DEI Task Force Update

October 31, 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.

Key Developments

On October 27, Brittany Panuccio was sworn in as a Commissioner for the Equal Employment Opportunity Commission ("EEOC"). Panuccio's swearing in has restored the Commission's three-member quorum, which allows it to vote on policy and regulatory matters, issue guidance, and authorize certain lawsuits. The Commission has not had a quorum since January 2025. Following Panuccio's confirmation earlier this month, Acting EEOC Chair Andrea Lucas stated in a post on X that "Now the agency is empowered to deliver fully on our promise to advance the most significant civil rights agenda in a generation under [President Trump] on behalf of the American worker." Under Lucas, the Commission has signaled interest in pursuing litigation challenging diversity, equity, and inclusion programs.

On October 16, a Cornell University professor and founder of the Equal Protection Project, William Jacobson, sent a complaint letter to the Department of Health and Human Services ("HHS") Office of Civil Rights, alleging that three HHS grant programs violate the Trump administration's bans on racial preferences in federal funding for higher education. The programs were each launched by the Biden administration in September 2024, with the goal of dispensing $5.7 million in minority fellowships for Black, Hispanic and Indigenous students training to become counselors and social workers. The grants pay for fellows to complete mental health, addiction counseling, and social work credentials. The complaint letter alleges that the grant programs "violate the federal civil rights laws and constitutional guarantees of equal protection, including Title VI and the Fifth Amendment" and "Executive Order 141731, which, among other directives, requires executive departments to eliminate racial and other unlawful preferences." The complaint letter seeks the immediate cancellation of the grants. An HHS spokesperson confirmed Monday that the agency had received the complaint. For more information, see the Washington Times's October 21, 2025 report.

On September 30, the U.S. Department of Transportation ("DOT") issued guidance regarding an Interim Final Rule, effective October 3, 2025, which revises fundamentally how DOT's Disadvantaged Business Enterprise ("DBE") and Airport Concession Disadvantaged Business Enterprise ("ACDBE") programs operate. Recipients of highway, transit, and airport funding are subject to the requirements of the DBE and ACDBE programs, which have been in operation for nearly 40 years and are intended to "level the playing field" for small businesses owned and controlled by "socially and economically disadvantaged individuals." Under the rules previously governing the programs, women and members of certain racial and ethnic groups were "'presumed' to be disadvantaged." However, in September 2024, the U.S. District Court for the Eastern District of Kentucky determined that the DBE program's race- and sex-based presumptions likely do not comply with Equal Protection principles, granting a preliminary injunction prohibiting DOT from mandating the use of presumptions with respect to contracts on which the two plaintiff entities bid. (*Mid-America Milling Co. v. U.S. Department of Transportation*, No. 3:23-cv-00072 (E.D. Ky. 2024)). DOT also cited President Trump's executive orders on DEI and memoranda issued by the Attorney General as support for the new rule.

The revised rule changes the definition of "socially and economically disadvantaged individual" to remove the race- and sex-based presumptions previously in place under both programs. Under the revised rule, any individual seeking to demonstrate that he or she is a "socially and economically disadvantaged individual" will be required to make an individualized showing of disadvantage, regardless of race or sex. The revised rule also requires reevaluation of any currently certified DBE, recertification of any DBE that meets the new certification standards, and decertification of any DBE that does not meet the new certification standards or "fails to provide additional information required for submission." The revised rule also eliminates the recordkeeping requirements for obtaining and maintaining demographic information from ACDBEs. In accordance with the Administrative Procedure Act, the DOT invites the public to comment on the rule during a 30-day period, which expires on November 3, 2025.

Media Coverage and Commentary:

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

- **Law360, "Columbia Says Feds Must Release Info on DEI Law Firm Deals" (October 23)**: Grace Elletson of Law360 reports on a lawsuit filed by the Knight First Amendment Institute at Columbia University to obtain information about deals made between nine law firms and the Trump Administration in relation to their DEI policies and programs. The Knight Institute submitted a Freedom of Information Act ("FOIA") request to the Department of Justice ("DOJ") and the Office of Management and Budget ("OMB") on May 14, 2025, seeking copies of the agreements. It also sought communications concerning the agreements between the EEOC, DOJ and OMB . OMB did not respond to the FOIA request. DOJ reported that the request had been assigned to the "complex track" and would need extended time to respond to the request. The Knight Institute sued DOJ and OMB in the U.S. District Court for the Southern District of New York, asking the Court to order the agencies to immediately process the FOIA requests.

