GIBSON DUNN

DEI Task Force Update

August 1, 2025

Gibson Dunn's Workplace DEI Task Force aims to help our clients navigate the evolving legal and policy landscape following recent Executive Branch actions and the Supreme Court's decision in SFFA v. Harvard. Prior issues of our DEI Task Force Update can be found in our DEI Resource Center. Should you have questions about developments in this space or about your own DEI programs, please do not hesitate to reach out to any member of our DEI Task Force or the authors of this Update (listed below).

Key Developments

On July 30, 2025, the Department of Justice ("DOJ") released guidance on the application of federal antidiscrimination laws to entities receiving federal funds. The guidance—which is non-binding—provides a detailed list of DEI policies and practices DOJ considers unlawful. This includes what DOJ characterizes as (1) programs that grant preferential treatment based on protected characteristics, (2) policies that use facially neutral proxies for protected characteristics, (3) practices that segregate individuals based on protected characteristics, (4) policies that unlawfully consider protected characteristics in selection decisions, and (5) trainings that promote discrimination or hostile environment. The document notes that these policies and practices could "result in revocation of grant funding," and states that federal funding recipients may be liable for discrimination if they knowingly fund the unlawful practices of third parties. The guidance also provides a list of "Best Practices" entities can adopt to minimize legal risk. This includes, among other things, opening programs and events to all, eliminating diversity quotas and "diverse slate" requirements, including non-discrimination clauses in agreements with third parties, and

implementing non-retaliation policies for individuals who refuse to participate in potentially discriminatory programs. For more information, please see our July 30 client alert.

On July 21, the U.S. Department of Labor issued Advisory Opinion 2025-01A, which withdraws a prior advisory opinion addressing a racial equity program operated by Citi. The Department issued the prior opinion, Advisory Opinion 2023-01A, in September 2023 in response to an inquiry from Citi about how its "Racial Equity Program"—which involved paying the investment management fees for "Diverse Managers" retained by Citi-sponsored employee benefit plans—intersected with its obligations under Title I of the Employee Retirement Income Security Act. The new opinion states that while "Advisory Opinion 2023-01A assumed that the Racial Equity Program was lawful," the program is in fact "not lawful" because "its allocation of benefits on the basis of race clearly and unambiguously violates the civil rights laws." The new opinion instructs Citi to "take immediate action to end all illegal activity within its Racial Equity Program and any other initiative, plan, program, or scheme it operates under the banner of diversity, equity, and inclusion." It concludes that "ERISA does not shield Citi or the fiduciaries of the Plans from the application of the civil rights laws."

On July 16, the Senate Health, Education, Labor, and Pensions Committee held a confirmation hearing for Brittany Bull Panuccio, President Trump's nominee to be a Commissioner of the U.S. Equal Employment Opportunity Commission ("EEOC"). Panuccio spoke about the "full circle moment" returning as a nominee for Commissioner after having served as an EEOC intern at the start of her career. Panuccio was also a Teach for America Corps member, clerked on both the D.C. Circuit and the Fifth Circuit, and worked at the U.S. Department of Education. Panuccio is currently an Assistant U.S. Attorney. She spoke about her parents' experience as small business owners and her own experience with disability accommodations, as well as her commitment to civil rights, including women's rights. During the hearing, Panuccio indicated support for the Administration's position on DEI. In response to a question about workplace diversity programs, Panuccio said that Title VII of the Civil Rights Act "does not include any exceptions for diversity, or DEI." Panuccio's confirmation would bring the EEOC back to a quorum. On July 24, Panuccio's nomination cleared the Health, Education, Labor, and Pensions Committee. Her nomination will now proceed to a vote before the full Senate.

On July 10, the U.S. Department of Education's Office for Civil Rights opened an investigation into George Mason University's DEI initiatives for potential violations of Title VI of the Civil Rights Act of 1964. According to an official press release, "[the] investigation is based on a complaint filed with the Department by multiple professors at GMU who allege that the university illegally uses race and other immutable characteristics in university policies, including hiring and promotion."

On July 10, the U.S. Department of Agriculture ("USDA") issued a rule announcing that it will "no longer apply race- or sex-based criteria" in the administration of its loan and benefit programs. The rule explains that the USDA has taken considerable and effective actions over the past several decades to redress past injustice and discrimination and has now determined that past discrimination has been sufficiently addressed. The change was made to align with a June 2024 decision in which of the U.S. District Court for the Northern District of Texas preliminarily enjoined USDA relief programs that included race- and sex-based preferences (*Strickland v. USDA*, No. 2:24-cv-00060). Going forward, the USDA says that it will ensure that "its programs are administered in a manner that upholds the principles of meritocracy, fairness, and equal opportunity for all participants."

