

## **Perceptions of New DEI Laws and the Recent Affirmative Action Decision among Engineering Faculty and Staff**

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## Abstract

*Introduction:* In 2023, several states enacted restrictions on diversity, equity, and inclusion efforts, and the Supreme Court ended the use of affirmative action in college admissions. These changes require higher education faculty and staff (HEFS) who want to work to end disproportionate representation in engineering programs to carefully reconsider how they will move forward in their work. The rapidity and recency of these changes mean that little is known about how these changes are understood by HEFS.

*Objective:* The primary purpose of this paper is to answer the question: How do higher education faculty and staff, especially those in engineering, perceive the new legal landscape?

*Methods:* We gathered data from HEFS who chose to participate ( $n = 46$ ) in a community of practice designed to help participants understand and negotiate the new legal landscape. This data included a survey, written artifacts from community activities, meeting transcripts, and plans for action. We performed a content analysis on this data using the framework developed by Kania et al. for understanding systems change that considers structural, relational, and transformative factors in order to determine how participants perceive the recent changes to the law.

*Results:* Our analysis found that participants had a variety of concerns related to the new legal reality, including those related to structural, relational, and transformative change. They expressed various concerns and sentiments about the changes, largely focused on the likely impact on underrepresented students and their own ability to serve these students. We also uncovered some misconceptions about the nature and extent of recent changes, such as the people and contexts to whom the new regulations apply.

*Conclusion:* This paper makes an important contribution to understanding how engineering HEFS understand and perceive the new legal landscape. This understanding is an important precursor to appreciating how those who want to work to improve representation in higher education might continue to do so within the constraints of recent changes to the law. The paper includes suggestions for serving all students in a manner that comports with the new legal landscape.

## Introduction

In 2023, the United States Supreme Court (SCOTUS) ruled that colleges may not use affirmative action in college admissions [1]. Many states have introduced legislation that restricts diversity, equity, and inclusion (DEI) efforts in public colleges, and several states have enacted such legislation [2]. In Texas, for example, DEI offices are no longer allowed, and public colleges may

not, for example, organize a conference that includes DEI activities on campus [3].

Mathematical modeling suggests that the end of affirmative action is likely to reduce the number of Black and Hispanic students in four-year colleges by 2% and by 10% at more selective colleges [4]. Further, *not* focusing on DEI efforts is likely to result in the development of policies, programs, and institutional cultures that are optimized for the majority, often at the expense of meeting the needs of other students [5].

This new legal landscape is thus likely to have substantial repercussions for higher education, especially engineering education, a discipline that already experiences a significant underrepresentation of students from historically marginalized groups. To the extent that higher education faculty and staff (HEFS) want to continue working for opportunity for all students, they will need to carefully redesign affected programs and policies to comply with the new legal landscape. Their perceptions of the new laws and the SCOTUS decision will form the foundation of this work. However, the recency of these changes has meant that little is known about how higher education faculty and staff perceive these changes. Thus, the primary purpose of this paper is to answer the question, How do higher education faculty and staff, especially those in engineering, perceive the new legal landscape?

## **Background**

While there is a body of literature analyzing the perceptions of DEI among higher education faculty and staff, most of that work focuses on the climate surrounding diversity, equity, and inclusion at a given institution [6–8]. Similarly, a literature review that predated the new legal landscape focused on the preparation of engineering faculty to address DEI issues [9]. It found a paucity of studies, leading to the conclusion that faculty DEI-related beliefs are not often studied. Synthesizing the studies that do exist, the authors conclude that most engineering faculty believe that DEI efforts are important, but they do not act on those beliefs due to lack of support. Work surrounding perceptions of DEI as an intellectual movement, political issue, and/or target of legislation (as opposed to the DEI-related climate or willingness to enact DEI efforts) are less common (In other words, the literature explores faculty beliefs surrounding the question, “Are we doing a good job at DEI?” but not the question “Is DEI a good idea?”), and the recency of laws designed to limit DEI efforts mean that perceptions of these laws are not yet widely studied.

