DEI Task Force Update

October 8, 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 3, the Senate advanced eleven nominees to serve in key leadership roles in labor agencies including the U.S. Department of Labor and Equal Employment Opportunity Commission ("EEOC"). Included in this batch of nominees are Brittany Bull Panuccio, President Trump's nominee to be a Commissioner of the EEOC; Andrew Rogers, who will serve as Wage and Hour Division administrator; James Woodruff, who will serve as a member of the Merit Systems Protection Board ("MSPB"); and Jonathan Berry, who will serve as Solicitor of Labor. Panuccio's and Woodruff's confirmations will restore quorums at the EEOC and the MSPB. For more information on Panuccio's nomination, please see our August 1 DEI Task Force Update.

On September 18, the U.S. Department of Justice ("DOJ") sent a letter from Assistant Attorney General Harmeet Dhillon of the Civil Rights Division to the mayor of the City of Austin, Kirk Watson, announcing an investigation into whether Austin "engage[s] in a pattern or practice of discrimination based on race, color, sex, or national origin in violation of Title VII" in relation to its hiring and training practices. Specifically, the letter alleges that Austin's Office of Equity and Inclusion, Equity Division promotes a plan for "how the City can 'work using a racial equity lens.'" The letter says that the plan's guidance includes:

1. "For managers, delineat[ing] clear racial equity expectations regarding hiring, incentivizing use of best practices within hiring processes to minimize bias, and incorporat[ing] equity throughout all phases of hiring processes."

2. "Apply[ing] stronger racial equity criteria to the design and execution of executive-level searches as a part of an overall review of hiring and HR practices."

3. "Collect[ing] and analyz[ing] demographic data in major job classifications to identify gaps in representation," and "develop[ing] and implement[ing] strategies to eliminate the gaps."

4. Creating "[r]acial equity tools ... designed to integrate explicit consideration of racial equity in decisions, including policies, practices, programs and budgets."

On September 16, DOJ sued the State of Rhode Island, the Rhode Island Department of Education, and the Providence Public School District, alleging that a state-funded student loan repayment program, the "Educator of Color Loan Forgiveness Program," violates Title VII because it provides relief only to teachers of color. The program provides up to $25,000 in student loan repayment for Providence Public School teachers. Eligibility is limited to teachers "in their first year of full-time (non-substitute) teaching in the District who identify as Black, Hispanic, Asian, American Indian, and/or 2 or more races." In the complaint, DOJ stated that while "[h]elping new teachers pay off their student loans may be a worthy endeavor for public school districts[,] . . . excluding white teachers is racist and unlawful." In a joint statement given to Law360, the Rhode Island Department of Education and Providence Public School District stated that the entities had been working with the DOJ over the past few months to reach a resolution on the issue.

Also on September 16, a coalition of faculty, staff, and unions affiliated with the University of California sued President Trump and various members of the administration, alleging that the administration's freezing and termination of over $500 million in research grants (along with its threats to freeze or terminate additional grants in the future) violates the plaintiffs' free speech rights. The 123-page complaint raises 13 claims, including violation of the First, Fifth, and Tenth Amendments, violation of the separation of powers, violation of the Administrative Procedure Act, and violations of Title VI and Title IX. The plaintiffs seek to enjoin the administration from terminating or freezing grants on the basis of purported violations of Title VII and Title IX by the university, from threatening legal and financial sanctions in retaliation for speech, and from

conditioning federal funding on actions not necessary under Title VI, Title VII, or Title IX, including curtailing the University's DEI policies.

