GOLDWATER INSTITUTE

Abolish DEI Bureaucracies and Restore Colorblind Equality in Public Universities

Proposal 1: Abolish DEI Bureaucracies

AN ACT relating to diversity, equity, and inclusion offices and officers at public institutions of higher education.

(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;
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:
    a. A full or part-time employee of an institution of higher education or component thereof; or
    b. 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:
    a. The county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
    b. The county of residence in this state for any one of the natural person defendants at the time the cause of action accrued;

c. The county of the principal office in this state of any one of the defendants that is not a natural person; or

d. 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.

Proposal 2: End Mandatory Diversity Training

AN ACT relating to mandatory diversity training at public institutions of higher education.

(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:
    a. 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;
    b. A requirement to participate in any administrative process or decision-making body of the university, such as a hiring committee;
    c. A requirement to participate in any otherwise available program sponsored by the institution of higher education or component thereof;
    d. A requirement to receive any generally available benefit offered by the institution of higher education or component thereof;
    e. A requirement to live in any residential facility used exclusively for housing or boarding students or faculty;
    f. 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:
    a. 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
    b. Purporting to describe methods to identify, dismantle, or oppose such structures, systems, or relations; or
    c. Justifying differential treatment or special benefits conferred on the basis of race, sex, color, gender, ethnicity, gender identity, or sexual orientation;
    d. Including unconscious or implicit bias, cultural appropriation, allyship, transgenderism, microaggressions, micro-invalidation, 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:
    a. An academic course offered for credit;
    b. 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:
    a. The county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
    b. The county of residence in this state for any one of the natural person defendants at the time the cause of action accrued;
    c. The county of the principal office in this state of any one of the defendants that is not a natural person; or
    d. 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.

Proposal 3: Curtail Political Coercion

AN ACT relating to diversity statements and political coercion at public institutions of higher education.

(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:
    a. To disclose or discuss the content of their scholarly research or creative works;
    b. To certify compliance with state and federal anti-discrimination law;
    c. To discuss pedagogical approaches or experience with students with mental or physical disabilities;
    d. 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:
    a. The county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
    b. The county of residence in this state for any one of the natural person defendants at the time the cause of action accrued;
    c. The county of the principal office in this state of any one of the defendants that is not a natural person; or
    d. 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.

Proposal 4: End Identity-Based Preferences

AN ACT relating to identity-based preferences in admissions and employment at public institutions of higher education.

(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:
    a. The county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
    b. The county of residence in this state for any one of the natural person defendants at the time the cause of action accrued;
    c. The county of the principal office in this state of any one of the defendants that is not a natural person; or
    d. The county of residence for the claimant if the claimant is a natural person residing in this state.