## **Methods**

In the fall of 2023, we extended an invitation, primarily to HEFS in engineering and adjacent disciplines, to participate in a series of interactive webinars. We gathered data from HEFS who chose to participate ( $n = 46$ ) in this community of practice designed to help participants understand and negotiate the new legal landscape. This data included a pre- and post- survey as well as artifacts (e.g., collaborative documents) generated during the webinar. It should be noted that not all who registered for the webinars completed the surveys and/or participated in the webinars; counts varied by event. The majority of participants were higher education faculty and staff working in engineering or similar fields, often with direct responsibility for DEI efforts (e.g., Dean of Inclusion), and the majority were women and white. Data generated by participants included a pre- and post- survey, digital artifacts from community activities, meeting transcripts, and plans for action. The pre-survey specifically asked respondents about their perceptions of the new DEI laws; it also included questions about the laws’ impacts on their work.

We used the Water of Systems Change model as a framework for understanding participant's perceptions of the new DEI landscape. Kania et al. developed this model, which is a framework for understanding systems change [10]. As Figure 1 shows, it defines three types of change: structural, relational, and transformative.

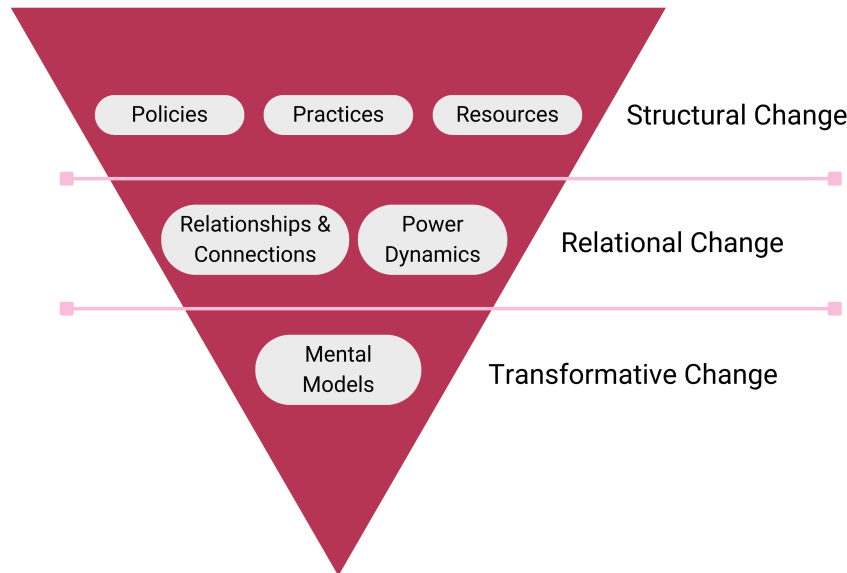


Figure 1: The Water of Systems Change Model, adapted from Kania et al. [10]

Structural change involves changes to policies, practices, and the allocation of resources; these changes are usually explicit. Relational change, which is semi-explicit, concerns changes to relationships and their corresponding power dynamics. Finally, transformative change, which is implicit, affects mental models. These six components of systems change are interdependent. We chose to use the model from Kania et al. to analyze the data because it presents a well-organized method of thinking about the various aspects of a system. We thus performed a content analysis on the data sources, grouping evidence of participant sentiment into the relevant component of the model in order to determine how participants perceive the recent changes to the law.

## Results

*1. Policies* In some cases, HEFS had factually incorrect perceptions of the new policies. For example, one person registered for the webinar but then contacted the organizers to explain why they would not be participating: upon reading some of the resources that the facilitators had shared with participants in preparation for the first webinar, they learned that their institution – a military academy – was not subject to the recent SCOTUS ruling. Another participant noted that “For now, reading the Q&A I’m less concerned than I was. We can still do what we are doing, and move in the direction in which we were moving, which is a relief.”