On September 3, Judge Allison D. Burroughs of the U.S. District Court for the District of Massachusetts permanently enjoined the federal government from "[i]mplementing, instituting, maintaining, or giving any force or effect" to 15 letters and orders from various federal agencies that froze or terminated over $2.2 billion in federal research grants to Harvard University, concluding that the administration's decision to freeze or terminate this federal funding amounted to an attempt "to pressure Harvard to accede to the government's demands in a way that squarely violates Plaintiffs' First Amendment rights and ignores the procedural requirements of Title VI and, to a certain extent, the [Administrative Procedure Act]." As it has done in other challenges to the administration's recission of federal funding grants, the government argued that the case belonged in the Court of Federal Claims because it related to government contracts. The district court rejected this argument as to Harvard's First Amendment and Title VI claims, as well as to some arbitrary and capricious challenges to government actions (but not to specific grant termination letters), holding that while "[t]he resolution of these claims might result in money changing hands, . . . what is fundamentally at issue is a bedrock constitutional principle rather than the interpretation of contract terms." The court concluded that this result was most consistent with the Supreme Court's recent decision in *National Institutes of Health v. American Public Health Association*, 606 U.S. __ (2025). The court permanently enjoined the administration from "[i]ssuing any other termination, fund freezes, stop work orders, or otherwise withholding payment on existing grants or other federal funding, or refusing to award future grants, contracts, or other federal funding to Harvard in retaliation for the exercise of its First Amendment rights, or on purported grounds of discrimination without compliance with the requirements of Title VI." The two related cases in which this decision arose are *President and Fellows of Harvard College, et al. v. U.S. Department of Health and Human Services, et al.*, No. 1:25-cv-11048 (D. Mass. 2025) and *American Association of University Professors, et al. v. U.S. Department of Justice, et al.,* No. 1:25-cv-10910 (D. Mass. 2025). In a Truth Social post, President Trump vowed to appeal the decision, although the government has not yet filed a notice of appeal as of the date of this update.

On August 29, the U.S. District Court for the Western District of Texas preliminarily enjoined the enforcement of Texas Senate Bill 2337, which was set to take effect on September 1, 2025. SB 2337 imposes extensive disclosure obligations on proxy advisory firms when their recommendations or services are based on non-financial factors, including DEI and ESG considerations. A violation of the law constitutes a deceptive trade practice under Texas law, and is actionable by the company, its shareholders, and its clients. The plaintiffs contend that the Texas statute violates the First and Fourteenth Amendments and is preempted by ERISA. Judge Alan Albright ruled orally after a three-and-a-half hour hearing on the plaintiffs' preliminary injunction motion. The injunction applies only to the Texas Attorney General and covers only enforcement against the plaintiffs in the two related cases in which the injunction motion arose. The two related cases are *Institutional Shareholder Services Inc. v. Paxton*, No. 1:25-cv-01160 (W.D. Tex. 2025) and

Glass, Lewis & Co., LLC v. Paxton, No. 1:25-cv-01153 (W.D. Tex. 2025). For more on this case, please see our August 30 client alert and our August 29 DEI Task Force Update.

On August 27, DOJ announced an investigation into the California Environmental Protection Agency to determine whether the agency engages in discriminatory hiring practices in violation of Title VII of the Civil Rights Act of 1964. In a letter to the agency, Assistant Attorney General Harmeet Dhillon wrote that the investigation is informed by, among other things, a California EPA document entitled "Practices to Advance Racial Equity in Workforce Planning," which DOJ asserts "indicates that [the] agency may be using protected characteristics such as race, color, sex, or national origin to 'increase[] equity in…hiring, promotion and retention practices and policies.'"

Media Coverage and Commentary:

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

- **The New York Times, College Board Cancels Tool for Finding Low-Income High Achievers (Sept. 4)**: Stephanie Saul and Dana Goldstein of the New York Times report that the College Board, which administers the SAT exam, has notified universities it will eliminate its "Landscape" tool, an online dashboard allowing admissions officers to view data on applicants' neighborhoods, including median household income, crime rates, and the percentage of single parent households. According to Saul and Goldstein, universities have historically used the tool to identify students from disadvantaged neighborhoods. While the College Board did not identify a reason for eliminating the Landscape tool, Saul and Goldstein report the tool was under review by Students for Fair Admissions ("SFFA"), the legal advocacy group whose lawsuit against Harvard resulted in the Supreme Court striking down affirmative action in college admissions in 2023. Saul and Goldstein quote

SFFA founder Edward Blum who stated that "[a]ny tool that allows admissions officers to consider race by proxy is a legal and reputational risk." The authors also quote Richard D. Kahlenberg, the Director of the American Identity Project at the Progressive Policy Institute, who has pointed out that the tool is race-neutral, and that several justices in the *SFFAHarvard* decision described consideration of socioeconomic factors as a legally permissible way to promote diversity in higher education.

