

- **Latest update:** The defendant has not yet responded to the complaint.
- x ***Californians for Equal Rights Foundation v. City of San Diego, et al.***, No. 3:24-cv-00484-MMA-MSB (S.D. Cal. 2024): On March 12, 2024, the Californians for Equal Rights Foundation filed a complaint on behalf of members who are “ready, willing and able” to purchase a home in San Diego, but ineligible for a grant or loan under the City’s BIPOC First-Time Homebuyer Program. The plaintiffs allege that the program discriminates on the basis of race in violation of the Equal Protection Clause of the Fourteenth Amendment.
 - **Latest update:** The defendants have not yet responded to the complaint.
- x ***Do No Harm v. Pfizer***, No. 1:22-cv-07908–JLR (S.D.N.Y. 2022), on appeal at No. 23-15 (2d Cir. 2023): On September 15, 2022, plaintiff association representing physicians, medical students, and policymakers sued Pfizer, alleging that the company’s Breakthrough Fellowship Program, which provided minority college seniors summer internships, two years of employment post-graduation, and a scholarship, violated Section 1981, Title VII, and New York law. The association alleges that the program illegally excludes white and Asian applicants. The association is represented by Consovoy McCarthy PLLC, the firm that also represents American Alliance for Equal Rights in multiple lawsuits. In December 2022, the court granted Pfizer’s motion to dismiss, finding that the plaintiff did not have associational standing because they did not identify at least one member by name, instead only submitting declarations from anonymous members. The Second Circuit affirmed the dismissal on March 6, 2024.
 - **Latest update:** On March 20, 2024, Do No Harm filed with the Second Circuit a petition for rehearing en banc, arguing that the panel’s opinion “splits with at least two circuits and creates an irreconcilable line of intracircuit precedent.”

2. Employment discrimination and related claims:

- x ***Gerber v. Ohio Northern University, et al.***, No. 2023-1107-CVH (Ohio. Ct. Common Pleas Hardin Cnty. 2023): On June 30, 2023, a law professor sued his former employer, Ohio Northern University, for terminating his employment after an internal investigation determined that he bullied and harassed other faculty members. On January 23, 2024, the plaintiff, now represented by America First Legal, filed an amended complaint. The plaintiff claims that his firing was actually in retaliation for his vocal and public opposition to the university’s stated DEI principles and race-conscious hiring, which he believed were illegal. The plaintiff alleged that the investigation and his termination breached his employment contract, violated Ohio civil rights statutes, and constituted various torts, including defamation, false light, conversion, infliction of emotional distress, and wrongful termination in violation of public policy.
 - **Latest update:** On February 28, the plaintiff filed an opposition to Ohio Northern University’s motion to dismiss the second amended complaint, arguing that he adequately stated a claim for defamation and intentional infliction of emotional distress because he alleged that the university made false accusations of

misconduct against him. On March 13, the defendants filed their reply, arguing that Gerber's discrimination and defamation claims against university officials in their individual capacity should be dismissed because the university was engaged in official academic activities. On March 18, the plaintiff filed a motion to voluntarily dismiss two of his claims—for conversion and replevin—citing the university's return of property left in his former office.

- ***Rogers v. Compass Group USA, Inc.***, No. 23-cv-1347 (S.D. Cal. 2023): On July 24, 2023, a former recruiter for Compass Group USA sued the company under Title VII for allegedly terminating her after she refused to administer the company's "Operation Equity" diversity program, in which only women and people of color were entitled to participate. The plaintiff alleged that she was wrongfully terminated after she requested a religious accommodation to avoid managing the program, claiming it conflicted with her religious beliefs.
 - **Latest update:** On March 21, the parties filed a stipulation of dismissal, stating that they had reached an undisclosed agreement to settle the case on February 28.

