



## **Congress's Role in the Elimination of DEI and Other Radical Ideologies**

By Samara Brown and Wade Miller

President Trump has done a tremendous job beginning the process of eliminating diversity, equity, and inclusion (DEI) and radical gender ideology from the federal government through executive actions. The president has issued numerous executive orders and directed federal agencies to root out DEI and other types of discrimination that violate the Civil Rights Act of 1964, but Congress also has a role to play in removing these discriminatory measures. Below are suggestions for new legislation that Congress should consider passing to eradicate DEI and other race-essentialist ideologies from the government.

### **Legal Considerations**

In years past, Constitutional amendments have been ratified and laws have been passed by to prohibit discrimination based on race, sex, ethnicity, color, religion, or national origin. These include the following:

- The Fourteenth Amendment, specifically the Equal Protection Clause, was added to the Constitution of the United States to ensure that all individuals in the United States are provided equal protection of the laws of the United States.
- The Civil Rights Act of 1964 outlawed discrimination on the basis of race, sex, color, religion, or national origin.
- The Education Amendments of 1972 included Title IX, which prohibited discrimination on the basis of sex in all educational programs that receive federal funding.

- The Civil Rights Restoration Act of 1987 extended the prohibition of discrimination on the basis of race, sex, color, religion, or national origin to entities receiving federal funding, ensuring that any entity receiving federal funding must comply with all federal civil rights law.
- The United States Supreme Court has ruled in numerous cases that discrimination on the basis of race, sex, color, religion, or national origin violates the U.S. Constitution. Most recently, in *Students for Fair Admissions v. Harvard* (2023), the court held that race-based admissions programs violate the Equal Protection Clause of Fourteenth Amendment.

### **Definition of Terms**

President Trump’s executive actions have reflected and sought to enforce the spirit of these measures. Congress should consider policy reforms that would bolster President Trump’s executive orders and ensure that no future administration can misconstrue basic terms such as “race” or “sex” away from their common usage and implement radically different policies. In order to achieve this goal, Congress should immediately move to codify these definitions.

Defining these terms accurately in statutes will avoid confusion—purposeful or otherwise—in future policymaking.

- Sex: An individual’s immutable biological status as either male or female. Sex is not defined as nor does it encompass sexual orientation and/or the concept of gender identity.
  - Female: A person belonging, at conception, to the sex that produces the large reproductive cell.
  - Male: A person belonging, at conception, to the sex that produces the small reproductive cell.
- Racial Discrimination: Ideologies, practices, initiatives, programs, or activities that inculcate belief in, implementation of, or adherence to efforts and policies that determine

whether an individual, by virtue of the individual's race, should be actively or passively discriminated against or receive adverse treatment.

- Gender Ideology: Ideologies, practices, theories, and initiatives that inculcate belief in, implementation of, or adherence to efforts and policies that affirm that an individual's subjective sense of belonging to a particular sex does not necessarily match his or her biological sex; that gender is defined on the basis of societal roles, behaviors, stereotypes, or other attributes typically associated with that sex; or that gender operates on a fluid spectrum as opposed to the biological binary of male and female.
- Gender Identity: A term that reflects a fully internal and subjective sense of self, disconnected from biological reality and sex and existing on an infinite continuum, that does not provide a meaningful basis for identification of sex and cannot be recognized as a replacement for the term "sex."
- Diversity, Equity, and Inclusion: Ideologies and practices, infrastructure, initiatives, programs, trainings, or activities that promote or otherwise inculcate belief in, implementation of, or adherence to discriminatory ideologies, gender identity ideologies, racial discrimination, racist ideologies, racial scapegoating, or revisionist history or are expressly labeled as diversity, equity, and/or inclusion activities. This does not encompass initiatives, programs, or activities that seek to expand or diversify the applicant pool for employment or otherwise broaden recruitment provided that interviews, consideration, and selection from such recruits or applicant pool are made without reference to protected characteristics.
- Discriminatory Ideology: Ideologies, practices, theories, and initiatives that inculcate belief in, implementation of, or adherence to efforts and policies that determine an individual's moral character, workplace value, or societal worth by the individual's race, color, ethnicity, national origin, religion, or biological sex.

