

THREADING THE NEEDLE

*Katharine T. Schaffzin**

The University of Memphis Cecil C. Humphreys School of Law provides an affordable, intellectually rigorous, and practice-oriented legal education and promotes student success, research, community engagement, diversity and inclusion, professional responsibility, and justice.

-The University of Memphis Cecil C. Humphreys School of Law Mission

This [divisive concepts statute] shall not be interpreted to:

(6) Prohibit public institutions of higher education from promoting diversity, equity, and inclusion; provided, that such efforts are consistent with the provisions of this part.

TENN. CODE ANN. § 49-7-1906(6) (2023).

INTRODUCTION

For the past six years, it has been my privilege to serve as Dean of the University of Memphis Cecil C. Humphreys School of Law. It is an honor to lead an institution boasting one of the highest rates of African American law graduates in the country.¹ In a city like Memphis where the majority of our community are African American citizens,² it is also our responsibility to educate culturally competent attorneys to serve our diverse community. But with childhood poverty rates as high as they are³ and academic success rates as low as they are here,⁴

* Kate Schaffzin is the Dean of the University of Memphis Cecil C. Humphreys School of Law. She is grateful to the many faculty colleagues who have joined her in the important work of recruiting and supporting diverse and culturally competent law students, especially Demetria Frank, Jacqueline O'Bryant, Dr. Sue Ann McClellan, Amber Campbell, Joanna Darden, and Meredith Aden. Special thanks are due to colleagues who offered their insights into this essay, including Lynda Black, Jenny Brobst, Ronnie Gipson, DeShun Harris, Daniel Kiel, Anna Vescovo, Faith Watson, and Jodi Wilson. Sarah Jones offered outstanding research assistance in finalizing this essay.

1. *Top Ranked Programs*, UNIV. OF MEM., CECIL C. HUMPHREYS SCH. OF L., <https://www.memphis.edu/law/about/rankings.php> (last visited Dec. 19, 2023).

2. Micaela Watts, *Memphis May Be the Largest Majority-Black City in the U.S., So Where do We Go From Here?*, COM. APPEAL (June 2, 2023), <https://www.commercialappeal.com/story/news/local/2023/06/02/memphis-is-the-largest-majority-black-city-in-u-s-passing-detroit/70258030007/>.

3. See Elena Delavega & Gregory M. Blumenthal, *2022 Memphis Poverty Fact Sheet* (2022), https://www.memphis.edu/socialwork/research/2022_poverty_fact_sheet_web.pdf.

4. Laura Faith Kebede, *In First Comparison with Other Large Cities, Memphis Students Score Poorly on National Test*, CHALKBEAT TENN. (Apr. 10, 2018, 12:01 AM), <https://tn.chalkbeat.org/20>

preparing our population for the rigors of law school and, ultimately, success in the profession requires strategic, dedicated investment. I am proud to report that Memphis Law has done and continues to do that work.

Fulfilling these responsibilities has become increasingly difficult for law schools like ours—public institutions in states pursuing legislation attempting to limit curricular content, implicit bias training, diversity staff roles, or the use of diversity statements in recruitment or admissions. If you are hoping to read an essay challenging such legislation, you may have to skip ahead to the next article—I will not debate the intent or value of such legislation here. Instead, I write from the frontline perspective of a dean leading an institution through these new regulations, walking a thin line to achieve an unchanged mission.

I write to share that, despite the conversations around legislation aimed at curtailing diversity work, the space for such important work remains wide. Although recent legislation has challenged us and similarly situated law schools to find new ways to meet our goals, these statutes do not require those goals themselves to change.⁵ In most cases, these new laws offer solutions looking for a problem; they attempt to regulate conduct that, to the best of my knowledge, did not already exist. Thus, the impact on the practical activities and programs most schools have been implementing is quite limited.

Admittedly, many legislative efforts focused on diversity at public institutions of higher education do institute additional affirmative requirements that take extra effort to meet.⁶ New regulations require the expenditure of sparse financial resources to comply with new reporting, communication, and investigative functions. But there remains a great deal of room within which public law schools can continue the important work of diversifying the bar. In fact, Tennessee's statute explicitly includes an affirmative commitment to promoting all diversity,⁷ which, in my experience, is something existing diversity, equity, and inclusion efforts have always sought to advance anyway.

