

WHEREAS in 1957’s *Sweezy v. New Hampshire*, the Supreme Court of the United States observed that “[t]he essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. . . . Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise, our civilization will stagnate and die.”; and

WHEREAS ten years later in *Keyishian v. Board of Regents*, the Supreme Court further declared that academic freedom “is a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.”; and

WHEREAS in *Healy v. James*, the Supreme Court stated that “the precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, “the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”; and

WHEREAS in *West Virginia State Board of Education v. Barnette*, the Supreme Court held that the First Amendment prohibits the government from compelling an individual to engage in speech, proclaiming that “if there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”; and

WHEREAS many colleges and universities require or invite current and/or prospective faculty to demonstrate their commitment to diversity, equity, and inclusion (DEI), often through a written statement that factors into hiring, reappointment, evaluation, promotion, or tenure decisions; and

WHEREAS vague or ideologically motivated DEI statement policies can too easily function as litmus tests for adherence to prevailing ideological views on DEI, penalize faculty or applicants for holding dissenting opinions on matters of public concern, and, as the Supreme Court warned against in *Keyishian*, “cast a pall of orthodoxy” over our public college and university campuses; and

WHEREAS a survey by the American Association of University Professors of hundreds of colleges and universities found that more than one-fifth of higher education institutions include DEI criteria in tenure standards, and of the institutions that do not include tenure standards, nearly half indicated they are considering adding such criteria in the future; and

WHEREAS a survey by the American Enterprise Institute of academic job postings found that nearly 20 percent required DEI statements; and

WHEREAS according to data presented at an academic conference in 2022 at the University of Southern California, a majority of tenured/tenure-track faculty members surveyed in a study indicated that they disfavored a candidate for an academic position when the applicant's DEI statement didn't reference race/ethnicity and gender diversity, reflecting the fact that DEI statements are used to favor candidates who endorse prevailing campus ideological orthodoxies; and

WHEREAS according to a forthcoming FIRE survey, faculty are split evenly on whether DEI statements are a justifiable requirement for a university job (50%) or are an ideological litmus test that violates academic freedom (50%), and three-in-four liberal faculty support mandatory diversity statements while 90% of conservative faculty and 56% of moderate faculty see them as political litmus tests; and

WHEREAS the First Amendment to the United States Constitution prohibits public universities from compelling faculty to assent to specific ideological views;

Now, therefore, the State of \_\_\_\_\_ enacts the following:

- A. No public institution of higher education shall condition admission or benefits to an applicant for admission, or hiring, reappointment, or promotion to a faculty member, on the applicant's or faculty member's pledging allegiance to or making a statement of personal support for or opposition to any political ideology or movement, including a pledge or statement regarding diversity, equity, inclusion, patriotism, or related topics, nor shall any institution request or require any such pledge or statement from an applicant or faculty member.
- B. If a public institution of higher education receives a pledge or statement describing a commitment to any particular political ideology or movement, including a pledge or statement regarding diversity, equity, inclusion, patriotism, or related topics, it may not grant or deny admission or benefits to a student, or hiring, reappointment, or promotion to a faculty member, on the basis of the viewpoints expressed in the pledge or statement.
- C. Nothing in this Act prohibits an institution from requiring a student, professor, or employee to comply with federal or state law, including anti-discrimination laws, or from taking action against a student, professor, or employee for violations of federal or state law.
- D. Nothing in this Act shall be construed to limit or restrict the academic freedom of faculty or to prevent faculty members from teaching, researching, or writing publications about diversity, equity, inclusion, patriotism, or other topics.

- E. Nothing in this Act prohibits an institution from considering, in good faith, a candidate's scholarship, teaching, or subject-matter expertise in their given academic field.
- F. Each public institution of higher education in the state shall post and make publicly available all training materials used for students, faculty, and staff, on all matters of nondiscrimination, diversity, equity, inclusion, race, ethnicity, sex, or bias, and all of its policies and guidance on these issues, on its website.
- G. A person whose rights were violated through a violation of this act may bring an action against a public institution of higher education, and its agents acting within their official capacities, in a state or federal court of competent jurisdiction to receive declaratory relief or enjoin a violation of this Act. If a court finds a violation of this act, the court shall provide a prevailing plaintiff appropriate equitable remedies, and award damages, reasonable court costs, and attorney's fees.
- H. The Attorney General may file suit to enjoin a policy or practice prohibited by Section A or Section B.
- I. If an institution, or any of its employees acting in their official capacities, are found by a court or the institution to have violated this Act, the institution may take disciplinary action against the responsible employees in accordance with the institution's policies and procedures.
- J. In addition to any relief under Sections G and H, the [State Fiscal Officer] shall impose an administrative penalty of \$100,000 against a State Education Institution for each violation of this Act. The penalty shall be deposited in the [State Treasury] and shall be allocated to each State Education Institution that is not currently in violation of this Act and has not violated this Act within the preceding two fiscal years.
- K. Any action brought pursuant to Section G must be brought within 1 year of the latest date the Act is alleged to have been violated.
- L. 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.

**FIRE proposes** alternative formulations of an enforcement provision for consideration:

Alternative A

In addition to any relief under Sections G and H, the [State Fiscal Officer] shall impose an administrative penalty of \$30 per student enrolled at the institution on a full-time basis in the fiscal year preceding the violation, against a State Education Institution for each violation of this Act. The penalty shall be deposited in the [State

Treasury] and shall be allocated to each State Education Institution that is not currently in violation of this Act and has not violated this Act within the preceding two fiscal years.

Alternative B

In addition to any relief under Sections G and H, the [State Fiscal Officer] shall impose an administrative penalty of the lesser of \$300,000 or 1% of the State Education Institution's budget during the fiscal year preceding the violation, against a State Education Institution for each violation of this Act. The penalty shall be deposited in the [State Treasury] and shall be allocated to each State Education Institution that is not currently in violation of this Act and has not violated this Act within the preceding two fiscal years