STANDING UP FOR THE RULE OF LAW: ENDING ILLEGAL RACIAL DISCRIMINATION AND PROTECTING MEN AND WOMEN IN U.S. EMPLOYMENT PRACTICES

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY U.S. HOUSE OF REPRESENTATIVES

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WITNESSES

Opening statements and the prepared statements for the witnesses are available in the U.S. House of Representatives Repository at: docs.house.gov.

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STANDING UP FOR THE RULE OF LAW: ENDING ILLEGAL RACIAL DISCRIMINATION AND PROTECTING MEN AND WOMEN IN U.S. EMPLOYMENT PRACTICES

Thursday, June 27, 2024

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY
Washington, D.C.

The Committee met, pursuant to notice, at 10:02 a.m., in room 2154, Rayburn House Office Building, Hon. James Comer [Chairman of the Committee] presiding.

Present: Representatives Comer, Gosar, Foxx, Grothman, Palmer, Sessions, Biggs, Mace, Fallon, Burchett, Greene, Raskin, Norton, Lynch, Connolly, Khanna, Mfume, Ocasio-Cortez, Porter, Brown, Stansbury, Frost, Lee, Goldman, Tlaib, and Pressley.

Also present: Representative Balint.

Chairman COMER. This hearing of the Committee on Oversight and Accountability will come to order. I want to welcome everyone here.

Without objection, the Chair may declare a recess at any time.

I now recognize myself for the purpose of making an opening statement.

I want to welcome everyone to this hearing before the Committee on Oversight. In recent years, diversity, equity, and inclusion, or DEI, initiatives have become a divisive subject in U.S. businesses, educational institutions, state legislatures, and here in Congress. Unfortunately, many of these initiatives, which many assume simply promote equal opportunity, have, in some cases, become integrated into employment practices to a point where the civil rights of employees are violated. DEI in some forms means preferencing racial categories and disfavoring other racial categories. It is discrimination with a fancy acronym. Racial discrimination is wrong, it is immoral, and it is illegal in the employment context.

Next Tuesday, July 2, we will celebrate the 60th anniversary of the enactment of the Civil Rights Act of 1964 into law. Title VII of that law makes it an unlawful employment practice to discriminate in hiring or against employees once on the job because of their race, color, religion, sex, or national origin. When employers systematically implement employment practices that discriminate on the basis of race, it does not matter that it is dressed up in a fancy acronym like DEI. The law says that is illegal racial discrimina-

tion, and it is illegal whether the victim of that discriminatory practice is White, Black, Native American, or any other racial category. All one needs to do is review the disclosures of many Fortune 500 companies to witness the implementation of literal racial quotas in hiring and promotion.

Hiring managers and executives are encouraged by their companies to institute hiring quotas on the basis of race or face cuts to their compensation or incentives. Can you imagine the disgust of those who crafted the Civil Rights Act to find out that 60 years later, some of the largest and wealthiest companies are still not just implementing, but publicly celebrating the racial discrimination at their companies? State attorneys general have called out companies advancing such discriminatory practices such as "explicit racial quotas and preferences in hiring, recruiting, retention, promotion, and advancement." They also have also recognized those practices to include "race-based contracting practices, such as racial preferences and quotas in selecting suppliers, providing overt preferential treatment to customers on the basis of race, and pressuring contractors to adopt the company's racially discriminatory quotas and preferences."

I will enter the Attorney Generals' July 13, 2023, letter into the record with unanimous consent.

Without objection, so ordered.

The Equal Employment Opportunity Commission, or EEOC, the Federal Agency responsible for enforcing Federal laws against illegal racial discrimination and harassment in all types of work situations, should stand up for the rule of law and investigate such practices at U.S. companies. The EEOC should also reiterate the plain language of Title VII prohibiting racial discrimination in everything it does through guidance, public statements, data collection, litigation, or otherwise. Yet, under the Biden Administration, the EEOC has demonstrated a pattern of public activity inconsistent with the law, and when presented with evidence of discriminatory practices at companies, the EEOC appears to have taken no action at all. In the worst cases, EEOC appears to have filed amicus briefs actually defending the ability of companies to engage in racially discriminatory practices. We are encouraged that EEOC commissioner, Andrea Lucas, has been outspoken in support of the law, arguing, correctly, that the Title VII is violated if race was at all or part of the motivation for an employment decision.

On March 1, 2024, I wrote the EEOC, along with Subcommittee Chairman Pat Fallon from Texas, seeking a briefing and documents and information to conduct oversight of this matter. Since that time, I have been alarmed as well with EEOC redefining sex discrimination through guidance in a way that will jeopardize the rights of men and women in the workplace. On April 29, 2024, the EEOC issued an updated workplace harassment enforcement guidance, its first since 1999. This includes new language requiring employers to permit male employees to use female changing areas and bathrooms. Many states immediately sued the EEOC after the issuance of the new guidance on the grounds of government overreach, and those states seek injunctions to prevent its implementation. EEOC Commissioner Lucas has called out the new guidance

for effectively eliminating single-sex workplace facilities in addition to intruding on the right to freedom of speech and belief.

Thank you to the witnesses appearing here today, and I now yield to Ranking Member Ocasio-Cortez for her opening remarks.

Ms. OCASIO-CORTEZ. Thank you so much Mr. Chairman. Throughout history, Americans have fought for and championed civil rights. We fought to end segregation, discrimination, and advanced measures toward an integrated, diverse, multiracial society. And throughout our history, we have also had to confront the ugly legacy and backlash of bigotry, ignorance, and White nationalism. The arguments that protections and civil rights for historically marginalized populations as "reverse racism" or "preferential" is not new.

We passed the Civil Rights Act and Economic Opportunity Act in 1964. The United States passed the Voting Rights Act in 1965, the Fair Housing Act in 1968, and spent decades afterwards integrating schools, all in an effort to build a society where people can work and be treated equally, no matter their race, gender, religion, or sexual orientation. But throughout it all, from Little Rock, to Charlottesville to today, extremists have resisted these efforts to integrate American democracy. They weaponize fear and claim these efforts toward a better society are themselves unjust, unconstitutional, or illegal. Today's hearing is just the latest in a decades-long attack from right-wing extremists on any and all efforts to expand civil rights, equity, and freedom in the United States.

Let us start with the Civil Rights Act, which is designed to ensure no person is discriminated against for something as simple as the color of their skin, their gender, or their religion. Before the Civil Rights Act of 1964 was even passed, conservative anti-integrationists opposed it, arguing that the law would somehow violate their constitutional right to segregated spaces, but they lost that fight. And thanks to the landmark legislation of the 1960's, opportunities for Black Americans radically expanded. From 1959 to 1969, the poverty rate for Black Americans dropped nearly in half, the share of Black youth completing high school rose from 39 percent to 56 percent, and the gap between White and Black incomes reached the lowest it had ever been, all after integrationist, pro-civil rights policies were passed.

Then came the conservative response afterwards. In the late 60's, Republican President, Richard Nixon, determined to gain support from Southern White politicians by appealing to racism, promised to slow civil rights enforcement. In the 1970's, right-wing opponents of civil rights and integration started framing efforts to ensure all Americans have equal access to opportunities as "reverse racism." And in the 1980's, Republicans and right-wing judges, including now Chief Justice John Roberts, built on that framing to advance a dubious argument if we do not talk about bigotry, it does not exist. So, instead of punishing bigoted leaders and organizations and societal structures and violations of the law and working to create a more equitable world, the law would instead pretend race and racism and their real-world impacts did not exist.

This right-wing legal effort continues today. One lawyer alone, Edward Blum, backed by wealthy right wingers, has brought more than 2 dozen cases since the 1990's attempting to remove consider-

ation of race entirely from key civil rights laws. This resistance to integration in every part of society, whether it be in schools, or housing, or the workforce, is an attempt to destroy the progress we have made toward a more equal and just society. But it is also an economic play, and that is what is important for people to understand. This is a way to keep the status quo that gives a handful of the most wealthy people in our society power and immunity and distract the working class from attaining the basic rights and protections we all deserve.

These right-wing billionaires prey on racism, bigotry, anti-trans panic, and fear to drive wedges in our communities and prevent resources from going to public services that predominantly serve working-class communities. They use these arguments to defund our schools, to defund our communities, and to defund our public infrastructure. They divide us, and they dismantle our public housing, and then union bust, and let us be clear. These extremists are not just destroying the public institutions that working people rely upon as retaliation in some culture war. No, defunding services for working people is the point, and we have seen what happens when they pursue this goal.

Last year alone, more than 4,200 books were targeted in right-wing attempts for censorship. Most often targeted for censorship were those books that cover themes related to race, gender, and sexual orientation. Last year, a record 510 anti-LGBTQ bills were introduced in state legislatures, and since the Dobbs decision 2 years ago this week, 21 states now ban abortion or are more restrictive than the standard was in place under Roe. Those opposed to integration see all this as a victory, and they are not planning to stop here.

Project 2025, the radical right-wing playbook detailing conservative Donald Trump's agenda for a second term, devotes an entire chapter to detailing the many ways that the Federal Government should roll back progress and turn back the clock on civil rights and liberties in the workplace. I will note that the majority of this Committee has apparently invited the author of that chapter to testify here today. This hearing is fundamentally an insult to the promise of a multiracial democracy that we all represent and require for prosperity for a working-class America. This hearing is fundamentally an insult to all of us.

My Republican colleagues are going to say empty words about discrimination in the workplace today. They are going to play on fear and provide yet another opportunity for radical right-wing extremism, the kind that says if you are not a White, or cisgender, or straight, or a man, you do not deserve equal rights, protections over your own body, and the ability to have control over your own life to take root. But we are not going to fall for it, and we are not going to let them get away with it. I yield back.

Chairman COMER. The gentlelady yields back. Today we are joined by the Honorable Todd Rokita, who serves as the chief legal officer of the state of Indiana as their Attorney General. He previously served Indiana's 4th congressional District as a member of the U.S. House of Representatives, 2011 to 2019. Welcome back. Jonathan Berry is a Managing Partner of the law firm, Boyden Gray. From 2018 to 2020, he led the U.S. Department of Labor's

Regulatory Office. Additionally, from 2017 to 2018, Mr. Berry served as Counsel to the Assistant Attorney General of the U.S. Department of Justice.

Inez Stepman is a Senior Policy and Legal Analyst for Independent Women's Forum, an organization devoted to enhancing people's freedom, opportunities, and well-being. She is a Lincoln Fellow with the Claremont Institute and a Senior Contributor to The Federalist. Last, Maya Wiley is President and CEO of the Leadership Conference on Civil and Human Rights, a coalition with more than 230 members that engages in legislative advocacy.

Pursuant to Committee Rule 9(g), the witnesses will please stand and raise their right hand.

Do you solemnly swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

[A chorus of ayes.]

Chairman COMER. Let the record show that the witnesses answered in the affirmative. Thank you. You all may take a seat. We appreciate you being here today and look forward to your testimony.

Let me remind the witnesses that we have read your written statement, and it will appear in full in the hearing record. Please limit your oral statement to 5 minutes. As a reminder, please press the button on the microphone in front of you so that it is on, and the members can hear you. When you begin to speak, the light in front of you will turn green. After 4 minutes, the light will turn yellow. When the red light comes on, your 5 minutes have expired, and we ask that you please wrap up.

I now recognize General Rokita for his opening statement.

STATEMENT OF TODD ROKITA
ATTORNEY GENERAL
INDIANA

Mr. ROKITA. Thank you, Chair Comer, Ranking Member Ocasio-Cortez, and members of the Committee for inviting me to speak here today. It is good to see you. My name is Todd Rokita, and I serve as the Attorney General for the state of Indiana, an office where I manage over 400 employees. And prior to serving as Indiana's chief legal officer, I spent several years in the private sector as general counsel for a company that served other companies, each having over 100 employees. And before that, as you mentioned, Chair, I served as a Member of Congress for 8 years as the Subcommittee Chairman on Educational Workforce, where I served under many chairmen, including the one here today. So, just like that, I am sure I will be corrected a few times today as well.

Chairman COMER. She does that a lot.

Mr. ROKITA. Like I said, it is good to see everybody. I also had the honor of serving for 8 years as Indiana's Secretary of State, where I managed the day-to-day operations of well near 100 employees. So, I believe these experiences, in short, give me some unique insights in how our laws regulate and restrict the use of race and sex in our workplace.

The United States was founded on a basic idea, self-evident today as it was 250 years ago, and that is all men are created

equal. That idea is embodied in the Fourteenth Amendment as well, which requires state governments to provide equal protection of the laws to all persons. The Fifth Amendment imposes similar constraints on the Federal Government. Likewise, Title VII of the Civil Rights Act, which prohibits invidious discrimination in the workplace, advances the goal of equal treatment in the private as well as public sectors.

So, despite the importance our Nation places on equal protection under the law, corporate America and academic institutions have all too frequently embraced the notion, completely at odds with our founding principles, that to remediate racial discrimination of the past, we must somehow engage in racial discrimination now. For decades, that misguided notion was put into practice through affirmative action programs on college campuses. More recently, it has infiltrated workplaces in the form of diversity, equity, and inclusion, or DEI, initiatives that have become fashionable in the C-suites of many of America's largest companies.

Such racial discrimination ignores the observation that Chief Justice Roberts made back in 2007, that the only way to stop discrimination on the basis of race is to stop discriminating on the basis of race. In other words, eliminating racial discrimination means eliminating all of it, and that is exactly what the Supreme Court recently declared in Students for Fair Admissions. In that case, the Court held that the admissions programs of Harvard College and the University of North Carolina violated the Constitution and civil rights laws because they relied on race to decide which students get admitted. The implications of the decision extend beyond the academic world because picking winners and losers based on race is wrong and illegal in any context.

It follows that DEI initiatives in corporate America that require race-based hiring practices are, in most, if not all cases, likely violations of Title VII. So, that is why last year I, along with 12 other state attorneys general, sent a letter to Fortune 100 company CEOs reminding them of their obligations under the civil rights laws. In our letter, we stress that these companies cannot discriminate based on race, including taking discriminatory actions under the guise of DEI. As Judge Robert Bork once said, to make a distinction between persons on racial grounds is utterly irrational. That is the bedrock non-negotiable principle that animates all of our civil rights laws, and there is no DEI exception to that in the Constitution or in Title VII.

Our civil rights laws also guarantee the equal treatment of men and women irrespective of sex. In Bostock *v.* Clayton County, the Supreme Court narrowly extended this principle, mistakenly, in my humble view, to hold that employers violate Title VII if they fire or refuse to hire an individual because of sexual orientation or gender identity. Critically, the Court's decision only concerned the hiring and firing decisions and specifically declined to address other issues that employers may encounter. To address some of the questions left unanswered in Bostock, my office recently issued an advisory opinion concerning the use of preferred pronouns in the workplace. We determined that neither state nor Federal law requires a coworker to use the preferred pronouns and name of a fellow employee and that an employer is likely not liable for a supposed mis-

use of pronouns. No Federal Court has reached and no reasonable interpretation of Title VII would support a different conclusion.

So, in summary, as we continue to deal with the fallout of the Bostock decision, it is of utmost importance that we address questions like this and give employers clarity about what the law requires. I am committed to ensuring that all workplaces in Indiana appropriately balance religious liberty, freedom of speech, safety, collegiality, and productivity. And, Chairman, it is just an honor to be here and seeing my friends and colleagues again. Thank you very much.