Much has been said about the reach of divisive concepts and Critical Race Theory legislation, but I write to share that many opportunities remain. Many educators and advisors in this space may rightfully feel targeted and demoralized by the plethora of legislation aimed at their work. And, while the enforceability and breadth of much of this legislation have not yet been challenged, the chilling effect on services and recruitment is unavoidable. But, for law schools like Memphis Law, our mission demands that we stay the course and do the work, although it may be increasingly difficult. Staying true to our mission and our community requires flexibility and resolve. At Memphis Law, we remain fluid as we both abide by the law and pursue the best outcomes for our students and our community.

18/4/9/21109306/in-first-comparison-with-other-large-cities-memphis-students-score-poorly-on-national-test.

5. See TENN. CODE ANN. § 49-7-1906 (West 2022) (“This [divisive concepts statute] shall not be interpreted to: (6) Prohibit public institutions of higher education from promoting diversity, equity, and inclusion; provided, that such efforts are consistent with the provisions of this part.”).

6. See *infra* notes 36-45 and accompanying text.

7. TENN. CODE ANN. § 49-7-1907(a) (West 2023).

I. THE THREAD: MISSION & COMMUNITY

Our mission at Memphis Law includes many aspirational goals, including an explicit commitment to promoting diversity and inclusion. “The University of Memphis Cecil C. Humphreys School of Law provides an affordable, intellectually rigorous, and practice-oriented legal education and promotes student success, research, community engagement, diversity and inclusion, professional responsibility, and justice.”⁸ We are fortunate to be part of an active and engaged legal community that shares our commitment to these goals. The local bench and bar focus a great deal of their programming and attention on diversity, equity, and inclusion.⁹ I have engaged in countless conversations with attorneys and judges asking how we can, together, increase the number of graduates prepared to serve our diverse community.

From the start of my tenure as Dean, I set forth as a driving goal to foster a culture of diversity and inclusion at Memphis Law, capitalizing on our already strong record. While diversity means different things to different people, we traditionally focused on a broad definition of diversity adopted from the State of Tennessee that includes racial and ethnic diversity, individuals with different abilities, first generation college graduates, and first generation citizens, among others.¹⁰ We hosted a highly successful alternative admissions program for diverse students at Memphis Law since at least 1987.¹¹ We have worked hard to grow and support this diversity among students, staff, and faculty.

Memphis Law sits in a community where African American residents are the majority population, so it should be no surprise that many of our diverse students, faculty, and staff identify as African American. We have increased the proportion of our student population who identify as ethnically diverse from about 20% to reliably closer to 30% of the 1L class over the past five years. As we strive to do with all students, we successfully support those students who identify as ethnically diverse throughout their time in law school and, ultimately, through the bar exam.

One of the greatest accomplishments of my tenure as Dean was convincing the indefatigable Associate Professor Demetria Frank to serve as the faculty director of diversity and inclusion and, eventually, Associate Dean for Diversity and Inclusion at Memphis Law. In that position, Professor Frank led the effort to increase our admissions pipelines for diverse students—broadly defined—from one to three, including both undergraduate students and high school leaders. She successfully wrote grants to support programmatic growth, and I, in turn, increased internal funding to her office and actively engaged in fundraising to support her

8. *About the School of Law: Mission*, UNIV. OF MEM., CECIL C. HUMPHREYS SCH. OF L., <https://www.memphis.edu/law/about/> (last visited Dec. 19, 2023) [hereinafter *Mission*].

9. In 2018, the Memphis Bar Association even formed a new non-profit organization, the Center for Excellence in Decision-Making, to educate key decision makers within our community on a variety of factors that may influence the decisions they make affecting our broader community. *About Center for Excellence in Decision-Making (CEDM)*, CTR. FOR EXCELLENCE IN DECISION-MAKING, <https://cedmmemphis.org/about-cedm/> (last visited Dec. 19, 2023).

10. Jacqueline M. O’Bryant & Katharine T. Schaffzin, *First-Generation Students in Law School: A Proven Success Model*, 70 ARK. L. REV. 913, 938 (2018).

11. *Id.*

work. Early on, she worked to expand our student satisfaction surveys to assess our community's cultural climate and we instituted change informed by student needs. After years of sustained programmatic growth led by Professor Frank, we successfully converted the faculty director position to the Associate Dean for Diversity and Inclusion.