- **Law360, "Why The Harvard Funding Case Is 'Clear As Mud' On Appeal" (Sept. 4):** Chris Villani of Law360 reports on the Harvard federal funding case, described above, and the possible resolution of the case on appeal. Though Villani cites lawyers and scholars who believe the case is strong on the merits, those experts say that the Supreme Court precedent regarding the proper jurisdiction for grant cancellation cases is anything but clear, making the outcome of the appeal difficult to predict. Villani notes the complicated split amongst the justices in the Supreme Court's decision in *National Institutes of Health v. American Public Health Association*, 606 U.S. __ (2025), in which four Supreme Court justices believed grant-termination cases belonged in the Court of Federal Claims, four believed they belonged in district court, and one (Justice Amy Coney Barrett) believed they most likely belonged in the Court of Federal Claims. Villani quotes lawyers who say that the shifting nature of the law may increase the administration's chances of prevailing in the case on appeal.

- **Forbes, "Most Employees Support DEI, Revealing Talent Risk From DEI Retreat" (Sept. 3)**: Michelle Travis of Forbes reports that a survey conducted by Catalyst and the Meltzer Center for Diversity, Inclusion, and Belonging found widespread employee support across demographics for workplace Diversity, Equity, and Inclusion. In particular, Travis reports, 93% of Gen Z employees, 94% of Millennial employees, and 86% of Gen X employees indicated support for DEI. According to Travis, the survey highlights that DEI initiatives are widely viewed as beneficial to a healthy workplace culture. More than 40% of employees surveyed said they would leave their companies if DEI programs were abandoned. Travis further reports that one in three companies who had previously pulled or scaled back DEI initiatives had reincorporated DEI programs as a result of decline in employee morale and difficulties recruiting diverse talent.

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:

- ***American Alliance for Equal Rights v. The Women, LLC and the Women Foundation*, No. 25-cv-00441 (E.D. Tenn. 2025):** On September 12, 2025, the American Alliance for Equal Rights ("AAER") sued two Tennessee-based companies, The Women

LLC and the Women Foundation, alleging that they violate Section 1981 and the Equal Credit Opportunity Act by "refusing to lend money to businesses whose owners are Hispanic, Native American, Arab, Asian, white, or any other race but black." AAER's complaint targets the companies' "micro-loan program" and asserts that "[t]o apply or win, businesses 'must be 51% or more Black Owned.'" AAER alleges that the defendants "at least employ a strong race-based preference for black-owned businesses" and that the "[d]efendants also designed the program with the race-based intent to benefit customers who are black." AAER alleges that its members are being harmed by the defendants' program, including one individual who is "able and ready to apply for a loan under Defendants' program" but "cannot apply because she . . . is white." AAER also filed an emergency motion for a temporary restraining order and preliminary injunction, seeking to enjoin the defendants from "closing the current application window or selecting winners for the loan program" for 2025.

    - **Latest update**: On September 16, 2025 the court ordered the defendants to respond to the emergency motion by September 26, 2025. The court set a hearing on the motion for October 7, 2025.

- ***Bradley, et al. v. Gannett Co. Inc.*, 1:23-cv-01100 (E.D. Va. 2023):** On August 18, 2023, white plaintiffs 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 the court granted a motion to dismiss the initial complaint, the plaintiffs filed an amended complaint on September 19, 2024, which 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. In its reply, filed on October 23, 2024, Gannett argued that the plaintiffs' reliance on *Duvall* was misplaced because it interpreted Title VII, not Section 1981.

    - **Latest update:** 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."

- ***City of Seattle v. Trump et al*., No. 2:25-cv-01435 (W.D. Wa. 2025)**: On July 31, 2025, the City of Seattle sued the Trump administration, challenging Executive Orders 14173 ("Ending Illegal Discrimination and Restoring Merit-Based Opportunity") and 14168 ("Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government"). The City alleges that the EOs violate principles of the separation of powers, the Fifth and Tenth Amendments, and the Spending Clause of the U.S. Constitution and are arbitrary and capricious in violation of the Administrative Procedure Act. The City asserts that enforcement of the EOs will result in the loss of "committed federal grants and contracts if" it does not abide by "improperly imposed (and impossibly vague) funding conditions."

