



State of West Virginia
Office of the Attorney General
Patrick Morrissey
Attorney General

April 16, 2024

The Honorable James Comer
Chairman
Committee on Oversight and Accountability
U.S. House of Representatives
2410 Rayburn House Office Building
Washington, DC 20515

The Honorable Jamie Raskin
Ranking Member
Committee on Oversight and Accountability
U.S. House of Representatives
2242 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Comer and Ranking Member Raskin:

Recently, Democrats have reintroduced two bills that aim to codify so-called diversity, equity, and inclusion (“DEI”) policies for federal programs. These two bills, the Federal Government Equity Improvement Act and the Equity in Agency Planning Act, embrace a thoroughly wrong-headed approach. We urge you to reject them both. Our federal government should champion merit-focused principles, not discrimination.

Members of your Committee have said these bills are intended to “further support implementation” of President Biden’s Executive Order 13985.¹ That Order, of course, was meant to push DEI initiatives to the fore. The Order instructs federal agencies to adopt policies that further “equity,” but it chiefly backs policies that provide targeted benefits to persons based on characteristics such as race, religion, sexual orientation, and disability status.² This “now infamous” Order has spawned a vast DEI bureaucracy across an array of federal agencies.³

Like the Executive Order, the bills now before your Committee command agencies to gather race, gender, and similar data related to government operations. Councils and committees are then established to ensure that this data is put to good use.⁴ Agencies must also implement “plans” that “improve” the provision of “services” to certain “communities and individuals”—that is, that provide special access to these favored groups. All in all, these bills ensure that government benefits, services, and jobs will be doled out to favored “populations sharing a particular characteristic” so long as government officials feel those “populations” were “systematically” disadvantaged “in aspects of economic, social, and civic life.”⁵

¹ See Press Release, Comm. on Oversight & Accountability Democrats, Reintroduction of Bills to Improve Government Services for Underserved Communities (Apr. 2024), <https://bit.ly/3JbndfF>.

² Exec. Order No. 13,985, 86 Fed. Reg. 7009 (Jan. 25, 2021) (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government).

³ Bradely Devlin, *Meet Biden’s Deep State DEI Enforcers*, THE AMERICAN CONSERVATIVE (Nov. 8, 2022), <https://bit.ly/3vR3cqA>.

⁴ Federal Government Equity Improvement Act of 2024, H.R. 7882, 118th Cong. §§ 2-3 (2024).

⁵ Equity in Agency Planning Act, H.R. 7881, 118th Cong. § 2 (2024).

Behind the legalese, it's clear enough what these bills would really do: write into law troubling forms of discrimination. They would codify some of "today's faddish social theories," which "embrace [a] distinction" between race, gender, and other characteristics.⁶ The bills assume that the government should approach persons first by drawing judgments about their facial characteristics, not from the individuals that they really are.

Yet our Constitution does not make these distinctions. Quite the opposite: our Constitution recognizes that "[e]liminating racial discrimination"—and all other forms of pernicious discrimination, really—"means eliminating all of it," even when implemented for purportedly beneficial ends.⁷ "[A]ll ... persons" enjoy the "broad and benign provisions" of our Constitution's equal-protection provisions.⁸ So a "public authority" cannot apply a law—even one that might seem "fair on its face"—in a way that will discriminate "between persons in similar circumstances."⁹

But those who would fight for bills like these seem to have forgotten all of that. It should be obvious that tracking targeted demographics of persons engaged with the federal government and then using that data to favor some persons over others is the very definition of discrimination. It harkens back to the sort of quotas and other exclusionary policies that have been deemed discriminatory for decades, including morally repugnant laws of an earlier time. No wonder so many of our States have affirmatively outlawed these policies in the public and private spheres.¹⁰ Yet bills march ahead in Congress anyway.

And to what end? Many negative consequences would follow from so readily embracing DEI. Persons are reduced to single-trait caricatures of themselves. People so categorized will surely suffer reduced morale or satisfaction. By excluding some and preferring others, DEI also threatens to shrink talent pools, bidder pools, and beneficiary pools—driving costs up for the government, hurting productivity, and limiting the reach and success of government programs. The only thing that can be reasonably expected to grow is the bureaucracy associated with implementing these laws. And when the government gives its official imprimatur to divisive policies, it virtually ensures that the very sort of conflict, animosity, and resentment that these kinds of laws are supposed to fix will instead only worsen.