- **The Hill, "Trump administration pauses $18 billion NYC infrastructure projects over DEI" (October 1)**: Brett Samuels of The Hill reports that the Trump Administration has paused roughly $18 billion in federal funding for New York City infrastructure projects. Samuels writes that Office of Management and Budget Director Russell Voight said that the freeze was "put on hold to ensure funding is not flowing based on unconstitutional DEI principles." Samuels reports that the Department of Transportation is reviewing whether "unconstitutional practices are occurring" in two major projects, the Hudson Tunnel project and work on the Second Avenue subway.

- **Bloomberg Law, "Boardroom Diversity Commitments Fade Amid Broad DEI Retreat" (October 1)**: Drew Hutchinson of Bloomberg Law reports that PricewaterhouseCoopers' latest annual survey of 638 public company directors indicates that fewer corporate boards plan to add women or people of color to their director pools to increase board diversity in the coming year. Hutchinson reports that only 9% of respondents to the survey plan to intentionally increase board gender diversity, down from 21% last year, while only 6% plan to intentionally increase racial diversity, compared to 13% in 2024. The article also notes that board diversity across new director appointments began falling prior to the second Trump Administration.

- **AP News, "Atlanta forfeits $37.5M in airport funds after refusing to agree to Trump's DEI ban" (September 26)**: The Associated Press reports that Atlanta's Hartsfield-Jackson International Airport declined to certify to the Federal Aviation Administration ("FAA") that the airport does not operate DEI programs that violate federal anti-discrimination laws. The AP reports that the FAA made certain funding contingent on this certification, and that the airport's decision prompted the FAA to withhold $57 million, with the possibility of receiving $19 million in the next fiscal year if the airport agrees to the certification then. According to a spokesperson for the mayor, the city is evaluating its options for continued receipt of federal funding.

- **New York Times, "3 School Districts to Lose $65 Million Over Gender and D.E.I. Policies" (September 25)**: Troy Closson of The New York Times reports that the Trump administration has pledged to withhold over $65 million in federal grants from magnet schools in New York City, Chicago, and Fairfax, Virginia. The decision to withhold funding under the Magnet Schools Assistance Program follows the districts' refusals to modify policies related to diversity, equity, and inclusion. According to Closson, the administration requested that New York City and Fairfax revise policies related to gender identity and that Chicago schools eliminate a Black Student Success Plan, an initiative aimed at doubling the number of Black male teachers hired and enrolling more Black students in advanced courses. Closson quotes Julia Hartman, spokesperson for the U.S. Department of Education, as stating that the districts' policies "blatantly discriminate against students based on race and sex."

- **HR Dive, "3 Charts That Show What Has Happened to DEI Roles – and DEI Pros" (September 23)**: HR Dive's Kate Tornone reports a notable decline in available DEI positions and highlights the evolving roles of DEI professionals. Drawing on data from Revelio Labs, which analyzed Russell 3000 companies (the 3,000 largest publicly traded U.S. companies), Tornone notes that the number of roles related to DEI peaked at 13,000 in 2022 but has dropped to approximately 11,000 in late 2025. Among those who left DEI roles since 2022, Tornone reports that more than half transitioned to non-DEI roles at different companies, about one-third moved into non-DEI roles within the same company, and just 7% took on another DEI role. Revelio's analysis suggests that the expertise of former DEI professionals is being "redirected into other parts of the organization," indicating that while the use of the term "DEI" has dwindled, the work of "building equitable and inclusive environments continues to find new avenues to persist." Tornone reports that Revelio's research found that organizations with dedicated DEI teams

demonstrated higher levels of employee satisfaction and higher ratings of workplace culture.

