August 10, 2026

Open Letter to Cities and Counties

Re: Protecting Local Governance in the Face of an Anti-Diversity Law (SB 1134)

Dear City and County Officials,

We write concerning the state's new Anti-Diversity Law that seeks to prohibit official actions of local governments relating to "diversity, equity, and inclusion," as defined within the statute, that is planned to go into effect January 1, 2027—and what you can do about it.

Below you will find information regarding what the law does and what it legally cannot do; its parameters, exemptions, and reasonable interpretations; the risk of legal action taken against local governments that discriminatorily pull funding from the communities they serve; and the law's unconstitutional language regarding removal from office for having committed no crime.

The new law, SB 1134,[1] is government overreach and indoctrination of the most nefarious kind. It attempts to "cast a pall of orthodoxy over"[2] local governments, mirroring recent unconstitutional laws restricting the discussion of certain ideas in workplaces and schools—that have been enjoined by the courts.[3] SB 1134 purports to block local governments from engaging in activities referencing race, color, sex, ethnicity, gender identity, or sexual orientation. Although the proponents of SB 1134 seek to stamp out diversity, Florida's cities and counties must reject this state overreach and defend their authority to address community interests and needs.

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[1] Official Actions of Local Governments, ch. 2026-43, 2026 Fla. Laws (CS for CS for S.B. 1134), https://www.flsenate.gov/Session/Bill/2026/1134/BillText/er/PDF.

[2] *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967).

[3] *Pernell v. Fla. Bd. of Governors of the State Univ. Sys.*, No. 22-13992, 2026 WL 1955783, at *6 (11th Cir. Jul. 7, 2026) (affirming injunction against viewpoint-discriminatory limitations on state university instruction); *Honeyfund.com Inc. v. Gov. of Fla.*, 94 F.4th 1272, 1277 (11th Cir. 2024) (affirming injunction against viewpoint-discriminatory limitations on private employment training).

What the Law Does

The law provides that cities and counties "may not fund or promote, directly or indirectly, or take any official action . . . as it relates to diversity, equity, and inclusion," which the law broadly defines to mean—in relevant part—"any effort to . . . [m]anipulate or otherwise influence the composition of employees with reference to race, color, sex, ethnicity, gender identity, or sexual orientation" (except to comply with anti-discrimination laws); "[p]romote or provide preferential treatment or special benefits to a person or group based on that person's or group's race, color, sex, ethnicity, gender identity, or sexual orientation"; or "[p]romote or adopt training, programming, or activities designed or implemented with reference to race, color, sex, ethnicity, gender identity, or sexual orientation." This provision, along with most of the law, is scheduled to take effect next year, on January 1, 2027.

For contracts executed or renewed after January 1, 2027, the law requires county and municipal contractors to certify that county and municipal government funds will not be used to require others "to ascribe to, study, or be instructed using materials relating to diversity, equity, and inclusion."

What the Law Does Not Do

Despite the law's broad reach, it has significant limitations.

First, the U.S. Constitution guarantees equal protection and safeguards against viewpoint discrimination.[4] The Fourteenth Amendment guarantees equal protection of the laws, while the First Amendment, applicable to the States through the Fourteenth, prohibits the government from suppressing or favoring particular viewpoints. Additionally, SB 1134, by its own terms, explicitly states that it "does not prohibit any official action by a county required for compliance with state or federal laws or regulations" and "does not prohibit any official action by a governing body of a municipality required for compliance with state or federal laws or regulations." *See* Fla. Stat. §§ 125.595 (7)(a), 166.04971 (7)(a). The statute also explicitly states that it does not prohibit official actions "to ensure that hiring is conducted in accordance with the state and federal antidiscrimination laws" nor "the use of equal opportunity or equal employment materials designed to inform a person about the prohibition against discrimination based on protected status under state and federal law." *See* Fla. Stat. §§ 125.595 (1)(b) and (7)(c), 166.04971 (7)(c), respectively.

[4] U.S. Const. amend. XIV, § 1; U.S. Const. amend. I.

Any application of SB 1134 must therefore exist within these constitutional and statutory protections, as well as state or federal laws or regulations. Overzealous compliance and fear-based capitulation with the authoritarian spirit of this state law can expose local governments to significant legal challenges. Moreover, complicity in this attack on diversity and democratic ideals is the opposite of what this moment in time calls for.

Second, to restate, the law does not take effect until next year. There is no interpretation of the law that can require any aspect of it to apply to anything prior to January 1, 2027—full stop. For example, cities and counties are free to support diversity, equity, and inclusion initiatives—which encompasses entering into any contracts to "fund" and "promote" community-based "training," "programming," and "activities"; passing local ordinances and policies consistent with current law; and conducting diversity trainings and contracting with DEI officers—without state interference through December 31, 2026.

