

**Nick Down, Associate Director of External Affairs
American Council of Trustees and Alumni (ACTA)
Testimony Before the Texas Senate Subcommittee on Higher Education
November 11, 2024**

Thank you, Chairman Creighton, and distinguished members of the Senate Subcommittee on Higher Education. My name is Nick Down, and I am the associate director of external affairs at the American Council of Trustees and Alumni, or ACTA for short. Thank you for allowing me to appear before you today. I am here to speak to why college governing boards should reappropriate funding for diversity, equity, and inclusion initiatives and adopt new policies that promote free expression, viewpoint diversity, and institutional neutrality, which would add tremendous value to higher education in Texas and, ultimately, strengthen the Texas workforce.

Before I begin my remarks, I'd like to explain why my organization is here in front of you today. By way of background, ACTA is a national nonprofit organization with over 29 years of dedicated experience promoting academic freedom, academic excellence, and accountability at four-year colleges and universities across the country. My organization also offers resources, guidance, and best practices for college governing boards to assist them in fulfilling their fiduciary and oversight duties to their institution, and in the case of public schools, to the taxpayers of the state. It is a core belief of ACTA's that university regents are appointed to be effective and engaged stewards of the institutions and the public they serve and should *never* view or treat their position as honorary. In other

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words, it is the regents who should take the lead in addressing issues with DEI bureaucracies on college campuses.

One does not need to spend a lot of time researching to learn how much institutions in other states are overspending on programs, staff, and resources that incorporate DEI. In January, the *College Fix* reported that the University of Michigan allocated \$30 million in payroll for salaries and benefits that could just as easily be repurposed to cover tuition and fees for almost 2,000 undergraduate students.¹ The University of California (UC)–Berkeley’s Division of Equity & Inclusion spends \$36 million annually to support 400 full- and part-time staff. In a 2021 report written by Jay Greene and Jason Paul the authors noted that at the University of Michigan 163 people had formal responsibility for providing DEI programming. The same report found that at Georgia Tech there were over three times as many DEI staff as there were history professors.² To ACTA, the solution is clear: Texas university regents should take the lead in determining whether resources slated for administrative bureaucracies could be reallocated in ways that better serve students. More on this in a moment.

¹ Jennifer Kabbany, “UMich now has more than 500 jobs dedicated to DEI, payroll costs exceed \$30 million,” *College Fix*, January 9, 2024, <https://www.thecollegefix.com/umich-now-has-more-than-500-jobs-dedicated-to-dei-payroll-costs-exceed-30-million/>.

² Jay P. Greene and James D. Paul, “Diversity University: DEI Bloat in the Academy,” *Heritage Foundation Backgrounder*, no. 3641 (2021), https://www.heritage.org/sites/default/files/2021-07/BG3641_0.pdf.

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Not only is overspending an issue, but the emphasis on DEI has really short-changed academic job seekers, which in turn ultimately affects a state’s workforce. Note, for example, a rubric used by several institutions in the University of California System to evaluate potential faculty candidates. It asks applicants to speak to their track record and future plans to promote DEI in “research, teaching, and service.”³ This rubric is considered before the candidate’s strength in research and teaching. To be clear: the “diversity rubric” is a screening tool. An answer that does not align with an activist’s agenda effectively ends the applicant’s candidacy. For those professors who prioritize merit-based evaluations and viewpoint diversity, *which should be the main consideration when evaluating future students, staff, or faculty*, this rubric presents a real challenge to being considered for employment. An opportunity to hire a strong candidate could be missed. Would a young Albert Einstein be able to land a job at UC–Berkeley today?

Further, DEI offices have on occasion shown themselves to be discriminatory. In 2021, Northwestern University’s Office of Institutional Diversity held an event for employees of color, but they intentionally left out Asian staff. When a group of Asian staff confronted the office, they were told that the venue

³ UC–Berkeley, “Creating a Rubric to Assess Faculty Candidates,” Office for Faculty Equity & Welfare, <https://ofew.berkeley.edu/creating-rubric-assess-faculty-candidates>.

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was not big enough to host all the employees of color and so they were simply left out.⁴ To provide a more recent example, the University of Virginia’s Division for Diversity, Equity, and Inclusion hosted back-to-back events about microaggressions one week following the tragic events of October 7, 2023. However, the first instance of any official program discussing the Israel/Hamas conflict did not occur until almost a month later and was hosted by the university’s Miller Center of Public Affairs, not the DEI office.⁵

And what do institutions have to show for all the expenditures and growing administrative bloat? Not much. A 2021 report issued by ACTA, titled *The Cost of Excess: Why Colleges and Universities Must Control Runaway Spending*, noted that studies have shown that tuition increases negatively impact minority students. One study found that a \$1,000 increase in tuition and fees was associated with a 4.5% decline in ethnic and racial diversity for future freshman classes.⁶ The return on investment for schools seeking a more diverse student body would most likely rest in greater need-based scholarship assistance or in other programs that

⁴ Ji-Yeon Yuh, “Yuh: On racism against Asians and Asian Americans at Northwestern,” *Daily Northwestern*, October 4, 2024, <https://dailynorthwestern.com/2021/10/04/opinion/yuh-on-racism-against-asians-and-asian-americans-at-northwestern/>.

⁵ University of Virginia Event, “Colliding crises: The Israel-Hamas conflict, the war in Ukraine, and geopolitics,” <https://global.virginia.edu/events/colliding-crises-israel-hamas-conflict-war-ukraine-and-geopolitics>.