On July 2, the U.S. Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") published a bulletin announcing that, pursuant to the Secretary of Labor's Order 08-2025, it is lifting an abeyance previously placed in January 2025 on certain of OFCCP's investigative and enforcement activities. On January 21, 2025, President Trump issued Executive Order 14173, which, among other things, revoked Executive Order 11246's race and gender-based affirmative action obligations on federal contractors. In response to EO 14173, the Secretary of Labor issued Order 03-2025 on January 24, 2025 mandating that OFCCP cease and desist all investigative and enforcement activity under EO 11246 and placing OFCCP's activity related to Section 503 of the Rehabilitation Act (regarding people with disabilities) and the Vietnam Era Veterans' Readjustment Assistance Act ("VEVRAA") in abeyance pending further guidance. The Secretary of Labor's Order 08-2025, issued on July 2, 2025, lifted the abeyance to allow OFCCP to resume activity under the Section 503 and VEVRAA program areas.

On July 1, OFCCP published several Notices of Proposed Rulemaking ("NPRMs") relating to affirmative action plan requirements. In "Modifications to the Regulations Implementing Section 503," which relates to people with disabilities, the OFCCP proposes (1) removing the requirement for federal contractors to invite applicants and employees to self-identify their disability status; and (2) removing the utilization goal requirements (i.e., the current Section 503 requirement to apply a 7% utilization goal for employment of qualified individuals with disabilities for each of their job groups, or to their entire workforce if they have 100 or fewer employees, and to conduct a utilization analysis using that goal). These modifications would mean that federal contractors will still be required to "take affirmative action to employ and advance in employment qualified individuals with disabilities" and "develop and maintain an affirmative action program, where they must implement and document their equal employment opportunity efforts on an annual basis," but would no longer be required to include numerical analysis. In "Modifications to Regulations Implementing VEVRAA," which relates to certain veterans, OFCCP proposes removing cross-references to EO 11246 and moving provisions related to administrative enforcement proceedings from the C.F.R. sections on EO 11246 to the sections relating to VEVRAA. Finally, in "Rescission of Executive Order 11246 Implementing Regulations," the OFCCP confirms that federal contractors are no longer required to prepare affirmative action plans relating to race, ethnicity, or gender, and also proposes rescinding the requirement that

federal contractors and first-tier subcontractors file reports with OFCCP. These proposed changes are subject to a notice-and-comment period ending on September 2, 2025, after which OFCCP will adopt a final rule and then submit a report to Congress. Thirty days after publication of the final rule, the changes will become effective.

On June 30, 2025, the Department of Justice appealed the U.S. District Court for the District of Columbia's May 2 ruling permanently enjoining enforcement of Executive Order against the law firm Perkins Coie LLP. Perkins Coie said in a statement that it is prepared to defend the ruling before the D.C. Circuit. On July 21, the Department of Justice also appealed the U.S. District Court for the District of Columbia's May 23 ruling permanently enjoining enforcement of Executive Order 14250 against the law firm Wilmer Cutler Pickering Hale and Dorr LLP.

Media Coverage and Commentary:

Below is a selection of recent media coverage and commentary on these issues:

- Washington Post, "EEOC to Consider Some Transgender Discrimination Cases After Months-Long Pause" (July 9): Julian Mark of the Washington Post reports that the EEOC has resumed processing certain discrimination complaints filed by transgender workers, reversing an earlier policy under which such cases were automatically placed on hold. Mark writes that this shift follows the agency's efforts earlier this year to comply with President Trump's executive order targeting "gender ideology" and limiting federal support for gender identity policies. According to a July 1 email obtained by the Washington Post, Thomas Colclough, director of the EEOC's field operations, stated that the agency will now process cases that "fall squarely" under the Supreme Court's 2020 ruling in *Bostock v. Clayton County*, which held that firing an employee because they are

transgender violates the Civil Rights Act of 1964. Mark reports that the renewed investigations will include hiring, discharge, and promotion claims, but will not extend to workplace harassment, and that all gender identity complaints will receive additional review from senior attorneys and the acting chair's office.

- Politico, "Trump Admin Asks Staff to Report Cases of Bias Due to DEI Directives" (July 7): Danny Nguyen of Politico reports that the Department of Health and Human Services distributed a "whistle-blower questionnaire" to its staff, seeking reports of discrimination linked to DEI policies. The survey asks whether employees have observed grants or contracts being rejected due to "discriminatory language" and if they are aware of any staff who were overlooked for promotions or hiring based on race, religion, gender, national origin, age, disability, or genetic information. The questionnaire, Nguyen writes, also probes whether employees know of former colleagues who resigned or faced disciplinary actions for not complying with DEI orders during the Biden administration. Nguyen further reports that although the survey does not mandate the disclosure of personal identifiers, it does request contact information for follow-up in certain cases. Nguyen notes that the outcome of the survey is uncertain, as the agency has not disclosed what it plans to do with the information.