Under Dean Frank's leadership, the Office of Diversity and Inclusion at Memphis Law expanded programmatic offerings by providing professional development training for faculty and staff around issues of bias and inclusivity. She established diverse mentoring programs and coordinated progressive cultural competence training. While we always strive to improve, the culture of diversity and inclusion at Memphis Law substantially and consistently grew under the leadership of Dean Frank.¹²

I am proud of the work we have accomplished to advance our mission to promote "student success, research, community engagement, diversity and inclusion, professional responsibility, and justice."¹³ We remain committed to these goals and will continue our efforts to achieve them. Recent legislation has begun to regulate the means we use to do so, but it does not limit these goals. It is up to legal educators to flexibly and fluidly pursue our missions.

II. THE NEEDLE: LEGISLATION TARGETING DIVERSITY, EQUITY, AND INCLUSION

It would be difficult for anyone following education or politics in the past three years to have missed the fact that ideas surrounding issues of diversity, equity, and inclusion, Critical Race Theory, and divisive concepts in educational settings have been targeted by state and local governments. Governor Glenn Youngkin of Virginia was an early proponent of limiting content related to "divisive concepts" in schools and Governor Ron DeSantis of Florida quickly followed suit.¹⁴ Many bills have been introduced in state legislatures around the country, based in large part on model legislation drafted by conservative think tanks such as the Heritage Foundation, the Manhattan Institute, and the Goldwater Institute.¹⁵ While national media outlets have highlighted the states of Florida and Texas as leaders in introducing legislation aimed at limiting diversity efforts in

12. Dean Frank left academe in 2023 to pursue other opportunities, and the Associate Dean position at Memphis Law remains open as we conduct a national search for her replacement. Our work continues through the tireless efforts of Assistant Dean of Access & Multicultural Affairs Jacqueline O'Bryant. Despite the depth of our law school's commitment to diversity and inclusion, we have realized first-hand the toll state legislation aimed at curtailing diversity efforts has taken on the level of interest in positions such as this at public institutions of higher education in states proposing and implementing these regulations. It is this situation that inspired me to write this essay to share the reality that this work will continue and can be done well, even at public law schools in states adopting this legislation.

13. *See Mission*, *supra* note 8.

14. Steven Brint, *The Political Machine Behind the War on Academic Freedom*, CHRON. HIGHER EDUC. (Aug. 28, 2023), <https://www.chronicle.com/article/the-political-machine-behind-the-war-on-academic-freedom>.

15. *Id.*

schools,¹⁶ Tennessee has quietly introduced, passed, and enacted as many, if not more, such bills than any other state in the past two years.¹⁷

In 2021, the Heritage Foundation drafted model legislation to ban “divisive concepts” in K-12 schools.¹⁸ The draft proposed:

No public education employee shall compel a teacher or student to adopt, affirm, adhere to, or profess ideas... [including] the following:

1. That individuals of any race, ethnicity, color, or national origin are inherently superior or inferior;
2. That individuals should be adversely or advantageously treated on the basis of their race, ethnicity, color, or national origin;
3. That individuals, by virtue of race, ethnicity, color, or national origin, bear collective guilt and are inherently responsible for actions committed in the past by other members of the same race, ethnicity, color, or national origin.¹⁹

It did not take long for states to adopt this language in seventy-eight of the ninety-nine bills seeking to prohibit divisive concepts in public higher education introduced across several states since 2021.²⁰ In Florida, this legislation was enacted as Florida House Bill 7 (the “Stop W.O.K.E. Act”);²¹ application of this statute to higher education was enjoined by the United States District Court for the Northern District of Florida because it infringes on the academic freedom of faculty protected by the First Amendment.²²

In 2022, the Tennessee General Assembly enacted its divisive concepts legislation,²³ borrowing heavily from the Heritage Foundation’s model language.²⁴ Tennessee Code § 49-7-1903 is titled, “Restrictions applicable to public institutions of higher education” and prohibits students and employees of public institutions of higher education from penalizing a student or employee for refusing to “support, believe, endorse, embrace, confess, act upon, or otherwise assent” to a divisive concept or from requiring inquiry or endorsement of an ideology or viewpoint in considering hiring, promotion, tenure, or graduation.²⁵ Tennessee Code § 49-7-1902 defines a “divisive concept” as, among other things:

[A] concept that [promotes one or more of the following ideals]:

- (A) One (1) race or sex is inherently superior or inferior to another race or sex;

16. *Id.*

17. *Id.*

18. *Protecting K-12 Students from Discrimination*, HERITAGE FOUND., <https://www.heritage.org/protecting-k-12-students-discrimination> (last visited Dec. 19, 2023).