Chairman COMER. Thank you. I now recognize Mr. Berry for his opening statement.

STATEMENT OF JONATHAN BERRY
MANAGING PARTNER
BOYDEN GRAY, PLLC

Mr. BERRY. Thank you. Good morning, Chairman Comer, Ranking Member Ocasio-Cortez, and members of the Committee. My name is Jonathan Berry, and I am the Managing Partner of the law and public policy strategy firm, Boyden Gray PLLC. There, I provide strategic counsel and litigate on issues involving the overlapping bureaucracies of the administrative state and corporate America, including matters relating to diversity, equity, and inclusion programs in the workplace.

I want to thank you for inviting me to testify today on the important subject of the recent overreach and underreach of the EEOC. I am honored to currently represent United States Conference of Catholic Bishops and other plaintiffs in litigation against the Commission regarding one of its recent rulemakings. While my views on the subject of today's hearing are informed by my representation of clients in this and other matters, I do not appear here today on behalf of any client, and the views I present are my own. I am also honored to bring with me here my 10-year-old son, Simon, to witness the Committee's important work.

The Commission has an important and crucial role to play in protecting American workers from unlawful discrimination and advancing equal opportunity for all. Unfortunately, too often, the Commission currently is working against those objectives, creating the need for congressional oversight. Three problems stand out when it comes to the EEOC's treatment of race.

First, it has defended DEI initiatives in the workplace, but those initiatives often violate Title VII. So-called reverse discrimination is unlawful discrimination under Title VII. When corporations make recruiting, training, management, and hiring decisions that treat non-White employees preferentially on the basis of race, those initiatives are generally unlawful. Yet the EEOC has let this discrimination go largely unpoliced, necessitating a surge in private lawsuits. Second, the Commission has sued an employer, in this case the Sheetz gas station chain, under Title VII's disparate impact provision for merely performing criminal background checks. But Title VII's disparate impact provision is likely unconstitutional, and the EEOC uses this powerful weapon inconsistently in any event. When the Commission employs this powerful tool arbitrarily, it becomes impossible for employers to plan around or pre-

dict how the law will be enforced. And third, the EEOC has continued to require that all employers submit workforce demographic data that breaks their employees down by race above a certain employer size. But it is wrong to require employers to classify their employees into racial categories and report the results, absent particularized suspicion of discrimination. It encourages everyone involved—the government, the employer, and the employee—to evaluate the merits of a human being on racial terms.

So, accordingly, I have three oversight recommendations for the Committee to consider. First, the Commission must be held to account for declining the stamp out racially discriminatory DEI programs. For instance, one firm alone that we sometimes work with, America First Legal, has filed over 30 discrimination charges against gigantic companies, like Disney and Salesforce and IBM, whose DEI programs are facially discriminating on the basis of race. This Committee could follow up, if it choses, to demand explanation for the lack of prompt EEOC action on these charges. Second, the EEOC must be held to account for how it sets its enforcement priorities, particularly with regard to disparate impact liability. The Commission could bring suit against almost any employer selection procedure. Why has the EEOC targeted criminal background checks and not college degree requirements, which often have profound disparities that result? The Commission should be asked that question. And third, and finally, Congress should end the EEO–1 data collection, or at least limit its imposition to cases where the Commission has particularized suspicion. There is no need to continue this extremely broad data collection, and its racial classification mandate forces American employers to view their employees as members of racial categories and not simply as individual human persons possessing dignity given by God.

Thank you again for the chance to testify this morning.

Chairman COMER. Thank you. I now recognize Ms. Stepman for her opening statement.

STATEMENT OF INEZ FELTSCHER STEPMAN
SENIOR POLICY AND LEGAL ANALYST
INDEPENDENT WOMEN'S FORUM

Ms. STEPMAN. Distinguished members of the Committee, I am honored to testify at today's much-needed hearing. I currently serve as senior policy and legal analyst with Independent Women's Forum and Independent Women's Law Center. For almost 30 years IWF has been the leading national women's organization dedicated to enhancing women's freedom and well-being.

Americans overwhelmingly agree that employers should be forbidden by law from discriminating on the basis of race and sex. Title VII of the Civil Rights Act of 1964 enshrined this principle into law, but is this fundamental promise of a civil rights era, the colorblind workplace, being fulfilled by today's interpretation and enforcement of Title VII? I would argue that, unfortunately, in many respects, it is not. Under the guise of progress or trying to rectify past wrongs, Title VII and its enforcement have gone from protecting the colorblind workplace to undermining it, and I want to talk today about three ways in which that is happening.

As the Chairman said in his opening remarks, the EEOC is mostly looking the other way thus far on overt racial discrimination when it is defended on the basis of diversity or inclusion or similar rationales. Nobody actually really disputes legally that Title VII forbids taking into account race or sex in employment decisions. The EEOC spends much of its 2,000 employees' efforts on policing, hiring, firing, or training criteria that even the Commission itself admits include no intent to discriminate. So, more on that in a moment, yet it is shockingly common, as we have seen from his testimony, for huge corporations to implement programs that amount to the kind of blatant racial quota setting that would make even Harvard University blush. These violations are advertised proudly.

Executives and banking technology and consulting came forward in 2020 to promise to hire a concrete quota of 100,000 Black, Latino, and Asian workers in the next decade. Companies like Google and Adidas declared to the press that 30 percent of their new positions would be filled by Black or Latino workers by 2025. In 2020, at the height of the BLM movement, much of corporate America made obviously discriminatory promises like these, and there is evidence that they followed through on those promises. Of the 300,000 jobs added by the S&P 100, in the year following the summer of 2020, 94 percent of them went to people of color.

Using the EEOC's favorite tool, disparate impact, there can be no doubt then that the discrimination pendulum in America's biggest companies has swung past equality and meritocracy toward discriminating against employees who are White, male, or lack other favored characteristics. But in this case, it is combined with clear statements of discriminatory intent. Unlike in the education context, or soft racial preferences but never were quotas allowed prior to being struck down by students for fair admissions, making decisions even partially based on race was never permissible in the employment context, yet companies had no fear about bragging about these hard quotas.

While Commissioner, Andrea Lucas, has sounded the alarm about these violations, Title VII's antidiscrimination mandate, the EEOC as a whole has been oddly quiet about these clear violations. The EEOC does have a responsibility to protect women from sexual harassment and discrimination in the workplace, but in an April 2024 guidance, the Commission does the opposite by redefining "sex" to include gender identity in a way that denies female employees their rights, privacy, and safety. The guidance explicitly states that employers who do not provide access to single-sex spaces on the basis of gender identity will be in violation, forcing women to use the restroom, pump breast milk, and even in some cases change or shower with male colleagues as a condition of employment.

As the preeminent legal organization dedicated to preserving the commonsense biological definition of sex, the Independent Women's Law Center has already received inquiries from women who have already been subjected to the results of this confusion and redefinition, now encouraged by the EEOC. One woman who contacted us works with chemicals that require employees to shower at work every day. The employer allowed a male to shower with the women

on the basis of reclaimed gender identity. That female employees were uncomfortable with this accommodation was largely disregarded of course. Another woman who contacted us tours with concerts, often in venues with group showers. Here, too, a man with male genitals was accommodated with access to female showers. Even when the women tried to delay their own showers, inconvenienced themselves to avoid him in the shower, the male employee waited in order to shower alongside them. Unbelievably, in the age of microaggressions and firing over mild jokes or offhand remarks, a man waiting to watch his female colleagues shower is now actually encouraged, not prohibited, by the EEOC.

The EEOC does not have the power to rewrite protected categories of Title VII, and their invented definition of the word "sex" in the statute is creating exactly the kind of workplace harassment the Commission is supposed to prevent. If a male employee repeatedly showing his penis to unwilling female coworkers does not qualify as sexual harassment under Title VII, it is honestly hard to see what kind of workplace behavior would.

American workers want to be judged by their employers on the basis of the quality of their credentials and work, not skin color or sex. Title VII's protections against discrimination and harassment should be enforced sanely, fairly, and without choosing favored or disfavored classes. Reforms should be made to rein in out-of-control interpretations contrary to the plain text of law, returning Title VII to its original textual and worthy purpose. Thank you.

Chairman COMER. Thank you. I now recognize Ms. Wiley for her opening statement.

STATEMENT OF MAYA WILEY
PRESIDENT AND CEO
THE LEADERSHIP CONFERENCE ON
CIVIL AND HUMAN RIGHTS

Ms. WILEY. Thank you, Chairman Comer, Ranking Member Ocasio-Cortez, and members of this Committee. My name is Maya Wiley, and my pronouns are "she/her." I am the proud President and CEO of the Leadership Conference on Civil and Human Rights. We will enter our 75th year next year, and we are the civil rights coalition that is responsible for fighting for and helping pass every single civil rights law you just heard the Ranking Member mention in her opening statement.

I say that because we have a 74-year history both of standing and fighting for the Civil Rights Act of 1964 when it faced a 60-day filibuster in the Senate—60 days, the longest filibuster in the history of the U.S. Senate. And ever since then, we have had to link arms across the most diverse coalition in the country that looks like a majority of the country, that has most major religious faiths, that has labor, that has educators, that has everyone, and we have linked arms to ensure and continue to protect the gains we have made. And one of the things I just want to acknowledge is that we all here agree that discrimination is wrong. And that is exactly why we know diversity, equity, and inclusion, a creation of the Civil Rights Act of 1964, who we commemorate in its 60th year this year, helped create.

I want to underscore that DE&I—diversity, equity, inclusion—has been made divisive, despite the fact that a majority in this country and businesses have embraced it because it is good for the bottom line as well as advancing equal opportunities for everyone. And I just want to remind all of us that it is Jamie Dimon, the CEO of JPMorgan Chase, who referred to himself as a self-described, red-blooded, un-woke capitalist, who is standing by diversity, equity, and inclusion because it is good for business. And the reality of what we are seeing is not a violation of Title VII. In fact, what the EEOC has done is continue to enforce Title VII, and it continues to be and remain the law of this land. And what we have to remember, too, is not only is it good for the workforce, is it good for business, is it good for the gross domestic product, is it good for a joint and shared prosperous future. It is that we have compelling need to continue to identify barriers to equal opportunity for all people.

And it is Jamie Dimon himself, who pointed to, in a recent interview, the example of how, by having the way to identify, and he mentioned two Black employees he did not feel good about losing and why they were not promoted. And it was the ability to identify the barriers that made him say we cannot keep losing good people, and everything he has done is in compliance with the law. And we have a lot of reason to be deeply concerned about fearmongering over what is working because it is.

And let me give you a few examples of just how this is good for everyone because it is because when women challenged height requirements for police departments, there were 10 percent of applicants who are White men who did not meet them, and thanks to those challenges, more White men who were short got jobs they had been precluded from. And as we continue to see all of the evidence around how we still see discrimination against people of color, against women of all races and, yes, against transgender Americans, we say we all deserve dignity. We all deserve diversity. We all benefit from it. And if we are not about inclusion in this country, what are we about? Thank you.

Chairman COMER. Thank you all for your opening statements.

Votes have been called, so the Committee will recess until 10 minutes after the close of the final vote in this morning series, which I expect to be around 10 minutes after 12.

With that, this Committee stands in recess.

[Recess.]

Chairman COMER. All right. The Committee will reconvene, and we will begin with the 5-minute questions portion of the hearing, and I will begin.

Attorney General Rokita, you have joined multiple efforts with other state attorneys general to warn companies with unlawful diversity, equity, and inclusion policies the plain language of Title VII, prohibiting discrimination in employment settings. Can you speak about the progress of these efforts in Indiana?

Mr. ROKITA. Yes, I appreciate the question. We continue to monitor these companies, and you are right, it was Fortune 100. And so, we are basically doing that through their public reporting these days and their filings with the SEC and other places like that.

Chairman COMER. What obstacles have you encountered throughout this process?

Mr. ROKITA. With the companies, it is mostly just, you know, the wokeness of the situation, I would say, the idea that you have to discriminate against people in order to please others——

Chairman COMER. Have you got——

Mr. ROKITA [continuing]. And not on the weakness of a C-suite to stand up on principle and morals and do the right thing for everybody.

Chairman COMER. Right. Have you had obstacles from blue state attorney generals?

Mr. ROKITA. I believe they wrote a competing letter that was wrong on the points. In order to deal with those attorneys general wanted to have done in the letter, you have to gut the Civil Rights Act.

Chairman COMER. Uh-huh.

Mr. ROKITA. Right?

Chairman COMER. Right.

Mr. ROKITA. Which is pretty plain on its face that you are not supposed to discriminate on sex, religion, color at all.

Chairman COMER. Right.

Mr. ROKITA. And so, the only way to deal with those attorneys general want to have done is to gut Title VII.

Chairman COMER. So, what could the EEOC be doing for states who are seeking to end unlawful employment practices?

Mr. ROKITA. Well, you know, I associate with the fellow next to me in his testimony when he said you got to rein the EEOC back in.

Chairman COMER. OK.

Mr. ROKITA. They have taken liberties, and that is to put it charitably, regarding the interpretation on Bostock and other similar cases.

Chairman COMER. Right.

Mr. ROKITA. And so, until you get the reforms that the gentleman was talking about done, it is going to be hard or get people who respect the rule of law in there.

Chairman COMER. Right. Mr. Berry, in your testimony, you discussed how the EEOC recently filed a lawsuit against Sheetz Incorporated alleging racially discriminatory hiring practices. It is a matter of saying that EEOC has declined to enforce Title VII against other companies with actual and literally explicit restrictions in their employment practices that are based on race. So, is the EEOC suing companies over seemingly neutral policies like requiring criminal background checks and appropriate use of enforcement resources and lot of more explicit policies based on race at U.S. companies that you have observed in your work?

Mr. BERRY. That is 100 percent correct, Mr. Chairman. The EEOC is going out of its way to develop these disparate impact lawsuits that are really rather intricate, like the Sheetz lawsuit, and ignoring, as best we can tell, charges against companies that just right there in big print on their websites say we are discriminating on the basis of race.

Chairman COMER. So, what should the EEOC be doing about unlawful company DEI practices based exclusively on race?

Mr. BERRY. The EEOC should be taking very serious investigatory and litigation action against those companies that are transgressing the core text of Title VII.

Chairman COMER. Ms. Stepman, we have recently seen the EEOC issue new guidance on sexual harassment in the workplace, its first time since 1999. In your work with the Independent Women's Forum, can you describe how your organization is committed to protecting men and women in the workplace and how EEOC's new guidance might jeopardize safety and freedom of employees?

Ms. STEPMAN. Absolutely. So, there are instances where we have an over and underenforcement problem, right? As my fellow witnesses have said, we see facial violations of companies that announced programs are clearly contrary to the plain text of Title VII and the interpretation of Title VII. And yet we see no enforcement of those, and then we see sort of these witch hunts on other topics. And in this case, we see the EEOC interpreting the word "sex" way beyond not just what the text says, but way beyond what Bostock says. And putting women in the situation in work where in any other context, the behavior of their colleagues would be considered harassment, it would be what the EEOC is actually supposed to be protecting women against, and yet they are doing nothing. They are actually worse than nothing. They are encouraging it.