- Yahoo Finance, "More Than 200 S&P 500 Companies Scrubbed 'Diversity' and 'Equity' From Annual Reports in 2025" (July 6): Alexis Keenan of Yahoo Finance reports that, according to law firm Freshfields LLP, over 200 S&P 500 companies removed words like "diversity" and "equity" from their 2025 annual reports, and nearly 60% fewer are using the phrase "diversity, equity, and inclusion," following President Trump's executive order ending federal DEI programs and targeting "illegal private sector DEI actions." Keenan reports that major companies have announced policy shifts by, for example, replacing DEI language with terms like "inclusion," "belonging," and "meritocratic workplace." Keenan further reports that shareholders have recently shown less support for both pro- and anti-DEI proposals. According to Keenan, "[n]one of this season's investor-led DEI-focused proposals" received majority approval.

- Wall Street Journal, "How Trump's Anti-DEI Push Is Unraveling College Scholarships" (July 5): Tali Arbel of the Wall Street Journal reports that colleges, companies, and philanthropic organizations are revising or eliminating scholarships that supported minority students in response to pressure from the current administration and activist groups over diversity programs and the Supreme Court's 2023 decision in *SFFA v. Harvard*. Arbel reports that the number of scholarships with race, ethnicity, or gender criteria in the National Scholarship Providers Association database dropped by 25% from March 2023 to June 2025. In April, the Justice Department threatened a lawsuit over an Illinois scholarship for minority graduate students, the Diversifying Higher Education Faculty, prompting several schools, including Northwestern University and the University of Chicago, to opt out. Arbel also reports that other sponsors are broadening eligibility for scholarships and deemphasizing race as a criterion. For example, in response to a lawsuit from an activist group challenging the use of race in scholarships, McDonald's removed its Hispanic-ancestry requirement from its 40-year-old Hacer sponsorship, instead requiring applicants to show contributions to the Hispanic community through

activities and leadership. Similarly, the Gates Foundation removed race and ethnicity criteria from the Gates Scholarship, making it available to all Pell Grant-eligible students.

- Law360, "Amid DEI Uncertainty, [Companies] Face Pressure From All Sides" (July 3): Sarah Jarvis of Law360 reports on the complex choices companies face as they balance government directives and consumer expectations regarding DEI programs. The article emphasizes that it is difficult to determine what "illegal DEI" means, and that companies are in a difficult spot as a result. Some experts, like Jason Schwartz of Gibson Dunn, anticipate a wave of additional reverse discrimination litigation from the government and private plaintiffs alike after the Supreme Court in June upheld the right of non-minority plaintiffs to sue under Title VII without meeting a heightened evidentiary standard. Jarvis cites a range of opinions on how employers should respond. According to Schwartz, companies are aiming to be more precise when describing their DEI programs, given that DEI is a highly charged term. According to Schwartz, this does not mean the end of DEI policies, but may mean more tightly circumscribed and rigorously defined policies.

- Law.com, "Law Schools Are Quietly Changing DEI Messaging. What Does That Mean for Big Law's Future Talent Pipeline?" (June 24): Christine Charnosky of Law.com reports that, in response to political backlash against DEI from the Trump Administration, as well as the Supreme Court's 2023 ruling in *Students for Fair Admissions v. Harvard*, some law schools are playing down their DEI messaging. Charnosky notes that some law schools have dismantled their diversity-related scholarships, others have removed information about diverse admissions practices from their websites, and still others have taken down their diversity webpages and initiatives altogether. Still, Charnosky reports, law schools continue to pursue diverse classes by providing outreach and education about the law in underrepresented communities, including at the high school and college level. And Charnosky reports that minority applicants continue to apply to law school, with applications from Black, Hispanic, Asian, and Native American students up by 20–25% since June 2024.

- Law360, "Shifting DEI Expectations Put Banks In Legal Crosshairs" (June 20): Writing for Law360, Dan Bray, Sean Kelly, and Shianne Thomas explore the implications of Executive Order 14173 for banks and other regulated financial institutions. First, the authors note, banks must ascertain whether they are subject to the EO by determining whether or not they are federal contractors. While OFCCP has maintained that banks may be classified as federal contractors by obtaining federal deposit insurance and acting as an issuing and paying agent for U.S. savings bonds and notes, other case law contradicts this view, according to the authors. Second, the authors explore whether banks' compliance with the Community Reinvestment Act ("CRA")—a law passed to combat redlining, and which requires banks to meet the credit needs of local "low- and moderate-income neighborhoods"—is consistent with EO 14173. They conclude that it is consistent, because the CRA does not require banks to address race or gender, beyond ensuring that banks are not engaging in illegal discrimination. Still, the authors argue, minority lending programs, while expressly authorized under the Equal Credit Opportunity Act ("ECOA"), may be at risk in light of EO 14173 and similar executive orders. While an executive order cannot override a federal statute like the ECOA, the authors write, an executive order can affect how regulators interpret and enforce the law. The authors argue that "[t]he most significant impact" from EO 14173 is to shift how regulators like the

Consumer Financial Protection Bureau interpret existing statutes and regulations. The authors cite the recently issued Executive Order 14281, which directs federal agencies to "eliminate the use of disparate-impact liability in all contexts to the maximum degree possible," as evidence of the administration's goal to change how companies, including banks and financial institutions, serve underrepresented communities.

