OFFICE OF ATTORNEY GENERAL
JAMES UTHMEIER

POLICY MEMORANDUM

The State of Florida, as a matter of policy and law, is committed to ending unlawful discrimination and bias. As our state officials have long made clear: Diversity, Equity, and Inclusion (DEI) and Environmental Social Governance (ESG) standards are transparently designed to intentionally discriminate on prohibited bases under the cover of anodyne phrasing. The Office of Attorney General—like other state government counterparts—will not allow Floridians' hard-earned tax dollars to be spent on these unlawful, discriminatory programs.

Many of our nation's largest and most profitable law firms have played a substantial role in trafficking DEI, ESG, and other illegal and discriminatory initiatives into Corporate America. One notable example is former U.S. Attorney General Eric Holder, who has burnished a reputation and lucrative practice devoted to promoting these illegal, inappropriate corporate policies. Many American law firms proudly parade their DEI/ESG programs and commitments. Indeed, this overt celebration of discriminatory practices has recently spurred an investigation into several firms by the U.S. Equal Employment Opportunity Commission.

Like the EEOC, I am deeply troubled that these discriminatory practices have been embraced and amplified by many of our nation's law firms. If we are truly committed to the rule of law, then we must be truly committed to equal justice under law. DEI and ESG practices flout those bedrock principles.

As Florida's Chief Legal Officer, I am committed to ending discriminatory DEI and ESG policies—under those monikers or others—and ensuring that resources entrusted to us by the taxpayers do not flow to vendors, programs, policies, and initiatives that misalign with the laws and policies of Florida.

This office engages outside counsel from time to time, and we approve outside counsel engagements from other cabinet and state agencies, as required by Fla. Stat. §§ 16.015 and 287.059. OAG receives and reviews requests to engage private attorneys

pursuant to Rule 2-37.010, Fla. Admin. Code. OAG vets each request, and I approve or deny each request as authorized by Fla. Stat. § 287.059(3).

Beginning immediately, the Florida Attorney General's Office will no longer engage or approve the engagement of private law firms who have or continue to engage in illegal and inappropriate discrimination and bias. Racial discrimination, in any form, is wrong and illegal. Florida taxpayer resources should not redound to the benefit of law firms who pretend otherwise.

DEI

Law firms that have demonstrated a history of racially discriminating against their own attorneys, staff, and job applicants will no longer be considered eligible for state work, absent a compelling demonstration of changed behavior and a rejection of discriminatory principles. The following is a list of inexhaustive law firm practices/programs/affiliations that will give rise to a disqualifying presumption:

- **Mansfield Certification** – Historically, Mansfield Certification, a project of Diversity Lab, required that 30% of candidates for law firm leadership roles and advancement opportunities (and 50% of candidates for in-house legal departments at companies) be members of "underrepresented groups," defined as women lawyers, "racial and ethnic lawyers," LGBTQ+ lawyers, etc.
- **Minority Corporate Counsel Association Scorecard** – A third-party diversity scorecard that scores law firms based on their "percentile ranking of the representation of underrepresented racial and ethnic groups, gender and LBGTQ+ per level and the overall disclosure of DEI data versus firms of a similar size." https://mccascorecard.com.
- **Diversity Targets in Hiring, Promotion, and Contracting** – Beyond Mansfield Certification, racial hiring percentages (as well as promotion and compensation policies reflecting the same concepts) have become prevalent in law firm operations, as have programs that reward suppliers based on the race or sexual orientation of the owner, management, or employee composition of the supplier.
- **Diversity Fellowships** – Until a wave of lawsuits that came on the heels of the Supreme Court's decision in *Students For Fair Admissions v. Harvard*, top law firms offered diversity fellowships that were been limited to "students of color" or students in other defined categories, something that has become a focus of the EEOC. Additionally, the practice of awarding supplemental "stipends" or "scholarships" to diversity fellows above and beyond normal compensation is pay discrimination, plain and simple. Euphemistic labeling doesn't redeem brazenly discriminatory behavior. Another indication that law firms are engaging in discriminatory behavior is demonstrated by participation in third-party programs like the Leadership Council for Legal Diversity, the SEO Law Fellowship, and similar programs that, in practice, discriminate based on race or sex.
- **Diversity Mentorship Programs** – Like with diversity fellowships, law firms have prioritized training and mentorship opportunities for certain races, genders, or sexual orientations, imposing disparate treatment based on protected characteristics.

