

Chapter 26

POLICIES TO ADDRESS CONTROL OVER CREATIVE, CULTURAL, AND INTELLECTUAL LIFE

This chapter details policy proposals to address harms set forth in Chapter 9, Control Over Creative, Cultural, and Intellectual Life. The Task Force recommends that the Legislature take the following actions:

- Provide State Funding to African Americans to Address Disparity in Compensation Among Athletes in the University of California and State System; and Funding to Support African American Athletes in Capitalizing on their Name, Image, and Likeness and Intellectual Property
 - Prohibit Discrimination Based on Natural and Protective Hair Styles in All Competitive Sports
 - Identify and Remove Monuments, Plaques, State Markers, and Memorials Memorializing and Preserving Confederate Culture; Erect Monuments, Plaques, and Memorials Memorializing and Preserving Reconstruction Era and the African American Community
 - Provide Funding to the Proposed California American Freedmen Affairs Agency, Specifically for Creative, Cultural, and Intellectual Life
 - Eliminate the Practice of Banning Books Maintained by the California Department of Corrections and Rehabilitation
- A. Provide State Funding to African Americans to Address Disparity in Compensation Among Athletes in the University of California and State System; and Funding to Support African American Athletes in Capitalizing on their Name, Image, and Likeness and Intellectual Property**

As documented in Chapter 9, Control Over Creative, Cultural, and Intellectual Life, following the end of formal slavery, most African American athletes were forced to compete in segregated teams, sports, and organizations. In the University of California system, “Black male student-athletes,” who comprise a large majority of the male student athlete population, have some of the lowest graduation rates compared to overall graduation rates.¹ Today, college student-athletes generate millions of dollars in profits for schools, coaches, and conference and network executives.² College athletics operate under the National Collegiate Athletic Association (NCAA), a private nonprofit organization.³ Under previous NCAA regulations, compensation for student-athletes was limited to scholarships for their education. Meanwhile, universities enter

¹ Harper, [Black Male Student-Athletes and Racial Inequities in NCAA Division I College Sports](#) (2018) USC Race and Equity Center (as of Jan 20, 2023);

² Chung, et al., [Paying College Athletes](#) (Feb. 6, 2021) The Regulatory Review, (as of Dec. 1, 2022).

³ *Ibid.*

multimillion dollar deals with cable networks and athletic brands—all of which profit from using athletes’ images in marketing campaigns, apparel sales, and ticket sales, among other revenue sources.⁴

Among the 500,000 or so college athletes who compete annually under the auspices of the NCAA, there are more than 210,000 injuries per year, according to one estimate, ranging from minor to catastrophic and fatal.⁵ In the University of California system, prioritization is placed on athletic accomplishment over academic engagement, often discouraging “Black athletes” from participating in activities beyond their sport.⁶ Effective July 1, 2021, the NCAA adopted the Interim Name, Image and Likeness (NIL) Policy allowing NCAA student-athletes the opportunity to benefit from their NIL without jeopardizing their NCAA eligibility.⁷ In August 2022, the NCAA Division I Board of Directors announced that schools are now empowered to support student-athletes in a variety of ways without asking for waivers, including providing support needed for a student-athlete’s personal health, safety, and well-being; paying for items to support a student’s academic pursuits; purchasing insurance of various types (including loss-of-value and critical injury); and funding participation in elite-level training, tryouts, and competition.⁸

To remedy and address the harms associated with discrimination in competitive sports and the imbalance of profit generating income based on an athlete’s NIL, the Task Force recommends that the Legislature conduct a study to determine the value African American athletes bring to an academic institution. In addition thereto, the Task Force recommends that the Legislature appropriate funds to academically support African American athletes and appropriately compensate African American athletes, for the value they bring to the institution, through non-contingent scholarship funds, private athlete insurance, and ongoing academic support. If history is any indicator, African American athletes are likely to be undercompensated for their talents compared to white athletes. Further study would be needed to determine whether the impact of changed NCAA policies benefit African Americans in the same way other athletes might benefit. The Task Force recommends that the Legislature direct that this study be undertaken. To support African Americans further in this area, the Task Force also recommends that a funding stream be created to assist African American athletes with monetizing their image and likeness while protecting their personal brand. This could include sponsored legal assistance and marketing training that may be administered by the California American Freedmen Affairs Agency.

⁴ *Ibid.*

⁵ Dart, [College athletes are unpaid. What if injury ruins their chance of turning pro?](#) (Sept. 6, 2021) The Guardian (as of Jan. 12, 2023).