Case Updates:

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

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

- ***Bradley, et al. v. Gannett Co. Inc.*, 1:23-cv-01100 (E.D. Va. 2023)**: On August 18, 2023, plaintiffs—a group of individuals who had performed work for the newspaper publisher Gannett Co., Inc. and who sought to represent a class of similarly situated individuals—sued Gannett over its alleged "Reverse Race Discrimination Policy," claiming Gannett's expressed commitment to having its staff demographics reflect the communities it covers violates Section 1981. After motions practice resulting in the Plaintiff filing an amended complaint and a second amended complaint, Gannett again moved to dismiss. In opposing the motion, the plaintiffs argued that their second amended complaint clarified several of their arguments and sufficiently alleged a class that could meet the requirements for class certification. The plaintiffs also argued that Gannett improperly failed to acknowledge the Fourth Circuit's decision in *Duvall v. Novant Health, Inc.*, an "on point intervening decision" that held policies similar to Gannett's were discriminatory. On September 3, 2025, the court granted in part and denied in part Gannett's motion to dismiss, holding that all but one of the named plaintiffs failed to state a claim for relief under Section 1981. The court found that the Fourth Circuit's decision in *Duvall* did "not require that [the] Court deny the Motion [to Dismiss] based on Plaintiffs' conclusory allegations of policy alone" because *Duvall* was a Title VII case and, in its ruling, the Fourth Circuit did not rely on the alleged diversity policy alone but considered the diversity policy in conjunction with other facts. Additionally, the court ordered the class allegations struck from the second amended complaint due to the lack of ascertainability and commonality. On September 17, Gannett filed its answer to the amended complaint, asserting six affirmative defenses. Among them, Gannett contends that the complaint fails to state a claim upon which relief may be granted and maintains that it "acted in good faith and without discriminatory intent."
    - **Latest update**: On October 3, 2025, the plaintiffs filed a notice of appeal of the court's orders dismissing their claims and striking their class allegations.
- ***Students for Fair Admissions v. United States Coast Guard et al.*, 5:25-cv-00284 (N.D. Fla. 2025)**: On October 7, 2025, Students for Fair Admissions, an advocacy group, filed a lawsuit against the United States Coast Guard, challenging the constitutionality of its College Student Pre-Commissioning Initiative. The complaint alleges that the program violates equal protection principles in the Due Process Clause of the Fifth Amendment

because it unlawfully restricts applicants to those attending either a federally designated Minority-Serving Institution or a school selected by the Coast Guard where less than fifty percent of the student body is white and thereby "facially discriminates based on race and ethnicity."

    - **Latest update**: The docket does not yet reflect that the Coast Guard has been served.

2. Employment discrimination and related claims

- ***Ardalan v. Wells Fargo*, 3:22-cv-03811 (N.D. Cal. 2022)**: On June 28, 2022, a putative class of Wells Fargo stockholders brought a class action against the bank related to an internal policy requiring that half of the candidates interviewed for positions that paid more than $100,000 per year be from an underrepresented group. The plaintiffs alleged that the bank conducted sham job interviews to create the appearance of compliance with this policy and that this was part of a fraudulent scheme to suggest to shareholders and the market that Wells Fargo was dedicated to DEI principles. On August 23, 2024, Wells Fargo answered the amended complaint, admitting that the bank had "Diverse Slate Guidelines" to promote diversity but denying the allegations of unlawful conduct. On April 25, 2025, the court granted a motion for class certification.

    - **Latest update**: On September 25, 2025, the parties notified the court that they had reached an agreement-in-principle to resolve the matter. On October 15, 2025, Plaintiffs filed an unopposed motion for preliminary approval of settlement. Under the proposed settlement, the defendants will pay $85,000,000 in cash to be distributed among class members who submit valid claims in accordance with the plan of allocation set forth by the parties or a plan of allocation approved by the court. The class consists of all persons and entities who purchased or otherwise acquired Wells Fargo common stock between February 24, 2021 and June 9, 2022. On October 28, 2025, the court ordered that the parties submit a joint supplemental response by November 3, 2025 that provides a breakdown of litigation costs and estimated recovery per claimant, among other things.