- **DEI Websites** – Many law firms have career websites and other webpages that discriminate in the provision of job notices and advertisements by containing statements indicating a preference for hiring individuals with certain racial, ethnic, or sexual orientation characteristics.
- **Workplace DEI Trainings** – Law firms have embraced workplace trainings on DEI or related issues (by whatever name they're given) that are so egregious as to constitute a plausible basis for a hostile work environment claim or allegation.

ESG

Law firms that have historically promoted or engaged in the illegal and immoral social engineering under the "ESG" brand will no longer be considered eligible for state work, absent some demonstrated, permanent change in behavior. ESG commitments by law firms place external policy goals above the objectives of their clients. When the State of Florida or its officers are clients, we are owed a duty of loyalty by our counsel and cannot allow the zealous, ethical advancement of the State's objectives to be subverted by external commitments that implicate a split loyalty or that actively undermine the interests of the State as the client. The following is a list of inexhaustive law firm practices/programs/affiliations/memberships that will give rise to a disqualifying presumption:

- **NetZero Lawyers Alliance** – The NetZero Lawyers Alliance embodies the worst of the discriminatory ESG apparatus, with firms making horizontal agreements and committing to "support the goal of net zero carbon dioxide (CO2) emissions by 2050 or sooner," "amplify the number of law firms that are members of the Race to Zero," and "support the alignment of commercial clients' legal contracts and terms with net zero, as well as their enforcement." https://www.netzerolawyers.com/our-members; https://www.netzerolawyers.com/commitments/our-commitment.
- **Legal Charter 1.5** – Legal Charter 1.5 is another legal-focused arm of the discriminatory ESG apparatus, which requires firms to commit to eight principles and lines up horizontal law firm agreements and coordination while it also "encourages and enables law firms to transition their strategies, operations and client work in line with a 1.5 degree world." https://legalcharter1point5.com.
- **NetZero Practice Groups Promoting ESG To Clients** – Law firm practice groups have played a central role in trafficking not just DEI, but also extreme, discriminatory ESG policies into Corporate America, making this promotion of discriminatory policies in a prime money-making operation while undermining the rule of law and other principles that Florida holds dear. https://clp.law.harvard.edu/knowledge-hub/magazine/issues/esg-and-lawyers/law-firms-in-the-esg-game/; https://www.thomsonreuters.com/en-us/posts/legal/law-firms-esg-practice/.

It is no excuse to say that the above-detailed policies were requested or supposedly mandated by a firm client—for example, a large corporate client. Hewlett-Packard's policy, for example, so prioritizes diversity, equity, and inclusion that its "legal department

… withholds up to 10% of all invoiced spend of those firms who fail to meet or exceed diverse minimal staffing on work for HP." Microsoft's Law Firm Diversity Program similarly steers outside counsel work to "women, minorities, LGBTQ+ people" and leverages law firms to rebalance their management committees along those same lines. But illegal, unethical, and inappropriate actions do not become legal, ethical, and appropriate merely because a client requests them. Lawyers should be called to a higher standard. Fulfilling such requests draws firms into the chain of liability for illegal, discriminatory actions. And in any event, both law firms and Corporate America should now be on notice that such discriminatory policies and commitments likely foreclose opportunities to secure government contracts, not least because these efforts at a minimum present a type of general "client-level-conflict" insofar as they implicate basic questions about the duty of loyalty owed to the State as a client and the guarantee of zealous advocacy the State expects from its counsel.

Those who have entertained and promoted these policies have, in my view, violated the public trust and the duties law firms owe to the State and its agencies as clients. For too long, law firms have felt free to misalign themselves with their clients' policies and objectives, and have instead prioritized ideological ends that are, at bottom, merely warmed over modes of prohibited discrimination and bias.

I am not unaware that law firms face immense pressure to mouth commitments to DEI and ESG principles and express support for third-party groups that promote prohibited and inappropriate discriminatory practices. Some attorneys at those firms personally reject the DEI and ESG rouses and simply want to perform excellent client. So for purposes of enforcing this policy, my office will consider—when reviewing potential law firm engagements—whether certain attorneys have demonstrated a track record of performing excellent legal work for the State.

Law firms' discriminatory commitments embodied in DEI and ESG policies must no longer displace the interests of the State and supplant the bedrock principles that have since time immemorial governed the attorney-client relationship.

For the State of Florida, it ends now.

My office will immediately commence a review of existing outside counsel engagements to assess compliance with this policy. And going forward, the office will not approve outside counsel engagements with law firms who are not in compliance with this policy.