Chairman COMER. Well, so in my last question, can you explain what actions the EEOC can take to appropriately interpret Supreme Court precedent and make clear that it is protecting and supports men and women in their workplace?

Ms. STEPMAN. Yes. It would start with rescinding the most recent guidance where they explicitly go beyond Bostock. Bostock is very clear. It says it does not apply to single-sex spaces, to locker rooms, to showers, to bathrooms, but this guidance explicitly does apply in those places, so it goes well beyond Bostock. And, again, these are exactly the places where female employees are likely to encounter males, you know, identifying as females in a way that, like, is very invasive to women's privacy, to their safety even, and makes them very uncomfortable at work.

Chairman COMER. All right. Well, thank you very much. I now recognize Ranking Member Ocasio-Cortez for her question.

Ms. OCASIO-CORTEZ. Thank you so much, Mr. Chairman. Ms. Wiley, I found some of the opening statements quite interesting that we heard from our witnesses here today, plenty of claims being thrown out there. One I thought that was particularly interesting was the idea that a company, a large company, perhaps a company like Disney or any other employer, aspiring to maybe have about 30 percent of new hires and having a goal of 30 percent of new hires being from diverse backgrounds or people of color, and the assertion that that kind of goal was anti-White discrimination. I wanted to break things down in terms of the numbers a little bit. About what percentage of Americans are non-Hispanic White? I think we are hearing from the Census, like 59, 60 percent. Is that right?

Ms. WILEY. That is about right. Yes.

Ms. OCASIO-CORTEZ. OK. So, about 59 percent of all Americans are White. That would mean about 40 percent of people are people of color of the U.S. population. And it seems to be that the argu-

ment is that seeking to have 30 percent of your hires be people of color is anti-White discrimination. Can you shed some light on the logic of that for me, please?

Ms. WILEY. No, because that is not logical. What I can say is what is factually accurate around the state of our laws, and that is aspirations are not unconstitutional. Aspirations are not antithetical or in any way a violation of Title VII under our Court's precedence or based on the plain language of Title VII, and, in fact, this is exactly what the fearmongering is doing.

We know, for example, that the Equal Employment Opportunity Commission had a million complaints between 2010 and 2018—a million complaints. Anybody can file one. A White man who is experiencing discrimination on the job can file one and it will be investigated. That is the job of the EEOC. What we are hearing and seeing is a large swath of cases that are based on race that are people of color, that are women of all races. In fact, the majority of hostile environment harassment cases are disproportionately women of all races, and Black women in particular, and that is in the statistics that they provide on the website. I think the question here is not whether people can file complaints and charges with the EEOC. It is who is filing them and why, and the aspirations themselves are consistent with our goals.

Ms. OCASIO-CORTEZ. Very well said. Thank you. And I find that point so interesting and fascinating because with all of this discussion around how diversity, equity, and inclusion policies are discriminatory in the long history of anti-integration in this country, and reaction and opposition to the Civil Rights Act, the Fair Housing Act, and more. I think one of the things that we need to take a look at is the world that they are fighting for, a world without diversity, equity, and inclusion policies, which is to say the default, which is to say workplaces that are honestly kind of like Congress because the population of the United States, as you mentioned, is about 59 percent White. Do you know what percentage of Congress is White?

Ms. WILEY. I do not, but I know that we finally have 60 Members of the congressional Black Caucus, which is progress.

Ms. OCASIO-CORTEZ. Yes. But even then, 75 percent. White Americans make up 59 percent of the U.S. population, 75 percent of Congress. Men are 50 percent of the population and make about 70 percent of Congress. When we see institutions of power, and that is reflected in almost any institutional organization of power, and when we even just try to have the basic acknowledgement that it would be good to encourage not an unreflective body, not unreflective workforce, but a workforce that barely even reaches the proportion of representation of what every day Americans look like, that somehow anti-White discrimination, anti-male discrimination, anti-straight discrimination, anti-cisgender discrimination. I mean, come on, folks. What are we doing here? What are we doing here?

And last, Ms. Wiley, I was wondering if you could also just shed some light on the economic impact of civil rights legislation and if you could draw that link between civil rights protections and policies and outcomes that help the working class.

Ms. WILEY. Yes. One of the critical things we have seen as a result of having civil rights protections and having them enforced is we have seen an increase in participation and people getting to the middle class of the American country, particularly people of color long denied fair and equal opportunities, and I think it is really important to understand that that has had widespread societal benefits. For example, thanks to civil rights laws, we have seen an increase in the life expectancy of people who are Black, and not only Black, other people of color, and that is something we all want.

One of the things that is so important to understand about the Sheetz case because we keep hearing about this and it is being misrepresented, what the Sheetz case says is not you have to hire anybody who is a person of color no matter of their criminal background. It is saying you cannot use what is colorblind on its face but has the practical effect of denying employment if it does not bear a relationship to the job that is going to be done. You can absolutely say an accountant who has been convicted of absconding with money, you do not have to hire that person. The reason that the Sheetz case is a lawsuit is because they did not have evidence that they needed to do that, and it was discriminating against qualified Black applicants.

Chairman COMER. Very good. The Chair now recognizes Mr. Palmer from Alabama.

Mr. PALMER. Thank you, Mr. Chairman. Last July 13, state attorney generals from across the country co-signed a letter directed to the CEOs of Fortune 100 companies, warning them of the serious legal consequences over race-based employment preferences and diversity policies. They did that in consequence of the decision of Students for Fair Admissions *v.* Harvard. Mr. Berry, can you speak to the impact or applicability of that case on the legality of DEI corporate policy in both the Federal and state contexts?

Mr. BERRY. Certainly. So, while it arises in the context of university admissions, the Harvard case looks at some of the most commonly proffered justifications for racial preferences and finds them lacking as a matter of strict scrutiny constitutionally and statutorily under Title VI. That disapproval of the presented pedagogical benefits of skin color, not viewpoints, skin color diversity, for example, that was rejected, and those same kinds of rationales for skin color diversity would not be available in the Title VII context. I think it is the most natural reading.

Mr. PALMER. So, should companies look to modify their hiring practices?

Mr. BERRY. So, some are. Others have not gotten the memo and are still pretending that these are completely distinct, which is not a good reading of it.

Mr. PALMER. But arguing DEI is good for business, is that not corporatism over individual rights?

Mr. BERRY. So, historically, moneymaking has never been a judicially cognizable rationale for racial discrimination, and there is no reason we should be starting with that now.

Mr. PALMER. Thank you for that clarification. Mr. Rokita, I think your state was one of the states that were included in those letters to the Fortune 500 companies. The Democrat state attorneys general criticized this letter. They condemned it for its tone of intimi-

dation, which purposely seeks to undermine efforts to reduce racial inequalities in corporate America. How do you respond to that critique?

Mr. ROKITA. Well, the fact of the matter is attorneys general have a duty to enforce the law. And what we were doing in that letter, unapologetically, was enforcing Title VII, which says it is unlawful to discriminate on the basis of sex, color, religion, and that is exactly what a DEI program does. By definition, it has to. It has to go against Title VII. And it is surprising because we are all celebrating here, and in most places, how good Title VII has been over the decades. I have heard testimony and comments from both sides of the aisle here today, and to have attorney generals say, well, enforcing Title VII is now threatening is disheartening and confusing and sad. So, we stand by our letter. Where appropriate, whenever we can, we will enforce the law.

Mr. PALMER. So, you are basically saying that you want to protect the rights of all Americans——

Mr. ROKITA. Exactly right.

Mr. PALMER [continuing]. In terms of their opportunity to gain employment.

Mr. ROKITA. Just as the Civil Rights Act envisioned.

Mr. PALMER. Yes. And I agree with you, and I am grateful for the position that you have taken on that. Ms. Stepman, in your role as Senior Policy Legal Analyst for IWF, you have promoted policies that advance women's rights. I have been involved with IWF for many years, having worked in the think tank world, and really very appreciative of what your organization has done. What does some of these policies look like, from your perspective, in terms of your efforts to end discrimination across the board in regard to women?

Ms. STEPMAN. Right now, we are focusing a lot on protecting the rights of women under both Title VII and Title IX, in the face of a redefinition of the word "sex," that somehow eviscerates all of the protections that women have counted on, relied on, fought for, when it comes to males who claim identity as the opposite sex. And in the Title VII context, as I said in my testimony, we have already received inquiries from women who are being forced to shower with fully intact males as part of their job. Again, you know, it is funny in the context where the definition that the EEOC enforces of "harassment" is in so many other cases so stretched, right, you know. A straight joke, an unintentional remark, right, can be characterized as creating a hostile working environment on the basis of sex, and yet, a man waiting to shower with his colleagues to see them naked in the shower is considered not just not qualifying as harassment, but actually something that is required by the EEOC. Well, it is not required by Title VII.

Mr. PALMER. Just one last point here, Mr. Chairman, is that the Biden Administration dropped over almost 1,500 pages of regulations that redefined "sex' to include gender identity. In other words, they have difficulty in defining what a woman is. In your opinion, what was the Biden Administration's primary goal in administering these regulations?

Ms. STEPMAN. I mean, I cannot speak for the Biden Administration, but it seems to be to cater to their own activist side. This is

definitely not good for women. This has consequences, far reaching, and it is actually, frankly, that the regulations, as you mentioned, are 1,577 pages long. There is a lot in there. This redefinition of "sex" obviously has massive consequences for women in sports, in locker rooms, but there is a lot else in there that is bad for everybody. These regulations gut due process and contravenes of Federal Courts who have said that it is necessary to provide every American with due process when accusing them of something as serious as sexual harassment. They eat into what the Supreme Court has clearly said as protected speech in terms of, for example, using pronouns that match the biological sex of a person and also just, you know, any kind of remarks about, for example, the role of men and women in society.

You have seen the definition under Title IX of "harassment" expand and expand, expand, and, once again, in these regulations that is put into guidance, and now regulation by the Biden Administration, in a way that is totally contrary to the idea of free speech and is, frankly, insulting to the idea, again, that we are trying to prevent, which is actual sexual harassment that everyone would recognize this.

Mr. PALMER. Thank you for your testimony. I yield back.

Chairman COMER. Thank you.

Ms. OCASIO-CORTEZ. Mr. Chair, apologies. I have a UC request. I would like to seek unanimous consent to enter into the record this follow-up letter from 21 AGs stating that the July 13, 2023 letter from Republican AGs as "disguises providing information regarding antidiscrimination law, but, in fact, takes direct aim at efforts to broaden recruitment and address inequities meant to break down historic barriers."

Chairman COMER. Without objection, so ordered.

The Chair now recognizes Ms. Brown from Ohio.

Ms. BROWN. Thank you, Mr. Chairman. I am deeply disappointed by some of what we have heard today from the other side of the aisle and by the very basis of this hearing. Our Nation's biggest strength is our diversity and our willingness to embrace it. Instead of applauding diversity, equity, and inclusion in the workforce, my colleagues on the other side of the aisle are threatened by it and would like to get rid of it. They want us to believe DEI programs are racist and sexist, which simply could not be more further from the truth. Supporting diversity, equity, and inclusion across sectors is not only right and just, but it is essential to ensuring talented, intelligent, and qualified individuals have opportunities to succeed. Diversity in the workforce has been shown to increase profits. According to Glassdoor, over 75 percent of job seekers say diversity is an important factor when considering a job opportunity. Employees who work in diverse and inclusive environments are more likely to stay with their employer.

Last month, Congresswoman Haley Stevens and I introduced the Diverse Cybersecurity Workforce Act to promote diversity in the cybersecurity field. Let us break down the makeup of the cybersecurity workforce. Nine percent are Black, 4 percent are Hispanic, 1 percent is Native American, and only 24 percent are women. There are over hundreds of thousands of unfilled cybersecurity roles in this country ready to be filled, and they should reflect the strategic

diversity of this country. Diversifying the cybersecurity workforce is just one example of how diversity, equity, and inclusion makes our country safer, our economy stronger, and our diverse communities more prosperous. DEI programs are needed and necessary.

So, Ms. Wiley, if you could share with us why it is important for both the private and public sector to be intentional about incorporating diversity, equity, and inclusion efforts, particularly in recruitment and talent development.

Ms. WILEY. Thank you for that question, and as corporations themselves have pointed out, both being in compliance with the law as they do it, but it has increased their ability to be competitive. The more diverse the workplace, the more competitive the business. There is data and research behind this. In addition, it helps them attract better applicants for their jobs. And they know it, they have been hearing from people they have been trying to hire that they are looking for diverse workplaces, and it has increased the job satisfaction of people on the job.

One of the biggest misunderstandings about DE&I programs is what they do because a huge part of what they do is give employees ways to get to know each other and find ways of working together effectively. So, when we are talking about diversity, equity, and inclusion, we need to remember that it is identifying unfair barriers to opportunity for highly qualified people, whether it is promotion or hiring, as well as to ensure that employees are working well together, enjoying the workplace, and wanting to stay there. That is good for everyone, and it is nondiscriminatory. It does advance our civil rights.

The only last point I want to make about this because we keep talking about this in the wrong ways, the right way to think about this is to think about the fact that while we have made progress, and we celebrate it, that we at the same time seen research that if your name sounds White, and you have the exact same resume as the person whose named sounds Black, exact same resume—these are experiments, these are tests, this is research—you are half as likely to get the job or 26 percent less likely to get the job if you are the Black person or if you have a Black-sounding name or a Latino name. That is not fair, equal opportunity. It is discrimination masking in colorblind ways in the law. And our case law is designed to say you do not get to hide behind the fact that you have not said it out loud.

Ms. BROWN. Thank you for that. And while it is important to focus on increasing diversity in recruitment efforts, it is also important to focus on diversity, equity, and inclusion in employee retention. Can you tell us how Title VII helps with employee retention, Ms. Wiley?

Ms. WILEY. Well, essentially, I use this example with CEO Jamie Dimon from JPMorgan Chase, who is a huge proponent of DE&I programs and has said he is sticking by them like those 21 attorney generals have said. But part of what it helped him do is see when he was losing talent, he did not want to lose Black employees who are passed over for promotion. It helped identify where and how they could create more fair, more practically important opportunities to ensure that the opportunities were available for advancement for people who are Black who are qualified for the pro-

motion. It is retention and it is retention in compliance with Title VII. It is why we have to ensure that we are not being blind to where and how we are harming full and fair and equal opportunity.

Ms. BROWN. Thank you. My time has expired.

Chairman COMER. The Chair now recognizes Dr. Foxx from North Carolina.

Ms. FOXX. Thank you, Mr. Chairman, and I thank the witnesses for being here today. Welcome our colleague, former Congressman Rokita, now Attorney General.

Attorney General Rokita, as I have said before, the EEOC is detached from reality. Their harassment guidance from April 29 is nothing more than a homage to leftist activists who want Americans to conform to their warped political ideology, from the mandated use of pronouns to a denial of biological facts. The EEOC seems more interested in appeasing the mob than undertaking commonsense policymaking to protect workers. File this away as another item in the long list of failures spearheaded by this Agency.