- ***Chislett v. New York City Department of Education et al*., 1:21-cv-09650 (S.D.N.Y 2021), on appeal 0:24-cv-00972 (2nd Cir. 2024)**: On October 1, 2019, Leslie Chislett, a white woman, sued her former employer, the New York City Department of Education, and its then chancellor, alleging race discrimination. The plaintiff originally brought claims under Section 1983 and the New York City Human Rights Law, asserting that the Department implemented a "race-based policy" that made race a determinative factor in employment decisions, resulting in adverse action taken against her. The plaintiff further alleged that mandatory participation in implicit bias trainings and meetings created a hostile work environment that led to her constructive discharge. On June 16, 2023, the defendants moved for summary judgment arguing that the plaintiff failed to establish individual liability necessary to support municipal liability and did not demonstrate the existence of a race-based policy. On March 14, 2024, the district court granted the defendants' motion for summary judgment and dismissed the complaint. The court found that the Department had legitimate and non-discriminatory reasons for the adverse actions taken against the plaintiff and that she failed to present sufficient evidence

demonstrating that the Department had adopted a policy under which race was a "determinative factor" in employment decisions affecting employees like her. The court further found that the record lacked factual support showing that the implicit bias trainings created a hostile work environment or that they were directly connected to the alleged "race-based policy" on which the plaintiff sought to establish liability. The plaintiff appealed the decision.

    - **Latest update**: The Second Circuit affirmed the district court's decision granting summary judgment on the plaintiff's adverse employment action claims. However, it vacated the district court's ruling on the plaintiff's hostile work environment claim and remanded the case for further proceedings. The Second Circuit found that the plaintiff had raised genuine disputes of material fact regarding whether the workplace was racially hostile and whether that hostility stemmed from a municipal policy. The Second Circuit further concluded that the plaintiff presented sufficient evidence showing that her supervisors were aware of the alleged racial harassment but failed to intervene, thereby supporting the inference that the conduct was attributable to municipal policy. A settlement conference is scheduled for December 19, 2025.

- ***De Piero v. Pennsylvania State University, et al*., No. 2:23-cv-02281 (E.D. Pa. 2023)**: A white male professor sued his employer, Penn State University, claiming that university-mandated DEI trainings, discussions with coworkers and supervisors about race and privilege in the classroom, and comments from coworkers about his "white privilege" created a hostile work environment that led him to quit his job. He claimed that after he reported this alleged harassment and published an opinion piece objecting to the impact of DEI concepts in the classroom, the University retaliated against him by investigating him for bullying and aggressive behavior towards his colleagues. The plaintiff alleged harassment, retaliation, and constructive discharge in violation of Title VI, Title VII, Section 1981, Section 1983, the First Amendment, and Pennsylvania civil rights laws. The parties filed cross-motions for summary judgment. On March 6, 2025, the court granted summary judgment in favor of the University on the plaintiff's hostile work environment claims. The court found that the behaviors complained of by the plaintiff, including "campus wide emails" pertaining to racial injustice, "being invited to review scholarly materials," and "conversations about harassment levied by and against [the plaintiff]," could not reasonably be found to rise to the level of severe harassment. As to the "pervasive" conduct prong, the court explained that of the 12 incidents in the complaint, no "racist comment" was directed at the plaintiff and "only a few" involved actions that were directed at the plaintiff at all. On March 20, 2025, the plaintiff filed a supplemental brief in support of his remaining claims, arguing that these claims should proceed to trial. He presented what he asserted were undisputed facts to support his claims, including that he was reported for "micro aggressions" after objecting to racial harassment, that colleagues lodged false claims against him, and that he faced retaliatory disciplinary action and salary claw backs. On March 27, 2025, the University filed its own supplemental brief in support of summary judgment, arguing that the plaintiff's putative Title VII and PHRA retaliation claims failed as a matter of law because the plaintiff cannot prove the University took adverse employment action against him, or there is no causal link between his alleged protected activity and adverse actions taken by the University. On April 17, 2025, the court granted summary judgment for the University on the plaintiff's

remaining retaliation claims, concluding that none of the alleged acts by the University constituted adverse employment actions. On May 15, 2025, the plaintiff filed a notice of appeal as to the orders granting the University's motions for summary judgment.