Meanwhile, "the causal effects of many widespread prejudice-reduction interventions ... remain unknown,"¹¹ so it's not obvious what benefits are even supposed to offset these harms. In the private sector, for instance, the *Harvard Business Review* reports that "strategies for controlling bias"—which echo those embraced by these bills—"have failed spectacularly."¹² Even as they have been receiving more and more resources, DEI advocates themselves have conceded that they

⁶ *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 780 (2007) (Thomas, J., concurring).

⁷ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023).

⁸ *Yick Wo v. Hopkins*, 118 U.S. 356, 373 (1886).

⁹ *Id.* at 373-74.

¹⁰ See, e.g., S.D. Codified Laws § 13-1-67 to -71 (2022); Utah H.B. 261 (2024).

¹¹ Elizabeth Levy Paluck & Donald P. Green, *Prejudice Reduction: What Works? A Review and Assessment of Research and Practice*, 60 ANN. REV. PSYCH. 339, 339 (2009); see also, e.g., Jeremiah Green & John R. M. Hand, *McKinsey's Diversity Matters/Delivers/Wins Results Revisited*, 21 ECON J. WATCH 5, 9 (March 2024), <https://bit.ly/3UbjgwE> (questioning certain widely cited studies that purportedly showed that diversity improved corporate performance).

¹² Frank Dobbin & Alexandra Kalev, *Why Diversity Programs Fail*, HARVARD BUSINESS REVIEW (July-Aug. 2016), <https://bit.ly/3PUsaMA>

have produced little in the way of identifiable results—leaving them “exhausted and frustrated with their [own] lack of progress.”¹³

We recognize that these bills are part of a broader effort by Democrats to continue pushing controversial DEI programs across the board.¹⁴ Some of our States have questioned this apparent effort in other contexts.¹⁵ And in response, some members of Congress have asked the Department of Justice to investigate States for being insufficiently supportive of DEI programs.¹⁶ This kind of rigid adherence to DEI dogma is shocking. And “[i]t is a sordid business, this divvying us up by race.”¹⁷ But it is not too late to do the right thing and wind down the effort.

We urge you to recommit to building an all-inclusive system of government built on merit and fairness—not inappropriate balance-shifting policies, targets, and preferences. States want it. Voters want it. Our Constitution demands it.

Sincerely,



Patrick Morrissey
West Virginia Attorney General



Steve Marshall
Alabama Attorney General



Treg Taylor
Alaska Attorney General



Tim Griffin
Arkansas Attorney General



Ashley Moody
Florida Attorney General

¹³ John Corrigan, *DEI leaders are burning out from diversity fatigue: Here's how to survive*, HRD: HUMAN RESOURCES DIRECTOR (Feb. 9, 2023), <https://bit.ly/43PEBPA>.

¹⁴ See, e.g., Andrew Solender, *Scoop: Democrats eye 2025 comeback for Congress' diversity office*, AXIOS (Apr. 8, 2024), <https://bit.ly/4cS2dXS> (discussing plans to reestablish a congressional DEI office).

¹⁵ See, e.g., Jon Styf, *West Virginia AG asks FBI to remove DEI from recruitment process priorities*, WASH. EXAMINER (Mar. 19, 2024), <https://bit.ly/43PuWIU>.

¹⁶ Letter from Congressional Black Caucus to Attorney General Merrick Garland (Mar. 6, 2024), available at <https://bit.ly/3xr4NUC>.

¹⁷ *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part and dissenting in part).



Christopher M. Carr
Georgia Attorney General



Raúl Labrador
Idaho Attorney General



Todd Rokita
Indiana Attorney General



Brenna Bird
Iowa Attorney General



Kris Kobach
Kansas Attorney General




Liz Murrill
Louisiana Attorney General



Andrew Bailey
Missouri Attorney General



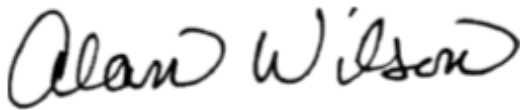
Austin Knudsen
Montana Attorney General



Mike Hilgers
Nebraska Attorney General



Gentner F. Drummond
Oklahoma Attorney General



Alan Wilson
South Carolina Attorney General



Marty Jackley
South Dakota Attorney General



Ken Paxton
Texas Attorney General



Sean D. Reyes
Utah Attorney General