- **Racist Ideology:** Ideologies, practices, initiatives, programs, or activities that inculcate belief in, implementation of, or adherence to efforts and policies that determine or insinuate that an individual, by virtue of the individual's race, is inherently racist or oppressive, whether consciously or unconsciously.
- **Racial Scapegoating:** Ideologies, practices, initiatives, programs, or activities that inculcate belief in, implementation of, or adherence to efforts and policies that determine or insinuate that an individual, because of the individual's race, bears responsibility for the actions committed by other members of the individual's race, color, ethnicity, or national origin or determine or insinuate that an individual should feel discomfort, guilt, anguish, or any other form of psychological or emotional distress on account of the individual's race, color, ethnicity, or national origin.
- **Revisionist History:** Ideologies, practices, initiatives, programs, or activities that inculcate belief in, implementation of, or adherence to efforts and policies that declare or insinuate that the United States is a fundamentally racist country; that the United States is uniquely culpable for the promulgation of slavery; that the true founding of the nation occurred prior to the signing of the Declaration of Independence; that the Declaration of Independence, the Constitution of the United States, or the Federalist Papers are fundamentally racist documents; or that the core identity of the United States is marked by discrimination.

### **Prohibition of Discriminatory Practices from Within the Federal Government**

- Congress can codify into statute that all racial discrimination within the federal government is prohibited. To do so, Congress could amend the Civil Rights Act of 1964 and all subsequent amendments to include a prohibition of DEI and DEI-like practices as unlawful discrimination. This would make it clear that *any* and *all* policy decisions based on race—regardless of the reason—are strictly prohibited. Congress could amend the Civil Rights Act of 1964 to include language such as the following:

- *It shall be unlawful for any federal agency, state, local government, institution of higher education, employer, or other organization receiving federal funds to implement, practice, or enforce any diversity, equity, and inclusion activities or practices, discriminatory ideology, gender identity ideology, racial discrimination, racist ideology, or racial scapegoating.*
- Congress could eliminate all DEI offices and employee positions throughout the federal government.
- Congress could repeal and defund all DEI, DEI-like, and gender ideology policies and programs within the federal workforce and ensure that similar policies using a different name are prohibited as well. Practices that should be prohibited include the following:
  - Diversity Programs: Diversity-focused recruitment or training programs that prioritize demographic characteristics over qualifications or performance.
  - Equity Initiatives: Altering merit-based selection or promotion processes or introducing quotas or preferential treatment based on demographic characteristics.
  - Inclusion Policies: Special accommodations or considerations for individuals based on race, gender, gender identity, or other protected characteristics beyond what is legally required for accessibility and nondiscrimination.
  - Discriminatory Ideologies: Determining an individual's moral character, workplace value, or societal worth by the individual's race, color, ethnicity, national origin, religion, or biological sex.

- Gender Identity Ideologies: Affirming that an individual's subjective sense of belonging to a particular sex does not necessarily match his or her biological sex; that gender is defined on the basis of societal roles, behaviors, stereotypes, or other attributes typically associated with that sex; or that gender operates on a fluid spectrum as opposed to the biological binary of male and female.
  - Racial Discrimination: Determining whether an individual, by virtue of the individual's race, should be actively or passively discriminated against or receive adverse treatment.
  - Racist Ideologies: Determining or insinuating that an individual, by virtue of the individual's race, is inherently racist or oppressive, whether consciously or unconsciously.
  - Racial Scapegoating: Determining or insinuating that an individual, because of the individual's race, bears responsibility for the actions committed by other members of the individual's race, color, ethnicity, or national origin or that an individual should feel discomfort, guilt, anguish, or any other form of psychological or emotional distress on account of the individual's race, color, ethnicity, or national origin.
- Congress could prohibit DEI, DEI-like practices, and gender ideology programming from being used in federal workforce training.
  - Congress could prohibit DEI, DEI-like practices, and gender ideology concepts from being used as criteria in federal contracting. Congress could pass legislation that prohibits these policies and programs among federal contractors as well.

- Congress could pass legislation that prohibits DEI, DEI-like practices, and gender ideology concepts from being used as criteria in federal grantmaking.