    - **Latest update**: On August 13, 2025, the plaintiff filed his opening brief with the Third Circuit arguing that his hostile work environment claims should have gone to trial, the record supports his statutory retaliation claim under Title VII and Pennsylvania law, and the district court erred in dismissing his First Amendment retaliation claim. On August 20, 2025, the Equal Protection Project of the Legal Insurrection Foundation sought leave to file an amicus brief in support of the plaintiff, which the Third Circuit granted on September 4, 2025. The Equal Protection Project argued that the district court erred in disregarding the possibility that the "racial demonization" accompanying DEI programming is harmful to white persons and that *Diemert v. City of Seattle*, which the district court relied upon, was wrongly decided. On September 26, 2025, the University filed its response brief arguing that the plaintiff failed to allege protected speech, failed to demonstrate severe or pervasive conduct to support a hostile work environment claim, and never asserted or preserved discrete claims for retaliation.

- ***Do No Harm v. Cunningham*, No. 25-cv-00287 (D. Minn. 2025)**: On January 24, 2025, Do No Harm sued Brooke Cunningham, Commissioner of the Minnesota Department of Health, challenging a state law that requires the Commissioner to consider race in appointing members to the Minnesota Health Equity Advisory and Leadership Council. Specifically, Do No Harm alleges that the state law requiring that the board include representatives from either "African American and African heritage communities," "Asian American and Pacific Islander communities," "Latina/o/x communities," and "American Indian communities and Tribal governments and nations," violates the Fourteenth Amendment. Plaintiffs seek a permanent injunction and declaratory relief. On February 20, 2025, Cunningham answered the complaint, denying all allegations related to the violation of the plaintiff's constitutional rights. She asserted five affirmative defenses: (1) the complaint fails to state a claim; (2) the plaintiff lacks standing; (3) the claims are unripe, (4) the plaintiff has suffered no harm or damages as a result of the Defendant, and (5) the claims are barred by sovereign immunity.

    - **Latest Update:** On September 22, 2025, the parties filed a joint stipulation of dismissal.

- ***Grande v. Hartford Board of Education et al*., 3:24-cv-00010-JAM (D. Ct. 2024)**: On January 3, 2024, John Grande, a white male physical education teacher in the Hartford school district, filed suit against the Hartford School Board after allegedly being forced to attend mandatory DEI trainings. He claimed that he objected to the content of a mandatory professional development session focused on race and privilege, stating that he felt "white-shamed" after expressing his political disagreement with the training's purposes and goals, and that he was thereafter subjected to a retaliatory investigation and was wrongfully threatened with termination. He claimed the school's actions constitute retaliation and compelled speech in violation of the First Amendment. On February 5, 2025, the defendants filed a motion for summary judgment, arguing that the

plaintiff's objections to the trainings were made in the course of his official duties as a District employee and therefore were not protected by the First Amendment. They further argued that the District's interest in effectively administering its professional development sessions outweighed the plaintiff's speech interests. On March 5, 2025, the plaintiff filed an opposition to the defendant's motion for summary judgment. The plaintiff argued that summary judgment is improper because material facts, such as whether the plaintiff was speaking as a private citizen about a matter of public concern and the nature of plaintiff's statements, are in dispute. The plaintiff also argued that he sufficiently pled a First Amendment retaliation claim against the defendants.

    - **Latest update**: On September 9, 2025, the court denied in part the summary judgment motion, allowing the plaintiff's First Amendment claim to go forward against two of the three defendants: school board officials sued in their official capacities. The court found that two of the officials did not have qualified immunity because there existed issues of fact as to whether their motivations were retaliatory. As to the merits of the First Amendment claim, the court held that there remained a dispute of material fact about whether the plaintiff's statements about DEI trainings were made in the scope of his duties as a school district employee and whether those statements pertained to matters of public concern. The court granted summary judgment as to the plaintiff's compelled speech claim, concluding that it was undisputed that the plaintiff was not required to speak during the relevant breakout session at which he made the statement. On September 16, 2025, defendants filed a motion for reconsideration, arguing that the court erred in not granting qualified immunity to the two individual defendants.