Case Updates:

Below is a list of updates in new and pending cases:

1. Challenges to statutes, agency rules, executive orders, and regulatory decisions:

- ***Chicago Women in Trades v. Trump, et al.*, No. 1:25-cv-02005 (N.D. Ill. 2025)**: On February 26, 2025, Chicago Women in Trades ("CWIT"), a non-profit organization, sued President Trump, challenging EO 14151 and EO 14173 on constitutional grounds. On April 14, 2025, the court preliminarily enjoined enforcement of key provisions of the EOs, including a provision terminating one of CWIT's federal grants. On May 14 and 21, 2025, the Department of Labor filed status reports indicating its continued compliance with the court's preliminary injunction.
    - **Latest update**: On July 7, 2025, the defendants moved to dismiss. The defendants argued that CWIT lacked standing to challenge certain "intra-governmental provisions" in the orders. They also argued that the court "should dismiss the President, DOJ and the Attorney General, and OMB and its Director based on considerations particular to those parties" and urged the court to reject each of CWIT's claims as a matter of law. On July 8, 2025, the defendants filed a motion for an indicative ruling and partial stay. In their motion, the defendants "request[ed] that the Court issue an indicative ruling that on remand from the court of appeals it would modify the scope of its preliminary injunction" in light of *Trump v. CASA*'s holding that "district courts do not have equitable powers to issue a 'universal injunction[.]'" The defendants also requested that the Court "stay the universal scope of the injunction pending resolution on appeal." On July 25, 2025, the plaintiffs opposed this motion, asserting that "the government's motion fails to raise any ground for reconsideration allowable under Federal Rule of Procedure 60(b)." The plaintiffs also asserted that the "injunction [the] Court entered does not conflict with *CASA*," and that the government has not shown that it "would be irreparably harmed without a stay."
- ***Doe v. EEOC*, No. 4:23-cv-03516 (S.D. Tex. 2023), No. 1:25-cv-01124 (D.D.C. 2025)**: On April 15, 2025, three law students, proceeding under pseudonyms, sued the EEOC, challenging the EEOC's investigations into law firms' demographic and diversity-related data. The plaintiffs allege that those investigations exceed the agency's authority under

Title VII because they are not based upon a charge. The plaintiffs further claim that the EEOC's investigation into law firms violates the Paperwork Reduction Act because the EEOC did not undergo public comment or obtain approval from the Office of Management and Budget before posing "identical questions to the twenty firms." The plaintiffs seek a declaratory judgment that the EEOC exceeded its authority, an injunction barring the collection of sensitive information through improper means, and an order compelling Acting EEOC Chair Andrea Lucas and the EEOC to withdraw the investigative letters and return any information collected pursuant to those letters. On May 16, 2025, the plaintiffs amended their complaint to bring the case as a proposed class action. On June 5, 2025, the plaintiffs moved to certify the putative class and moved for summary judgment the same day. On June 16, 2025, the EEOC moved to stay consideration of the plaintiffs' motions for class certification and summary judgment and requested an extension to respond to the amended complaint. Specifically, the EEOC argued that the plaintiffs' motions were premature, as the EEOC had yet to respond to the amended complaint. On June 18, 2025, the plaintiffs opposed the EEOC's motion to stay, arguing that they would be prejudiced by the EEOC's proposed stay. On June 26, the court granted the EEOC an extension of time to respond to the complaint and the summary judgment motion and dismissed the class certification motion without prejudice. The court denied the stay motion in all other respects.

    - **Latest update**: On July 31, the EEOC moved to dismiss the complaint, moved in the alternative for summary judgment, and opposed the plaintiffs' summary judgment motions. The defendants assert that the plaintiffs lack standing because they did not experience harm, and any harm they may experience would be caused by the law firms, not the EEOC. The defendants also challenge the ultra vires claim and assert that the plaintiffs "have identified no basis for such [an] expansive" remedy as injunctive or declaratory relief."

- ***E.K. v. Department of Defense Education Activity*, 1:25-cv-00637 (E.D. Va. 2025), No. 1:25-cv-01124 (D.D.C. 2025)**: On April 15, 2025, twelve anonymous minor students at schools operated by the Department of Defense Education Activity ("DoDEA") sued DoDEA, claiming DoDEA violated their First Amendment right to receive information by removing books and lesson content related to race and gender from their schools, allegedly in an effort to comply with EO 14168, EO 14185, and EO 14190. On May 5, 2025, the plaintiffs moved for a preliminary injunction. On May 23, 2025, DoDEA opposed the motion, arguing that the act of establishing a curriculum is "government speech" and that the First Amendment cannot prevent the government from "declining to express a view." On June 3, 2025, the court orally ordered the defendants to provide a list of books under review. On June 11, 2025, the defendants filed a motion to reconsider the oral order, arguing that the deliberative process privilege protected disclosure of such a list and that the court did not need a list to address issues at the preliminary injunction stage, where "the Court is constrained to rule on the legal and factual issues only as presented by the parties." On June 13, 2025, the plaintiffs opposed the defendant's motion for reconsideration, arguing that the deliberative process privilege is inapplicable because it does not protect "factual information" so long as the information is "severable" from a protectable document, and that the court had discretion to request the list at this stage of the litigation. On June 16, 2025, the court ordered the DoDEA to make the list of books

under review available *ex parte* for *in camera review* while the motion for reconsideration remains pending.