The EEOC's guidance from April 29 states that harassment covered by Title VII of the Civil Rights Act includes, "repeated and intentional use of a name or pronoun inconsistent with the individual's known gender identity, misgendering" and "the denial of access to a bathroom or other sex segregated facility consistent with the individual's gender identity." The EEOC claims to be implementing the Supreme Court's Bostock decision with this guidance. Do you think the EEOC is overstepping its authority and going beyond the Bostock decision with the April 29 guidance?

Mr. ROKITA. For sure, Chairwoman. Thank you for the question. It is going way beyond Title VII, which, again, Title VII is just about sex, religion, color, terms that are very clear. Now, what the Bostock decision did is, and as I said in my opening remarks, I think they got it wrong, in my humble opinion, but it is the law of the land. They went a little bit further in the hiring/firing decision to include same-sex employees and transgender, but that is it, just in the hiring and firing. These other things that the EEOC has read in are like some kind of wish list of things that just simply are not there.

Ms. FOXX. In your testimony, you did note that their guidance runs foul the First Amendment and even admits to it. Can you elaborate on that and speak to why the EEOC would knowingly do that?

Mr. ROKITA. Well, what I do know is that we analyzed Federal and Indiana law. Clearly, we have an official opinion published on this, and there are First Amendment implications to requiring to call someone by their preferred pronoun or not, and you cannot compel that kind of speech, and so the EEOC guidance on that is completely wrong. We do not find that there is a requirement for either employer or other employees to call someone by that certain employee's preferred pronoun.

Ms. FOXX. So, would you agree that the EEOC should address your concerns with this harassment guidance that you have raised?

Mr. ROKITA. No. I associate myself with the testimony that was given a little bit earlier that these wrongheaded guidance, which

really do not have the force and effect of law, their interpretations really need to be rescinded.

Ms. FOXX. Thank you. Ms. Stepman, can you speak to how the EEOC believes it has the authority to go beyond the Supreme Court's most thoughtful decision with the April 29th harassment guidance?

Ms. STEPMAN. Yes. I mean, I think the Attorney General really intimated the reason there. I mean, there is a longstanding now problem with agencies putting out guidance, not even going through the APA rulemaking process, right, which is itself a kind of replacement for democracy and constitutional governance. Going beyond even those APA standards that at least require notice and comment, have all kinds of safeguards on it to just issuing a memo, issuing a guidance and saying, hey, this is how we are going to interpret the law, it may be very, very different from how courts have interpreted the law in the case of Bostock. It may be very different from the plain text of the law, but this is how we are interpreting the law now, by bureaucratic fiat. And basically, it is a heads up to all the people who would be covered under that law, and it is very effective, but it is not the way that governance is supposed to work in this country.

Ms. FOXX. Thank you. In your testimony, you suggest that harassment should be defined objectively, such as the standard in Davis *v.* Moore County Board of Education. How would that differ from the EEOC's overreaching new harassment guidance?

Ms. STEPMAN. Yes. As we have mentioned, there is both an over and underenforcement with harassment. On the one hand, these kinds of either unintentional or straight remarks, they could be added up by different acts in office, right? One guy might have made an off-color joke one time in front of a female employee. Another employee has a picture of his wife at the beach on his desk, right? And these little incidents, even though they are not severe, they are not pervasive, they are not objectively offensive, right, can add up into a liability for the employer.

But we have seen since the 1991 Act, in particular, has been a kind of move by employers to police and micromanage the speech and opinions of their employees for fear of offending the most offendable among us, and that has really led to a situation if we are worried about diversity in the workplace, what about diversity of thought? People are afraid to speak their minds—more than 60 percent in a lot of these polls at work—because employers are very, very careful about opening themselves to liability in that way. And then on the flip side, as I said——

Ms. FOXX. Thank you, Ms. Stepman, we are out of time. I appreciate it. Sorry, Mr. Chairman.

Chairman COMER. You are good. Thank you, Dr. Foxx. And the Chair now recognizes Mr. Frost from Florida.

Mr. FROST. Thank you, Mr. Chair. I want to start off by saying that I find that bigotry, transphobia, and outright attacks on our LGBTQ+ community, these attacks that we have heard in this hearing today are disgusting and unacceptable. Ms. Wiley, we have heard a lot of bigotry in this room today, highly uncomfortable to sit here as one of these witnesses used their testimony time to, I

guess, complain about the fact that maybe too many Black and Brown people are getting jobs is what that sounded like.

Once again, Republicans are trying to stoke fear by claiming that transgender people using the correct locker room somehow endangers cisgender women, yet research shows that it is trans folks who are in danger. Trans folks are more than 4 times likely as cisgender people to be the victims of violent crime, including sexual assault. And groups who support victims of sexual assault agree with this, bipartisan, nonpartisan groups, dozens of groups, including the National Alliance to End Sexual Violence, they signed a letter supporting full and equal access to locker rooms for trans folks.

So, I ask unanimous consent to enter this letter into the record, as well as a study by Williams Institute that shows the high rates of victimization for transgender individuals.

Chairman COMER. Without objection, so ordered.

Mr. FROST. I want to turn to the EEOC's final rule on how to implement Pregnant Workers Fairness Act, which, I will remind my colleagues, passed the U.S. House of Representatives with over 300 votes, with over 200 co-sponsors, a bipartisan piece of legislation that my colleagues did not have any problems with until they found out that maybe we can use it as a wedge issue to rev up some of our bigoted voters for the election this year. This important act requires employers to accommodate workers with limitations caused by pregnancy, childbirth, or medical conditions. In its rule, the EEOC makes it clear that pregnancy, childbirth, and related medical conditions includes abortion care.

Ms. Wiley, my colleagues do not seem to understand why this is so important. Could you walk us through that and explain the potential consequences of undermining this important protection?

Ms. WILEY. Well, I think, Congressman, you just did. I think that is a perfect explanation about the importance of the rulemaking to protect people from discrimination. And here is one of the things that I want to appreciate Attorney General Rokita for is the acknowledgement that it is the Supreme Court of the United States of America. In fact, a Neil Gorsuch opinion, a conservative justice that found that Title VII's prohibition on sex discrimination also prohibits employers from firing an employee "simply for being transgender." So, what we are hearing from the EEOC is it is taking to heart the directive from the Supreme Court that the plain language of Title VII and its prohibition against sex discrimination covers people who are transgender. And by the way, and as we know with all civil rights laws, when we protect the most vulnerable, we protect everyone.

The reason it is so critically important is because those protections extend to everyone, and we should remember that because it is one of the greatest lessons that we have seen and why we should absolutely refuse to allow fearmongering about 1 percent of the U.S. population. The transgender community in the United States is 1 percent of the U.S. population. And so, the idea that states and localities, 200 municipalities, 18 states that are already providing the protections against discrimination we are talking about, some of them for years have not seen the fear, the violence, any of the things that we are hearing today. And the reason we are hearing it is because there is not a fact-based disagreement, but an ideolog-

ical one. And what we should be dealing with is facts because everyone is protected by our civil rights laws—everyone—and it is the facts that ensure we are protecting the most vulnerable.

Mr. FROST. Thank you so much, Ms. Wiley. I do not have much time left to get to my other questions, but I just wanted to let you keep talking because I agree with everything that you just said. And it is just a shame to sit in these hearings, watching my colleagues attack programs that also are designed to help veterans. So, to attack these programs is to attack what I consider true patriotism, which is more than a bald eagle bearing flag. It is about loving the people who live in the country, no matter who they are. Thank you. I yield back.

Chairman COMER. The Chair recognizes Mr. Biggs from Arizona.

Mr. BIGGS. Thank you, Mr. Chairman. Thank you witnesses for being here.

Andrea Lucas, who was a commissioner of the EEOC, published an article warning that race-conscious corporate diversity programs may violate Title VII of the Civil Rights Act, which prohibits employment discrimination on the basis of race, color, sex, religion, or national origin. Mr. Rokita, in your written testimony, I am quoting from it now, it says, "DEI programs that consider a job applicant or employee's race or color in hiring, retention, promotion, and other terms, conditions, or privileges of employment could be considered unlawful under Indiana's Civil Rights Act." Is that also true under Federal law?

Mr. ROKITA. Thank you for the question. Yes, Indiana's law in several respects mirrors the Federal law. So, the point there I was making is that Title VII prohibits race-conscious employment actions, period, full stop. It does not matter how the program is labeled.

Mr. BIGGS. And, Ms. Stepman, in your written testimony, you say something similar. It said, "Instead of upholding a system in which all employees, regardless of their race, sex, or other characteristics irrelevant to work performance, are judged on their merit, talent, qualifications, grit, intelligence, or any other of the myriad qualities that make a good hire, too often, Title VII, in practice, as it exists today, not only fails to do so, it does the opposite." How so, and can you expand on it, please?

Ms. STEPMAN. Sure. Again, we have the same story of over and underenforcement, on the one hand, completely ignoring publicly delivered and announced racial quotas. And I am sorry, announcing that 30 percent of your workforce will be of a particular race by a particular date is a quota. It is an obvious quota. It is the kind of obvious quota that even university admissions departments cannot say or are reluctant to say even before SFFA and it is forbidden by Title VII. Somehow these companies have very little fear of announcing these things to the press. And while on the other hand, they do have to be careful when, for example, as the Sheetz case—it has been repeatedly brought up here—they use a neutral qualification, like not, you know, screening out job applicants who have felonies on their record, the sort of policy considerations about that, about mainstreaming inmates back into society. Those are irrelevant to the point. This is a neutral qualification that the employer is using, and yet they find themselves having to show, and being

on the defensive in having to show, this very tight connection to the job in the way that the EEOC enforces Title VII.

So, on the one hand, we have a neutral qualification and people are being hauled into court for using it. On the other hand, we have blatant racial quotas that are being ignored by the EEOC.

Mr. BIGGS. So, Mr. Berry, you wrote, "The EEOC has defended DEI initiatives in the workplace even when those initiatives create the very Title VII violations that the EEOC is entrusted to stamp out." Expand on that, please.

Mr. BERRY. Certainly. So, the Commission has taken the position, we have seen a couple of times today, which is to equivocate between the existence of disparities and an actual intentional discrimination. And repeatedly, over and over again, the Commission has declined to take action against companies that are saying the quiet part out loud. They are saying we are going to have, come hell or high water, greater percentages of certain racial categories reflected, not because we have done a labor market analysis, but because we think that a certain kind of racial balancing is appropriate. The exact kind of interest the Supreme Court has said is grossly inappropriate.

Mr. BIGGS. And so, does that get to what you talk about in your testimony extensively about disparate impact liability?

Mr. BERRY. Yes, exactly. Disparate impact liability is very inconsistently enforced, and is not being brought to bear, as best I can tell, against the widespread practice of college degree requirements as a screening mechanism.

Mr. BIGGS. Mr. Rokita, is tying one's continued employment or pay to statistical data, which Ms. Stepman has talked about as being perhaps a quota, is that in any way aspirational and protected?

Mr. ROKITA. No, I do not think so.

Mr. BIGGS. Ms. Stepman, any comment?

Ms. STEPMAN. Yes. I guess my only comment would be that I agree with my fellow witness that the real disagreement here is whether any disparity, whether racial, sex, or on any other basis, is suspect immediately as created by discrimination. There are disparities in everything. There is virtually no qualification that an employer could ever set that would have no race or sex disparities. So, that is how the EEOC looks at the issue in this way. What it really does is expands its own power because it is arbitrary.

Whatever issue the EEOC looks at, whatever qualification will spit out some kind of disparity, and so, but they do not look at other qualifications, as my witness also said, my fellow witness, for example, using college degrees as a qualification. Fewer men have college degrees. Fewer Black Americans have college degrees, right? Those are disparities that exist, but the EEOC does not look at that qualification and say, well, it is against our civil rights law to require a college degree, probably because that would be very unpopular with their friends in universities.

Mr. BIGGS. Thank you, Mr. Chairman. My time has expired.

Chairman COMER. The gentleman's time has expired. The Chair recognizes Ms. Lee from Pennsylvania.

Ms. LEE. Thank you, Mr. Chair. Just to pick up where my colleague from Florida left off when he ended. It is not just that we

have colleagues here in this Committee who are making the claim that too many Black folks are getting jobs, but indeed, it feels like the entire premise of the cultural war that we are seeing against diversity, that we are seeing against equitable practices that might possibly level the playing field, right, that there are too many Black folks who are getting jobs. There are too many Black folks who are getting degrees. There are too many Black folks who are getting opportunities that were not historically for them.

So, to just remind people why we are here, the reason DEIA policies were even created was to right existing wrongs. The reality is, is that we have some members of this Committee who were alive during Jim Crow, they experienced segregation firsthand, yet now they are acting like we are suddenly in a colorblind society, that we do not need to codify protections or that the only victims here are wealthy or the White or the privileged. How easily we forget.

But we know statistically that they are not the ones whose communities have been intentionally polluted or targeted by police or the war on drugs. Their neighborhoods have not been redlined. Their schools have not been decimated by racist, inequitable funding schemes that commonwealths like Pennsylvania, my own, are finally recognizing as harmful and attempting to fix. Lest we forget, the reason HBCUs and other minority-serving institutions exist is because we were not accepted into predominantly White institutions. They are not targeted by how they look or how they dress or how their hair grows.

Truthfully, we recognize that this crusade has been going on since indeed the passage of the Fourteenth Amendment, if not earlier. Every time Black folks or Brown folks or women or queer folks or the disabled are able to achieve some semblance of equity, we continue to be demonized or face ad hominem attack, so we did not earn our spot or we do not belong here, to ensure that they can continue to concentrate wealth and power with the few.

Ms. Wiley, in your opening statement, you said that this kind of weaponization of civil rights was nothing new. Could you please elaborate on that?

Ms. WILEY. Well, sadly, and one of the reasons we have disparate impact recognized by the Supreme Court of the United States is because every single time we have made advancements in civil rights laws, what we have seen is active efforts to skirt them, as well as not paying attention to whether or not someone is qualified for the job that you are hiring.

So, again, sadly, at every turn, we have been having to fight to protect the gains even as we can quantify how much it has benefited every single one in society. And just because we are talking a lot about race, and I do not want to lose gender in this. Going back to police departments, we made real progress, as I said, not just with getting women on the police forces, but improving the opportunity for White men who were being excluded because of things that did not have anything to do with the job like height. But it stalled about 20 years ago at 12 percent women, and even "Police Chief Magazine" recently has been raising the alarm bell that police departments are utilizing measures of, say, upper body strength that are not necessary to qualify to be a police officer, that may be keeping women off the force.

But if we see a stagnation in progress that does not have to do with the qualifications for the job, that is telling us there is a barrier that we as a society should want to remove. And whether it is voting rights, whether it is employment, whether it is education or public accommodations, every single time we say let us pay attention to the people who are excluded, a lot more people of every race, of every background, get more opportunity, and that is what we should all be for.

Ms. LEE. We are going to leave it right there. That is my time. I yield back.

Chairman COMER. The Chair recognizes Mr. Grothman from Wisconsin. Oh, I am sorry, Mr. Sessions from Texas.

Mr. SESSIONS. Mr. Chairman, thank you very much. The discussions have been very important today, and I think the issue is laid out where the American people know what they think is right and wrong. Discrimination, I think, defines itself in existence of law over and over and over. And it tries to give a balance, not just to the importance of it, but also about how it would be looked at by conduct, not just the law, but really how we ought to move as a society.