- ***Martin v. Sedgwick Claims Management Services, Inc.*, No. 2:25-cv-02275 (W.D. Tenn. 2025)**: On March 11, 2025, a former employee of Sedgwick Claims Management Services, Inc., filed a complaint against the company alleging race discrimination and sexual harassment, as well as retaliation for complaints made regarding discrimination. The plaintiff's complaint asserts that he was subjected to a hostile work environment and discriminatory practices because he is Caucasian and heterosexual. In part, he alleges that Sedgwick's DEI training materials were offensive and discriminatory towards white, heterosexual males. The plaintiff claims that after he complained about the discriminatory DEI content and sexual harassment by his supervisor, he faced retaliation, including being falsely accused of recording conversations with management, which led to his termination on March 25, 2024. He asserts that Sedgwick failed to conduct a meaningful investigation into his complaints and that his discharge was pretextual.

    - **Latest update**: On September 15, 2025, the plaintiff filed a notice of settlement, and the parties filed a stipulation of dismissal. The court dismissed the case on September 16, 2025.

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

- ***Glass, Lewis & Co., LLC v. Ken Paxton,* 1:25-cv-01153 (W.D. Tex. 2025)**: On July 24, 2025, Glass, Lewis & Co., LLC sued Texas Attorney General Ken Paxton to enjoin Texas Senate Bill 2337, which, starting September 1, 2025, required proxy advisory services like Glass Lewis to "conspicuously disclose" that their advice or recommendations are "not

provided solely in the financial interest of the shareholders of a company" if the advice or recommendations are based wholly or in part on ESG, DEI, social credit, or sustainability factors. Glass Lewis alleges that the law unconstitutionally discriminates based on viewpoint and infringes on its freedom of association in violation of the First Amendment. Glass Lewis also contends that the law is unconstitutionally vague under the First and Fourteenth Amendments and is preempted by ERISA. Also on July 24, 2025, Glass Lewis contemporaneously moved for a preliminary injunction to prevent Texas Senate Bill 2337 from going into effect on September 1, 2025, contending that Glass Lewis will suffer "irreparable harm" if the Act becomes effective. On August 19, 2025, the Attorney General filed an opposition to the preliminary injunction motion, asserting that (1) the plaintiffs lack standing, having pled no actionable injury in fact, (2) the law does not violate the U.S. Constitution nor is it preempted by federal law, and (3) there is no irreparable harm. Also on August 19, the Attorney General filed a motion to dismiss, arguing that the plaintiffs lack standing; sovereign immunity bars the suits; proxy advisor speech is commercial in nature and thus subject only to rational basis or intermediate scrutiny; SB 2337 is not vague and requires factual disclosures; and, to the extent provisions were problematic, they could be severed while leaving the statute intact. The court held an evidentiary hearing on August 29, 2025. During the hearing, the court granted the preliminary injunction motion, reasoning that the law compels speech likely in violation of the First Amendment. On September 9, 2025, Glass Lewis filed an amended complaint.

    - **Latest update**: On September 18, 2025, the Attorney General appealed the district court's order granting the preliminary injunction. On September 23, 2025, the Attorney General filed an answer to the amended complaint. The answer generally denies all of Glass Lewis's allegations. It also asserts the following defenses: sovereign immunity; failure to state a claim for which relief can be granted; failure to join an indispensable party; ripeness; and equitable doctrines such as laches, estoppel, unclean hands, and waiver.

- ***Khatibi v. Hawkins*, No. 23-cv-06195-MRA-E (C.D. Cal. 2023), appealed No. 24-3108 (9th Cir. 2024)**: On August 1, 2023, doctors Azadeh Khatibi and Marilyn M. Singelton, along with Do No Harm, sued officials of the Medical Board of California, alleging that the Board unconstitutionally compelled their speech in violation of the First Amendment. Plaintiffs challenged a California law that, since January 1, 2022, has required all Continuing Medical Education ("CME") courses to "contain curriculum that includes the understanding of implicit bias." Khatibi and Singelton allege that, but for this law, they would never include implicit bias training in their medical curriculum because it is unrelated to their courses. On May 2, 2024, the court granted the defendants' motion to dismiss without leave to amend, accepting their argument that the requirements do not violate the First Amendment because teaching CME courses constitute government speech that is part of a state licensing scheme, and, much like teachers of a state-mandated public school curriculum, the doctor-educators are not associated with the contents of their course. On May 15, 2024, the plaintiffs appealed to the United States Court of Appeals for the Ninth Circuit.

