



PROFESSIONAL
CERTIFICATION
COALITION

February 22, 2023

Representative Ben Baker
201 W Capitol Ave, Room 403-A
Jefferson City, MO 65101
ben.baker@house.mo.gov

Re: H.B. 489

Dear Representative Baker:

The Professional Certification Coalition (PCC) writes to share our views regarding H.B. 489. As currently drafted, the bill would **unconstitutionally intrude on the First Amendment right of private associations and organizations to establish and define their credentials**. The bill's content and viewpoint-based restrictions on higher education institutions are also unconstitutional and would interfere with the preparation of Missouri students for health care credentials and careers. The PCC's preference is always to work with bill sponsors on legislation where we identify areas of disagreement. We are a non-partisan organization solely focused on protecting and promoting the certification community through public policy, not advancing (or, for that matter, opposing) a political agenda. However, as we explain below, the constitutional defects in your legislation are core to the bill. The PCC accordingly must oppose H.B. 489. Before doing so, however, we want to explain the basis of the PCC's concerns.

The PCC is a nonprofit association formed to address legislation that affects professional certification programs, those who hold private certification credentials, and the many constituencies that rely on professional certification. The PCC's organizational members include non-governmental professional certification organizations, professional societies, and service providers, spanning a wide spectrum of professions, including numerous health care organizations. Our founding organizations – the American Society of Association Executives (the leading organization for association management) and the Institute for Credentialing Excellence (the leading developer of accreditation standards for professional certification programs) – govern the PCC.

Of direct concern to the PCC, H.B. 489 provides that:

- Organizations that issue state-required health care-related professional certifications shall not use DEI material or require DEI training as part of the certification process.
- Health care-related professional licensing boards and organizations that issue health care-related professional certifications shall not conduct internal DEI audits or otherwise engage DEI consultants.

The bill defines “Diversity-Equity-Inclusion” or “DEI” as:

- (a) Any effort to promote racial diversity in any aspect of a health care-related academic program;
- (b) Any reference to group differences within a given setting with respect to culture, ethnicity, gender, gender identity, national origin, race, religion, or sexual orientation; and
- (c) The promulgation of policies, practices, and procedures designed or implemented with reference to the group differences described in paragraph (b).

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In combination, these provisions would impose content-based and viewpoint-based restrictions on certification organizations. **For the PCC, this is a direct infringement on our members' First Amendment rights as private organizations, and the PCC would have these serious concerns regardless of the particular viewpoints the bill seeks to restrict.**

Importantly, although other provisions of the bill relating to institutions of higher education limit the reach of the bill to institutions receiving state funds, **the provisions relating to professional certifications intrude into the decisions and business contracts of wholly private organizations.** It is common for state licensure requirements to have eligibility requirements that include credentials issued by non-governmental entities – such as educational degrees (which may be earned at private institutions) and passing examinations developed and administered by private certification organizations. This is true of many health care-related licensure laws in Missouri – but **that does not confer authority on the Missouri legislature to dictate the content of those private certification programs.**

Although H.B. 489 is limited in scope to health care-related professions, its content is similar to that of a Florida law that was recently blocked on First Amendment grounds by a federal court. Florida's "Individual Freedom Act" (also known as the "Stop WOKE Act") would have made it unlawful for public universities and professors to promote or inculcate eight concepts, including DEI concepts such as implicit bias. In issuing an injunction in *Pernell v. Florida Board of Governors* against the statute, the U.S. District Court for the Northern District of Florida explained that "enacting a prophylactic ban on protected expression of certain viewpoints—in the interest of suppressing those viewpoints because the State ... finds them 'repugnant'—is neither sufficiently weighty nor reasonable" to outweigh an individual or organization's First Amendment right to free expression. Indeed, the court stated that "such viewpoint discrimination is poison to a free society."

Challenges to the right of certification organizations to develop and define the content and requirements of their credentials have repeatedly failed. As the U.S. Court of Appeals for the Third Circuit stated in *Kenney v. Am. Board of Internal Medicine*, a certification organization "has the right to control who it is certifying and what standards and requirements are necessary." H.B. 489 violates this fundamental principle.

If this bill is enacted, it will certainly face legal challenges, diverting taxpayer funds to litigation – and with the expected result that the provisions of the bill will be blocked. For all of these reasons, we respectfully request that you abandon your efforts in support of this bill.

