



Commonwealth of Virginia  
General Assembly  
RICHMOND

May 1, 2023  
Hon. Jason R. Miyares  
Attorney General of Virginia  
202 North 9th Street  
Richmond, VA 23219

Re: Request for an Informal Opinion Pursuant to § 2.2-505

Dear Attorney General Miyares:

We are requesting an informal opinion pursuant to § 2.2-505 of the Code of Virginia.

In 2020, the General Assembly adopted Delegate Jeion Ward's HB394, which enacted § 2.2-435.12 in Title 2.2, Chapter 4.2:2 of the Code of Virginia on a bipartisan basis. It passed the House of Delegates 68-32 with twelve Republican votes and the Senate with only two "no" votes. It states as follows:

§ 2.2-435.12. Director of Diversity, Equity, and Inclusion; duties.

The position of Director of Diversity, Equity, and Inclusion (the Director) is created. The Director shall be appointed by the Governor. The Director shall (i) develop a sustainable framework to promote inclusive practices across state government; (ii) implement a measurable, strategic plan to address systemic inequities in state government practices; and (iii) facilitate methods to turn feedback and suggestions from state employees, external stakeholders, and community leaders into concrete equity policy.

Governor Youngkin has appointed two different people to these positions. He proposed nominees in SJ271 (Martin Brown) and SJ276 (Rosa Atkins). In both resolutions, Governor Youngkin used a title not reflected in the Code of Virginia by inserting the word "opportunity" for "equity" for his nominees and both chambers affirmed an amendment correcting the resolutions to reflect the name in the Code.

The official state website for this office likewise uses an incorrect name and refers to Mr. Brown as the Commonwealth of Virginia's Chief Diversity, Opportunity, and Inclusion Officer. The title required by Code does not appear anywhere on the official state website.

According to the Washington Post, Mr. Brown spoke to students at the Virginia Military Academy last week.

- First, he stated that the former title of his position was the Director of Diversity, Equity and Inclusion and insinuated that it has a new title.
- Second, DEI stands for "diversity, equity and inclusion" and Mr. Brown told a student:

"Let's take a moment right now to kill that cow. DEI is dead. . . . we're not going to focus on civility. We're not going to bring that cow up anymore because it's dead. It was mandated by the General Assembly, but this Governor has a different philosophy of civil discourse and living the Golden Rule."

- Third, Mr. Brown further stated that "equity has become a tradeoff for excellence" and made numerous other statements that were critical of equity policies