19. *Id.*

20. *See* Brint, *supra* note 14.

21. H.B. 7, 124th Reg. Sess. (Fla. 2022) (codified at FLA. STAT. ANN. § 1000.05 (West 2022)); Katie Reilly, *Florida’s Governor Just Signed the ‘Stop Woke Act.’ Here’s What It Means for Schools and Businesses*, TIME (Aug. 22, 2022, 6:04 PM), <https://time.com/6168753/florida-stop-woke-law/>.

22. *Pernell v. Fla. Bd. Governors State Univ. Sys.*, 641 F. Supp. 3d 1218, 1277-78 (N.D. Fla. 2022).

23. TENN. CODE ANN. §§ 49-7-1901-08 (West 2023).

24. *See Protecting K-12 Students from Discrimination*, *supra* note 18.

25. § 49-7-1903.

- (B) An individual, by virtue of the individual's race or sex, is inherently privileged, racist, sexist, or oppressive, whether consciously or subconsciously;
- (C) An individual should be discriminated against or receive adverse treatment because of the individual's race or sex;
- (D) An individual's moral character is determined by the individual's race or sex;
- (E) An individual, by virtue of the individual's race or sex, bears responsibility for actions committed in the past by other members of the same race or sex.²⁶

Tennessee Code § 49-7-1904, titled "Restrictions on divisive concepts," includes additional prohibitions, including precluding mandatory training, the use of training materials, or the use of funds to include divisive concepts in any public higher education context.²⁷

Despite these restrictions applicable to all public higher education employees, Tennessee Code § 49-7-1906 notably states that "[t]his part shall not be interpreted to: . . . (3) [i]nfringe on the rights of academic freedom of faculty in public institutions of higher education."²⁸ Reading the prohibitions of Tennessee Code §§ 49-7-1903-04 within the context of Tennessee Code § 49-7-1906, then, seems to insulate Tennessee's divisive concepts statute from First Amendment attacks like that successfully argued to enjoin enforcement of a similar statute in Florida.²⁹ Nonetheless, the statute puts the burden of understanding where the line on academic freedom lies on the faculty at risk of crossing it. Any faculty member endeavoring to remain law-abiding would avoid coming close to that line, which some may view as encouraging self-censorship by faculty.

In January 2023, Manhattan Institute Fellows, Christopher F. Rufo and Ilya Shapiro, joined Goldwater Institute Director of Education Policy, Matt Beienburg, in authoring *Abolish DEI Bureaucracies and Restore Colorblind Equality in Public Universities*.³⁰ This brief offered steps state legislatures could take "to reverse the illiberal takeover of higher education through Diversity, Equity, Inclusion (DEI) offices that, ironically, stifle intellectual diversity, prevent equal opportunity, and exclude anyone who dissents from a rigid orthodoxy."³¹ The authors offered model legislation to accomplish four goals: 1) the abolition of "DEI bureaucracies"; 2) the prohibition of mandatory diversity training; 3) the curtailment of "political coercion"; and 4) an end to "identity-based preferences."³²

Following the release of this model legislation in 2023, the Tennessee General Assembly amended Tennessee Code § 49-7-1903 to include in its listed restrictions on divisive concepts a prohibition from requiring a diversity statement

26. § 49-7-1902.

27. § 49-7-1904.

28. § 49-7-1906.

29. *See* Pernel v. Fla. Bd. Governors State Univ. Sys., 641 F. Supp. 3d 1218, 1277-78 (N.D. Fla. 2022).

30. Christopher F. Rufo et al., *Abolish DEI Bureaucracies and Restore Colorblind Equality in Public Universities*, MANHATTAN INST. (Jan. 18, 2023), <https://manhattan.institute/article/abolish-dei-bureaucracies-and-restore-colorblind-equality-in-public-universities>.

31. *Id.*

32. *Id.*

in the employment or admissions process.³³ Tennessee Code § 49-7-1904 was also amended to further limit the use of state funds to support “fees, dues, subscriptions, or travel in conjunction with... an organization” if the “organization requires an individual... to endorse or promote a divisive concept.”³⁴ This section was further amended to include required position responsibilities of any individual “whose job title includes diversity, equity, or inclusion.”³⁵ Finally, this section was amended to mandate that public institutions of higher education “notify students and employees of the institution on the restriction in § 49-7-1903 and the definition of divisive concepts in § 49-7-1904[.]”³⁶

The General Assembly also added a new section to Tennessee Code § 49-7-184 last year.³⁷ That provision provides in pertinent part that:

