

ANDERSON V. ARIZONA BOARD OF REGENTS BACKGROUNDER

Executive Summary

Arizona State University (ASU) requires its faculty and staff to take a course titled “ASU Inclusive Communities”—a training that teaches doctrines often referred to as “critical race theory” or “diversity, equity, inclusion and belonging.” These are discriminatory doctrines often masked in innocent sounding words like “diversity.” What’s more, state law prohibits mandatory training for state employees and use of taxpayer resources to teach doctrines that discriminate based on race, ethnicity, sex, and other characteristics.

Among some of the concepts presented in the Inclusive Communities training is that white supremacy was “written into the foundational documents of our nation,” that racism takes the form of innocuous questions or comments like asking someone where they are from, and that American colonization created systems of thinking people are inherently good or bad. These concepts are not just outlandish, but university professors (on the taxpayers’ dime) are being forced to participate in these trainings.

Owen Anderson is a faculty member of ASU and is required to take Inclusive Communities. Every employee of ASU is required as a condition of employment to take the Inclusive Communities training both upon hire and again every two years. An employee’s failure to take the training may result in being reported to their supervisor. At the conclusion of the training, employees, including Anderson, must take a test covering the materials taught in Inclusive Communities. If the employee does not provide “correct” answers to highly subjective and often controversial questions – as determined by the creators of the test – then the employee can “fail” the training, after which the employee would be reported to a supervisor.

Arizona law prohibits both the spending of public money on such discriminatory training and mandating that employees take such trainings. Arizona law specifically prohibits any forms of “blame or judgment on the basis of race, ethnicity or sex.” This would include funding and teaching: that an individual is responsible for the actions committed by other members of the individual’s race, ethnicity or sex; that an individual should feel psychological distress because of his or her demographic characteristics; and that meritocracy is a racist or sexist tool.

The Arizona Constitution also protects the right to free speech but requiring public employees to submit to an examination in which ASU predetermines the “correct” answers, compels ASU’s employees to agree to this speech, even if they find it objectionable. That is unconstitutional.

The Goldwater Institute sent a demand letter to the Arizona Board of Regents to put an end of the Inclusive Communities training, but ASU continues to fund and promulgate the training. That is why the Goldwater Institute filed a lawsuit against the Arizona Board of Regents demanding that ASU stop spending public money on and requiring training of the Inclusive Communities training.

Background

Owen Anderson was hired as a faculty member of ASU. In October 2022, Anderson received an email from ASU that all employees were required to take the ASU Inclusive Communities training and they would have to repeat the training again every two years. Anderson understood that if he failed to take the training that it would be reported to his supervisor. He understood that after taking the training, he would also be required to take an online quiz testing his knowledge of the training and failed answers would be reported to his supervisor. Anderson viewed, but did not complete the mandatory training nor the required quiz that followed.

In May 2023, the Goldwater Institute received via a public records request, the slides and video transcript from the ASU Inclusive Communities training. The slides included statements or concepts including, but not limited to: acknowledging the history of white supremacy and social conditions for it to exist as a structural phenomenon; how perceptions of authority and control are not granted to minoritized faculty; racism takes the form of innocuous questions or comments; and heterosexuality is privileged and goes unquestioned. The video transcript included, but was not limited to, the following statements or concepts: it scares people to be called a white supremacist; we have to open the space to critique whiteness; and white supremacy was written into the foundational documents of our Nation. The Inclusive Communities training thus promulgated and funded concepts of blame or judgment on the basis of race, ethnicity or sex in violation of Arizona law.

This training is followed by the Inclusive Communities quiz. The quiz designated the “correct” answers to statements or concepts including, but not limited to: systemic unconscious bias; land acknowledgment statements holding organizations and people accountable; that diversity, equity, inclusion and belonging should be part of every facet of the university; decolonizing the university; and transformative justice.

In September 2023, the Goldwater Institute sent a letter to the Arizona Board of Regents (ABOR) demanding that ASU 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. But, despite its warning, ASU continues to fund and require the training.

ASU continues to spend taxpayer money on the ASU Inclusive Communities training and continues to require that public employees take this training, in violation of state law. ASU continues to mandate that employees take a quiz following the Inclusive Communities training and attest their allegiance to these principles by selecting “correct” answers, thereby compelling ASU employees’ speech, in violation of the Arizona Constitution.

Legal Analysis

Arizona law prohibits the state from requiring an employee to “engage in training, orientation or therapy that presents any form of blame or judgment on the basis of race, ethnicity or sex.” A.R.S. § 41-1494(A). The law also prohibits the state from using “public monies for training,

orientation or therapy that presents any form of blame or judgment on the basis of race, ethnicity or sex.” A.R.S. § 41-1494(B).

Blame or judgment is defined by Arizona law through seven concepts that can be summarized as: one person or group of people being treated differently from another based solely on demographic or immutable characteristics such as race or national origin. A.R.S. § 41-1494(D). This also includes concepts like “an individual should feel discomfort, guilt, anguish or any other form of psychological distress because of the individual’s race, ethnicity or sex” and “meritocracy or traits such as hard work ethic are racist or sexist...or [used to] oppress members of another race, ethnic group or sex.” *Id.*

Using taxpayer money to develop, require, administer and implement a training that presents *any* form of blame or judgment is a violation of Arizona law. It is also a violation of Arizona law to require an employee to complete training presenting *any* form of blame or judgment. ASU is doing both. ASU uses taxpayer money to create and disseminate the Inclusive Communities training and they also require ASU faculty and staff to take the training upon hire and again every two years.

Additionally, the Arizona Constitution protects the right to free speech, including the right to speak freely or not to speak. Ariz. Const. art. II, § 6. The protections of the Arizona Constitution offer broader protections for free speech than the First Amendment to the U. S. Constitution. ASU employees are required to attest their agreement to the principles being mandated by the Inclusive Communities training by taking an quiz with predetermined “correct” answers.” The views and principles of the Inclusive Communities training are the preferred messages of ASU, but Anderson does not agree with these views. By taking the quiz, Anderson is being compelled to agree with speech he finds objectionable or, be reported to his supervisor.

Case Logistics

The case is *Anderson v. Arizona Board of Regents*. The complaint was filed on March 19, 2024, in Maricopa County Superior Court.

The Legal Team

Stacy Skankey is a Staff Attorney at the Goldwater Institute’s Scharf-Norton Center for Constitutional Litigation, where she litigates in areas of property rights, government transparency, free speech, economic liberty, and regulatory reform.

Parker Jackson is a Staff Attorney at the Goldwater Institute’s Scharf-Norton Center for Constitutional Litigation, where he focuses on taxpayer protection, free speech, associational rights, government transparency, education, and election-related issues.