    - **Latest update**: On July 11, 2025, the court denied the defendants' motion for reconsideration and ordered that the list of books pending review by the Department of Defense be filed on the public docket. The court agreed with the plaintiffs that the list of books was purely factual and did not contain "any indicia" of deliberation. While the motion for reconsideration was pending, the defendants moved to dismiss the complaint on Juny 27, 2025. The defendants argue that the plaintiffs lack standing because they "failed to put forward any factual basis to establish that they sought information temporarily withdrawn from DoDEA's bookshelves pending further review," and because the First Amendment does not grant them a right to receive information. In the alternate, the defendants argue that curriculum changes and the curation of libraries constitute government speech, which is not regulated by the Free Speech Clause. On July 16, the plaintiffs opposed the motion, arguing that they have standing because they "are suffering ongoing and irreparable injury as a result of the government's knee-jerk removal of library books and changes to school curricula." The plaintiffs also asserted that they had successfully stated a claim under the First Amendment as to both the book and curricula removals. The motion remains pending.

- ***NAACP v. Department of Education, et al.*, 1:25-cv-00637 (E.D. Va. 2025), 1:25-cv-01120 (D.D.C. 2025)**: On April 15, 2025, the National Association for the Advancement of Colored People ("NAACP") sued the U.S. Department of Education ("DOE") and various officials challenging recent DOE agency actions on the grounds that they violate the Administrative Procedure Act ("APA") and the First and Fifth Amendments of the U.S. Constitution. The challenged actions include DOE's February 14, 2025 Dear Colleague Letter, which instructed educational institutions to "(1) ensure that their policies and actions comply with existing civil rights law; (2) cease all efforts to circumvent prohibitions on the use of race by relying on proxies or other indirect means to accomplish such ends; and (3) cease all reliance on third-party contractors, clearinghouses, or aggregators that are being used by institutions in an effort to circumvent prohibited uses of race." The NAACP also challenged DOE's February 28 guidance document titled "Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act," which addressed a range of issues relating to DEI initiatives in educational institutions and provided examples of DEI programming that the Trump Administration is likely to find discriminatory. Finally, the NAACP challenged DOE's April 3, 2025 letter requiring state and local officials to certify their compliance with the Administration's interpretation of Title VI in relation to DEI. On April 20, 2025, the NAACP moved to preliminarily enjoin these actions. On April 24, 2025, the court concluded that the NAACP was unlikely to succeed with its APA claims and that it lacked standing to challenge the February 14 Dear Colleague Letter and February 28 guidance document under the First or Fifth Amendment. However, the court determined that the NAACP had a substantial likelihood of success in challenging DOE's April 3 letter as impermissibly vague under the Fifth Amendment and preliminarily enjoined DOE from enforcing that letter. On May 9, 2025, the NAACP filed its First Amended Complaint, asserting the same causes of action.

- **Latest update**: On June 23, 2025, DOE moved to dismiss the NAACP's claims on four grounds: (1) failure to establish standing; (2) the challenged actions are not final agency actions and lack the force of law; (3) even if the challenged actions are final agency actions, the actions are interpretative rules not subject to notice-and-comment rulemaking; and (4) the constitutional claims fail as a matter of law. On July 14, 2025, the NAACP opposed DOE's motion, countering that it had plausibly alleged standing and set forth sufficient factual allegations to survive the motion to dismiss.

- ***National Education Association v. Department of Education*, No. 1:25-cv-00091 (D.N.H. 2025), 1:25-cv-01120 (D.D.C. 2025)**: On March 5, 2025, the National Education Association and other groups, including the ACLU of New Hampshire, sued DOE, alleging that DOE's letters to universities and colleges, threating to revoke federal funding for pursuing certain DEI programs, violated the First and Fifth Amendments of the U.S. Constitution and the APA. The challenged actions include the Department's February 14, 2025 Dear Colleague Letter, described above. On April 24, 2025, the court granted the plaintiffs' motion for a preliminary injunction, holding that plaintiffs were likely to succeed in their procedural challenge due to the Department's failure to follow the procedural requirements that the APA imposes on legislative rules. The court also concluded that the Dear Colleague Letter was likely impermissibly vague in violation of the Due Process Clause. Finally, the court concluded that the agency actions likely violated the First Amendment by targeting speech based on viewpoint. On May 12, 2025, the plaintiffs filed an amended complaint, adding allegations that the Dear Colleague Letter and other DOE letters violate the Spending Clause of the U.S. Constitution because they exert "undue influence" by "attaching conditions to federal funds" that make them impermissibly coercive. The plaintiffs also added allegations that the Dear Colleague Letter and similar letters are unconstitutionally vague and ambiguous.