- (a) A public institution of higher education, shall not:
- (1) Require a faculty member or other employee of the institution to participate in implicit bias training; or
 - (2) Take an adverse employment action against a faculty member or other employee of the institution for the faculty member’s or employee’s failure or refusal to participate in implicit bias training.³⁸

In 2023, the Tennessee General Assembly further amended Tennessee Code Title 49, Chapter 7, to add the “Tennessee Higher Education Freedom of Expression and Transparency Act.”³⁹ This Act recognizes freedom of expression and inquiry at public institutions of higher education as “indispensable” and identifies a duty by those institutions to “promote and defend freedom of expression and inquiry[.]”⁴⁰ It challenges public institutions of higher education to “foster intellectual diversity” and identifies divisive concepts as “contrary to the mutual respect and collegial processes essential to the free exchange of ideas[.]”⁴¹ The statute finds that “[m]easures taken to ensure non-discrimination cannot be allowed to undermine the principles of merit and excellence in the core activities of public institutions of higher education[.]”⁴² It continues, “the implementation of § 49-7-1903 will help limit the potential risk of diminished excellence from our great institutions[.]”⁴³ This Act provides a process by which a student or employee may file a report with an institution, which should investigate and take appropriate corrective action; violations must be reported by the institution to the state comptroller.⁴⁴

33. TENN. CODE ANN. § 49-7-1903 (West 2023).

34. § 49-7-1904(a)(4).

35. § 49-7-1904(b)(2).

36. § 49-7-1904(d)(1).

37. § 49-7-184.

38. § 49-7-184(a)(1)-(2).

39. § 49-7-1907.

40. § 49-7-1907(a)(1)-(2).

41. § 49-7-1907(a)(3)-(4).

42. § 49-7-1907(a)(5).

43. § 49-7-1907(a)(6).

44. § 49-7-1907(b).

Finally, the Tennessee General Assembly amended § 49-7-1907 to prohibit public institutions from demonstrating viewpoint bias or favoritism in providing access to student groups hosting speakers.⁴⁵ In just two legislative sessions, the Tennessee General Assembly has enacted many new regulations aimed at curtailing diversity initiatives in public institutions of higher education.

III. THE THIMBLE: NAVIGATING THE LEGISLATION

It is anticipated that state legislatures will continue to pursue legislation aimed at limiting diversity efforts at public colleges and universities. It is in this climate that Memphis Law currently finds itself attempting to recruit its next Associate Dean to lead our efforts to invite and support a diverse student body and to prepare all our students to become culturally competent lawyers. So, how does a law school with a proven record of its commitment to diversity and inclusion, in a wildly diverse community, with a diverse student body, offering a competitive salary package, recruit a leader in this beautiful space which seems to be shrinking each legislative session? Our general plan is to reiterate our commitment to continue to do what we have done to build and support the diversity of our community. We will exercise flexibility and resolve, grace and commitment, as we continue to serve our community and our profession to the best of our abilities.

Initially, it is of paramount importance to clearly understand the breadth and applicability of diversity legislation on an institution's actions. Tennessee's divisive concepts statute expressly permits institutions to continue pursuing diversity, equity, and inclusion.⁴⁶ Moreover, the statute identifies the pursuit of diverse viewpoints as a value to be celebrated.⁴⁷ These ideas directly support the goals stated in the mission of our law school.⁴⁸ Pursuing our commitment to diversity not only remains fully sanctioned, but it is supported by recent legislation. We will move forward confidently in that support.

As I noted above, many statutes specifically exempt certain categories of diversity work and a great deal of recent legislation prohibits work that no one is even doing. For example, the divisive concepts legislation in Florida has been stayed on First Amendment grounds as it applies to faculty in higher education.⁴⁹ Divisive concepts legislation in Tennessee specifically exempts any interpretation that would infringe on higher education faculty's academic freedom.⁵⁰ The concepts identified as "divisive" by Tennessee statute are certainly not best practices anywhere and I can confirm that Memphis Law has never and would never incorporate any of these practices into our program. So much of this legislation has no impact on our work because it proscribes actions that are antithetical to our educational mission.

45. § 49-7-1907(c)(1).

46. § 49-7-1906(6).

47. § 49-7-1907(a)(3).

48. *See Mission*, *supra* note 8.

49. *See Pernell v. Fla. Bd. Governors State Univ. Sys.*, 641 F. Supp. 3d 1218 (N.D. Fla. 2022).

