

SENATE THIRD READING
SCR 89 (Smallwood-Cuevas)
As Amended March 20, 2026
Majority vote

SUMMARY

Affirms the Legislature's commitment to Diversity, Equity, and Inclusion (DEI) and encourages local, state, and federal policymakers, among others, to adopt and uphold DEI principles.

Major Provisions

- 1) Declares, among other things, that whereas:
 - a) The American Dream embodies the ideals of opportunity, prosperity, and upward mobility, promising that every person should have the chance to achieve what they themselves define as success and fulfillment through hard work and determination, and that every individual, regardless of background can fully participate in all aspects of society.
 - b) DEI policies are intended not only to promote access, but to proactively dismantle systemic inequities.
 - c) DEI initiatives often include targeted recruitment, culturally competent workplace training, equity-focused budgeting, inclusive curriculum development, and disaggregated data reporting in order to address measurable disparities in income.
 - d) DEI is based on removing barriers to opportunity, widening pathways to the American Dream, and is essential to creating a society where all individuals are valued, heard, and included.
 - e) Attempts to prohibit DEI practices diminish the diversity of perspectives that strengthen our society and conflict with antidiscrimination laws.
 - f) The federal government under the Trump administration and other political actors have sought to dismantle DEI framework, and these efforts not only undermine civil rights progress but contradict core democratic values and harm our country.
- 2) Resolves, in light of the above, that the Legislature:
 - a) Affirms its commitment to Diversity, Equity, and Inclusion as an essential foundation for achieving the American Dream and fostering environments where all individuals have the freedom to be healthy, prosperous, and safe and have the opportunity to realize their full potential.
 - b) Encourages local, state, and federal policymakers, educational institutions, workplaces, and other organizations to adopt and uphold DEI principles that promote inclusivity, protect freedom of expression, remove barriers, and provide equitable opportunities for all individuals to pursue their dreams.

COMMENTS

This timely resolution affirms California's commitment to diversity, equity, and inclusion (DEI) at a moment when such ideals are under assault from the President of the United States and others. While President Trump began his second term issuing executive orders calling for an end to DEI, this resolution not only affirms the Legislature's commitment to DEI, but it cuts through some of the recent distortions of DEI principles and policies. The resolution's findings and declarations also make the case that efforts to attack DEI undermine civil rights progress and are harmful to our country. The measure resolves and affirms the Legislature's commitment to Diversity, Equity, and Inclusion (DEI) and encourages local, state, and federal policymakers, among others, to adopt and uphold DEI principles.

"Competing meanings of "Diversity, Equity, and Inclusion." When a business or public entity adopts a policy of "diversity, equity, and inclusion" – or DEI – it apparently means different things to different people. To many, including the author of this resolution, DEI promotes policies that confront the historical barriers that prevent some people from enjoying the benefits of the American Dream. As a practical matter, given the reality of systemic discrimination in the history of our state and nation, this may require businesses or public agencies to review existing policies to ensure that they do not unintentionally perpetuate beliefs or practices that have led to racial, ethnic, religious, gender, or other inequalities. While DEI may be a relatively new term, it is deeply rooted in a much older ideal that all people are created equally and possess the same rights to human dignity and to pursue happiness. To others – including the President of the United States – DEI apparently means something quite different. For the President and other media and political actors, DEI means "wokeness" run amok. DEI, the President claims, is "illegal" because it requires adopting unconstitutional, quota-based "affirmative action."

A clear example of the two meanings can be seen by comparing two executive orders (EO): President Biden's Executive Order 13985 (January 20, 2021), and President Trump's Executive Order 14151 (January 20, 2025), reversing the Biden order. President Biden's EO – entitled "Advancing Racial Equality and Support for Underserved Communities Through the Federal Government" – began by noting that equal opportunity is "the bedrock of American democracy," and that diversity is "one of our country's greatest strengths." Biden's EO simply required federal agencies to "review" existing policies in order to "assess whether underserved communities and their members face systemic barriers in accessing benefits and opportunities available pursuant to [the agency's] policies and programs." In short, the EO did not require any specific change in policy, nor did it require agencies to provide any "preference," as Trump's EO mischaracterized it. Biden's EO simply required agencies to review existing policies and practices to make sure that they did not discriminate or otherwise create obstacles to equal opportunity for all. The EO also required the federal government, *consistent with applicable law*, to allocate resources "to address the historic failure to invest sufficiently, justly, and equally in underserved communities, as well as individuals from those communities." To that end, the Biden EO directed the Director of the Office of Management and Budget (OMB), *consistent with applicable law*, to identify opportunities to invest in underserved communities. The EO did not direct the OMB or any other agency to grant preferences to particular groups; it simply required them to review existing policies and identify opportunities to address inequities, albeit "consistent with applicable law," including anti-discrimination laws and the court rulings interpreting them.

President Trump reversed the Biden policy with EO 14151, misleadingly titled, "Ending Radical and Wasteful Government DEI Programs and Preferencing." Trump's EO claimed that the

agency responses to the Biden's order "demonstrated immense public waste and shameful discrimination." Trump's EO ordered the OMB, assisted by Office of Personnel Management (OPM), to "coordinate the termination of all discriminatory programs, including illegal DEI and 'diversity, equity, inclusion, and accessibility' (DEIA) mandates, policies, programs, preferences, and activities in the Federal Government, under whatever name they appear." The EO directed each agency, department, or commission head to terminate any "environmental justice" offices and positions, as well as "all 'equity action plans,' 'equity actions,' initiatives, or programs, 'equity-related' related grants or contracts; and all DEI or DEIA performance requirements for employees, contactors, and grantees." In short, the EO apparently sought to terminate any position title, office, or program that had the word "equity" in its title. Although Trump's EO purported to end Biden's EO, it did so only by mischaracterizing the earlier EO as requiring illegal "preferencing," something the Biden EO clearly did not do.