Attorney General Rokita, you and I have intellectually disadvantaged, disabled children. We had to fight lots of battles and still do, but we ask for accommodation. I do not think we ask to overrule or move over. We ask for accommodation, the opportunity to participate. I note on page 10 of your brief that you gave us, "Indiana State Attorney General Advisory Opinion Concerning Use of Preferred Pronouns in the Workforce." This is very interesting because it goes well beyond something that I think someone could see on its surface, something that someone could easily understand.

We can see color, we can see a sex, we can see things. We know discrimination when we see it, attitude and other things. I note in here that you find it is not against the law, and yet people are held accountable. There are Federal rulings on this by government, EEOC, perhaps most importantly. This disturbs me. Where is the line between discrimination defined in law and this overwhelming desire for people to push simple things like pronouns or competing against women?

Mr. ROKITA. Thank you, Congressman. I mean, that is exactly it. You have painted the picture correctly. Title VII was very clear in the words that it used, and Bostock has taken it a very tiny step further, still connecting it to the word found in Title VII, particularly the word "sex." But what the EEOC does and the reason that the legislator who asked for this opinion wanted it, was to stop that creep, to stop that crawling by unelected bureaucrats.

Mr. SESSIONS. I think we all need to know where the line is.

Mr. ROKITA. Right, and Title VII——

Mr. SESSIONS. It would be inappropriate if I necessarily meaningfully discriminated against someone, but there are a lot of things we do not know about people that we cannot see, that we do not know.

Mr. ROKITA. Right, like whether it is our sons or in any context, and that is why the laws have to be clear. They have to be unambiguous. And that is why it is wrong for unelected bureaucrats to try to take those words, those laws that you are supposed to create

and make their own interpretations of them, and then try to enforce them, which is exactly what is being done at the EEOC today, and why it is important to have opinions like the one we did in Indiana.

Mr. SESSIONS. Ms. Stepman, I found your arguments most compelling because I believe that most Americans want to do the right thing, but they expect that the law will equally be balanced in that endeavor. And we tend to hear about how capitalism and corporations or businesses want all these things, but really what it gets down to is that I think we, deep down as Americans, want to be good to people. We really do not want to hold things against anybody, but we also recognize when that line is violated, when it did not work for me, or it did not work for a group of people. Tell me more about how we fix this. Is it done in state laws? Does it have to be done at a Federal law?

Ms. STEPMAN. Well, Independent Woman's Voice has been quite active, and we have something where we basically are advancing a definition of "sex," which we did not used to have to do, right? This was something that was common sense. Everybody understood what a woman was, what a man was, but now we find that it is necessary to actually define that in state law in order, for example, to protect sports opportunities for young women.

Unfortunately, this Administration in 2021, for example, we had West Virginia pass exactly that kind of law, defining the word "woman" and only permitting females to participate in public youth sports, a very reasonable thing for a state to do. We actually had the Biden Administration come in—this is even before their regulatory drop of 1,500 pages, right—come in and say, no, we interpret Federal law, Title IX, to basically say, no, the state of West Virginia cannot define the word "woman." So, I do think, ultimately, something will have to be done on the Federal level.

And the first thing that has to be done on the Federal level is for agencies to stop going beyond their mandates and doing and usurping the job that this body has, right? The so-called Equality Act was put forward in this body multiple times to add gender identity to Title VII and to our civil rights law generally. That law did not pass. And so, what we have are a series of agencies, whether it is the Department of Education or the EEOC, putting out either guidance or regulation that does what they were not able to do politically, and I think they cannot do it politically because of exactly what you said. Americans do not believe that the reality of biological sex is bigotry.

Chairman COMER. Thank you very much. The Chair recognizes Representative Tlaib from Michigan.

Ms. TLAIB. Thank you so much, Mr. Chair. I know just hearing all this, it just feels like colleagues just want to pretend that racism and discrimination actually even exist. I do not know how you address systemic, you know, inequity, different various policies and systems without actually, like, fully understanding the full scope of, again, the systems and how they were created and the history of how it was created and all of that. You know, I always say this to people. I am in an institution that was not really ready for someone like me, and it is very clear, you know, being one of the first Muslim women here.

You know, CEO Wiley, like, one of the things that I am really taken aback, though, and have only seen this, you know, maybe in my lifetime. I know it happened before, but one of the things that I see in regard to trying to even deny Black history as American history is really incredibly, I do not know, painful that we will not even acknowledge that those systems and that form of oppression even existed. And I was looking up, it was like, what, 3,362 instances of certain books being banned. I mean, you know, everybody is always shocked, "Beloved" by Toni Morrison, CEO Wiley, "I Know Why the Caged Bird Sings" by Maya Angelou, "The Color Purple" by Alice Walker. I mean, it just goes on and on. And so, I do not know, talk about, I think, the importance here of, you know, how we address systemic inequality without even acknowledging our history.

Ms. WILEY. Well, thank you, Congresswoman, for that question because I think part of what it lays bare is the fact that we are seeing a very organized, highly financed, and concerted effort by some extremist ideologues to say we cannot learn about slavery and, in fact, we should go one step further in one instance, and we should say that there are some good things about slavery, require it in our curriculum, even though that is a lie. It is counter to history.

Pan America has actually documented that roughly 80 percent of all banned book titles are written by or about people of color or LGBTQ people, so that is targeted. That is not general, and none of that has to do with age-appropriate learning. And some teachers have been fired for saying, no, but this is consistent with the curriculum I am being asked to deliver. The fact that we have seen a political attack on AP African American History, demanding that things that are historical facts be taken out of the curriculum, that is political. That is political. It should be nonpartisan.

Ms. TLAIB. It is unbelievable to me that they just want to erase it or try to reinterpret it in 2024 and how that is actually the opposite. This is why, if anything, it proves we need some of these policies in place. I think policies are already in place. It has been embedded in place before I even got here.

Ms. WILEY. I want to connect it to employment.

Ms. TLAIB. Yes.

Ms. WILEY. Let us connect it to employment because there is a recent viral video from a few days ago, a Black woman FedEx driver——

Ms. TLAIB. That is right.

Ms. WILEY [continuing]. Who then says she was told by her supervisor that there was a town she could not deliver in because it was like a sundown town it was so racist. She did not believe it. She had 2 hours off, and so she wanted to go to the Walmart that was in that town. It was 10 minutes away from her route. She drives over there. It is so hostile, she leaves. Her supervisor has to tell her, I told you so, you know.

But here is the thing. So, we are making businesses now have to tell and assign drivers based on their race for their own safety around their routes, and this is in the Midwest. That is because we are not doing what even so many companies are now being threat-

ened with for doing, which is saying how do we understand each other's experiences.

Ms. TLAIB. I agree, CEO Wiley, and I will end, Chairman. But, you know, I grew up in Detroit, and we grew up with community mothers, not just your own biological mothers, and they said, oh, this is not the first time we had to pretend that it did not happen, we had to pretend. Oh, we could not live in those neighborhoods. It is like, move on. That is what they were forced to do as children, you know, just move on, stop talking about it, and I think that is incredibly dangerous because we end up repeating history. Thank you so much. I yield.

Chairman COMER. The gentlelady yields. The Chair recognizes Ms. Mace from South Carolina.

Ms. MACE. Thank you, Mr. Chairman. The Fourteenth Amendment of the Constitution and the Title VII of the Civil Rights Act of 1964 prohibit discrimination on the basis of sex. That has been the law of the land for decades. Unfortunately, Joe Biden is confused. Shocker. The Biden Administration and their "gender Taliban" cannot even define what it means to be a woman. They are erasing what it means to be women and endangering women and girls in the process.

The Biden Administration's Equal Employment Opportunity Commission in April of this year updated guidance on what constitutes sex-based discrimination. Under the Biden Administration's guidance, to use someone's biologically correct pronouns or their legal name, guess what? It is workplace discrimination. Acknowledging someone who identifies as a different gender without their permission, workplace discrimination. Insist that biological men use the bathroom or locker room designated for biological men and not terrorize women and girls in the girls' bathroom, workplace discrimination.

Where did we lose our way? This is absurd. I tell my kids, you do not come home from school with pronouns, you come home with A's and B's. I do not want to know your pronouns. I do not care about your pronouns. That is not what we should be talking about in school. We should be talking about A's and B's, math, writing, and arithmetic. This guidance by the Biden Administration infringes on the First Amendment rights of American workers, threatens the safety of women and girls, and serves to further erase and erode what it means to be a woman, which leads me to my first question, Ms. Wiley. Can you define what a woman is?

Ms. WILEY. A woman is a person who says she is. And let me just tell you one story about this because when I was a child——

Ms. MACE. Oh no, you are not going to tell me a story. We are not doing that right now. It is not story time.

Ms. WILEY. Yes, it is story time because when I was a child, I was called a boy.

Ms. MACE. No, it is not. I am going to reclaim my time. Be quiet. I am going to reclaim my time right now. Biological women are real women. A guy born as a man who wants to pretend to be a woman and put him in his big gym and the twins in the locker room with underage girls, or his little gym and twins, by the way, is disgusting.

I have a daughter. She turned 14 last year. I took her to a store called Aerie for her birthday. We went shopping for an hour in downtown Charleston, South Carolina. She was taken to her dressing room by a biological male in a mini-skirt and a lace bralette. It is disgusting. I have no idea if that man was over 18 or under 18. It is absolutely disgusting that we are redefining what women are and allowing men into women's private spaces.

And by the way, Ms. Wiley, I am a survivor of rape. I was raped at the age of 16. I am not going to put other women and girls into unsafe situations where biological men with their willie-nillies out, putting women and girls at risk. It is absurd. It is disgusting. And I have 1 minute and 50 seconds left of my questioning. Do you believe, Ms. Wiley, that you need to have a Ph.D. in biology to know what a woman is? Yes or no. Yes or no to my question?

Ms. WILEY. I first want to say you are right.

Ms. MACE. I am running out of time.

Ms. WILEY. I am so sorry, and you should never have to suffer from sexual violence.

Ms. MACE. You did not do it. Do you need a Ph.D. in biology to know what a woman is? I have been rape shamed by the left, and I am not going to allow any of that stuff to happen today. Do you believe that you need a Ph.D. to define what a woman is—yes or no—is the question.

Ms. WILEY. I think every woman is able to define herself as a woman.

Ms. MACE. That is not how it works. There is biology and science. I would encourage every American to follow the science. Are there risks to women when biological men are in a bathroom with them, Ms. Wiley? Yes or no.

Ms. WILEY. We have every reason to want everyone to be safe.

Ms. MACE. She cannot even answer the question.

Ms. WILEY. And we are not safe or unsafe——

Ms. MACE. Everybody, listen to the left today. They cannot say "yes" or "no" when asking whether or not there are risks to women when biological men are in the bathroom, cannot even say "yes" or "no" in the hearing today. This is lunacy. This is absurd. This gender-bending ideology of the left is disgusting. It is absurd. It is absolute lunacy, and it is a mental health issue in our country. If you agree with this ideology of allowing men into women's spaces, you have a mental health problem in this country.

I do not have to go on about the Planet Fitness in Alaska just a few weeks ago or months ago where this guy in his boxers is in the locker room shaving, and there is an underage girl in a towel in the locker room with him. This stuff is disgusting. And I am going to do everything in my power as a conservative woman in this country and Congress to protect all of our women and girls from this lunacy that is happening in the country today. Thank you, Mr. Chairman, and I yield back.

Chairman COMER. The gentlelady yields back. The Chair recognizes——

Ms. OCASIO-CORTEZ. Mr. Chair, I ask unanimous consent to enter into the record a new report from the Southern Poverty Law Center that describes how pseudoscience has become a tool to manipu-

late public opinion and advance legislation and legal actions targeting the LGBT community.

Chairman COMER. Without objection, so ordered.

The Chair now recognizes Mr. Grothman from Wisconsin.

Mr. GROTHMAN. I would like to thank you for having this hearing. I have a book that I am reading—hold on for 1 second—called the "America's Culture Revolution," in which they talk about this DEI obsession as being a successor to prior efforts of progressives or communists or what have you to divide America, and they fail to divide America by income level, so they are intentionally trying to divide America by race. The reason I believe that this is true is if you look at this time in our history, where people from all around the globe come and earn more than people of European descent. India, China, Cuba, Philippines, Iran, all these people come here, and within a generation, they are outliving people of European descent.

We live at a time where single women under 30 out-earn single men under 30. But nevertheless, we set up this bureaucracy that says that if I am a person of color and I inherited $10 million, I am put upon and should be given preference over somebody who is of European descent who has virtually nothing. We have a bureaucracy in which if somebody comes here from Spain, they are considered an evil European and they have to be penalized, but if somebody comes from Spain, spends two generations in Cuba and then comes here, all of a sudden, they are a put-upon minority. The only way that makes any sense is if you intentionally want to divide America, and it is just so obviously offensive and it must be confronted wherever we go.

I also want to point out the left is very good at using words to confuse people. Earlier today, we were accused of conservatives being for censorship. I think when you do not want to have first or second grade kids reading graphical sexual things, that is not what I consider censorship.

But in any event, according to a recent study by Bloomberg—and this is for Jonathan Berry up there—a recent study by Bloomberg, when looking at 2020 and 2021 data for 88 S&P 100 companies, it was found that 94 percent of new hires went to people of color or other minorities, only 12 percent European. This, in my opinion, could be the result of companies instituting race-based policies when it comes to hiring and recruitment. I hear that from all sorts of people in my district, by the way. There is no question. If you talk to human resource professionals and they can speak off the record, this is happening big time.

Mr. Berry, can you discuss how this data might support findings of illegal corporate race-based policies that violate the law?

Mr. BERRY. Congressman, in the ordinary course, if you presented in court that kind of data where you have such a profound mismatch, presumably, between the demographics of who actually is hired and the relevant labor market, and then you couple that with the company's own explicit race-based policy, that is a layup. That is not a hard case. That is textbook racial discrimination under Title VII in many cases.

Mr. GROTHMAN. OK. I will give you another question along those lines. In President Biden's first year, approximately three percent

of his judicial appointees were White heterosexual men, three percent in his first year in office. Could you comment on that? Would that be evidence of something going on here with the Biden Administration?

Mr. BERRY. It is, potentially. The standards that govern the President's appointments are, of course, different than private employment, but again, you need to look at the relevant labor market. I think it is something that would need a real look, yes.

Mr. GROTHMAN. Yes. I am just saying, when you have that degree. Could any one of you talk, and maybe this is not exactly on point, but what effect does this pound, pound, pound on some young people that America is a racist country have upon certain groups? I can certainly understand how it empowers politicians, right, but in the classroom when you are again and again told that, in essence, you are going to have a harder time succeeding. Obviously, people coming from other countries, India, China, Philippines, Iran, they do not have a hard problem succeeding, but on some groups may be counterproductive and be the reason why certain ethnic groups are not doing as well because they keep being told that they should not.

Mr. ROKITA. Congressman, good to see you again. I think you are exactly right. It is made to divide. It is made to make people feel inferior. There is no excuse for it anymore. We have been through it for so long now, other than, really, what you are talking about. It is intentional, and it is made to make us weaker instead of more unified, more patriotic.

