

## **SB 83 IS NEEDED NOW MORE THAN EVER**

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My name is George Dent. I am a Professor of Law Emeritus at Case Western Reserve Law School. I am also a member of the Board of Directors of the National Association of Scholars and President of its Ohio affiliate.

Two recent developments show that the case for Senate Bill 83 is even more compelling than it was before. First, John Sailer of the National Association of Scholars recently published a report based on 800 pages of ‘Diversity Faculty Recruitment Reports’ obtained from Ohio State University through a public records request. These reports show systematic discrimination based on race and extreme identity politics.

One report said a candidate would “greatly enhance our engagement with queer theory outside of the western epistemological approaches.” Is this what our college students need for a successful career? Another praised the politics of a candidate who would “expand DEI (diversity, equity and inclusion) efforts beyond simply representation and instead toward social justice.”

One committee gave a “zero” diversity score to anyone who “solely acknowledges that racism, classism, etc. are issues in the academy.” This is hiring based expressly on a candidate’s political views. And you can’t be just a liberal; you must be a hard-core leftist.

Race and political ideology weren’t used just as tiebreakers. A biology search committee weighted “67% research and 33% contribution to DEI.” These approaches resulted in remarkable discrimination. For a position in medical anthropology with 67 applicants, all four finalists were “women of color.”

Ohio State is not alone in such practices in Ohio. Miami U. preferred faculty applicants with a “commitment to allyhood [sic] through learning about structural inequities.”<sup>1</sup>

This kind of discrimination is basically necessary given institutional commitments. In 2021 Ohio State President Kristina Johnson began, without the advice and consent of the faculty, a new Race, Inclusion and Social Equity (RAISE) Initiative, pledging to hire 50 faculty members focused not on academic excellence but on “social equity” and “racial disparities” and another 100 “underrepresented and BIPOC [Black, Indigenous, and People of Color] hires in all fields of scholarship.”

Ohio State’s Department of Mathematics recently sought a professor who would “study issues relevant to educational equity across STEM fields, with a special focus on race and other

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<sup>1</sup> John D. Sailer, Documents: Miami University’s Litmus Test, National Association of Scholars 2023, at <https://www.nas.org/blogs/article/documents-miami-universitys-litmus-test>.

factors identifying historically marginalized groups.”<sup>2</sup> This is an unsubtle way of favoring candidates of a particular race and particular political views.

And note that this description for a position in the math department does not even refer to any knowledge or ability in math! Why would OSU do this? For one thing, in 2022 the total number of Ph.D.’s awarded in the U.S. to Black citizens and permanent residents in math and statistics was 26.<sup>3</sup> Excluding statistics and applied math the number is 5. And that, of course, says nothing about the quality of those five. So if university math departments have to meet racial quotas, they have to hire people who aren’t mathematicians.

More generally, there is a large education gap between Black and Hispanic Americans, on one hand, and white and Asian Americans on the other. However, a tenet of radicals like Ibram X. Kendi is that racial disparities *must* be caused by discrimination. Therefore, in hiring, academic excellence must be trumped by race.

Since Jews are statistically overrepresented in academia, DEI hiring criteria necessarily discriminate against Jews. And Asian-Americans are now also overrepresented in many areas of academia. Since they are not white, this poses a problem for the radicals which they have solved by declaring Asian-Americans to be “white adjacent.”

Laws restricting the divisive concepts of DEI have already passed in 8 states, including Florida, Iowa, Mississippi, North Dakota, South Dakota, Tennessee, and Texas. Bills to restrict the divisive concepts of DEI have been introduced in another 19 states, not counting Ohio. Iowa’s Board of Regents also just moved to remove DEI programming from Iowa’s public universities. Whatever useful functions were performed there could be done as well or better by other university offices.

SB 83 does not eliminate DEI offices but does prohibit the use of diversity statements.<sup>4</sup> It also forbids schools to encourage or require students or faculty to any given ideology, political stance, or view of social policy<sup>5</sup> or to impose any “ideological litmus tests” in hiring and admissions.<sup>6</sup>

A second development is that since October 7 we have seen many students, organizations, and administrators equivocating about, apologizing for, or even applauding Hamas’s vicious terrorist attacks against civilians in Israel.

Many people have now realized that this disgusting anti-Semitism is not an aberration or a bug in the program of the academic radicals. It is a feature; it is part and parcel with the rest of that program.

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<sup>2</sup> John D. Sailer, Diversity Statement, Then Dossier, National Association of Scholars 2023, at <https://www.nas.org/reports/diversity-statement-then-dossier/full-report>.

<sup>3</sup> These data come from the National Science Foundation.

<sup>4</sup> § 3345.0217(B)(10).

<sup>5</sup> § 3345.0217(B)(7).

<sup>6</sup> § 3345.0217(B)(8).

The old anti-Semitism (which, unfortunately, is still very much alive) sees Jews as alien, non-Western, not exactly white. The new leftist anti-Semitism hates Jews and Israel because they *are* white and Western. And they have prospered under liberal democracy and free market economies, both of which the left despises.