### **Prohibition of Discriminatory Practices from Federal Labor Laws**

In addition to amending the Civil Rights of 1964 to clarify that DEI is prohibited, Congress could also prohibit DEI and gender ideology in federal labor law.

- Congress could pass legislation that directs the Equal Employment Opportunity Commission (EEOC) to conduct a review of current employment practices to identify current usage of discriminatory practices, including DEI and gender identity ideology by employers in the United States.
- Congress could establish an anonymous tip line for employees to alert the use of prohibited DEI, DEI-like, and gender ideology practices by employers in the workplace.
- Congress could create a private cause of action for individuals who face discrimination in relation to DEI and/or gender ideology practices.

### **Elimination of Discriminatory Practices and Gender Ideology from Education**

Americans have been alerted to the persistent presence of DEI and radical gender ideology in K–12 and higher education systems. President Trump has taken executive actions to address this issue, but Congress could do more.

- Congress could eliminate gender ideology from the Department of Education and all of the agency’s programs and policies through legislation, especially by clarifying that “sex” refers *only* to the immutable biological status of male or female and emphasizing that “sex” does not refer to sexual orientation or gender identity.

- Congress could prohibit educational accreditation agencies from using DEI and gender ideology concepts as criteria when accrediting an educational institution.
- Congress could prohibit the use of DEI and all other ideological statements from being used as criteria for admission, hiring, promotion, or firing in higher education.

### **Elimination of Radical Discrimination from the U.S. Military**

- Congress could pass legislation that applies Title VI of the Civil Rights Act of 1964 to the Department of Defense and create a companion clause in the Uniform Code of Military Justice (UCMJ). This would prohibit the military from discriminating on the basis of race, sex, color, religion, or national origin in all military practices unless there is a demonstrable national security need for case-by-case exceptions.

### **Appropriations Language**

In addition to passing full legislation, Congress could consider adding language to appropriations legislation that would prohibit the use of funds to implement radical discriminatory ideologies and practices. Examples include the following:

Prohibit Diversity, Equity, and Inclusion:

*No funds authorized or appropriated by federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by federal law, shall be expended to advocate or promote diversity, equity, and inclusion ideology or practices.*

Prohibit Discriminatory Ideology:



*No funds authorized or appropriated by federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by federal law, shall be expended to advocate or promote efforts and policies that determine an individual's moral character, workplace value, or societal worth by the individual's race, color, ethnicity, national origin, religion, or biological sex.*

Prohibit Gender Identity Ideology:

*No funds authorized or appropriated by federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by federal law, shall be expended to advocate or promote efforts and policies that affirm that an individual's subjective sense of belonging to a particular sex does not necessarily match his or her biological sex; that gender is defined on the basis of societal roles, behaviors, stereotypes, and other attributes typically associated with that sex; or that gender operates on a fluid spectrum as opposed to the biological binary of male and female.*

Prohibit Racial Discrimination:

*No funds authorized or appropriated by federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by federal law, shall be expended to advocate or promote efforts and policies that determine whether an individual, by virtue of the individual's race, should be actively or passively discriminated against or receive adverse treatment.*

Prohibit Racist Ideology:

*No funds authorized or appropriated by federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by federal law, shall be expended to advocate or promote efforts and policies that determine or insinuate that an individual, by virtue of the individual's race, is inherently racist or oppressive, whether consciously or unconsciously.*

Prohibit Racial Scapegoating:

*No funds authorized or appropriated by federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by federal law, shall be expended to advocate or promote efforts and policies that determine or insinuate that an individual, because of the individual's race, bears responsibility for the actions committed by other members of the individual's race, color, ethnicity, or national origin or determine or insinuate that an individual should feel discomfort, guilt, anguish, or any other form of psychological or emotional distress on account of the individual's race, color, ethnicity, or national origin.*

Prohibit Revisionist History:

*No funds authorized or appropriated by federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by federal law, shall be expended to advocate or promote efforts and policies that declare or insinuate that the United States is a fundamentally racist country; that the United States is uniquely culpable for the promulgation of slavery; that the true founding of the nation occurred prior to the signing of the Declaration of Independence; that the Declaration of Independence, the Constitution of the United States, or the Federalist Papers are fundamentally racist documents; or that the core identity of the United States is marked by discrimination.*