    - **Latest update**: On June 10, 2025, the plaintiffs moved for summary judgment, contending, among other things, that the Dear Colleague Letter (1) is impermissibly vague under the First Amendment; (2) censors constitutionally protected academic speech; (3) is arbitrary and capricious under the APA; and (4) impermissibly attaches ambiguous and retroactive conditions to federal funds that are contrary to the purpose of the statutes authorizing the funding. On July 17, 2025, the defendants filed a cross-motion for summary judgment and an opposition to the plaintiffs' motion for summary judgment. The defendants argue that none of the plaintiffs can establish standing, and that they lack a cause of action under the APA because the Dear Colleague Letter and corresponding FAQ documents are not final agency actions subject to review. Even if the letter and FAQ document were subject to review, the defendants argue they do not violate the APA. The defendants also argue that the plaintiffs' constitutional claims fail as a matter of law. Finally, the defendants contend that "[e]ven if the Court concluded that any part of the challenged agency action is unlawful," only vacatur—and not an injunction—would be an appropriate remedy.

- ***National Urban League et al., v. Trump, et al.*, No. 1:25-cv-00471 (D.D.C. 2025), No. 1:25-cv-00471 (D.D.C. 2025)**: On February 19, 2025, the National Urban League, National Fair Housing Alliance, and AIDS Foundation of Chicago sued President Donald

Trump challenging EO 14151, EO 14168, EO 14173, and related agency actions, as ultra vires and in violation of the First and Fifth Amendments and the APA. The plaintiffs allege that these orders penalize them for expressing viewpoints in support of diversity, equity, inclusion, accessibility, and transgender people. They also claim that, because of these orders, they are at risk of losing federal funding. The plaintiffs filed a motion for a preliminary injunction, which the court denied on May 2, 2025, finding that the plaintiffs failed to establish standing to challenge provisions of the EOs that are intra-governmental and "not aimed at them." For the remaining challenged provisions of the EOs—including provisions mandating certification by government contractors that they do not operate unlawful DEI programs and terminating grants relating to DEI and gender ideology—the court concluded that the plaintiffs failed to show a likelihood that they would succeed on the merits. On May 20, 2025, the parties filed a joint motion to obtain leave for the plaintiffs to supplement their pleadings. The court granted the motion, setting forth deadlines for amendment and response to that amendment, as well as a briefing schedule for a motion to dismiss, should the defendants choose to file one.

    - **Latest update**: On June 16, 2025, the National Fair Housing Alliance voluntarily dismissed its claims. On June 30, 2025, the remaining plaintiffs filed their amended complaint, which no longer includes an APA claim. The plaintiffs added factual allegations seeking to demonstrate how the EOs directly impact their operations and redrafted their claim for relief regarding ultra vires presidential action, outlining specific statutes authorizing their equity-related services. On July 7, 2025, the parties jointly moved for an extension of time for the defendants to respond to the plaintiffs' amended complaint, which the court granted, ordering defendants to respond by August 8, 2025.

- ***San Francisco AIDS Foundation et al. v. Donald J. Trump et al.*, No. 4:25-cv-01824 (N.D. Cal. 2025), No. 1:25-cv-00471 (D.D.C. 2025)**: On February 20, 2025, several LGBTQ+ groups filed suit against President Trump, Attorney General Pam Bondi, and several other government agencies and actors, challenging the President's executive orders regarding DEI (EO 14151, EO 14168, and EO 14173) on constitutional grounds. On March 3, 2025, the plaintiffs filed a motion for preliminary injunction. On April 11, 2025, the defendants opposed the motion, arguing that (i) the plaintiffs are not likely to establish the court's jurisdiction; (ii) the plaintiffs' claims will likely fail on the merits; (iii) the plaintiffs failed to show irreparable injury; and (iv) the balance of inequities and public interest weigh against granting relief. The defendants also argued that "to the extent the Court intends to grant Plaintiffs' request for a preliminary injunction, such relief should be narrowly tailored to apply only to [the] defendant agencies, Plaintiffs, and the provisions that affect them" and that any injunctive relief should be stayed pending an appeal and bond.

    - **Latest update**: On June 9, 2025, the court granted the preliminary injunction motion in part after finding that the plaintiffs faced the imminent loss of federal funding critical to their ability to provide lifesaving healthcare and support services to marginalized LGBTQ+ populations, but also denied the motion in part after concluding that the plaintiffs failed to demonstrate they were likely to succeed in their challenge to the EOs' certification provision because the plaintiffs did not show that the provision goes beyond targeting DEI programs that violate federal

antidiscrimination law. On June 13, 2025, the court enjoined the agency defendants from enforcing the funding provisions of the EOs. The agency defendants were further ordered to reinstate any terminated contracts or grant awards of the plaintiffs.