Mr. GROTHMAN. OK. I will give you an anecdote and then I will let you comment on it. I was in a classroom, Zoom, and the teacher, a White teacher, told a mixed-race classroom that Black children made up a higher percentage of kids arrested in that school than their total number in the school, and then told the kids that this was evidence of racism. What effect do you think that would have on a little boy or girl in the class who was African American if their teacher is telling them how racist America is and how racist the police is? Do you think that has any effect on their ability to succeed in society? I mean, I can understand how when a politician says it, it makes the politician more likely to get elected, but could you comment on that?

Mr. BERRY. Congressman, just briefly I would say that a lot of education that focuses on critical race theory has the perverse effect of inculcating a victim mentality in a way that makes for all kinds of unhappy societal occurrences, exactly the kind you are talking about.

Mr. GROTHMAN. Thank you very much.

Chairman COMER. The Chair recognizes Ms. Stansbury from New Mexico.

Ms. STANSBURY. All right. Well, thank you very much, Mr. Chairman. I want to just start by saying that this hearing is making America less safe for our children and LGBTQ and people of color across this country. There are over 14 million Americans in this country who currently self-identify as LGBTQ. Twenty percent of our young people who identify as queer have taken actions to harm themselves. Hearings like this, and I am sorry, witnesses like the ones that have been called here today who are spewing hateful

rhetoric as are my colleagues across this dais today, are making this country unsafe for our children. They are making this country a less just place by perpetrating and repeating hateful speech.

Now, we know here in the United States that nearly 45 percent of Americans who identify as LGBTQ have experienced discrimination in the workplace, and about 20 percent actually report that they have faced physical harassment. Of the lawsuits that have been filed by the EEOC, 35 percent of them are based on sex, 34 percent are based on disability, and 17 percent are based on race, and of the reported cases, over 40 percent of Black Americans report that they experienced discrimination in the workplace. This is not some woke agenda. This, as Childish Gambino says, "This is America."

So, why is the GOP sitting here spending Committee resources trying to tell us that this is just some made-up agenda? Why are they bringing folks here to perpetrate these lies and attacks on people that we know have faced systemic discrimination for generations here in this country? It is because it is being funded. It is being funded by donors, it is being funded by organizations that are trying to advance this agenda, and it is being funded and supported by candidates right here in this Congress as well as other institutions.

Now, Mr. Berry, I appreciate that you have come before this Committee, but I want to ask you just a few quick "yes" or "no" questions. Is it true that you clerked for Justice Alito? Yes or no.

Mr. BERRY. Yes.

Ms. STANSBURY. And you helped to draft Chapter 18 of the Project 2025 report, correct?

Mr. BERRY. I was the lead author, yes.

Ms. STANSBURY. You were the lead author. And your law firm, in fact, filed an amicus in the Students for Fair Admission case before the Supreme Court, correct?

Mr. BERRY. Correct.

Ms. STANSBURY. Thank you. That is right. So, one of our key witnesses that has been called here today—and, again, no disrespect—is part of a larger effort in front of the courts, in front of Congress, in front of state legislatures across the country to undermine and chip away at the rights of Americans, affirmative action, voting rights, LGBTQ rights, abortion rights, women's rights, fueling anti-trans and anti-LGBTQ legislation across the country, and making it less safe and less free for our children, for our families, and for all Americans.

I represent the state of New Mexico, and I want to say that we have taken action. We have protected reproductive rights, we have protected gender-affirming care, and we have passed one of the most comprehensive voting rights pieces of legislation in the country. And I will not stand here and sit silent while I hear this kind of hate being spewed in this institution. We have to stop the hate. I yield back.

Chairman COMER. The Chair recognizes Mr. Burchett from Tennessee.

Mr. BURCHETT. Thank you, Mr. Chairman. I ask for unanimous consent to enter into the record the Bloomberg article titled, "Cor-

porate America Promised to Hire a Lot More People of Color. It actually did."

Chairman COMER. Without objection, so ordered.

Mr. BURCHETT. Thank you. Attorney General Rokita, following George Floyd's death, there were many companies that made promises to hire and promote more Black folks and others from underrepresented groups. Does that sound familiar?

Mr. ROKITA. Yes, Congressman.

Mr. BURCHETT. Well, what do you think of those promises?

Mr. ROKITA. Well, you know, aspirations are one thing, and I could just tell you that in my own hiring practices, where I said during my testimony we have 400 people, we look for diversity. I want diversity of thought. It makes for better cases, it makes for better arguments, it makes for better attorneys, it makes for better office, but I am not going to do that by discriminating against another person. That is against the law, it is against Title VII, and it is short-sighted and ignorant.

Mr. BURCHETT. I often say put the best player in, coach, and that is what we need. Bloomberg collected data from 2021 for 88 Standard & Poor's 100 companies. In total, those companies increased their workforce by 323,094 people. Of the 323,094 jobs, only 20,524 or 6 percent went to White workers. The other 94 percent went to the people of color. Mr. Berry, Title VII of the Civil Rights Act prohibits discrimination based on race, color, or national origin. Is that correct?

Mr. BERRY. That is correct.

Mr. BURCHETT. Do you know what percentage of the U.S. is White, non-Hispanic?

Mr. BERRY. So, the statistic that has been discussed today is approximately 59 percent or 60 percent.

Mr. BURCHETT. OK. I had 57, but I will go with that. How is it possible that these companies only hire six percent White folks without using discriminatory hiring practices?

Mr. BERRY. My rough-and-ready statistical analysis would be that it is extremely implausible that that would be done without intentional discrimination.

Mr. BURCHETT. OK. Thank you. Ms. Wiley, in your written statement, you said that so-called war on woke is a danger to democracy and to all progress we have made as a society that has benefited us all. How does corporate America using discriminatory practices against White people benefit us all?

Ms. WILEY. Discrimination does not benefit anyone, ever.

Mr. BURCHETT. OK.

Ms. WILEY. And the good news here is that is why corporations have been voluntarily taking steps to ensure that they are not discriminating, and that is what we want them to keep doing.

Mr. BURCHETT. OK. Thank you. Yes or no, you also say attacks against woke radicals are based in a desire to keep us back to the 1950's when Black people were segregated. Is that——

Ms. WILEY. Yes.

Mr. BURCHETT. OK. Attorney General Rokita, as someone who fights against unequal and discriminatory workplace practices, do you believe the critics of the DEI movement are radicals that want

to bring us back to the 50's, or are they just upholding Title VII of the Civil Rights Act?

Mr. ROKITA. Clearly, Congressman, they are upholding Title VII, they are upholding the rule of law, and they are keeping things fair for everyone.

Mr. BURCHETT. What about you, Mr. Berry?

Mr. BERRY. Hundred percent. Nondiscrimination and colorblindness are baked into the statute, and that is exactly what we try to indicate.

Mr. BURCHETT. OK. And so how should the EEOC combat these corporate DEI programs?

Mr. BERRY. The EEOC should apply the blackletter law and find that attempts to change the racial complexion by these racial balancing schemes are unlawful, as Title VII has always held.

Mr. BURCHETT. Thank you. Mr. Chairman, I yield the rest of my time to Representative Greene.

Chairman COMER. Representative Greene?

Ms. GREENE. Thank you. Listening today to my colleagues on the other side of the aisle charging Republicans with racism, hate, saying that we discriminate against people from the LGBTQ community or based on race has been appalling today, and I am sorry for the witnesses that have had to hear that. I am sorry to the American people. That should not be happening. I do not think anyone stood in line to pick their race or chose if they wanted to be a man or a woman or what color hair, any kind of physical feature before they were born. That is not something that any of us picked.

But I will say that America has gotten a lot of things right, and Title VII of the Civil Rights Act has done an incredible job with the blackletter law, and it is being violated every single day. Mr. Chairman, I yield back the remainder of the time.

Chairman COMER. The gentlelady yields back. The Chair now recognizes Ms. Norton Holmes from Washington, DC. Holmes Norton. I am sorry. I always get that wrong. Ms. Norton from D.C. I apologize.

Ms. NORTON. You can use either of my names. Thank you very much, Mr. Chairman. Ms. Wiley, I want to begin by thanking the Leadership Conference on Civil and Human Rights for its longtime support for statehood and home rule for the District of Columbia. The Leadership Conference has been indispensable in the fight to end the second-class treatment of the nearly 700,000 D.C. residents by Congress.

In 1977, I was appointed by President Jimmy Carter to be the first woman to chair the EEOC. As Chair, I issued the first Federal guidelines holding sexual harassment to be a violation of equal employment laws, which were later upheld by the Supreme Court. Despite progress in preventing employment discrimination, the work is not done. Ms. Wiley, what major gaps still remain to achieving equity for women, people of color, and other underrepresented groups in the workplace?

Ms. WILEY. Oh, thank you, Congresswoman, and thank you for all you are doing to help get representation to all of us in Washington, DC. who deserve it. I will just say that as the EEOC guidance—and just to be very clear, it is guidance, it is not rulemaking, which means it is nonbinding—has been a real effort to try to di-

rect attention to ways in which employers can and should look for ensuring more opportunity in employment for everyone and in compliance with Title VII.

That is really important because I think the role of government both in helping to create guidance as well as being an enforcement mechanism for understanding and identifying when there have been violations is part of what we need. At the same time, you know, we need to make sure we are working together collectively to say let us be willing to collect data and understand and look at and find whether or not we have barriers to opportunities for equal employment for any group, because, by the way, one of the things that we have seen in Chapter 18 that has been referenced here today is a proposal that says we should not know where and how we are doing when it comes to being more inclusive as a society.

And if we are unwilling to look, if we are unwilling to actually confront whether or not we have created barriers, intentional or unintentional, what we are really saying is we are refusing to look at how we can move forward together. That is not going to help us fill the gaps and, I think, in addition to making sure that we are looking at the practical realities for every single American, and that is what we are talking about today.

Ms. NORTON. Well, Ms. Wiley, EEOC has been mandated since 1964 to enforce Federal employment discrimination laws. Since 1987, EEOC has issued policy guidance to employers, employees, practitioners, EEOC staff, and the courts, which, in EEOC's own words, serve as a resource for the public and the private sector on issues related to workplace harassment. This April, EEOC issued its most recent enforcement guidance on harassment in the workplace. So, Ms. Wiley, is this guidance creating new law, or is it viewed as an explanation and clarification of existing law?

Ms. WILEY. It is an explanation, clarification. It is guidance. It is nonbinding. It is intended to be instructive.

Ms. NORTON. My Democratic colleagues and I will continue to stand up for Title VII and all American workers. I yield back the remaining time to the Ranking Member.

Mr. RASKIN. Thank you very much, Ms. Norton. Ms. Wiley, I seem to recall that there were a series of Federal Circuit Court decisions finding that Title VII protects transgender individuals against employment discrimination under the Civil Rights Act itself. Is that right?

Ms. WILEY. That is correct, Congressman.

Mr. RASKIN. OK. And that is well accepted at this point, right?

Ms. WILEY. It is, and, in fact, it is the Eleventh Circuit, which is a pretty conservative one, that has been protecting transgender rights, most recently, Tyler Copeland, who is a corrections officer, a trans man, who experienced incredible harassment that also endangered him as an employee.

Mr. RASKIN. And I am pleasantly surprised I have not heard any of the witnesses, anyone really, attacking the idea that there should be civil rights protection for transgender people in the workplace. Instead, they seem to be attacking these kind of bathroom hysteria stories. And I wonder to what extent bathrooms have played a role generally in opposition to civil rights laws, going all the way back to the interracial workforce.

Ms. WILEY. Yes. I mean, one of the things that has been so sad about the discussion we have had today is that we have not recognized that we heard a lot of these same arguments when we were talking about integrating based on race. You know, every time we have advancements in society for protecting rights, there is often a lot of fear about what it means. And that is true of public accommodations law and saying that we should be able to have integrated restaurants and other public spaces. And that is something we overcame not because the American public and a majority of White people at the time supported it, but because it was the right thing to do under our Constitution.

And what we have seen is that when we protect people's rights, and bathrooms are a great example. No, everyone should be safe in a bathroom. There are women who get raped by cis men who are in men's clothing in bathrooms. They should be safe from that just like transgender women should be safe from sexual violence. Everyone should be safe. And what we know is if you are a transgender woman forced to go into a men's bathroom, you are much less likely to be safe.

And that is why we also have 200 organizations that have focused on sexual violence that have said what we have seen is more vulnerability for transgender people, that they have not seen any increase in sexual violence based on what is happening in bathrooms. And that is what we should be——

Chairman COMER. The time has expired, almost 2 minutes over. The Chair now recognizes Ms. Greene for a full 5 minutes.

Ms. GREENE. Thank you, Mr. Chairman.

[Chart.]

Ms. GREENE. For the people watching at home today, we are talking about Title VII of the Civil Rights Act that states, "It shall be unlawful employment practice for an employer to fail or refuse to hire, or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin." It carries on to talk about segregation and classification of employees or applicants, and it carries on to an individual's, again, race, color, religion, sex, or national origin.

Yet today, and it was reported by CBS, it says that major U.S. companies gave 94 percent of new jobs to people of color in 2021. White workers accounted for 20,524 jobs, just 6 percent. Mr. Rokita, would that be a violation of Title VII of the Civil Rights Act?

Mr. ROKITA. Yes, if the hiring was done simply on the basis of race. Correct.

Ms. GREENE. Mr. Berry?

Mr. BERRY. Yes, one hundred percent.

Ms. GREENE. Ms. Stepman?

Ms. STEPMAN. As the AG said, when you find intentional statements to discriminate publicly, that is about a slam dunk a case under Title VII as you can get.

Ms. GREENE. Ms. Wiley?

Ms. WILEY. You cannot discriminate based on race, period.

[Chart.]

Ms. GREENE. OK. BlackRock Founder Scholarship has a program designated for undergraduate master's students who self-identify as Black or African American, Hispanic, or Latino, Native American, LGBTQ, or disabled. Is this a violation of Title VII or a violation of the Civil Rights Act? Mr. Rokita?

Mr. ROKITA. Yes. I am having trouble reading all that, although I appreciate what you are doing. Self-identifying and then——

Ms. GREENE. Based on race——

Mr. ROKITA. Yes.

Ms. GREENE [continuing]. Identifying sex. Mr. Berry?

Mr. BERRY. Under Section 1981, that looks like a violation.

Ms. GREENE. Ms. Stepman?

Ms. STEPMAN. Yes.

Ms. GREENE. Ms. Wiley?

Ms. WILEY. We have had no ruling that I am aware of that says that is a violation.

Ms. GREENE. This is talking about race, gender, LGBTQ. Definitely it leaves off White. "White" is not on this list, so that would be based on race. That seems to be a violation to me.

Ms. WILEY. I think what we are talking about is what the status of current case law is——

Ms. GREENE. Yes, I think definitely leaves off White people. I reclaim my time.

[Chart.]

Ms. GREENE. "Smithfield Foods has an aggressive set of goals in its hiring"—I know it is hard to see for the witnesses—"by 2030, increase the racial diversity of our leadership team by promoting and hiring qualified Black, Hispanic, and other underrepresented individuals to positions of supervisor and above in support of our current goal of 30 percent representation." It goes on to talk about gender diversity in their leadership team for female leaders to positions of supervisor, talking about another current percentage goal. Mr. Rokita, would this be a violation?

Mr. ROKITA. Yes, because that is a quota.