⁶ See Harper, [Black Male Student-Athletes and Racial Inequities in NCAA Division I College Sports](#) (2018) USC Race and Equity Center (as of Jan 20, 2023); California Task Force to Study and Develop Reparation Proposals for African Americans, [Interim Report](#) (June 2022) p. 311.

⁷ National Collegiate Athletic Association Division I, [Institutional Involvement in a Student-Athlete’s Name, Image and Likeness](#) (Oct. 26, 2022) (as of Jan. 20, 2023).

⁸ Hosick, [DI Board of Directors adopts student-athlete benefit legislation](#) (Aug. 3, 2022) NCAA (as of Dec. 1, 2022).

B. Prohibit Discrimination Based on Natural and Protective Hair Styles In All Competitive Sports

In January 2021, Talyn Jefferson, a young Black student at Ottawa University, was removed from her cheerleading team for refusing to remove her bonnet during practice.⁹ Jefferson wore the bonnet to prevent her braids from hitting other team members.¹⁰ In December 2018, Andrew Johnson, a high school student on the wrestling team, was forced by a referee to either cut his dreadlocks or forfeit his match.¹¹ As discussed in Chapter 9, Control Over Creative, Cultural, and Intellectual Life, Eurocentric norms of professionalism often have a disparate impact on African American individuals. To remedy and address the harms in this area, the Task Force recommends that the Legislature extend the reach of Senate Bill (SB) No. 188 to explicitly include competitive sports within California. SB 188, the “Create a Respectful and Open Workplace for Natural Hair Act,” amended the Government Code and Education Code so that the definition of race now also includes traits historically associated with race, including hair texture and protective hairstyles.¹² This recommendation seeks to ensure that African American athletes are not subject to discrimination and exclusion based on their natural hair.

C. Identify and Remove Monuments, Plaques, State Markers, and Memorials Memorializing and Preserving Confederate Culture; Erect Monuments, Plaques and Memorials Memorializing and Preserving Reconstruction Era and the African American Community

The erection of the sort of monuments we make today and the naming of objects we name today are practices with historical roots, but not especially deep roots.¹³ “In fact, it is mainly a western and post-medieval practice, which puts it at only a few hundred years at the oldest.”¹⁴ Confederate monuments harm African Americans because of what the monuments mean, the messages they convey, and the white supremacist ideology they advance.¹⁵ Most monuments to the Confederacy were erected either in the wake of Reconstruction or during the civil rights movement, when African Americans in the South were striving for greater political power and social equality, and those who were resistant wished to express opposition to these developments.¹⁶ Confederate monuments commend those who committed treason against the United States, and who ascribed to – and fought and died to advance – a white supremacist ideology that sought to preserve slavery and the continued subjugation of African Americans. “As the philosopher Jeremy Waldron points out, public art and architecture are important means

⁹ Wells, [College Cheerleader Reportedly Kicked Off Team For Wearing A Bonnet To Practice](#) (Jan. 26, 2021) Madamemoire, (as of Dec. 1, 2022).

¹⁰ *Ibid.*

¹¹ Ahmed, [The cutting of a teenage wrestler's hair was a familiar act of violence for black athletes](#) (Dec. 23, 2018) The Guardian, (as of Dec. 1, 2022).

¹² Sen. Bill No. 188 (2019-2020 Reg. Sess.).

¹³ Laden, [Erasing history by removing monuments and renaming things](#) (Sept. 6, 2017) ScienceBlogs, (as of Dec. 1, 2022).

¹⁴ *Ibid.*

¹⁵ Rossi, [Removing Monuments, Grappling with History](#) (June 19, 2020) The Prindle Institute for Ethics DEPAUW, (as of Dec. 1, 2022).

¹⁶ *Ibid.*

by which society and government can provide assurances to members of vulnerable groups that their rights and constitutional entitlements will be respected.”¹⁷

As documented in Chapter 9, Control Over Creative, Cultural, and Intellectual Life, a great number of Confederate monuments have been erected in many locations across California, including memorials dedicated to Confederate generals and soldiers in places such as Monterey, Fort Bragg, and San Diego. To remedy and address the harms associated with these ever-present markers of an insurrection dedicated to the preservation of the enslavement and oppression of African Americans, the Task Force recommends that the Legislature identify and remove monuments, plaques, state markers, memorials, and any similar structures or markers memorializing and preserving Confederate culture. Only when all are removed will California have begun to address the history of monuments glorifying rebellion, enslavement and white supremacy. This includes all such monuments, plaques, state markers, building names, and memorials so identified on government property and on private property that benefits from state funding. Additionally, the Task Force recommends that the Legislature commit to identifying resources to fund monuments, plaques, state markers, and memorials that memorialize and preserve the brief period of Reconstruction in the United States and various key figures within the African American community.