And after January 1, 2027, while the law expressly voids existing "ordinances, resolutions, rules, regulations, programs, or policies" relating to its definition of diversity, equity, and inclusion (Fla. Stat. §§ 125.595(2), 166.04971(2)), apart from contracts between local government and DEI officers it simply does not speak to existing contracts at all. Any effort by the state or other third parties to interfere with contractual commitments established before the law's effective date may run afoul of the Contracts Clause of the U.S. Constitution, which prohibits state laws from impairing contracts.

Third, the law includes a list of exemptions, which it codifies at Fla. Stat. §§ 125.595(7)-(8) and Fla. Stat. §§ 166.04971(7)-(8). Local governments should lean on these exemptions. For example, the law explicitly permits recognizing and promoting state and federal holidays, observances, monuments, and memorials. Local governments retain full authority to fund, celebrate, and maintain all programming tied to these designations entirely as before. Such permitted observances include National Black History Month, National Hispanic Heritage Month, Juneteenth, the Birthday of Martin Luther King, Jr., and Asian/Pacific American Month. All are protected as federal holidays or observances.

The law also explicitly permits "[r]ecognizing or honoring the individuals and groups recognized and honored by the monuments, memorials, and museums authorized by chapter 265 or chapter 267" of Florida's code, and "recognizing the events and individuals forming the basis for such monuments, memorials, or museums." Examples include the Florida Black History Museum, the Florida African American Heritage Preservation Network, the Florida Slavery Memorial, the Florida Holocaust Memorial, the Florida Women's Hall of

Fame, and the State Historical Marker Program, which includes the Cuban Heritage Trail, Jewish Heritage Trail, Native American Heritage Trail, and others. The sponsors of the law made clear that honoring individuals and groups recognized and honored by these institutions enables local governments to, for example, issue a Black History Month proclamation or give awards to women leaders of distinction. This is consistent with the statute's plain language, which protects not only the monuments, memorials, and museums themselves, but also all of the "events and individuals" that "form[] the basis for" those commemorative sites. Thus, for example, because the intent of the legislature with respect to the Florida Slavery Memorial is "to recognize the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the American Colonies and to honor the nameless and forgotten men, women, and children who have gone unrecognized for their undeniable and weighty contributions to the United States," Fla. Stat. § 265.006(1), local governments have a broad lens through which to make use of the capacious exemptions and fund organizations that examine our history.

The law also by its own terms does not apply to "actions of a body composed of nonelected volunteers," nor to "[b]asic administrative support" to such volunteer boards as long as such support is not that employee's sole function. In other words, the volunteer boards that flourishing cities and counties across the state have cultivated as part of their commitment to community engagement and pluralistic local culture may continue to operate entirely as before, without limitation. Given such explicit textual protections in the law, there can be no basis to eliminate these boards.

Numerous other carve-outs exist. For example, the law does not prohibit local governments from issuing permits in a content-neutral manner or providing public-safety services. It does not prohibit "[p]romoting or supporting a nonprofit entity that provides single-sex programs for the homeless or education, counseling, and rehabilitation of trauma-involved or at-risk youth," nor can it be construed to conflict with "[s]tate and federal laws ensuring access to public health care services corresponding to a person's race or ethnicity" or "biological sex." The law also "does not prohibit the use of equal opportunity or equal employment opportunity materials designed to inform a person about" anti-discrimination law.

Fourth, the law cannot be interpreted —consistent with the constitution—to prohibit local governments from hosting or supporting programming that reflects the diversity of the community. For example, if depicting families led by heterosexual couples is permissible, so is depicting families led by same-sex couples. If a library event about the ways in which the founding fathers were influenced by the Roman Republic is permissible, so is one about the

influence of the Iroquois Confederacy. A local government cannot remove the names from government buildings of Black civil rights leaders while leaving in place the names of others. And if an arts event celebrating the contributions of Irish Americans is permissible, so is one celebrating the contributions of African Americans. Despite their apparent efforts, the State of Florida cannot functionally require that only white non-Hispanic men receive funding, promotion, and praise. Yet if cities and counties decide, for example, not to honor the contributions of women and Black Americans out of fear that the state will retaliate for honoring those groups and individuals, that only serves to accomplish what the state purports to stand against—singling out someone based on their race or sex. Any local government that chooses to disfavor certain groups opens itself to liability under federal law.