Ms. GREENE. Mr. Berry?

Mr. BERRY. Absolutely.

Ms. GREENE. Ms. Stepman?

Ms. STEPMAN. Quotas are a violation of——

Ms. GREENE. Ms. Wiley?

Ms. WILEY. Goals are not quotas.

Ms. GREENE. They have quotas. They have percentage quotas, Ms. Wiley.

Ms. WILEY. What I have heard is goals.

Ms. GREENE. I guess you have a hard time hearing the truth.

[Chart.]

Ms. GREENE. Kellogg's. According to its filings with Securities and Exchange Commission, Kellogg's operates in a highly competitive commercial environment and faces significant challenges in finding capable employees, is what they claim. They have a program called Better Days Promise, specifies that by the end of 2025, it will achieve 25 percent racially underrepresented talent at the management level in the United States. It is talking about a paid postgraduate fellow program "for Black chefs to work with our research and development team to help them better understand

food's roles in Black communities worldwide." Mr. Rokita, talking about race and having the woke percentage plans, is this a violation with Kellogg's?

Mr. ROKITA. Yes, assuming the hires are based solely on race, yes.

Ms. GREENE. Yes, they specifically say Black chefs here. Mr. Berry?

Mr. BERRY. Goals are usually quotas under the law.

Ms. GREENE. OK. Ms. Stepman?

Ms. STEPMAN. Yes, it is a violation.

Ms. GREENE. Ms. Wiley?

Ms. WILEY. We need to know a lot more facts before we know if that is the violation.

Ms. GREENE. They clearly state it right there, "a paid post-graduate fellow program for Black chefs to work with our research and development team to help them better understand food's role for Black communities worldwide." Unlawfully, only Black or African-American chefs are allowed, even if individuals with other immutable characteristics who otherwise qualify, so they are leaving off the trans people. They are leaving off LGBTQ, Asian, Indian. Mr. Chairman, I have run out of time. Thank you very much.

Chairman COMER. Thank you. The Chair now recognizes Ms. Pressley from Massachusetts.

Ms. PRESSLEY. Thank you to our witnesses for being here today. You know, although the subject matter of today's hearing is to be expected, certainly makes it no less offensive or frightening. My Republican colleagues very often like to quote Dr. King, I do not know, maybe for some civil rights credibility or to pervert his words to suit your extremist needs, while working actively to undermine his legislative legacy. Republican attacks on the EEOC are part of their broader efforts to weaken civil rights protections. One of their goals is plainly laid out in Project 2025, a thousand-page bucket list of extremist policies. Mr. Berry, Chapter 18 of the Project 2025 manifesto is about the Department of Labor, and you are the author of that chapter, correct?

Mr. BERRY. Lead author, yes. There are others, too.

Ms. PRESSLEY. Yes, you are. I believe the American public should know exactly how you and the Republican majority that invited you to testify today want to sabotage the EEOC, rewrite the Civil Rights Act of 1964, and push all of us back to an era of Jim Crow racism. I am shocked that my colleague across the aisle was in disbelief at our characterizations and assertions of racism and discrimination when even former House Speaker Kevin McCarthy said the Republican side of the aisle looked like the most restrictive country club in America. We all know that Make America Great Again is about making America White only again.

The first page of Chapter 18 of Project 2025 complains about how the Biden Administration has been fighting for racial equity. On the next page, it calls for eliminating data collection on race and ethnicity in employment. On the page after that, it calls for rescinding an executive order signed in 1965 that prohibits discrimination in hiring by contractors. Mr. Berry, do these terrible ideas sound familiar?

Mr. BERRY. They are great ideas.

Ms. PRESSLEY. These terrible ideas sound familiar. Of course they do. You came up with them. Mr. Berry, I find it shameful to advance a vision attacking the very policies and agencies that have helped Black Americans secure jobs, earn a living, and provide for our families. This Project 2025 plan is policy violence, plain and simple. Its authors have placed such a large target on the EEOC because of the incredible work the EEOC is doing today. Last year alone, the Agency filed more than 27,000 charges of race-based discrimination. These workers and their families have a pathway to justice, accountability, and healing because of the policies and regulations that Project 2025 is trying to get rid of. Ms. Wiley, how would workers be harmed by Project 2025's commitment to undermining crucial protections that are enforced by EEOC and other Federal agencies?

Ms. WILEY. Well, essentially, it guts the ability to both be able to have the rights and have enforcement and protection of the rights that we already have, and we have been seeing improvements and advancements when we have been enforcing them. And I am also deeply concerned with any suggestion that we should not be collecting data, or that labor rights, the rights to organize, which has been so important for workers across race, including White men, to ensure that they are getting fair wages and safe working conditions. All of these are actually in that chapter, and they threaten our workplaces for people who are White, for people of color, for people of all backgrounds in this country, and I think that is why we all need to be concerned because it really is about all of us.

Ms. PRESSLEY. That is right. They threaten our workplaces for every person who calls this country home. EEOC offers essential protections that create workplaces where all of us can thrive. But Project 2025 aspires to be the realization of a decades-long crusade by Republicans to strip away this key pillar of the Civil Rights Act. As a founding member of the Stop Project 2025 Task Force, I look forward to showing and telling the American people exactly who you are, Mr. Berry, along with your extremist friends. I urge my colleagues to join me in building the inclusive world we know to be possible, one in which everyone—is there something funny?

Mr. BERRY. No.

Ms. PRESSLEY. I did not think so. Nothing funny about this. And in honor of my departed mother and for my 15-year-old daughter, I will do everything possible to stop you from building the world that you are hell bent on doing. I urge my colleagues to join me in building the inclusive world we know to be possible, one in which everyone can show up to work free from discrimination. Thank you. I yield back.

Chairman COMER. The Chair recognizes Mr. Gosar from Arizona.

Mr. GOSAR. The U.S. Equal Opportunity Employment Commission has decided on April 29, 2024, that its new sexual harassment guidance, that most businesses with 15 or more employees must allow men in women's bathrooms or be in violation of Title VII of the Civil Rights Act. Attorney General Rokita, sir, good to see you again.

Mr. ROKITA. You, too.

Mr. GOSAR. What punishment would be meted out to a business that does not allow men into women's bathrooms?

Mr. ROKITA. Under that guidance?

Mr. GOSAR. Yes.

Mr. ROKITA. Well—it could range. First of all, there is the embarrassment factor of going through the process. There is the financial cost of going through the process if the EEOC was to bring charges, and, you know, depending on the circumstances, there could be fines.

Mr. GOSAR. Now, would the same punishment apply to a business if a business refused to force its employees to use pronouns they are not comfortable with?

Mr. ROKITA. Well, what we have said in the opinion in Indiana is that there is no Federal or state law that has this requirement. So, what you question goes to is how far these unelected bureaucrats are going to go to try to use the law, and the wedge they are putting into it, and the liberties they are taking with it to inflict harm and confusion on the business community.

Mr. GOSAR. Will single-sex spaces and businesses with employees of 15 or more exist if the sexual harassment guidance stays in place? Will they exist?

Mr. ROKITA. I am having trouble following that one. So, if you could——

Mr. GOSAR. It will be very hard, would it not, to be in compliance?

Mr. ROKITA. Yes. Right.

Mr. GOSAR. OK. Mr. Berry, this EEO–1 data, can you give me a little bit more information on how this data could be utilized or address our concerns it is in violation of the law?

Mr. BERRY. So, the EEO–1 collection requires employers to classify their employees on the basis of race, put people in these identity politics categories. The issue here is that unless there is particularized evidence of suspicion of discrimination, the EEO–1 aggravates, raises unnecessarily the salience of race, and this is in direct contravention to what the first Justice Harlan said. In Plessy *v.* Ferguson—his dissent vindicated in Brown *v.* Board of Education—Justice Harlan said we should not permit any public authority to know the race of any American citizen, that colorblindness is exactly what our Constitution requires, and that is indeed the value we ought to be upholding.

Mr. GOSAR. Is that not the whole premise of the Lady Justice? She is blindfolded. She holds a set of scales and a sword. Is that not the same kind of principle?

Mr. BERRY. Exactly. No respecter of persons.

Mr. GOSAR. Well, you know, pretty interesting. Now, the Supreme Court ruled in Bostock *v.* Clayton County that a male employee cannot be fired just because he thinks he is a woman. That is an egregious decision on his face. However, you mention in your testimony, Ms. Stepman, that the Court did not, and this is the words of the Court "purport to address bathrooms, locker rooms, or anything else of that kind." Is the EEOC directly violating the Supreme Court?

Ms. STEPMAN. It is going much further than Bostock does, and it is violating the plain text meaning of Title VII.

Mr. GOSAR. And so really it is a promotion by a bureaucracy out of control?

Ms. STEPMAN. Exactly. So, this did not even go through the APA rulemaking process.

Mr. GOSAR. So, when Kim Gardner refused to grant marriage licenses to gay couples, she was jailed. Earlier this year, she was just ordered to pay a gay couple that she would not pretend to marry for $260,000. Why am I not holding my breath that the EEOC officials will be held in the same account as Kim Gardner?

Ms. STEPMAN. I am sorry. I am partially deaf, so it is difficult for me to understand. Sorry. I could not——

Mr. GOSAR. I will try it one more time. When Kim Gardner refused to grant marriage licenses to a gay couple, she was jailed. Earlier this year, she was just ordered to pay a gay couple she would not pretend to marry for $260,000. Why am I not holding my breath that the EEOC officials will be held to the same account as Ms. Gardner?

Ms. STEPMAN. Yes, I am not holding my breath either, but they are equally beyond their mandate. They are operating as unelected officials. Remember, they do not have to stand before the American people. Again, this body, if it wanted to, could add gender identity to Title VII. It declined to do so, and now bureaucrats who are unelected are taking that power for themselves.

Mr. GOSAR. I thank you very much. Mr. Chairman, I yield back.

Chairman COMER. The gentleman yields back. The Chair recognizes Mr. Raskin from Maryland.

Mr. RASKIN. Thank you, Mr. Chairman. Back to you, Ms. Wiley. Title VII has been a great American success story and the model for civil rights law and jurisprudence all over the world. And the vast majority of Americans support Title VII, which really embodies the promise of civil rights and people being treated as individuals so that they can actually succeed upon their own merits. And yet Title VII has been opposed from the very beginning, has it not, and it has been resisted at every turn. I think that the ideological forebears of Mr. Rokita and Mr. Berry and Ms. Stepman, like Robert Bork, were arguing against the Civil Rights Act of 1964, saying that it was a violation of freedom of association. And I remember, you know, Anita Bryant and other anti-feminist activists arguing that women were not looking for equality and equal rights. Women were looking for a separate place and their special place under religious and cultural heritage. So, I just wonder if you would say a word about how this current attack on the Civil Rights Act and Title VII fits in with that history.

Ms. WILEY. Yes, Congressman, there is an unbroken ideological line. In fact, this Committee hearing, I think, was noticed the day after Juneteenth, when we recognized the last state, in Galveston, Texas, where Black people were informed they were free after the Civil War. And the Civil War amendments themselves, the Fourteenth Amendment, which was the underpinning of Title VII, explicitly and after the Civil War, rejected colorblindness, in fact, in the forming of the amendment because it was understood that after slavery, there had to be the ability to actually create more opportunities for people who are Black. And in fact, the laws passed, like

the Freedmen's Bureau, were specific about finding ways to focus on creating more opportunity.

When we got to the Civil Rights Act of 1964, again, the longest filibuster in the history of the country, 60 full days before, fortunately, 73 senators, bipartisan, passed the Civil Rights Act, which includes Title VII, as well as Title VI, as well as Title II. But we never saw 1 day end in the argument that said it was somehow going to be unfair to White people if we were paying attention to racial discrimination. And frankly, it has just never been true that we have not paid attention to racial discrimination for all people. And anybody who is White can file an EEO complaint charge right now if they are being discriminated against based on their race, and the EEOC will investigate it.

So, the whole fact that we are talking about Title VII as if there is a refusal to pay attention to discrimination, or the whole fact that we are suggesting that if Black people or Latinos or Native Americans are getting jobs, they must not be qualified for them, that in and of itself speaks to the same arguments we heard in opposition, whether it was post-Civil War or post-1964 or now, 2024.

Mr. RASKIN. And Mr. Berry was engaged in a colloquy with Representative Gosar about colorblindness, which they anchored in the principle of Lady Justice being blindfolded. And it made me wonder about to what extent you think there will be objective, neutral, dispassionate interpretation of the Civil Rights Act of 1964, of the Voting Rights Act of 1965 by Justice Alito, Mr. Berry's former boss, whose home displayed the pro-January 6th insurrectionist upside-down American flag and who displayed other flags in opposition to the American flag, essentially. Do you have a lot of confidence that Lady Justice is blindfolded when it comes to Justice Alito?

Ms. WILEY. I do not.

Mr. RASKIN. And finally, just back on the transgender point, there seemed to be some suggestion from our colleagues that transgender individuals pose the threat of rape to American women. Are most American women who are raped, raped by heterosexual cis men or by heterosexual transgender men?

Ms. WILEY. Well, I will say that what I have seen, which is the letter in support of transgender people being able to utilize the bathroom that matches their identity from sexual violence providers, rape crisis counselors is it is transgender people who are often disproportionately victims of sexual violence, and that they have not seen any increase in sexual violence because of protecting the rights of transgender people.

Mr. RASKIN. And I appreciate that. I am out of time, but I will say, without fear of being contradicted, that the overwhelming majority, if not all, of the rapes in America are conducted by men who are heterosexual cis men. And this other thing is a complete paranoid conspiracy theory, mythology meant to undermine the progress of civil rights law. I yield back.

Chairman COMER. The Chair recognizes Mr. Khanna from California.

Mr. KHANNA. Thank you, Mr. Chair. Mr. Berry, you are the co-author——

Chairman COMER. OK. Go ahead, Mr. Khanna. I am sorry, Mr. Khanna.

Mr. KHANNA. Mr. Berry, you are the co-author of Project 2025, the labor section. Am I correct?

Mr. BERRY. The lead author on that section, correct.

Mr. KHANNA. I want to get some facts out. There has been so much conversation about working families and what we are going to do for the working class. I just want to get some facts out. In that report, you call for the repeal of Davis-Bacon and say that Congress should enact a law that makes it illegal to pay prevailing wage for union employees. Is that correct?

Mr. BERRY. I appreciate the chance to correct the record. That is actually not correct. The chapter expresses no view. There is an alternative view not attributable——

Mr. KHANNA. So, you do not think there should be a repeal of Davis-Bacon?

Mr. BERRY. The chapter does not take a position——

Mr. KHANNA. Do you have a view of whether there should be a repeal?

Mr. BERRY. Honestly, I think it is complicated, and I do not really know.

Mr. KHANNA. OK. In the chapter it says that you should end project labor agreements and project labor requirements. Is that correct?

Mr. BERRY. Same issue, Congressman.

Mr. KHANNA. You do not agree with that, or you say that the report does not call for that?

Mr. BERRY. The chapter does not speak to the issue directly. There is a dissent that does. I do not take a position.

Mr. KHANNA. What about the rescinding of regulations prohibiting the discrimination on the basis of sexual orientation, gender identity, transgender status, and sex characteristics? Do you believe that we should be repealing any regulations to prevent discrimination on that?