Sincerely,



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AABC Commissioning Group
ABRET Neurodiagnostic
Credentialing & Accreditation
(ABRET)
ABSA International: the
Association for Biosafety and
Biosecurity (ABSA)
Academy for Certification of
Vision Rehabilitation &
Education Professionals
(ACVREP)
American Association of
Professional Landmen (AAPL)
American Board for
Certification in Orthotics,
Prosthetics and Pedorthics
(ABCOP)
American Board of Certification
for Gastroenterology Nurses
(ABCGN)
American Board of Foot and
Ankle Surgery (ABFAS)
American Board of Medical
Specialties (ABMS)
American Board of
Neuroscience Nursing (ABNN)
American Board of Nursing
Specialties (ABNS)
American Industrial Hygiene
Association (AIHA)
American Legal Nurse
Consultant Certification Board
(ALNCCB)
American Medical Certification
Association (AMCA)
American Nurses Credentialing
Center (ANCC)
American Payroll Association
(APA)
American Society of
Association Executives (ASAE)

American Society of Civil
Engineers (ASCE)
American Speech-Language-
Hearing Association (ASHA)
American Traffic Safety
Services Association (ATSSA)
American Translators
Association (ATA)
Arcitura Education, Inc.
Association for Financial
Counseling & Planning
Education (AFCPE)
Association of Surgical
Technologists (AST)
Behavior Analyst Certification
Board (BACB)
Board of
Certification/Accreditation
(BOC)
Board of Certified Safety
Professionals (BCSP)
Board of Pharmacy Specialties
(BPS)
Building Commissioning
Certification Board (BCCB)
Certification Board for Diabetes
Care and Education (CBDCE)
Certification Board for Music
Therapists (CBMT)
Certification Board of Infection
Control and Epidemiology
(CBIC)
Certification Council for
Professional Dog Trainers
(CCPDT)
Certified Financial Planner
Board of Standards (CFP)
Certified Fund Raising
Executive International (CFRE)
CertiProf, LLC

Chartered Financial Analyst
Institute (CFA)
Commission for Case Manager
Certification (CCMC)
Commission on Nurse
Certification (CNC)
Community Association
Institute (CAI)
Computing Technology Industry
Association (CompTIA)
Construction Management
Association of America
(CMAA)
Council for Interior Design
Qualification (CIDQ)
Council of Engineering and
Scientific Specialty Boards
(CESB)
Dental Assisting National Board
(DANB)
Diving Equipment and
Marketing Association (DEMA)
Entertainment Services and
Technology Association (ESTA)
ETA International
Financial Planning Association
(FPA)
Healthcare Sterile Processing
Association (HSPA)
Hearth, Patio, & Barbecue
Education Foundation (HPBA)
Heuristic Solutions
Hospice and Palliative
Credentialing Center (HPCC)
Institute for Credentialing
Excellence (ICE)
Institute of Hazardous Materials
Management (IHMM)
Institute of Inspection Cleaning
and Restoration Certification
(IICRC)

International Coach Federation (ICF)
International Information System Security Certification Consortium (ISC²)
Investments & Wealth Institute (IWI)
Irrigation Association
IT Certification Council (ITCC)
Laborers' International Union of North America Training & Education Fund (LIUNA)
Medical-Surgical Nursing Certification Board (MSNCB)
National Association of Insurance and Financial Advisors (NAIFA)
National Association of Personal Financial Advisors (NAPFA)
National Athletic Trainers' Association Board of Certification, Inc. (NATA/BOC)
National Board of Certification and Recertification for Nurse Anesthetists (NBCRNA)
National Board of Certification in Hearing Instrument Sciences (NBC-HIS)
National Board of Certification in Occupational Therapy (NBCOT)
National Board of Surgical Technology and Surgical Assisting (NBSTSA)
National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM)
National Certification Corporation (NCC)
National Commission on Certification of Physician Assistants (NCCPA)
National Commission for Health Education Credentialing (NCHEC)

National Council on Family Relations (NCFR)
National Kitchen and Bath Association (NKBA)
National Recreation and Park Association (NRPA)
National Restaurant Association (NRA)
National Roofing Contractors Association (NRCA)
National Society of Professional Engineers (NSPE)
Nephrology Nursing Certification Commission (NNCC)
Oncology Nursing Certification Corporation (ONCC)
Pediatric Nursing Certification Board (PNCB)
Pharmacy Technician Certification Board (PTCB)
Professional Association of Therapeutic Horsemanship International (PATH)
PSI Services
Pearson Vue
QualityPro
Rehabilitation Nursing Certification Board (RNCB)
School Nutrition Association (SNA)
SeaCrest Consulting
Security Industry Association (SIA)
Society of Broadcast Engineers (SBE)
Specialty Pharmacy Certification Board (SPCB) c/o National Association of Specialty Pharmacy Certification Board
Spray Polyurethane Foam Alliance (SPFA)

Towing and Recovery Association of America, Inc. (TRA)
National Board of Public Health Examiners (NBPHE)