



## The Battle Over Diversity Training

Many diversity, equity and inclusion programs are toxic. The laws trying to curb them are worse.

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Workplace diversity training—or, as it’s more commonly known today, Diversity, Equity, and Inclusion (DEI) training—has become a hotly contested battlefield in the culture wars. In September 2020, Donald Trump, fired up by anti-critical race theory crusader Christopher Rufo’s [appeal](#) on Fox News, issued an [executive order](#) banning employee training based on “divisive concepts”—e.g., that “an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive”—by federal institutions or contractors. Four months later, one of Joe Biden’s first actions as president was to [reverse](#) this order.

Now, the clash has moved to the states. In April, Florida Gov. Ron DeSantis [signed House Bill 7](#), the Stop the Wrongs to Our Kids and Employees Act (“Stop WOKE,” get it?), outlawing supposed indoctrination into what DeSantis [called](#) “pernicious ideologies” in schools and in the workplace. Last month, after two Florida-based businesses and a diversity consultancy sued claiming that the law was an unconstitutional infringement on their freedom of speech, U.S. District Judge Mark Walker [granted](#) a temporary injunction blocking enforcement of the portion of the law that affects private employers. (There’s a separate lawsuit on behalf of colleges and universities.) In a strongly worded 44-page [opinion](#), Judge Walker noted (referencing the Netflix show *Stranger Things*) that “recently, Florida has seemed like a First Amendment upside down”:

Normally, the First Amendment bars the state from burdening speech, while private actors may burden speech freely. But in Florida, the First Amendment apparently bars private actors from burdening speech, while the state may burden speech freely.

While this is only the beginning of what is likely to be an arduous legal battle, the First Amendment case against HB 7 seems pretty straightforward. As Judge Walker noted, the law amounts to straightforward content-based speech regulation: It allows businesses to hold discussions of “woke” concepts as long as those concepts are not endorsed, which presumably means that “anti-woke” sessions or readings would be fine. The law, as George Mason University law professor Ilya Somin [put it](#), “singles out speech that advocates particular viewpoints on disputed issues, while giving more favorable treatment to speech that supports the opposite positions. . . . Such targeting is a blatant violation of the First Amendment.”

The Florida law is, of course, blatant and unabashed pandering to the culture-war right by DeSantis, who [declared](#) upon signing the bill that “we will not let the far-left woke agenda take over our schools and workplaces.” It’s unclear how many other states are contemplating similar efforts: Most Republican-backed laws targeting “critical race theory” have focused on education, and while a Reuters [article](#) from July mentions “44 bills or new laws in 17 conservative-led states penalizing [progressive] company policies,” many of these have to do with gun control or

climate change activism. But if DeSantis eventually prevails in court, it's very likely that other red and purple states will get on the bandwagon.

Let's grant that DeSantis's Trump-lite culture-warmongering is cynical and noxious, and the "Stop WOKE" law—which should be taken out and shot for its moniker alone—is a very real speech infringement, especially given the broad scope and the vagueness of its prohibitions. (For example, the law prohibits training or teaching that individuals "must feel guilt, anguish, or other forms of psychological distress because of actions . . . committed in the past by other members of the same race, color, sex, or national origin." Does this apply only to instructing trainees that such reactions are *required*, or could any material that inspires employees to feel "psychological distress" or shame over racial inequities fall under suspicion?)

And let's further grant that Rufo is a political hack who is upfront about his end-justifies-the-means approach to stopping "wokeness."

But DEI training is also one of those issues on which the right and the left tend to get trapped in a mutual cycle of escalating culture-war follies. The right seizes on a real problem, blows it up into an imminent threat to Civilization As We Know It, and demands ham-handed—and often unconstitutional—action to root it out. The left circles the wagons and ferociously argues that whatever the right is complaining about is either nonexistent or actually a good thing. The right attacks even more forcefully. Rinse and repeat.

While Rufo's dispatches from the culture-war front definitely need to be taken with a grain, or maybe a shaker-full, of salt—as I noted last year, he's prone, at the very least, to exaggeration and cherry-picking—some of the corporate documents he has collected should give cause for concern.