3. Challenges to agency rules, laws, and regulatory decisions:

- ***American Alliance for Equal Rights v. Ivey***, No. 2:24-cv-00104-RAH-JTA (M.D. Ala. 2024): On February 13, 2024, AAER filed a complaint against Alabama Governor Kay Ivey, challenging a state law that requires Governor Ivey to ensure there are no fewer than two individuals "of a minority race" on the Alabama Real Estate Appraisers Board (AREAB). The AREAB consists of nine seats, including one for a member of the public with no real estate background (the at-large seat), which has been unfilled for years. Because there was only one minority member among the Board at the time of filing, AAER asserts that state law will require that the open seat go to a minority. AAER states that one of its members applied for this final seat, but was denied purely on the basis of race, in violation of the Equal Protection Clause of the Fourteenth Amendment.
 - **Latest update:** On March 11, AAER moved for a temporary restraining order and preliminary injunction to prevent the Governor from enforcing the statute and to require her to withdraw her pending Board appointments. In response, Ivey argued that AAER had not shown irreparable harm and lacked standing via anonymous "Member A." On March 15, the court ordered AAER to "file under seal the name of Member A" that day. On March 18, the court held a hearing on the emergency motion for a temporary restraining order and preliminary injunction, and on March 19 denied AAER's motion, holding that AAER has standing, but is not entitled to a TRO and preliminary injunction because it will not suffer irreparable harm.
- ***Valencia AG, LLC v. New York State Off. of Cannabis Mgmt. et al***, No. 5:24-cv-116-GTS (N.D.N.Y. 2024): On January 24, 2024, Valencia AG, a cannabis company owned by white men, sued the New York State Office of Cannabis Management for discrimination, alleging that New York's Cannabis Law and implementing regulations favored minority-owned and women-owned businesses. The regulations include goals to

promote “social & economic equity” (“SEE”) applicants, which the plaintiff claims violates the Equal Protection Clause and Section 1983. On February 7, 2024, the plaintiff filed a motion for a temporary restraining order and preliminary injunction, seeking to prohibit the defendants from implementing the regulations, charging SEE applicants reduced fees, or preferentially granting SEE applicants’ applications.

- **Latest update:** On March 5, the defendants filed their opposition to the plaintiff’s motion for a preliminary injunction. On March 8, plaintiff’s new counsel, Pacific Legal Foundation, asked to withdraw the plaintiff’s motion for a preliminary injunction, which the court granted. On March 13, the plaintiff filed an amended complaint, naming only two New York state officials as defendants in their official capacity and voluntarily dismissing others, including the claims against the two officials in their personal capacity.

4. Actions against educational institutions:

- ***Chu, et al. v. Rosa***, No. 1:24-cv-75-DNH-CFH (N.D.N.Y. 2024): On January 17, 2024, a coalition of education groups sued the Education Commissioner of New York, alleging that its free summer program discriminates on the bases of race and ethnicity. The Science and Technology Entry Program (STEP) permits students who are Black, Hispanic, Native American, and Alaskan Native to apply regardless of their family income level, but all other students, including Asian and white students, must demonstrate “economically disadvantaged status.” The plaintiffs sued under the Equal Protection clause and requested preliminary and permanent injunctions against the enforcement of the eligibility criteria.
 - **Latest update:** On March 18, the defendant moved to dismiss for lack of standing, arguing that neither the organizational plaintiffs (comprised of parent members) nor the named parent plaintiff have suffered any personal or individual injury, and that the plaintiffs cannot sue for alleged violations of members’ rights as prospective STEP applicants. The plaintiffs’ response is due on April 8.

The following Gibson Dunn attorneys assisted in preparing this client update:
Jason Schwartz, Mylan Denerstein, Blaine Evanson, Molly Senger, Zakiyyah Salim-Williams, Matt Gregory, Zoë Klein, Mollie Reiss, Alana Bevan, Marquan Robertson, Janice Jiang, Elizabeth Penava, Skylar Drefcinski, Mary Lindsay Krebs, David Offit, Lauren Meyer, Kameron Mitchell, Maura Carey, and Jayee Malwankar.

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually

work, any member of the firm's Labor and Employment practice group, or the following practice leaders and authors:

Jason C. Schwartz – Partner & Co-Chair, Labor & Employment Group
Washington, D.C. (+1 202-955-8242, jschwartz@gibsondunn.com)

Katherine V.A. Smith – Partner & Co-Chair, Labor & Employment Group
Los Angeles (+1 213-229-7107, ksmith@gibsondunn.com)

Mylan L. Denerstein – Partner & Co-Chair, Public Policy Group
New York (+1 212-351-3850, mdenerstein@gibsondunn.com)

Zakiyyah T. Salim-Williams – Partner & Chief Diversity Officer
Washington, D.C. (+1 202-955-8503, zswilliams@gibsondunn.com)

Molly T. Senger – Partner, Labor & Employment Group
Washington, D.C. (+1 202-955-8571, msenger@gibsondunn.com)

Blaine H. Evanson – Partner, Appellate & Constitutional Law Group
Orange County (+1 949-451-3805, bevanson@gibsondunn.com)

Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

If you would prefer NOT to receive future emailings such as this from the firm,
please reply to this email with "Unsubscribe" in the subject line.

If you would prefer to be removed from ALL of our email lists,
please reply to this email with "Unsubscribe All" in the subject line. Thank you.

© 2024 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at gibsondunn.com