- **Latest update**: The Ninth Circuit heard oral argument on the plaintiffs' appeal on March 27, 2025, and the court issued its opinion on July 25, 2025, affirming the district court's dismissal of the action. The court held that CME courses eligible for credit by the Medical Board of California are government speech. The court reasoned that the public would attribute CME speech to the government rather than to CME instructors because California has a longstanding tradition of regulating the medical profession and California controls the content of CME courses. Because CME courses are government speech, the court held they are immune from certain strictures of the First Amendment. The appellants filed a petition for panel rehearing on August 8, 2025, arguing that the panel decision (1) conflicts with decisions of the Supreme Court of the United States, (2) diverges from the holdings of other circuit courts, and (3) presents questions of exceptional importance, including whether continuing professional education courses are government speech. The appellees filed a response to the appellants' petition on September 23, 2025, asserting that the Ninth Circuit's decision does not conflict with either Supreme Court precedent or the rulings of other circuits, and no questions of exceptional importance exist because the decision was narrow and context-specific and therefore does not raise concerns about government control over other forms of speech.

- ***Nat'l Urban League et al., v. President Donald J. Trump, et al.,* 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 Administrative Procedure Act. 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 complaint seeks a declaratory judgment holding that the EOs at issue are unconstitutional, as well as a preliminary injunction enjoining enforcement of these EOs. On June 27, 2025, the National Fair Housing Alliance voluntarily dismissed its claims without prejudice. On June 30, 2025, the remaining plaintiffs filed an amended complaint, again requesting declaratory and injunctive relief. On August 8, 2025, the defendants moved to dismiss the amended complaint, arguing that the plaintiffs lacked standing to sue, including because the plaintiffs failed to assert that they were injured by the challenged executive orders. The defendants further argued that the court lacked jurisdiction to review challenges to funding provisions under the Tucker Act (which permits individuals to sue the U.S. government for monetary damages in the Court of Federal Claims), and that the plaintiffs' claims failed on the merits.

    - **Latest update**: On September 12, 2025, the plaintiffs filed an opposition to the defendants' motion to dismiss, arguing that they adequately alleged standing as to all eight of the challenged EO provisions, including because certain of the executive orders reduced the plaintiffs' access to funding and others chilled the plaintiffs' speech. The plaintiffs further argued that the Tucker Act does not affect the court's jurisdiction to adjudicate their constitutional claims. Finally, the plaintiffs contended that they sufficiently alleged First Amendment violations,

arguing that the executive orders "coerce[d] Plaintiffs to abandon disfavored speech concerning DEIA and transgender rights."

- ***Rhode Island Latino Arts v. National Endowment for the Arts*, 1:25-cv-00079 (D. R.I. 2025)**: On March 6, 2025, four arts non-profits filed a complaint in the United States District Court for the District of Rhode Island against the National Endowment for the Arts ("NEA") and its acting chair, seeking to enjoin the NEA from incorporating Executive Order 14168 into its application criteria for NEA grants. Specifically, on February 6, 2025, the NEA amended its grant application to say, "The applicant understands that federal funds shall not be used to promote gender ideology, pursuant to Executive Order No. 14168." The plaintiffs alleged that, because their art involves themes that could be considered "gender ideology," the application of EO 14168 "effectively bar[s] [them] from receiving NEA grants." The NEA's actions, the plaintiffs alleged, are thus contrary to the NEA's governing statute, arbitrary and capricious under the Administrative Procedure Act ("APA"), and in violation of the First and Fifth Amendments. On March 7, 2025, the NEA rescinded the language about "gender ideology" in its funding criteria pending further review and extended the application deadline for the grants in question. On May 12, 2025, the plaintiffs filed an amended complaint to account for the NEA's rescission of the EO language from its funding criteria, alleging that the perception that a project "promotes gender ideology" may still impact the grantmaking process, even if the NEA did not formally apply the EO to grantmaking decisions. On May 27, 2025, the defendants answered the amended complaint and presented five affirmative defenses, including that the court lacked subject matter jurisdiction, that the complaint failed to state a claim upon which relief may be granted, and that the NEA "was acting in good faith, with justification, and pursuant to authority." On June 30, 2025, the plaintiffs filed a motion for summary judgment, asserting that the NEA's implementation of EO 14168 constitutes viewpoint-based discrimination, exceeds the agency's statutory authority under the APA, and fails to provide fair notice while permitting arbitrary and discriminatory decision-making. On July 16, 2025, the defendants filed their opposition and cross-motion for summary judgment, arguing that the agency's selection of arts projects for funding constitutes government speech and is therefore not subject to scrutiny under the First and Fifth Amendments. The defendants further contended that the alleged vagueness is not substantial in the context of "public patronage of the arts," and that the rescission of the certification requirement mitigated any constitutional concerns.