For instance, the "*Listen. Understand. Act.*" program launched at AT&T in April 2021 describes "21-Day Racial Equity Habit Challenge" which invites the employee to "do one action to further your understanding of power, privilege, supremacy, oppression, and equity" every day for 21 days. These actions include reading, watching, or listening to material on antiracism, gender issues and/or social justice from an ideologically uniform list that features Ibram X. Kendi, Robin DiAngelo, Ta-Nehisi Coates, and Nikole Hannah-Jones. No alternative or critical point of view is listed—not, say, Kelefa Sanneh's trenchant 2019 critique of Kendi and DiAngelo for the *New Yorker*, or the podcast discussions by Brown University economist Glenn Loury and Columbia University linguist John McWhorter, two black academics critical of the Kendi brand of antiracism.

Other recommended material includes a blog post arguing that the COVID-19 pandemic has been good for anti-racism because living in the constant shadow of death allows white Americans to understand how black Americans feel all the time; a column that bluntly states, "White people, you are the problem"; a video titled "Not Everyone Is Your Friend," in which a spoken-word poet warns that old friends who don't support you on your social justice journey may not really be true friends; and a conversation with the author of a book arguing that the United States owes its economic power to slavery, with no mention of other work challenging his thesis. Participants are also encouraged to become involved in social and racial justice activism and to scrutinize their circle of friends, their reading and film- or TV-viewing habits, and even the artwork in their homes for racial balance.

This program is not mandatory, though Rufo says a “senior employee” told him that managers at AT&T are, in Rufo’s words, “assessed annually on diversity issues” and that employees are under heavy pressure to participate in DEI programs. Whatever one thinks of Rufo’s credibility, this particular claim does not sound implausible. On the other hand, the “*Listen. Understand. Act.*” text tells us little about what the program actually requires. We don’t know if employees merely check off attendance or are actually pressured to read, watch, and discuss the material and chart their progress on the “equity challenge.”

Does AT&T have a First Amendment right to foist this program on its employees? Yes, it does (within certain limits, of which more in a moment). But that doesn’t mean it should. For one thing, if the goal is to improve the workplace climate, there is scant evidence that DEI training actually has the intended effects. DiAngelo’s books, *White Fragility* and *Nice Racism*, are based primarily on her experience conducting diversity workshops and running into resistance and negativity—which she blames entirely on white people’s unwillingness to confront racism, not on possible problems with the material and/or the presenter.

Moreover, one need not endorse conspiracy theories about “woke” corporations and the left to be troubled by a trend of major employers expecting employees to declare allegiance to a particular political viewpoint. Nor does one need to endorse Trump-style white identity politics to believe that the DiAngelo-style identity politics of many DEI programs are, in fact, very bad. It’s everything from the messages decrying “whiteness” and badgering white employees to confess their “complicity” in racism to the fixation on seeing all interpersonal problems through the lens of identity, privilege, and oppression to the constant sleuthing for “microaggressions” and “harm.” It doesn’t help that for all the talk of “diversity,” many DEI programs are focused on the dynamics of black and white Americans while giving short shrift to other groups. The “*Listen. Understand. Act.*” materials include more than forty items that focus on the black American experience, but just two focused on Hispanics and one dealing with Asian Americans.

With little in-depth reporting on the subject, it’s impossible to tell to what extent programs in the politicized “social justice” mold dominate the DEI training scene. For what it’s worth, the complaint in *Honeyfund v. DeSantis* offers plenty of grist for DEI detractors. The plaintiffs are fairly upfront about their reliance on guilt and collective responsibility in their training sessions, their belief that white and male employees must be confronted about their “privilege,” and their attachment to implicit bias tests some five years after implicit bias research was debunked.

While the DeSantis “Stop WOKE” law is unlikely to survive judicial scrutiny, even Judge Walker acknowledged in his opinion that some curbs on DEI programs could be constitutional if, for instance, they focused on differential treatment of employees based on race, gender, or ethnicity rather than expression of particular viewpoints. “The First Amendment starting position is that private companies have the right to offer training that embodies a particular point of view, the same way that they would have a right to buy a full page editorial in the newspaper saying those same things,” Walter Olson, a constitutional scholar and employment law expert at the Cato Institute (where, for disclosure, I am a cultural studies fellow), told me in an interview. “But it gets more complicated because the system has accepted for many decades that some things companies say to their workforces might not have First Amendment protection because they might contribute to violations of anti-discrimination law and [create a] hostile environment.”