    - **Latest update:** On August 26, 2025, Seattle moved for a preliminary injunction barring enforcement of the EOs. Seattle argued that it is likely to prevail on the merits of its claims because the EOs are, among other things, unconstitutionally vague and are akin to a "gun to the head" in violation of the Tenth Amendment. Seattle also argues that the threat of loss of federal funds irreparably harms the City though continuous budget uncertainty and that loss of funding would result in the loss of essential housing services for its residents, the cutting off of pedestrian and roadway safety projects, and the curtailing of law enforcement and first responder training, among other harms. On September 16, 2025, the government filed its opposition arguing, among other points, that Seattle failed to show that it will suffer irreparable harm because (1) it waited more than six months after the EOs were issued to file suit, indicating a lack of urgency, and (2) it offers only speculative allegations of harm if federal agencies one day open an investigation or terminate the City's federal grants.

- ***Thakur et al. v. Donald J. Trump, et al.* 3:25-cv-04737 (N.D. Cal. 2025)**: On June 4, 2025, six University of California ("UC") researchers whose federal research grants been terminated earlier this year in accordance with President Trump's executive orders relating to DEI and government spending sued the administration, asserting that the termination decisions violated the U.S. Constitution. On June 23, 2025, the court granted the plaintiffs a preliminary injunction, which required the Environmental Protection Agency, the National Science Foundation, and the National Endowment for the Humanities to reinstate the plaintiffs' research grants. The administration appealed, seeking a stay of the preliminary injunction order. On August 21, 2025, the Ninth Circuit denied the stay motion, reasoning that the record showed that "the agencies selected grants for termination based on viewpoint" in violation of the First Amendment.

    - **Latest update:** On September 22, the district court issued a second preliminary injunction, this time enjoining Department of Defense, the Department of Transportation, the Department of Health and Human Services, and the National Institute of Health from "en masse funding cuts" across the University of California ("UC"). The court also granted provisional class certification to two classes of researchers across the UC system.

2. Employment discrimination and related claims:

- ***EEOC v. Battleground Restaurants***, **1:24-cv-00792 (M.D.N.C. Sept. 25, 2024):** On September 25, 2024, the EEOC filed a lawsuit against a sports bar chain, Battleground Restaurants, in federal district court in North Carolina. The lawsuit alleges that the chain refused to hire men for its front-of-house positions, such as server or bartender jobs, in violation of Title VII. On November 25, 2024, Battleground Restaurants moved to dismiss or strike an improperly named defendant. Battleground Restaurants argued that the EEOC's pattern or practice claims are "insufficiently pled, conclusory, and not plausible on their face," and that the EEOC failed to conduct a "reasonable investigation" or give "adequate notice" to Battleground Restaurants. On February 24, 2025, the court denied the defendant's motion to dismiss, finding that the EEOC complied with notice requirements, plausibly alleged a pattern or practice of disparate sex discrimination, and can properly include Battleground Restaurants as a defendant. On March 10, 2025, the defendants answered the complaint, denying the large majority of the EEOC's allegations, and asserted numerous defenses, including that the EEOC failed to identify any male applicant who was not hired for a front-of house position due to their sex, and that the defendants hired the best applicants without regard to their sex.

    - **Latest update:** On August 15, 2025, the parties submitted a proposed consent decree intended as a "complete resolution of all matters in controversy." In the consent decree, the defendants deny any liability. The consent decree would enjoin the defendants from "discriminating against any qualified male applicants who apply for nonmanagerial front-of-house positions," "steering applicants into positions, in whole or in part, because of their sex," and "disposing of or failing to maintain records relevant to applications for employment." The defendants agree to make a payment of $1,111,300 to be distributed to a class of eligible claimants. The defendants also agree to, among other requirements, "promulgate and maintain" policies that prohibit Title VII violations, require hiring practices be periodically reviewed, require all images in promotional materials depict at least one male server, and require application records be maintained for the duration of the decree. They also agree to provide an annual in-person training to "all supervisory, management and Human Resources personnel" involved in restaurant hiring.