    - **Latest update**: On September 19, 2025, the court granted summary judgment in favor of the plaintiffs on their First Amendment claim and three APA claims. The court reasoned that the NEA's notice of its final decision regarding the implementation of the EO imposed a viewpoint-based restriction on private speech, thereby violating the First Amendment. The court also held that the NEA exceeded its statutory authority, and that the notice was arbitrary and capricious. At the same time, the court ruled that NEA's notice was not unconstitutionally vague. The court's ruling enjoined the defendants from disfavoring applicants deemed "to promote gender ideology" and from enforcing compliance with EO 14168 when using NEA funds.

4. Actions against educational institutions

- ***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 sued the Regents of the University of California, 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. The plaintiff 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. On August 14, 2025, the defendants moved to dismiss the complaint. The defendants argued that the plaintiffs lacked standing and that the complaint makes, at most, indiscriminate "barebones allegations" as to "every undergraduate, law, and medical school across all UC campuses." The defendants also argued that the chancellor of each UC campus is entitled to sovereign immunity under the Eleventh Amendment.
    - **Latest update**: On September 26, 2025, the plaintiffs filed their opposition to the defendants' motion to dismiss. The plaintiffs asserted that they adequately alleged standing because their members are part of a genuine membership organization and are "able and ready to apply" for admission to the University of California, but "will encounter racial discrimination if they do so." They further argued that the amended complaint "alleges all that is needed to state a claim" because it includes allegations that "each of the University of California's undergraduate colleges, law schools, and medical schools discriminates in favor of blacks and Hispanics and against Asian-Americans and whites when admitting students." On September 28, 2025, the parties filed their joint Rule 26(f) report. Defendants proposed a discovery schedule that anticipated a trial date in October 2027. The court held a conference on October 28, 2025 in which it took the motion to dismiss under submission and set a bench trial for October 2027.

Legislative Updates

- **U.S. House Bill 5315:** On September 11, 2025, U.S. House Representatives Harriet Hageman (R-WY) and Barry Moore (R-AL) introduced U.S. House Bill 5315: the Fair Artificial Intelligence Realization Act of 2025. The bill would require federal government agencies, if procuring large language models, to procure only those that "do not manipulate responses in favor of ideological dogmas such as diversity, equity, and inclusion."

- **U.S. House Bill 5399:** On September 16, 2025, U.S. House Representatives Sydney Kamlager-Dove (D-CA), Nydia Velazquez (D-NY), Cleo Fields (D-LA), Suzanne Bonamici (D-OR), Eleanor Norton (D-DC), Shri Thanedar (D-MI), Maxwell Frost (D-FL), and Veronica Escobar (D-TX) introduced U.S. House Bill 5399: the Equitable Arts Education

Enhancement Act. The bill would direct the U.S. Secretary of Education to establish a competitive grant program to support arts education at minority-serving institutions of higher education. The bill notes that minority-serving institutions are "uniquely positioned to produce a diverse generation of art professionals and help bring much needed attention to works by BIPOC (Black, Indigenous, People of Color) artists."

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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:

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