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Dear Attorney General Merrick Garland,

As the conscience of the U.S. Congress, the Congressional Black Caucus writes to ask that the Department of Justice examine the lawfulness of states acting to dismantle the Diversity, Equity, and Inclusion (DEI) programs at American institutions of higher learning.

For centuries, the American collegiate experience has offered the opportunity for students to expand their perspectives and wealth of knowledge, and push the boundaries of innovation and thought leadership beyond the four walls of a classroom. However, this Nation's history makes clear that such opportunities were severely limited to white male students for centuries. It was the advent of civil rights laws, including Title VI of the Civil Rights Act and Title IX, that led to the emergence of a sizable presence of women and different racial groups on America's campuses, along with the visibility of the LGBTQ+ populations, international students, and students with disabilities. According to the National Center for Education Statistics (NCES), white students made up over 80% of college undergraduates in 1980; in 2020 they made up 54%.¹ Hispanic and Latino students went from 4% of the undergraduate population in 1980 to just over 20% in 2020.² The growth of diversity on America's campuses occurred despite the entrenched housing discrimination that feeds the K-12 school populations, which are a pipeline to this nation's colleges. The presence of women and people of color continued on America's campuses, in spite of legal challenges to affirmative action in every decade since the 1970s.

It must be noted, however, that the increased visibility of a diverse student body came with challenges to the safety of those diverse students. For example, in its 2022 Report on the Indicators of School Crime and Safety, researchers with the U.S. Department of Education noted that because most colleges suspended on-campus instruction due to COVID-19, hate crime incidents in 2020 were down 25 percent from 2019, and 38 percent from 2010.³

¹ *Digest of Education Statistics*, National Center for Education Statistics, (2022) https://nces.ed.gov/programs/digest/d22/tables/dt22_306.20.asp?current=yes.

² *Id*

³ *Report on Indicators of School Crime and Safety*, Institute of Education Sciences, (2022) <https://nces.ed.gov/pubs2023//2023092.pdf>.

Despite the lockdown on most campuses, there were still 571 incidents classified as hate crimes on college campuses in 2020, **with 55% of those crimes motivated by race.**⁴ We also know that like other sensitive crimes, the true number of hate crimes is vastly underreported.⁵ We need only peruse the pages of the major media outlets to recall high-profile incidents involving racial animus on America's campuses:

- the Unite the Right white supremacists rally in Charlottesville;
- the hanging of nooses and bananas at American University the day after the election of the school's first Black student body president;
- the racially charged murder of Richard Collins, III, a black ROTC student at Bowie State University, during a visit to the University of Maryland, College Park; and,
- students who have been confronted with racial slurs at basketball games, soccer matches, football games, and in their dorms.

Most recently, the nation's campuses have witnessed an explosion of complaints filed regarding animus directed at students perceived to be Jewish, Arab and/or Muslim. Horrifically, a gunman shot three Palestinian-American college students walking down the street in Burlington, VT.

It is in this background that we are witnessing multiple states attempt to eliminate DEI programs. For example, one day after Martin Luther King, Jr. Day this year, the state of Florida's State Board of Education voted to prohibit spending on DEI programs at its 28 state colleges. According to the press release, Florida colleges are prohibited "from using state or federal funds to administer programs that categorize individuals based on race or sex for the purpose of differential or preferential treatment." This decision followed Governor DeSantis comments referring to DEI programs as "wasteful," "ideological," and "discriminatory". As a result, the University of Florida has removed all DEI programming from their campus, endangering an already low percentage of Black students at 5% of the student body, and an even lower percentage of Black faculty at 4.5%. In a state where Black Americans make up 15% of the total population, these numbers are not representative, and removing DEI programming only exacerbates this issue.

Last week, the Alabama senate (S.B. 129) passed a bill to limit DEI programs and the teaching of "divisive concepts" that touch on "any race, color, religion, sex, ethnicity, or national origin." Earlier this year, Texas implemented SB 17, a bill that eliminated DEI programs at the state's colleges and support for student constituency groups. Anti-DEI bills have been introduced in more than 30 states as of February 29, 2024.⁶

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in the programs or activities of all recipients of Federal financial assistance. Similarly, Title IX prohibits such discrimination in education on the basis of sex. As these university systems are in receipt of federal dollars, the Congressional Black Caucus questions the legality of the state's actions with regard to the DEI programs. Title VI and Title IX regulations issued by the United States Department of Education's Office of Civil Rights make clear that learning institutions are supposed to provide safe, learning spaces. DEI programs have, in recent years, become a central player in ensuring the inclusion of all students on American campuses.

⁴ *Id.*

⁵ *Millions are victims of hate crimes, though many never report them.* The Center for Public Integrity. (2018, August 16) <https://publicintegrity.org/politics/millions-are-victims-of-hate-crimes-though-many-never-report-them/>.

⁶ *Map: See which states have introduced or passed anti-DEI bills.* NBC News, (2024, March 2)

(<https://www.nbcnews.com/data-graphics/anti-dei-bills-states-republican-lawmakers-map-rcna140756>)

It is because of these reasons, we are concerned by the strident actions taken by states like Florida, Alabama, Texas, and others. To that end, the Congressional Black Caucus reiterates its request that the Department of Justice reviews the actions of these states to assess their legality, especially as it relates to the need for a safe, learning environment for students. We look forward to reviewing the record reflected from this inquiry and the actions of the Department of Justice to rectify these harmful actions.

A handwritten signature in black ink, appearing to read "Steven Horsford". The signature is written in a cursive, flowing style.

U.S. Representative Steven Horsford (NV-04)
Chair, Congressional Black Caucus