There was also a lack of certainty regarding whether and how laws restricting DEI efforts would impact participants, with the majority (58%) of those who completed the pre-survey indicating that they were not sure if their state had recently enacted such laws.

*2. Practices* One survey respondent, who worked at an institution that had changed its policies as a result of the new legal landscape, was concerned that recent legal changes would result in a

two-tiered system, where privileged students were offered “traditional” educational opportunities and other students were offered “alternative” pathways, with the implication that the latter would lead to more circumscribed outcomes (e.g., limited career opportunities). Having two different tracks would permit the institution to boast of a diverse student body, but it would also limit less privileged students. In other words, this respondent’s perception was that efforts to continue to promote diversity in a way that comports with the new legal landscape would inadvertently lead to policies that harmed some students.

Another participant expressed concern that HEFS might “overreact” and limit efforts beyond what is legally required and end up “completely water[ing] down policies and initiatives that are targeted for [underrepresented] students.” Some concerns about practices were specific to distinct functions and roles, such as one participant who expressed curiosity about what the new legal landscape and resulting institutional policies would mean for data collection about students. Practices around recruitment were viewed as crucial, with one participant noting that “we will need to be more purposeful in our recruitment efforts so that the pool of applicants has more representation.”

About half (46%) of survey respondents agreed that their work had been directly affected by recent changes. Given that this survey was completed *before* many institutions enacted new policies in compliance with the new DEI laws and the SCOTUS decision, it suggests that, at least among this sample, the pragmatic impact of changes to the legal landscape would involve substantial direct impacts on the work of HEFS. Further, almost half (46%) of respondents to the pre-survey believed that the new legal landscape would require additional changes to their work. These additional changes were thought to include, for example, the need to guide those submitting proposals to the National Science Foundation to adjust the language used to describe the broader impacts of their work in a way that complies with legal requirements.

*3. Resources* Participants were concerned with how funding challenges would intersect with the new legal landscape. One participant expressed concern that underrepresented students would face limited opportunities at schools that serve primarily white students; they felt that underrepresented students might therefore be more likely to attend minority-serving institutions, but that the lack of funding that many of those schools experience [11] could be a challenge for those students. Another participant wondered whether the NSF would alter its funding strategies based on the new legal landscape.

Other resources that were mentioned in participants’ concerns included states that had previously prohibited affirmative action and their school’s general counsel. One respondent felt that states – such as California and Texas – that had not allowed affirmative action in college admissions even before the recent SCOTUS ruling – would likely be helpful sources for ideas on how to design policies and programs that aided all students, and another pointed out that “what we can say and do” will depend on the guidance they receive from their university’s general counsel. This comment points to the role that each institution’s legal affairs division will have in determining how new laws are translated at the local level into policies and practices.

*4. Relationships and Connections* Participants anticipate that many different relationships will be impacted by the new legal landscape. One participant noted that, while the new laws won’t directly impact their work, they “have to be sensitive to our partners and thus have been

considering how to position our language and work in a manner that can be broadly receptive.” Similarly, another participant who was not directly impacted by the new laws expressed that they “are closely watching developments in other states” in case their partners are impacted. Several participants expressed a desire to learn from each other about how to respond to the new legal landscape.

But the greatest concern was expressed with regards to students, and this was articulated in very general terms (“[I’m] concerned about our students and the impact of these laws.”) as well as in more specific terms. For example, one participant was concerned that legal changes would require that programs previously targeted at underrepresented students would need to be opened to all students, “which could . . . diminish the [willingness of these] students to share their experiences.”

Participants also viewed the legal changes as not just impacting future relationships but also as stemming from changed relationships, including the “volatile and polarized national political landscape.”

*5. Power Dynamics* One HEFS expressed that potential graduate students were less willing to apply to their institution in the wake of new laws; thus the power dynamics between potential applicants and the department had shifted to privilege applicants a bit more than previously. Another participant felt that the new legal landscape constitutes “a threat to free speech,” thus amounting to a change in the power allocated to those who can no longer speak and act in defense of DEI on some campuses.