Some speech in DEI trainings, says Olson, could be arguably unprotected if it stereotyped or attacked whites or other groups; if HB 7 narrowly targeted programs that could be shown to violate federal or state anti-discrimination law, it would be, at the very least, “a tougher case for judges to decide.” But, he says, “as far as I can see the law swept into a lot of different things unlikely to be treated as a civil rights violation.” (That’s what happens when you’re more interested in performative anti-wokeness than in viable legislation.)

What complicates matters even further, Olson adds, is that DEI trainings in their various guises originally arose in large part as a way for companies to avoid or limit liability in civil rights lawsuits. As a result, conservatives and libertarians have often treated such programs as a form of compelled speech by businesses, unwillingly deputized by government to enforce new codes of conduct. But today, we’re in the midst of a right-wing backlash against “woke capitalism” in which corporations are cast, and castigated, as zealous champions of progressive values—and so culture warriors like DeSantis are only too happy to trample on corporations’ First Amendment rights. At least, until they run into judicial review.

Again, this doesn’t mean the *Honeyfund* plaintiffs’ practices are good or worthwhile. It just means that commonsense liberals and conservatives should side with these plaintiffs solely on the Voltairean principle: disapprove of the speech, defend their First Amendment right to engage in it.

Is there another way to address polarizing and toxic DEI training besides constitutionally dubious laws and culture-war bluster? One possible way would be to mount legal challenges to programs that really do treat employees in abusive ways. But some argue that the solution is better DEI—and a few are exploring such alternatives.

Among them is Irshad Manji, the 54-year-old educator, author and journalist who was born in Uganda to Egyptian and Indian parents, moved with them to Canada as a child, and now lives in New York. In 2008, Manji, then at New York University, founded the Moral Courage Project with the purpose of helping young people speak out on difficult issues; eventually, it evolved into a “Moral Courage College” that bills itself as a provider of “Diversity Without Division.” It is a certified provider of diversity training that has already conducted workshops at companies that include Disney, Lockheed Martin, and Novartis and universities including Cornell, the University of Southern California, and the University of Virginia.

Manji traces her interest in a better diversity model to her earlier work as a reformist Muslim—a role in which she often courted controversy. “What I didn’t understand during that chapter of my life is that the way we communicate our point of view is at least as important as what we’re trying to communicate,” Manji told me. Her impulse, she says, was to lash back when she felt attacked; the resulting stress led to a breakdown that literally landed her in the hospital, and then forced her to reconsider her approach, including the way she taught “moral courage.” (Another “transformative moment,” Manji says, was a debate on Al Jazeera in which she consciously tried new tactics—to learn as well as teach and to understand that her opponent is not “the enemy”—and was amazed by the positive feedback.) She did some presentations on “moral courage” in K-12 classes on global citizenship as well as diversity/equity/inclusion; then, as the demand for DEI rose due to Trump-era social conflicts and especially the racial “reckoning” after the murder of George Floyd, Manji decided to expand the project into a unique DEI consultancy in which the initials stand for “diversity, *empathy*, and inclusion.” In May, the Society for Human

Resources Management partnered with Moral Courage College to distribute Diversity Without Division as an “innovative inclusion program.”

“Our first principle is: no shaming, no blaming,” says Manji.

No matter what group you’ve been born into, you have equal worth and dignity.

Number two: we define diversity to include diversity of viewpoint. Very simple: individuals are not identical even when they belong to the same identity group. And I often use myself as an example: I happen to be Muslim. Does that mean that I think like every other Muslim out there? Obviously not, if you know my backstory. And as I’ve come to learn, every other Muslim doesn’t think like every other Muslim out there. And if that’s true for my group, why wouldn’t it be true for white straight guys—that they are not a monolithic group, that they don’t think alike?