The federal appeals court for Florida, the Eleventh Circuit, made clear just last week that nonprofit organizations have standing to sue local governments for discrimination in the denial of funding, grants, contracts, and the like.[5] The court in that case recognized multiple theories of liability, reversing the earlier dismissal of the case and allowing the case to proceed on claims of First Amendment retaliation and Fourteenth Amendment racial discrimination.[6] That decision underscores the significant risk local governments take when they broadly interpret state laws such as SB 1134.

Lastly, SB 1134 does not address several characteristics commonly considered to be part of diversity, equity, and inclusion. The law's definition of "diversity, equity, and inclusion" does not reference distinctions based on, for example, age, national origin, religion, disability, veteran status, or pregnancy status. Thus, policies, programs, recognitions, or funding based on those characteristics do not fall within the law's restrictions and thus are not sources of potential liability under the law.

Other Constitutional Pitfalls

SB 1134's enforcement provisions also create problems under the Florida Constitution. The law states that governing officials acting in their official capacity who violate this law commit "misfeasance or malfeasance." This is likely a reference to Governor DeSantis's favored tool for addressing those who disagree with him—not with persuasion,

[5] *African People's Educ. & Def. Fund v. Pinellas County*, No. 24-13547, slip op. 31 (11th Cir. Jul. 29, 2026), https://media.ca11.uscourts.gov/opinions/pub/files/202413547.pdf.
[6] *See, e.g.*, *id.* at 15 ("the County [allegedly] manipulated the ARPA grant program to suppress ideas that it viewed as dangerous"); *id.* at 35 ("APEDF's assertion that several white-coded organizations were funded, despite issues of the same sort that were cited as reasons for the revocation and denial of its requests, underscores its circumstantial evidence case.")

but unlawful force. In particular, he has suspended or removed state officials from office when, in his selective estimation, they have not carried out the law to his liking (though he has taken no action against his own attorney general, who has repeatedly and publicly refused to enforce some of the state's gun laws). The Eleventh Circuit rebuked this behavior in the context of the Governor's suspension of former state attorney Andrew Warren, who brought a First Amendment retaliation claim following his removal. The Florida Constitution limits the Governor's authority to suspend elected municipal officials, and SB 1134 attempts to accomplish indirectly what the Constitution does not permit directly. Florida statutory law, at Fla. Stat. § 112.51(1), does provide that "[b]y executive order stating the grounds for the suspension and filed with the Secretary of State, the Governor may suspend from office any elected or appointed municipal official for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties." And SB 1134, through Fla. Stat. § 166.04971(4), relies on this same statutory framework, stating that "[a]ny member of the governing body of a municipality or other municipal official acting in an official capacity who violates this section commits misfeasance or malfeasance in office." By expressly deeming violations of the new law (at Fla. Stat. §166.04971(4)) to constitute "misfeasance or malfeasance," the Legislature sought to bring such conduct within the categories identified in Fla. Stat. § 112.51(1) as grounds for gubernatorial suspension.

The problem for the Florida Legislature is that its statutory scheme violates the Florida Constitution. Article IV, section 7(c) of the Florida Constitution provides that "[b]y order of the governor any elected municipal officer *indicted for crime* may be suspended from office until acquitted and the office filled by appointment for the period of suspension, not to extend beyond the term, unless these powers are vested elsewhere by law or the municipal charter." The Florida Constitution does not authorize the Governor to suspend elected municipal officials (as opposed to *county* officials) for misfeasance, malfeasance, neglect of duty, or other noncriminal conduct. The Florida Constitution authorizes suspension of elected municipal officers only upon indictment for a crime. To the extent Fla. Stat. § 112.51(1) and Fla. Stat. §166.04971(4) purport to operate together to authorize the suspension of elected municipal officials for conduct falling short of a criminal indictment, they conflict with Article IV, section 7(c) of the Florida Constitution and are therefore unconstitutional. The plain text of Article IV, section 7(c) of the Florida Constitution strictly limits the Governor's suspension authority over elected municipal officers.

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SB 1134 is state government overreach. It seeks to disintegrate the thread between local officials and the communities they serve. And it is unconstitutionally vague in parts. It is all of those things—but it is not without limits. By adhering to the Constitution, complying with state and federal anti-discrimination laws, understanding the effective date and the numerous exemptions, honoring your existing contractual obligations, and continuing and expanding the use of the explicitly authorized volunteer boards, you can comply with this terrible legislation without sacrificing the dynamic communities that you serve and that we know you remain committed to protecting. We welcome the opportunity to discuss any of these matters with you in more detail.

In coalition with,
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