50. § 49-7-1906(3).

Mandatory bias training in higher education is now proscribed by Tennessee statute, but an exception exists for training required by accreditors.⁵¹ Memphis Law continues to offer the “bias, cross-cultural competency, and racism” training required by the ABA,⁵² which remains fully sanctioned under Tennessee law.⁵³ In fact, the same semester the Tennessee General Assembly considered and then adopted its prohibition on diversity training, Memphis Law hosted Herff Chair of Excellence Demetria Frank (who had since retired as Associate Dean) to offer a national symposium on teaching cultural competence in law schools.⁵⁴ Much work can be accomplished to advance a fully sanctioned mission through knowledge and creativity.

In Tennessee, public universities and employees acting in the scope of their employment are represented by the Tennessee Attorney General.⁵⁵ As state actors themselves, public universities cannot sue the state to challenge state laws they believe to be unconstitutional. Because the right arm of the state cannot sue the left, no one should expect state institutions of public education to challenge any of the legislation directed at their diversity efforts. But that does not mean that those who are dissatisfied with the limits such legislation puts on public institutions cannot take action. Employers are often as interested in growing a diverse and well-educated workforce as institutions of higher education are in providing it. State legislation has not attempted to limit the steps employers take to advance these goals. Private employers can and should pick up the mantle if these issues are important to them.⁵⁶

Public institutions cannot adopt offensive positions to diversity legislation. But they can strengthen their defenses through strong partnerships. At Memphis Law, we are blessed with many amazing and varied community partners. Because we all share the same vibrant and diverse community, many of our partners share our commitment to celebrating diversity in all its forms while supporting our students. Where we may no longer be able to offer certain programs which may be interpreted by some as violating recently enacted legislation, our partners often can continue that work. For example, while the Tennessee General Assembly considered imposing substantive curricular limitations that might affect how Critical Race Theory is taught at public institutions of higher education, the Memphis Bar Association and the Center for Excellence in Decision-Making

51. § 49-7-1906(4)(B).

52. AMERICAN BAR ASSOCIATION, REVISIONS TO THE 2021-2022 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW 2 (2022), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2021-2022/21-22-standards-book-revisions-since-printed.pdf.

53. § 49-7-1906(4)(B).

54. *Demetria Frank Named Visiting Herff Chair of Excellence*, UNIV. OF MEM., CECIL C. HUMPHREYS SCH. OF L., https://www.memphis.edu/law/about/news/demetria_herffchair.php (last visited Dec. 19, 2023).

55. *About the Office: Divisions*, TENN. STATE GOV'T, <https://www.tn.gov/attorneygeneral/about-the-office/divisions.html> (last visited Feb. 4, 2024).

56. Angel B. Perez, *Employers Benefited from Affirmative Action. It's Time to Step Up.*, N.Y. TIMES (July 2, 2023), <https://www.nytimes.com/2023/07/02/opinion/employers-colleges-affirmative-action.html>.

sponsored Memphis Law Herff Chair of Excellence Dr. Darrell Jackson as he hosted a national symposium on the topic itself in law schools and the attacks upon it by state legislatures.⁵⁷

Although it is true that some state legislation aimed at limiting diversity efforts in public institutions of higher education imposes new obstacles and burdens on state colleges and universities, the practical impact of such legislation in limiting existing efforts to advance diversity missions is narrower than may appear at first glance. Diversity missions remain lawful and worthy aspirations for many schools. Clear knowledge of the limits of such legislation is key to advancing these missions while complying with the law. Flexibility and resolve are essential in carving new pathways to foster diverse and culturally competent learning communities.

CONCLUSION

The work required to diversify the bar and to educate attorneys prepared to serve our diverse community can still be done within the confines of current legislation aimed at curtailing traditional diversity efforts in many states. New laws will not dissuade current and prospective students from demanding that institutions value diversity in their educational communities or the bench and bar from demanding culturally competent and diverse graduates. Achieving these outcomes now requires greater innovation, creativity, commitment, and diplomacy than before. But legal education and the legal profession will continue to evolve, and even public law schools can accomplish a great deal while remaining compliant with the law.

57. *Dr. Darrell Jackson Named Visiting Herff Chair of Excellence*, UNIV. OF MEM., CECIL C. HUMPHREYS SCH. OF L., https://www.memphis.edu/law/about/news/visitingherffchair_darrelljackson.php (last visited Dec. 19, 2023).