D. Provide Funding to the Proposed California American Freedmen Affairs Agency, Specifically for Creative, Cultural, and Intellectual Life

As detailed in Chapter 9, Control Over Creative, Cultural, and Intellectual Life, African American Californians continue to face discrimination in the television and film industries. Despite earning higher returns, “Black-led” projects are often characterized as economically inviable, which results in “Black-led” projects being underfunded. To rectify the harms in this area, the Task Force recommends that the Legislature provide funding to the proposed California American Freedmen Affairs Agency on an annual basis to re-create and support African American cultural hubs and leisure sites, news publications, arts (film, radio, television, visual arts, creative writing, podcasting, etc.), and lifestyle activities. The intent behind this recommendation is to help bring about the restoration of the “Harlem of the West” in communities where African American-led businesses, facilities, churches, and shared cultural interests were able to thrive.¹⁸ Examples of where resources should be directed include funding for rebuilding and supporting African American-led businesses—including providing stipends for the acquisition of licenses, such as liquor or cosmetology licenses; building or preserving outdoor recreational spaces such as parks, pools, sport fields, courts, rinks, beach access, and trails; curating African American art and integrating African American art within existing museums; creating a reparative fund or funded fellowship program for African American media institutions and African American media makers in California to help repair the harm caused by

¹⁷ *Ibid.*

¹⁸ See Hix, *‘Harlem of the West’: Oakland’s once-bustling jazz and blues scene along Seventh Street* (May 6, 2020) Local News Matter | Bay City News Foundation (as of Feb. 17, 2023); See also *Harlem of the West: The San Francisco Fillmore Jazz Era* (2021) Bolinas Museum Photography Gallery Curated by Lewis Watts (as of Feb. 17, 2023).

anti-African American narratives produced by dominant white media institutions and to help nurture innovative media, civic-technology projects, and African American-owned media outlets; and supporting access to patents, copyrights, and trademarks through community-based education and legal assistance designed to assist African Americans through means such as funding for an African American public trust, funding for legal incubator programs specifically benefiting African Americans, and funding to support educational opportunities for African Americans such as continuing education, certificate programs, symposia, and technology conventions.

These recommendations seek to address the harms associated with the disruption of African American cultural centers in the name of redevelopment and to address the history of censorship of African American-produced media and arts.¹⁹ These public works, educational, and legal services initiatives should be localized to areas predominately occupied by African Americans, or spaces where African Americans have traditionally gathered for recreation in an effort to restore community watering holes and thriving cultural hubs that were lost in the name of urban renewal. The Task Force recommends that the proposed California American Freedmen Affairs Agency be granted authority to administer these programs and have the discretion to provide this funding directly to individual applicants or to fund grants to NGOs that are involved in this work. These recommendations are intended to stand irrespective of whether the Agency is ultimately created by the Legislature and, if so, whether it is constituted in a manner that would encompass the roles and responsibilities specified here.

E. Eliminate the Practice of Banning Books Maintained by the California Department of Corrections and Rehabilitation

States and local governments have engaged in racist censorship of books written by African American authors, primarily in public schools and in prisons.²⁰ The Task Force recommends that the Legislature direct the appropriate state agency to review the California Department of Corrections and Rehabilitation's list of banned books to determine whether the ban should remain in effect. The Task Force aims to address the censorship of African American creative works by examining whether written work, or publications featuring the stories or experiences of African American people and their forbearers, should be removed from the list of banned books. Alternatively, the Task Force recommends that the Legislature direct the California Department of Corrections and Rehabilitation to provide justification and criteria for banning a particular book, and require evidence that a book ban is an effective means of accomplishing a legitimate stated goal or purpose.

²⁰ Chapter 9, Control Over Creative, Cultural, & Intellectual Life, *supra*, at p. 307; See Bellamy-Walker, [*Book bans in schools are catching fire. Black authors say uproar isn't about students*](#) (Jan. 20, 2022) NBC News (as of April 11, 2023).