board of Regents
2700 North Central Avenue, Suite 400
Phoenix, Arizona 85004
Fred.duval@azregents.edu

Re: Arizona State University Training—A.R.S. § 41-1494

Dear Chairman DuVal:

We write to express concern that by spending public money and requiring faculty and staff to take the “ASU Inclusive Communities” training course, Arizona State University (“ASU”), under the governance of the Arizona Board of Regents (“ABOR”), is violating state law.

In 2022, the Arizona Legislature passed A.R.S. § 41-1494. That statute prohibits the state and its agencies from: (1) “us[ing] public monies for training”; or (2) “requir[ing] an employee to engage in training ... that presents any form of blame or judgment on the basis of race, ethnicity or sex.”

The “ASU Inclusive Communities” training course, however, spends state money in a manner prohibited by this statute and requires employees to engage in training prohibited by this statute. Section 41-1494 defines “blame or judgment” training as any training that promulgates the theory that:

1. One race, ethnic group or sex is inherently morally or intellectually superior to another race, ethnic group or sex.
2. An individual, by virtue of the individual’s race, ethnicity or sex, is inherently racist, sexist or oppressive, whether consciously or unconsciously.
3. An individual should be invidiously discriminated against or receive adverse treatment solely or partly because of the individual’s race, ethnicity or sex.
4. An individual’s moral character is determined by the individual’s race, ethnicity or sex.
5. An individual, by virtue of the individual’s race, ethnicity or sex, bears responsibility for actions committed by other members of the same race, ethnic group or sex.
6. An individual should feel discomfort, guilt, anguish or any other form of psychological distress because of the individual’s race, ethnicity or sex.
7. Meritocracy or traits such as a hard work ethic are racist or sexist or were created by members of a particular race, ethnic group or sex to oppress members of another race, ethnic group or sex.

The statute makes clear that while the state may, of course, teach *that* such ideas exist, it may not *promulgate* these messages of blame or judgment in any official sense, or mandate the participation of employees at any session where these ideas are promulgated.

The “ASU Inclusive Communities” training, however, is premised on the “blame or judgment” referred to in this statute. For example, the training incorporates such notions as:

- “[A]cknowledging the history of white supremacy and the social conditions for it to exist as a structural phenomenon” (See Slide 2.2 Expert Perspectives);
- “How is white supremacy normalized in society” (*id.*);
- “[G]iven the socio-historical legacy of racism, sexism, homophobia and other forms of structural inequality, perceptions of authority and control are not always granted to minoritized [*sic*] faculty.” (Slide 3.2 Power & Privilege in the Classroom);
- “White Fragility” (See Slide 5.0 Additional Resources, Readings, Essays and Articles);
- “What is White Privilege, Really” (*id.*);
- “Explaining White privilege to a broke white person...” (*id.*);
- “7 Ways White People Can Combat Their Privilege” (*id.*);
- “Racism ... can take the form of ... and include seemingly innocuous questions or comments, such as asking people of color where they are from” (See Slide 5.0 Additional Resources, Race and Racism);
- “Sexual identities are linked to power, and heterosexuality, the dominant sexual identity in American culture, is privileged by going largely unquestioned.” (See Slide 5.0 Additional Resources, Sexuality and Sexual Orientation);
- “[I]t scares people to talk about white supremacy or to be called a white supremacist. But if we start thinking about it in terms of whiteness as something that is culturally neutral and we’re moving it from that neutral space into a critical space.” (See Transcript of Inclusive Communities Video Transcript, p. 43);
- “[W]e have to open the space to critique whiteness.” (See Transcript of Inclusive Communities Video Transcript, p. 44);
- “[W]hite supremacy ... referring to here is the period between the 1500’s and the 1800’s that encompasses both Spanish colonization and Euro American colonization. And what colonization did, was it really created this system of binary thinking. There were folks that were inherently good and folks that were inherently bad, and that led to the systems of superiority that were then written into the foundational documents of our Nation.” (See Transcript of Inclusive Communities Video Transcript, p. 39-40).

Obviously, ABOR falls within the statute’s prohibition as a state actor. *State v. Arizona Bd. of Regents*, 253 Ariz. 6, 10 ¶ 10 (2022) (The Arizona Supreme Court “has already resolved that ABOR is considered the ‘state.’”); *see also Bd. of Regents of Univs. & State Coll. v. City of Tempe*, 88 Ariz. 299, 305 (1960); *City of Tempe v. Del E. Webb Corp.*, 13 Ariz. App. 597, 598 (1971). For ABOR and ASU to spend public money for training that promulgates the blame and judgment referenced above, or to require any employee to engage in such training, is therefore plainly illegal.

Consequently, we request that ABOR direct ASU to immediately cease and desist from spending any public monies to provide the “ASU Inclusive Communities” training, and/or requiring that any member of the ASU faculty or staff participate in such training.

Should ASU continue to violate the law, it will expose ABOR to potential litigation.

We also note that ABOR should conduct an immediate audit of other courses at ASU and other Arizona universities¹ to ensure compliance with A.R.S. § 41-1494.

I look forward to working with you to quickly resolve this matter. Should you have any questions in the meantime, please do not hesitate to contact me at (602) 462-5000 or sskankey@goldwaterinstitute.org.

Sincerely,



Stacy Skankey
Staff Attorney
Scharf-Norton Center for Constitutional Litigation
at the Goldwater Institute

Cc: Cecilia Mata, Cecilia.Mata@azregents.edu
Lyndel Manson, Lyndel.Manson@azregents.edu
Robert J. Herbold, Robert.Herbold@azregents.edu
Larry Edward Penley, Larry.Penley@azregents.edu
Jessica Pacheco, Jessica.Pacheco@azregents.edu
Doug Goodyear, doug.goodyear@azregents.edu
Gregg Brewster, Gregg.brewster@azregents.edu
Katelyn Reese, katelyn.reese@azregents.edu
David Zaragoza, David.Zaragoza@azregents.edu
Hon. Katie Hobbs (via regular mail)
Tom Horne (via regular mail)
John Arnold, john.arnold@azregents.edu
Kimberly Demarchi, Kimberly.demarchi@asu.edu

¹ See, e.g., <https://diversity.medicine.arizona.edu/education-training/diversity-equity-and-inclusion-trainings> (training courses provided by the College of Medicine at the University of Arizona); <https://eller.arizona.edu/diversity-training> (training courses offered at the Eller College of Management at the University of Arizona); and <https://in.nau.edu/eao/training/> (optional training offered by Northern Arizona University).