Misconstruing "affirmative action" and misconstruing DEI as affirmative action. The day after President Trump reversed the Biden order, he issued EO 14173, entitled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity." This EO purported to rescind EO 11246, issued by President Lyndon Johnson in 1965. Trump's EO once again mischaracterized the earlier order. President Johnson's EO did not require granting "preferences," promote "illegal discrimination," or reject merit-based opportunity. Arguably, given the historical context, it did just the opposite. Johnson's EO prohibited federal contractors from engaging in employment discrimination and required government agencies to include anti-discrimination provisions in government contracts and subcontracts. Johnson's EO was fully consistent with the then-recently enacted Civil Rights Act of 1964.

President Johnson's EO 11246 introduced the term "affirmative action," but it did not have the meaning that it does today in popular and constitutional discourse. By "affirmative action," Johnson's EO did not mean a system that gave "preferences" to any particular group; rather, like the Biden EO, it meant that government agencies had an affirmative duty to review existing policies and, if necessary, take affirmative steps to ensure contracting policies, including in advertising and recruitment, did not unintentionally discriminate on the basis of race. Indeed, in comparing Johnson's EO with Trump's EO, one is struck by their rhetorical similarity in ending "discrimination" in order to ensure all Americans "equal opportunity." Johnson's EO was issued at a time when racial discrimination in public contracting was the norm in many places of the country and in many sectors of the economy. It required agencies to take affirmative steps – not "affirmative action" as the term is used today – to ensure that discrimination did not occur in public contracting, whether by the federal agency awarding the contract or by the contractor executing it. President Biden's order similarly required agencies to review existing policies to make sure that they did not reinforce historical patterns and identify ways in which those policies might be made more equitable for all.

Contrary to President Trump's assertions and suggestions, the earlier EOs did not require "preferencing" or encourage agencies to engage in "illegal discrimination" or "workforce balancing based on race, color, sex, sexual preference, religion, or national origin." (EO 14173 rescinding EO 11246.) When President Trump spoke of "illegal discrimination" and "preferencing," he apparently had in mind affirmative action programs that do not comply with the limitations set forth by the U.S. Supreme Court in *Students for Fair Admissions v. Harvard* (2023) 600 U.S. 181. (See EO 14173 Section 5.) President Trump apparently equates – either knowingly or unknowingly – DEI with affirmative action programs that give preferences in employment, college admissions, and public contracting based on race or gender. However, DEI

is not the same as affirmative action, though a constitutional affirmative action program could be a part of a DEI policy. DEI does not impose quotas or hiring mandates; rather, as the resolution explains, DEI policies could include "targeted recruitment, culturally competent workplace training, equity-focused budgeting, inclusive curriculum development, and disaggregated data reporting in order to address measurable disparities in outcome."

As the resolution makes clear, DEI principles and policies are consistent with long-standing ideals embedded in state and federal civil rights legislation, as they "promote equal access to opportunities, foster an environment of respect and belonging, and ensure that every individual, regardless of background, can fully participate in all aspects of society." It is difficult to imagine a statement more reflective of the best American ideals than that.

According to the Author

SCR 89 reaffirms the California Legislature's commitment to diversity, equity, and inclusion as essential to fulfilling the promise of the American Dream and safeguarding our democracy. This is a values-based resolution—one grounded in the Constitution and in the enduring legacy of civil rights protections, from the Civil Rights Act of 1964 to the Americans with Disabilities Act of 1990—that has expanded opportunity and strengthened civic participation in our country.

The resolution highlights California's leadership—from the creation of the Racial Equity Commission to equity-focused legislative processes—and underscores that inclusive policies are essential for all individuals to reach their full potential.

Arguments in Support

SEIU California writes in support:

Our members represent the diversity and strength of Californians. They work in both the public and private sectors, live in all 58 counties in the state, and span the political spectrum as Democrats, Independents, and Republicans. 60% of them are women, of which 70% are women of color, and altogether, our members speak over 31 languages. The resolution affirms that the Legislature remains committed to diversity, equity, and inclusion as an essential foundation for achieving the American Dream and fostering environments where all individuals have the freedom to be healthy, prosperous, and safe, and have the opportunity to live their fullest potential. It also reminds the Legislature of the progress California has made in prioritizing diversity, equity, and inclusion.

Arguments in Opposition

None on file

FISCAL COMMENTS

None

VOTES

SENATE FLOOR: 29-7-4

YES: Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Durazo, Gonzalez, Grayson, Hurtado, Laird, Limón, McGuire, McNerney, Menjivar, Padilla, Pérez, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener

NO: Alvarado-Gil, Dahle, Jones, Niello, Ochoa Bogh, Seyarto, Strickland

ABS, ABST OR NV: Choi, Grove, Reyes, Valladares

ASM JUDICIARY: 9-3-0

YES: Kalra, Bauer-Kahan, Bryan, Connolly, Harabedian, Pacheco, Papan, Lee, Zbur

NO: Dixon, Johnson, Sanchez

UPDATED

VERSION: March 20, 2026

CONSULTANT: Tom Clark / JUD. / (916) 319-2334

FN: 0002423