⁶ American Council of Trustees and Alumni (ACTA), *The Cost of Excess: Why Colleges and Universities Must Control Runaway Spending* (Washington, DC: ACTA, 2021), https://www.goacta.org/wp-content/uploads/2021/08/The-Cost-of-Excess_2.pdf.

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accomplish the same goal of providing resources to disadvantaged students. For example, the Pennsylvania Higher Education Assistance Agency's Act 101 Program is a state-funded program that allocates funds to Pennsylvania postsecondary institutions to support services for academically and financially disadvantaged students. Aimed at helping them successfully complete their postsecondary studies, the program funds services like additional tutoring and counseling, additional academic advising, and peer mentoring programs. I would like to point out that this program has no requirements related to a student's race, gender, or sexual orientation.

How are Texas institutions implementing the DEI ban? We have seen news coverage and reports from institutions that have cut DEI-related positions and closed departments.⁷ On the other hand, we have also witnessed Texas institutions attempting to skirt the law by simply renaming positions and departments, as demonstrated in a video captured by Accuracy in Media.⁸ It is because of examples like these that these hearings are important.

⁷ Sneha Dey, "Documents detail how Texas' DEI ban is changing university campuses," *Texas Tribune*, May 24, 2024, <https://www.texastribune.org/2024/05/24/texas-dei-ban-higher-education-brandon-creighton/>.

⁸ Marcela Rodrigues, "Hidden cameras aim to expose DEI efforts in Texas colleges despite ban," *Dallas Morning News*, February 15, 2024, <https://www.dallasnews.com/news/education/2024/02/15/hidden-cameras-aim-to-expose-dei-efforts-in-texas-colleges-despite-ban/>.

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I will use the remainder of my time to highlight an institution that ACTA believes is doing things right. ACTA recommends all Texas institutions to follow the example of the University of North Carolina (UNC)–Chapel Hill’s Board of Trustees. Not only did the board reappropriate funding dedicated to DEI by shifting \$2.3 million of DEI money to campus public safety, but the institution is also actively trying to change its campus culture by fostering a community dedicated to diversity of all kinds, especially intellectual and viewpoint diversity. In 2022, the UNC–Chapel Hill board adopted both the Chicago Principles on Freedom of Expression and a policy of institutional neutrality modeled after the University of Chicago’s 1967 Kalven Report. We also congratulate the University of Texas System Board of Regents, which adopted an institutional neutrality statement this past August, as well as the Chicago Principles back in 2022.

Broadly speaking, the purpose of a university is to discover, debate, and share knowledge. When a university realizes this purpose, it is of tremendous benefit to all members of the university community and the larger society. As in life, in higher education it is often too tempting to suppress ideas and harass individuals who do not conform to established orthodoxies. Thus, policies protecting the free expression rights of each community member need to be

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adopted. The Chicago Principles and the doctrine of institutional neutrality as defined in the Kalven Report are two such policies.

The Chicago Principles function in a manner similar to a bill of rights. On one level, they create a policy environment that protects free expression for students and faculty. On a deeper level, the content and aspirations of the Chicago Principles teach students, faculty, and the broader community about the ideas they should embrace and habits they should develop (and expect from others) as citizens in a free democratic society.

By preventing a university from using public statements to bestow favor or disfavor on a particular perspective or set of ideas, especially on matters of political or social controversy, institutional neutrality is an equally important part of protecting free expression. As the Kalven Report states, “The instrument of dissent and criticism is the individual faculty member or the individual student. The university is the home and sponsor of critics; it is not itself the critic.”

Not only is UNC–Chapel Hill adopting policies designed to foster free expression and viewpoint diversity, but the institution is also creating additional spaces where these foundational principles can thrive. In 2023, the board approved a resolution accelerating the establishment of the School of Civic Life and Leadership. SCiLL, as it is being called for short, is a new academic unit that aims

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to promote civic engagement and discourse, welcoming heterodox faculty and visiting scholars. It offers a Civic Life and Leadership Minor as well as varied courses on topics including scientific knowledge, classical philosophy, political psychology, and microeconomics. The core of SCiLL's mission is to expose students to diverse points of view, equipping them with the core competencies necessary to be good citizens—whereas courses, trainings, and programs focused on incorporating elements of DEI seek only to indoctrinate students.

DEI courses, trainings, and programs, as they are practiced today, are too often force-fed to faculty, staff, and students. This is the antithesis of the mission of the university, where students should be taught how to think and not what to think. It is ACTA's recommendation that Texas institutions, led by their governing boards, should consider adopting the Chicago Principles on Freedom of Expression and the Kalven Report on institutional neutrality, or similar policies, in addition to their efforts to reappropriate funding, positions, and resources away from initiatives that solely focus on DEI.

I would like to end my remarks by stating for the record that the American Council of Trustees and Alumni *believes* in diversity, equity, and inclusion—true diversity of mind and heart, in which students and faculty freely exchange questions and ideas. This is the fearless diversity that advances understanding and

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progress. We believe a college education should be made affordable and accessible to all who wish to attend, regardless of race, creed, gender, or sexual orientation.

ACTA is against DEI initiatives that are forced onto staff, faculty, and students with the goal of indoctrination. While Texas institutions may be making headway in following the law through administrative direction and memoranda, it should be the regents who are charged with ensuring that their schools are following the spirit and letter of the law.

My contact information is **ndown@GoACTA.org**. With that, I am happy to answer any questions you have. Thank you for your time.