Number three: we don’t tell anybody what to think or believe. Your convictions are part of your integrity. What we teach—and we teach this to everybody, regardless of what part of the political spectrum they’re on—is how to lower their emotional defenses so that everyone can think more clearly. The reality is that human beings are not thinking creatures with the capacity to feel, we are feeling creatures with the capacity to think. We emote before we engage our cognition, so lowering those emotional defenses immediately clears the fog of fear. So, unlike most DEI practitioners who teach the *what*—the facts and figures from their perspective—we teach the skills to communicate productively about polarizing issues. It all comes down to people and how we treat one another.

So far, Manji and Allison Gerard, the direction of education for Moral Courage College, are the only two people who have conducted Diversity Without Division workshops; but more mentors are in training, and the first eight are expected to be certified in the next few weeks. Manji says there is tremendous interest in what she has to offer: “More and more, organizations are looking for this approach.” But, she adds, “People who reach out to us are still afraid—afraid that they’re the crazy ones. There have been many, many calls during which I or one of my team members had to play some version of therapist”—holding people’s hands through the fear that they have of doing the wrong thing by choosing an unconventional approach to DEI.

Manji is highly critical of conventional DEI—many of today’s antiracism activists, she has said, actively undermine Martin Luther King’s ideal of judging people without regard to color—but she also has extremely harsh words for the anti-CRT, anti-DEI, anti-“wokeness” campaign on the right led by Rufo and his ilk. “It is utterly hypocritical,” she says. “They preach a good game about freedom, about individual liberty, about combating ‘indoctrination.’ But the way they conduct that campaign is at least as authoritarian, at least as toxic, at least as fear-mongering and fear-inducing, as tribalistic as anything that they accuse the other side of indulging in. It feeds reactionary behavior on the part on the left, which of course fuels [the right’s] own campaign. It’s the perfect self-reinforcing mechanism.” She’s not even particularly inclined to credit Rufo with exposing bad diversity programs, pointing out that people like *New York Times* reporter Michael Powell have been doing a fine job of exposing the excesses of social justice activism without Rufo’s toxic baggage.

Another alternative DEI program is offered by Brooklyn-based African-American entrepreneur and writer Chloé Simone Valdary under the name “Theory of Enchantment.” (It’s based on the 2011 book *Enchantment: The Art of Changing Hearts, Minds, and Actions* by marketing guru

Guy Kawasaki, who defines “enchantment” as winning people over by “delighting” them with a product or idea.) On the Theory of Enchantment [website](#), Valdary describes her program, launched four years ago, as “a framework for compassionate antiracism that combines social-emotional learning (SEL), character development, and interpersonal growth,” based on three principles: “treat people like human beings, not political abstractions”; “criticize to uplift and empower, never to tear down or destroy”; “root everything you do in love and compassion.” Clients include the online food-delivery company GrubHub and the Hadassah Jewish women’s organization. The company currently has six part-time employees; Valdary told me that at least for now, she’s looking not to expand but to build sustainable systems. She also stresses that she approaches the issue “from an entrepreneurial perspective, not a culture-war perspective.”

Like Manji, Valdary is highly critical of the conventional DEI model, which her site describes as leading to “individuals being unfairly singled out, ostracized, and humiliated” and “animosity developing among coworkers.” But she also believes that the anti-woke crusaders—whether activists or politicians—end up becoming the very things they wage war against, and she thinks HB 7, with its focus on banning “harmful” concepts in workplace training, is a perfect example. “They’re imitating critical race theory, which also wants to ban certain uses of words,” she says. “It’s like, to a T, an imitation of their opponents.”

Contrary to the anti-woke crusaders’ portrayal of “wokeness” as a juggernaut crushing everything in its path, we live in a pluralistic society in which those who oppose toxic DEI training have many options. You can reach out to corporate leaders and try to persuade them that there’s a better way. You can help boost alternative programs such as the ones created by Valdary and Manji, which seem to have a very real appeal. (This may sound shocking, but most corporate leaders probably aren’t crazy about programs that breed negativity and resentment in the workplace.) Or you can persuade yourself, like Rufo and co., that the power of the left is so totalitarian that there is no recourse except to use the power of government to crush corporate and academic programs that advance “pernicious ideologies.” And, before you know it, you can find yourself in solidarity with certain elements of the left, deciding that it’s fine to do an end run around the First Amendment to curb what you consider hate speech.