Mr. BERRY. I am blanking on exactly which regs we are talking about, but yes, I support what is in there on those issues. Yes.

Mr. KHANNA. So, just to be clear, you would repeal any regulations that prohibit discrimination on the basis of sexual orientation, gender identity, and sex characteristics?

Mr. BERRY. The position is that Bostock should be read properly narrowly and not extended to the biological areas like bathrooms that we have been discussing today.

Mr. KHANNA. But that is not what the report says. The report says, basically, you do not want any regulations that prevent discrimination against gay people and people based on sexual orientation or gender identity. I mean, that is what you call for in the report.

Mr. BERRY. No, the chapter accepts Bostock according to its terms but resist its extension to areas it does not apply.

Mr. KHANNA. I mean, I am just quoting directly. It says "rescind regulations prohibiting discrimination on the basis of sexual orientation, gender identity, and sex characteristics." I mean, do you stand by that statement?

Mr. BERRY. I stand by what it says in the chapter, yes.

Mr. KHANNA. So, just to be clear, I mean, that basically means you do not believe that we need to have laws to protect people from

discrimination. If someone is gay or someone is transgender, you think that there should not be laws to protect them. Let me go on to one other issue in this report. You say that we need to be scheduling civil employees as F scheduled employees, which means that the President would have the authority to fire about 50,000 civilian employees if she or he wants to. Is that correct?

Mr. BERRY. Someone else had responsibility. I do support that as a policy matter that, ultimately, the President and people accountable to the President should be the ones setting our executive branch policy.

Mr. KHANNA. So, I mean, under this scenario, for example, if President Trump returns to office, he would be able to fire about 50,000 people who are currently civil servants and bring in people who are more consistent with his ideology, and you are recommending this as a policy, correct?

Mr. BERRY. Having more political accountability is a very good thing.

Mr. KHANNA. I just want to know. I am not trying to argue. I am saying for a fact. So, you support the idea that Donald Trump could come in, hypothetically, if he wins the election, fire 50,000 civil employees and replace them with people who support his ideology?

Mr. BERRY. I support the Schedule F idea, yes.

Mr. KHANNA. And that means that if he wants to take civil servants from the Justice Department, State Department, and from the Department of Homeland Security, and he says they are not sufficiently for MAGA, I want to fire these folks, 50,000 of them, and replace them with people more aligned the MAGA, he would have the ability to do that. Currently, there are only 4,000 political appointees. You want him to have the authority if he wins the election to have 50,000 people replaced, correct?

Mr. BERRY. It is a lesser civil service regime. It is not the same as political appointees, but policy responsiveness is appropriate when it comes to any employee who touches on public policy, which——

Mr. KHANNA. But I am——

Mr. BERRY [continuing]. Would.

Mr. KHANNA. I am directionally correct. I mean, I think the American people should decide whether they want that or not. You are basically saying he should have the ability to fire up to 50,000 people if they are not doing what his ideology is and replace them with people more consistent with his ideology and reclassify these folks as Schedule F, correct?

Mr. BERRY. Hundred percent.

Mr. KHANNA. Thank you.

Chairman COMER. The gentleman yields back. I would like to go to Mr. Mfume, but they tell me I have to call on Mr. Goldman next, so the Chair recognizes Mr. Goldman for 5 minutes.

Mr. GOLDMAN. Thank you, Mr. Chairman. It has been interesting listening to my colleagues on the other side of the aisle use phrases such as "follow the science" and blackletter law. Since science overwhelmingly has established that climate change is real and caused by human beings, especially oil and gas companies, I am sure they will agree that if we are to follow the science, then we should stop

denying climate change. Mr. Berry, do you agree with the Supreme Court's rationale and analysis in the Bruen decision?

Mr. BERRY. So, I am not deeply familiar with it, but directionally what I understand, it seems to construe the Second Amendment as a robust individual right.

Mr. GOLDMAN. And would you consider it to be a strict constructionist interpretation of the Second Amendment?

Mr. BERRY. My impression is that it attempts to be a faithful exploration of the original public meaning of the Second Amendment.

Mr. GOLDMAN. The original public meaning, OK. Just so everyone is aware, the Bruen decision interpreted the Second Amendment to only allow for gun regulation that could have existed in 1789 when the Second Amendment was ratified. And of course there were no machine guns, there were no bump stocks, you know, the list goes on as to many, many technological advances that did not exist then, but it is the original meaning. Ms. Wiley, if we are going to talk about the original meaning of the actual blackletter law, was there any evidence in 1964 of pervasive discrimination against White people?

Ms. WILEY. No.

Mr. GOLDMAN. So, it is fair to say this Title VII was, of course, not written to right the wrongs of discrimination against White people in 1964?

Ms. WILEY. That is correct.

Mr. GOLDMAN. So, if one were to use the original meaning at the time that something was ratified or enacted, then discrimination against Whites would not be included as a cognizable claim under Title VII. Is that right?

Ms. WILEY. No, because it is true that Title VII prevents all forms of racial discrimination. The reality of why the law was drafted and passed in the first place was because there were no protections that recognized that Black people, that Native Americans, that Pacific Islanders, that other people of color who were not being protected by government from discrimination deserve to be protected by government from discrimination, because what was happening for a hundred years after the winning of a Civil War to create true, equal opportunity is that it was formally and constantly denying people because they were not White.

Mr. GOLDMAN. I agree with you.

Ms. WILEY. So, it did not make it OK to discriminate against White people. It just made it clear you cannot allow it against everyone else.

Mr. GOLDMAN. I am making somewhat of a rhetorical point because I do agree with you that we should not have discrimination based on race. I just want to point out the hypocrisy and the convenience that folks on the other side of the aisle like to use in a cynical way, blackletter law and the original meaning of things when it is convenient, but not when it is not convenient.

The fact of the matter is that 82 percent of business leaders consider diversity initiatives to be essential to their business strategy. Two percent of business leaders say that these initiatives are not important. Diversity initiatives are credited with improving business performance, enhancing talent acquisition and retention, enhancing competitiveness, and fostering innovation. And 45 percent

of business leaders said that the main reason they have diversity initiatives is to improve business performance. This is motivated by businesses, and it is demanded by consumers, just like ESD. And so, if Republicans profess to be the party of deregulation and free markets, why will you not just let the market decide whether diversity and inclusion or ESD is something that the market wants? Why do you now want regulation?

The fact of the matter is you want regulation because you want to go back to the White replacement theory and a time when, in 1964, we needed to pass a law to protect discrimination against people of color and underserved and marginalized groups, not against White people. And it is a shame that this entire Project 2025 includes attacks on immigrants and the expulsion of immigrants and the exclusion of immigrants who make up so much of our economy and are essential to so many aspects, both from agricultural workers to highly skilled workers with H–1B visas. And so, I wish that we would have some consistency from the other side of the aisle in how we view diversity, as we approach with Project 2025, with immigration and with our employment laws, and I yield back.

Chairman COMER. The Chair now recognizes Mr. Mfume from Maryland.

Mr. MFUME. Thank you very much, Mr. Chairman. I want to thank the witnesses that have been through a rather long day here with many of us on this Committee and certainly many of you. I am, Mr. Chairman, a bit perplexed. I have listened early on to the opening statements, and I am trying to find a connection back to what the original sin was, how we got to where we are, what caused it, what brought it about, and I have heard talk of bathroom sharing and the showing of genitals and a disputed definition of Title VII. Title VII is what it is, what it is, what it is, and as we heard earlier, its birth came out of the Civil Rights Act. That is how it was conceived.

So, I think it is important for the Committee to understand that too often we hold fast to the conclusions of others. We tend to subject all facts to a prefabricated set of interpretations. We enjoy the comfort of opinion without the discomfort of thought, but we stay away in this hearing at least from the original sin, and I do not know how that is possible considering how we got to where we are. And for a race of people who have suffered, endured, and survived a hundred years of Jim Crow, 200 years of slavery, oppression, deprivation, degradation, denial, and disprivilege, that is the original sin. And in an era of smaller vision, rapid apathy, and celebrated mediocrity, we do need people who will stand up and speak out for that and fight back against that which is wrong.

It is just amazing how we have distorted how we got to where we are because we did not just fall out of the heavens this way. You know, the American birth, the American conception, was a conception that brought with it a number of things: the slaughter of Native Americans, the enslavement of what was then the Negro, and the annexation of the Hispanic. We have got a lot to bear in terms of the original sin. So, as we seek to correct it today, it is funny that the wolf has put on sheep's clothing and has come to tell us that we are all wrong.

One thing is for sure. We are not going back to the way it was, not ever, ever again, and I want to commend Ms. Wiley, the Leadership Conference on Civil Rights. You know, in my decade as president of the National NAACP, I had an opportunity to work with many of your predecessors. I have seen this fight go on for a long, long time, and I recognize that you have had the least amount of time today because you are one person versus three others who have had an opportunity to be called on a number of times. So, Mr. Chairman, I am going to relinquish my remaining time to Ms. Wiley. She may have some closing comments, questions, or suggestions for this Committee. Thank you very much.

Ms. WILEY. Thank you, Congressman Mfume, for all your years of leadership and commitment to civil rights. I want to bring something into the room that is a direct example of why this is an ideological attack because we are seeing, as a result of a Supreme Court opinion on admissions in higher education, a lawsuit in San Francisco against a city program that is trying to ensure that Black babies and Pacific Islander babies live beyond the first year of life because the infant mortality rate for them are 11 and 13 percent higher than they are for White babies, and we do not want any baby to die before the age of 1. We want everyone of all races to be able to make it to maturity and make their own decisions and live their own lives.

And yet we are seeing a legal attack based on the Civil War amendment, the Fourteenth Amendment, because of a higher education admissions case that is now weaponized against trying to ensure survival of babies that is not about higher education admissions, and yet that is how we are seeing the opinion being weaponized. In the same way we have heard complaints about the EEOC taking a logical extension of a Supreme Court case, we are not hearing that on the other side about how a diversity case on higher education is being weaponized against rights.

Mr. MFUME. Thank you and thank you for your work in this area over many, many years. Mr. Chairman, I yield back.

Chairman COMER. The gentleman yields back. Without objection, Representative Balint from Vermont is waived on to the Committee for the purpose of questioning the witnesses at today's hearing.

Without objection, so ordered.

The Chair now recognizes Representative Balint from Vermont.

Ms. BALINT. Thank you, Mr. Chair. I would like to bring us back to the reasons that the protections enshrined in Title VII of the Civil Rights Act of 1964 were needed then and are actually still very much needed today. My community, the LGBTQ community, is constantly under attack in this Congress. According to the Williams Institute, nearly half of LGBTQ+ workers have experienced unfair treatment at work, and LGBTQ employees of color are more likely to report being denied jobs and experiencing verbal harassment.

There are endless stories that I could convey in this hearing. I will just cite a few. I am thinking of one American who faced horrific workplace discrimination. She described how her co-worker said that "transgender people were mentally ill, and the cure was a bullet between the eyes." Another American—and I stress that these are Americans who are just trying to live their lives and

work in peace—another American faced workplace violence and discrimination when one of her co-workers became physically aggressive with her while calling her transphobic slurs, again, while just trying to do her job and live her life. There are so many gut-wrenching stories, and they are an indication of the damage that fearful, hateful, and dehumanizing rhetoric has had on Americans who just want to live their lives. Everyone deserves to be treated with dignity and respect in the workplace, and these Title VII protections help us ensure that they are protected. This is about basic humanity. I cannot tell you how many times I have to say this in this Congress. It is about basic humanity, people being able to live their lives and work in peace.

In the Supreme Court's Bostock decision, our Nation's highest Court affirmed that Title VII protects against discrimination based on sexual orientation and gender identity. But we need explicit protections because so many will still seek to demonize and dehumanize us, and I say "us" as I am part of that community. We have to pass the Equality Act to explicitly protect LGBTQ people against discrimination, whether it is in employment, housing, public accommodations, federally funded programs, education, jury selection, credit, I can go on and on and on, people just trying to live their lives as Americans. To the members of my community across this country, I want you to know that you are entitled to dignity and respect at work. You are entitled to dignity and respect everywhere because you are an American and you are entitled to those things.

Although there are many people in Congress who push discriminatory bills and hateful amendments and fearmongering rhetoric every single day that I am in the Capitol, there are also good people in Congress who are standing up to this hateful rhetoric, and I am one of them. I am one of these people who, every single day, I have to come here and do battle with this. I will not allow our voices to be silenced. I will not allow these attacks to go on unchallenged and to have our rights as Americans taken away. We are going to continue to fight alongside all of our strong allies in Congress because we have many. And I want to specifically say to trans people across this country, I see you. I am here to support you. I want you to live freely and authentically without fear of violence or discrimination.

Ms. Wiley, in the minute that I have left, what would it mean for trans people if Republicans' interpretation of Title VII were to prevail, and that gender identity was no longer protected by Title VII?

Ms. WILEY. It would mean not only the loss of dignity, not only the loss of jobs, not only the loss of the ability to really be able to ensure that you can take care of yourself and your family fairly and with equal opportunity to work, it would increase danger and physical safety. We saw that in the Eleventh Circuit case with Tyler Copeland, a transgender man, endangered because his own supervisees were harassing and abusing him because he was transgender in front of inmates. That is actually an unsafe condition, and the same in terms of sexual violence, murder. You know, we are essentially giving permission to hate bias and violence, and we should not tolerate it, and we stand with you.

Ms. BALINT. Thank you, Ms. Wiley. In closing—I know I am over, Mr. Chair—I just want to say there are a few, I believe, true believers whose spew these hateful indignities toward people in my community, and there are a lot of enablers who go along to get along, and what they are doing is demonizing and dehumanizing their fellow Americans. I yield back.

Chairman COMER. The gentlelady's time expired. In closing, I want to thank our witnesses for being here——

Mr. MFUME. Mr. Chairman? Mr. Chairman, I am sorry.

Chairman COMER. Yes. Yes.

Mr. MFUME. I have a unanimous——

Chairman COMER. Absolutely, of course.

Mr. MFUME [continuing]. Consent request for three articles to be entered into today's record. The first is from the *New York Times*, entitled, "No Vacancies for Blacks: How Donald Trump Got His Start and Was First Accused of Bias." The second article is from NBC News, entitled, "Not Wanted: Black Applicants Rejected for Trump Housing Finally Speak Out." And the third is an article from *Politico*, entitled, "Trump Moves to Gut Obama Housing Discrimination Rules."

Chairman COMER. Without objection, so ordered.

Are there any other UCs that anyone wants to submit?

[No response.]

Seeing none and in closing, I want to thank our witnesses for being here today. Obviously, this is an enormous issue. This is an issue that is going to have to be addressed by Congress, very differing opinions on this issue. We have heard from many in the private sector, many Americans that feel discriminated against by the DEI policies. Thankfully, the Civil Rights Act protects against discrimination, but many of us believe this DEI has taken discrimination to another level, and we continue to want to work with you all to try to come up with a resolution to the problem that is affecting a majority of Americans.

So, with that and without objection, all members have 5 legislative days within which to submit materials and additional written questions for the witnesses, which will be forwarded to the witnesses.

If there is no further business, without objection, the Committee stands adjourned.

[Whereupon, at 2:38 p.m., the Committee was adjourned.]

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