- ***Young Americans for Freedom et al. v. Department of Education et al.*, No. 3:24-cv-00163 (D.N.D. 2024), on appeal at No. 25-2307 (8th Cir. 2025)**: On August 27, 2024, the University of North Dakota Chapter of Young Americans for Freedom ("YAF") sued DOE over its McNair Post-Baccalaureate Achievement Program, a research and graduate studies grant program that supports incoming graduate students who are either low-income, first-generation college students or "member[s] of a group that is underrepresented in graduate education." YAF alleges that the McNair program violates the Equal Protection Clause by restricting admission based on race. On September 4, 2024, YAF filed a motion for preliminary injunction. On December 31, 2024, the court denied the plaintiffs' preliminary injunction motion and dismissed the case without prejudice for lack of subject matter jurisdiction, ruling that there was no Article III standing because the McNair Program is not exclusively administered by DOE. On January 24, 2025, the plaintiffs filed a motion to alter or amend the judgment, which the court denied on May 6, 2025, holding that the plaintiffs failed to identify a manifest error of law or fact and affirming its prior ruling that it lacked subject matter jurisdiction.
    - **Latest update**: On July 1, 2025, the plaintiffs filed a notice of appeal.

2. Contracting claims under Section 1981, the U.S. Constitution, and other statutes:

- ***American Alliance for Equal Rights v. American Bar Association*, No. 1:25-cv-03980 (N.D. Ill. 2025)**: On April 12, 2025, the American Alliance for Equal Rights ("AAER") sued the American Bar Association ("ABA") in relation to its Legal Opportunity Scholarship, which AAER asserts violates Section 1981. According to the complaint, the scholarship awards $15,000 to 20–25 first-year law students per year. To qualify, an applicant must be a "member of an underrepresented racial and/or ethnic minority." The complaint alleges that "White students are not eligible to apply, be selected, or equally compete for the ABA's scholarship." AAER seeks a TRO and preliminary injunction barring the ABA from selecting winners for this year's scholarship, as well as a permanent injunction barring the ABA from knowing or considering applicants' race or ethnicity when administering the scholarship.
    - **Latest update**: On June 16, 2025, the ABA moved to dismiss the complaint for failure to state a claim. The ABA argued that AAER lacks standing to pursue its Section 1981 claim because it failed to allege that it has any members with standing to pursue the claim on their own behalf. The ABA argued that AAER failed to state a Section 1981 claim because AAER did not allege a contractual relationship with the ABA. The ABA also argued that the relief sought would impede the ABA's First Amendment rights to free speech and expression, and that the "ABA has a First Amendment right to distribute funds as it deems appropriate." AAER filed an amended complaint on June 25, making new allegations about the ABA's commitment to diversity and beliefs around refusing to contract with persons of certain races. On July 30, the ABA moved to dismiss

the amended complaint on the same grounds it moved to dismiss the initial complaint, asserting that the new facts pled in the amended complaint failed to overcome the shortcomings of the initial complaint.

3. Employment discrimination and related claims:

- ***Langan v. Starbucks Corporation*, No. 3:23-cv-05056 (D.N.J. 2023)**: On August 18, 2023, a white, female former store manager sued Starbucks, claiming she was wrongfully accused of racism and terminated after she rejected Starbucks' attempt to deliver "Black Lives Matter" T-shirts to her store. The plaintiff alleged that she was discriminated and retaliated against based on her race and disability as part of a company policy of favoritism toward non-white employees. On July 30, 2024, the district court granted Starbucks' motion to dismiss, agreeing that the plaintiff's claims under the New Jersey Law Against Discrimination ("NJLAD") were untimely and that she failed to allege that her termination was based on anything other than her "egregious" discriminatory comments and her violation of the company's anti-harassment policy. On August 11, 2024, the plaintiff filed an amended complaint. On November 8, 2024, Starbucks again moved to dismiss, arguing that the additional facts alleged to explain plaintiff's untimeliness—specifically, her difficulty obtaining a right to sue letter—were insufficient to state a claim.
    - **Latest update**: On June 20, 2025, in a single-page order, the court granted Starbucks' motion to dismiss with prejudice.
- ***Spitalnick v. King & Spalding, LLP*, No. 4:23-cv-03516 (S.D. Tex. 2023), No. 24-cv-01367 (D. Md. 2024), on appeal at No. 25-1721 (4th Cir. 2025)**: On May 9, 2024, Sarah Spitalnick, a white, heterosexual female, sued King & Spalding, alleging that the firm violated Title VII and Section 1981 by deterring her from applying to its Leadership Counsel on Legal Diversity internship program. Spitalnick alleged that she believed she could not apply after seeing an advertisement that stated that candidates "must have an ethnically or culturally diverse background or be a member of the LGBT community." On September 19, 2024, King & Spalding moved to dismiss, arguing that Spitalnick failed to state a claim, her claims were time-barred, and she lacked standing because she never applied to the program. On February 25, 2025, the court granted the defendant's motion to dismiss, holding that the plaintiff had not adequately pled that she was "able and ready" to apply to the position she claims she was denied. On March 24, 2025, the plaintiff filed a motion for reconsideration, which the court denied.
    - **Latest update**: On June 22, 2025, the plaintiff filed a notice of appeal. On June 26, 2025, the Fourth Circuit docketed the appeal and issued a briefing order.