The largest shift in power identified by participants had to do with the loss of power for students from historically marginalized backgrounds. One participant felt that “the new DEI laws make obtaining equitable educational opportunities for ‘all’ more difficult,” thus resulting in a loss of power for some students. Another participant articulated this shift in more detail, observing that the laws “are unfair to students who were not born into privilege. Their effect will be to widen economic and educational differences in our society.”

*6. Mental Models* One survey respondent described one of the impacts that recent laws had had on their work as including the need to “be mindful” of new admissions criteria. Similarly, another participant described the need to consider more carefully how potential projects are framed. Thus, participants felt that there would need to be some change to mental models – and a corresponding mental effort – in response to the new legal landscape.

## **Discussion**

As described above, we found that participants anticipate impacts from the new legal landscape that will affect all of the sectors of Kania et al.’s model, suggesting something of the scope of the impact of new DEI laws and the SCOTUS decision. Overall, there were more comments and concerns from participants related to structural changes than to relational or to transformative changes.

It was also the case that some of participants’ observations suggest some porousness in the borders of the Kania et al. model. For example, participants viewed guidance from their institution’s office of general counsel as a resource, but in doing so, that office becomes a stronger seat of power, therefore constituting changed power dynamics. To the extent that these offices

tend to be risk adverse and to focus on risk management [12], their guidance may limit opportunities to respond boldly and creatively to the new legal landscape.

Based on the results of this work as described above and the research on best practices for HEFS professional development [13], we recommend that efforts to serve all students begin by addressing the needs of the HEFS who impact student experiences:

- *Recognize and acknowledge that HEFS have a variety of intense feelings and opinions about legal changes.* Our results show that some opinions are strongly held and that there are intense feelings about the changes as well. It is essential that those working with HEFS, especially those providing professional development, anticipate and respectfully acknowledge these beliefs.
- *Recognize the need for professional development.* As mentioned above, some participants expressed that their initial beliefs about DEI laws and/or the SCOTUS decision were not accurate. It is important to provide HEFS with opportunities to learn about legal changes and how those changes will impact their work.
- *Develop agile professional development.* The rapidly changing legal landscape combined with the role of guidance from general counsel create a situation where there is often a very short time window to enact changes. The professional learning that accompanies these changes will therefore need to be developed and delivered rapidly.
- *Extend resources to HEFS in unimpacted states.* Some participants mentioned that they were concerned about state-level changes, even if they lived and worked in unaffected states, due to the impacts on their partners. Thus, it is important to extend professional learning opportunities nationally.
- *Carefully frame messaging.* We uncovered a variety of deep concerns about the new legal landscape, some tied to deeper apprehensions about political changes and divisions. It is essential to acknowledge these concerns. At the same time, it is important not to convey a sense of despair, which may discourage HEFS from continuing to work to advance the success of all students. Additionally, it is important to recognize that previous policies (e.g., affirmative action in college admissions) were not a panacea or a complete solution for equity concerns. Balancing these nuanced positions, in a way that respects the beliefs of all HEFS, will be delicate work.
- *Continue to work to create opportunities for the success of all students.* One finding was that the recent SCOTUS decision and other legal changes are perhaps more limited in scope than they initially seem. All practitioners should continue to strive to meet the needs of all students, including those who have historically been marginalized.

## **Conclusion**

This paper analyzes and synthesizes evidence of HEFS' perceptions of new DEI laws and of the recent SCOTUS affirmative action decision. Using the Water of System Change model as a framework, we found that HEFS had a variety of concerns across all levels of the model. Significant findings included that (1) some HEFS identified that they had become aware that their initial perceptions about changes were not correct, pointing to the need for professional

development around these topics, (2) there was a strong sense that practices would need to change, and (3) there was concern around the impact on students. We conclude that more – and more agile – professional development around these topics will benefit HEFS and the students they serve.

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