Various labels are used for these radicals, including Woke and Critical Race Theory. I don't insist on any particular label, but we should all understand that these people are not liberals. That label applies to people like John Kennedy and Bill Clinton. But campus radicals, to quote the leading treatise on Critical race Theory, "question the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law."<sup>7</sup>

Part of the liberal order that must go is the rule of law, which holds that people are treated the same regardless of their racial identity or sexual orientation. But to the radicals, those are the crucial factors, so people of different races must be treated differently. Thus Hamas terrorism is excused or even acclaimed because the Palestinians are oppressed, but steps by Israel to defend itself are vilified and met with demands for a ceasefire.

Another bedrock American principle that must go is free speech. Most of us see free speech as the way to get closer to the truth, but the radicals believe they already have the truth, and anyone who disagrees with them is evil and must be silenced.

The constriction of free speech has affected Ohio campuses. The Foundation for Individual Rights & Expression (known as the FIRE) rates the speech policies of hundreds of American colleges and universities. It rates them green if they do not threaten free speech; yellow if they restrict speech somewhat or are too vague; and red if they clearly restrict speech. Only one Ohio public institution – Cleveland State University – gets a green rating; the others all get a yellow rating.

The FIRE also records student perceptions at many campuses. Here is a sample just from Ohio State: Quote: "Many [students] are afraid that disagreeing with a professor on a topic will lead to the student being treated unfairly in class as well as in our grades." OSU is an "echo chamber that . . . stifles actual discussion and debate." "During one of my classes last spring semester the professor openly stated in his first class that he was not there to engage in a dialogue but to 'educate' us." "Any opinion I have regarding election integrity, vaccination, mask mandates, or LGBT issues I cannot publicly express; otherwise my scholarship, academic livelihood, and family's employment would be at risk." "Any graded, written assignment is based on what I think my professor wants to hear." Senate Bill 83 takes badly needed steps to end these problems and protect free speech on our campuses.

Shawnee State University punished a professor (Nick Meriwether) for addressing a student with pronouns based on his biology rather than his gender preference. The professor sued, and the federal court of appeals ruled that the school had violated his Constitutional free speech rights. The school then settled by paying the professor \$400,000. As an aside, may I

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<sup>7</sup> Richard Delgado & Jeanne Stefancic, *Critical Race Theory: An Introduction* (2d ed. 2012).

suggest that this amount should have been paid by the officials who violated the Constitution and not by the taxpayers of Ohio.

Campus leftists repeatedly proclaim that they are not merely theorists and teachers of theory; they are activists for what they call social justice and pressure students also to be activists. As the leftist strategist Saul Alinsky said: “One acts decisively only in the conviction that all the angels are on one side and all the devils on the other.”<sup>8</sup>

This Manichean world allows no nuance; one is either an oppressor or oppressed. Since Israel and Jews are generally prosperous, and since Israel of necessity has created a strong military, Israel and Jews are oppressors, regardless of how much they have suffered from thousands of years of anti-Semitism. As a result, we see a growing number of cases of harassment of and even physical intimidation and attacks against Jews on American campuses.

Again, this is not a departure from but is consistent with the left’s general beliefs. The modern dogmas of American college campuses – cancel culture, social justice, critical race theory, intersectionality – are general theories of which Hamas terror is an instance. You can’t extract the anti-Semitism except by eliminating the general theories of which anti-Semitism is a part.

Yes, Palestinians are sorely oppressed, but they are oppressed mainly by Hamas and other terrorist groups backed by Iran. However, since the left considers Muslims oppressed, we never see campus demonstrations against Iran, Hamas, or Hezbollah.

And how do these radicals view America? Black people are freer and more prosperous and have achieved more in America than in any other country at any time in history. But to the radicals, white people are among Saul Alinsky’s devils. America is systemically racist and dominated by white supremacy. Most Black victims of homicide are killed by other Black civilians, but from the radicals all we hear about America is of atrocities committed long ago or isolated incidents, like the killing of George Floyd.

Several leaders and chapters of Black Lives Matter have applauded Hamas’s genocidal attacks. Can there be any doubt that they would do the same to those they consider their oppressors – which is to say all white people – if they could get away with it? And yet Black Lives Matter is still lionized on American campuses.

Forces opposing Senate Bill 83 have been seeking delay in order to discuss matters further, to let the universities address the problems themselves, to consider revisions to the bill. These are just transparent efforts to stop reform. The universities created the existing problems; they’re not going to correct them now.

This year in *Students for Fair Admissions v. Harvard* the Supreme Court barred racial preferences in college admissions, and this bar clearly applies to faculty hiring as well. However, the Court said that schools could still consider a student's discussion of how their race has impacted their life "so long as that discussion is concretely tied to a quality of character or

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<sup>8</sup> Saul Alinsky, *Thirteen Tactics for Realistic Radicals: from Rules for Radicals* 10 (2016).

unique ability that the particular applicant can contribute to the university." In other words, schools can continue to discriminate so long as they hide what they're doing. And that is what they *will* do – unless state legislatures stop them from doing it.

We can never say with certainty that proposed legislation is perfect, but this bill looks excellent and is badly needed. If some kinks emerge in its implementation, they can be ironed out later. Let's pass this bill now.