4. Actions against educational institutions:

- ***Johnson v. Fliger, et al.*, No. 1:23-cv-00848 (E.D. Cal. 2023), on appeal at No. 24-6008 (9th Cir. 2024)**: On June 1, 2023, Daymon Johnson, a professor at Bakersfield College, sued several Bakersfield and Kern Community College District officials, alleging that the district's commitment to "embrac[e] diversity" and "anti-racism" through state and local district statutes, regulations, and policies imposes an "ideological orientation" on district faculty by suppressing opposing viewpoints and political speech in violation of

Section 1983 and the First and Fourteenth Amendments of the U.S. Constitution. On July 20, 2023, the plaintiff sought a preliminary injunction against enforcement of the state and local statutes, regulations, and policies. On August 29, 2023, and October 3, 2023, multiple defendants separately moved to dismiss the plaintiff's claims for, among other reasons, lack of standing and failure to state a claim. On September 23, 2024, the court granted the defendants' motions to dismiss and denied the plaintiff's motion for preliminary injunction as moot. The court reasoned that the plaintiff lacked standing to bring a pre-enforcement action because he failed to allege sufficient injury and dismissed the case without prejudice. On September 23, 2024, the plaintiff filed a notice of appeal.

    - **Latest update**: On July 14, 2025, the Ninth Circuit reversed the district court's conclusion that the plaintiff lacked standing to sue the defendants under certain California regulations, holding that (1) the plaintiff sufficiently alleged "an intention to engage in a course of conduct arguably affected with a constitutional interest" under the First Amendment, (2) his intended conduct was "arguably proscribed" by the regulations because they directly regulate the plaintiff as a community college employee and faculty member, and (3) the plaintiff adequately alleged a "credible threat" of enforcement under the relevant provisions. The court remanded the plaintiff's motion for preliminary injunction for the district court to consider in the first instance.

- ***Students Against Racial Discrimination v. Regents of the University of California et al.*, No. 8:25-cv-00192 (C.D. Cal 2025)**: On February 3, 2025, Students Against Racial Discrimination ("SARD") sued the Regents of the University of California ("UC"), alleging that UC schools discriminate against Asian American and white applicants by using "racial preferences" in admissions in violation of Title VI and the Fourteenth Amendment of the U.S. Constitution. SARD alleged it has student members who are ready and able to apply to UC schools but are "unable to compete on an equal basis" because of their race.

    - **Latest update**: On June 10, 2025, the plaintiffs filed their first amended complaint, and on June 24, 2025, the plaintiffs filed a response to the defendants' recent notice of related cases to refute the defendants' argument that the first amended complaint adds new claims against the UC medical schools. The plaintiffs argue that the first amended complaint narrows their claims by focusing on alleged discriminatory practices in the UC's medical school, law school, and undergraduate admissions.

- ***Students for Fair Admissions v. United States Naval Academy et al.*, No. 1:23-cv-02699 (D. Md. 2023), on appeal at No. 24-02214 (4th Cir. 2024)**: On October 5, 2023, Students for Fair Admissions ("SFFA") sued the U.S. Naval Academy, arguing that consideration of race in its admissions process violates the Fifth Amendment because it was not narrowly tailored to achieve a compelling government interest. The dispute proceeded to a nine-day trial in September 2024, during which the Academy argued that its consideration of race was necessary to achieve a diverse officer corps, which furthers the compelling government interest in national security. On December 6, 2024, the district court issued a decision in favor of the Academy, holding that the Academy's admissions process withstood strict scrutiny. SFFA then appealed the decision to the Fourth Circuit. Pursuant to President Trump's Executive Order 14185, issued on January 27, 2025, the

Academy subsequently changed its policy to prohibit the consideration of race in its admissions process. On April 1, 2025, the court granted a joint motion to hold appellate briefing in abeyance while the parties considered the recent changes to the Academy's admission policy.

- **Latest update**: On June 16, 2025, the parties filed a joint motion to dismiss the appeal and vacate the district court's judgment, as the complaint was rendered moot by the change to the Academy's admission policy. On July 2, 2025, the court granted the parties' motion.

The following Gibson Dunn attorneys assisted in preparing this client update: Jason Schwartz, Mylan Denerstein, Zakiyyah Salim-Williams, Cynthia Chen McTernan, Zoë Klein, Cate McCaffrey, Sameera Ripley, Anna Ziv, Emma Eisendrath, Benjamin Saul, Kristen Durkan, Simon Moskovitz, Teddy Okechukwu, Beshoy Shokralla, Heather Skrabak, Maryam Asenuga, Angelle Henderson, Kameron Mitchell, Lauren Meyer, Chelsea Clayton, Maya Jeyendran, Albert Le, Allonna Nordhavn, Felicia Reyes, Godard Solomon, Laura Wang, and Ashley Wilson.

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