- ***Miall v. City of Asheville***, **1-23-cv-00259 (W.D.N.C. 2024):** On September 26, 2023, five white residents of Asheville, North Carolina sued the City of Asheville, the City's manager, and the mayor, alleging that the defendants violated the Equal Protection Clause, Section 1981, and Section 1983 by preferring applicants of minority racial groups for seats on the Asheville Human Relations Commission. The plaintiffs sought to enjoin the defendants from using race as a factor in considering board applicants, and to require them to review applicants without awareness of any applicant's race or ethnicity. On November 14, 2023, the defendants moved to dismiss both the Section 1981 and Section 1983 claims. On October 29, 2024, the district court denied the motion to dismiss the Section 1983 claim, which it held was plausibly pled. The court declined to accept a Magistrate Judge's recommendation to dismiss the Section 1981 claim on the basis of the plaintiff's race, holding that white litigants may sue under Section 1981.

- **Latest update**: On September 9, 2025, the parties stipulated to dismiss the case, following a September 2, 2025 consent decree. Under the consent decree, Asheville agreed to make board appointment decisions without regard for race, ethnicity, color, or national origin. In addition, Asheville agreed to place a disclaimer on its website, and any other website mentioning vacant positions on the Human Relations Commission, making clear that appointments are not restricted to individuals of a specific race, ethnicity, color, or national origin, and that the city does not consider those traits in making appointments.

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

- ***American Alliance for Equal Rights v. Bennett*, No. 1:25-cv-00669 (N.D. Ill. 2025):** On January 21, 2025, AAER sued the Attorney General of Illinois, the Director of the Illinois Department of Human Rights, and the Secretary of State of Illinois, alleging that an Illinois law, SB 2930—which requires "qualifying nonprofits to gather and publicize" certain demographic data online—compels organizations to engage in unlawful discrimination. They assert that "[b]y forcing charities to publicize the demographics of their senior leadership, the law pushes them to hire candidates based on race." AAER also alleges the law violates the First Amendment by compelling organizations "to speak about a host of controversial demographic issues." On March 4, 2025, the United States intervened as a plaintiff. AAER filed a motion for preliminary injunction on April 4, 2025. The defendants subsequently moved to dismiss both complaints—for lack of subject matter jurisdiction as to the United States and failure to state a claim as to AAER—and opposed the preliminary injunction motion. On August 20, 2025, the court issued its ruling on the motions for preliminary injunction and to dismiss. The court granted in part the defendants' motion to dismiss. The court held that AAER lacked standing to sue on behalf of its anonymous members based on alleged public disclosure, which the court held was too speculative to constitute injury in fact. However, the court held that AAER has standing to sue in relation to the collection of its members' sensitive information. The court granted the motion to dismiss the United States from the case due to lack of injury in fact. The court denied AAER's motion for preliminary injunction, reasoning that AAER proved neither likelihood of success on the merits nor irreparable harm.

    - **Latest update:** AAER and the United States filed notices of appeal on August 21, 2025 and August 25, 2025, respectively. On August 27, 2025, the parties stipulated to a stay of SB 2930 for the duration of the appeal. On August 28, 2025 the district court stayed enforcement of the challenged law and stayed all district court proceedings pending appeal.

- ***Austin et al. v. Lamb et al.*, No. 1:25-cv-00016 (N.D. Fl. 2025):** On January 16, 2025, six professors in Florida's public university system sued various administrators of Florida's public universities alleging that SB 226—which bans the funding of expression that "[a]dvocate[s] for diversity, equity, and inclusion, or promote[s] . . . political or social activism," Fla. Stat. § 1004.06(2), and restricts the viewpoints that can be taught in general education courses—violates the First and Fourteenth Amendments of the U.S. Constitution as well as Florida's Campus Free Expression Act. The law provides that general education courses "may not distort significant historical events or include a curriculum that teaches identity politics," nor can they be "based on theories that systemic

racism, sexism, oppression, and privilege are inherent in the institutions of the United States and were created to maintain social, political, and economic inequities." In an attempt to comply with the law, public universities in Florida began denying "general education status" to courses that purportedly touched on these subjects. On January 27, 2025, the plaintiffs moved to preliminarily enjoin the defendants from enforcing the law, but the court denied the motion on April 2, 2025, following a March 31, 2025 hearing. On April 8, the plaintiffs filed an amended complaint, which the defendants moved to dismiss on May 6, 2025. Gibson Dunn, along with the American Civil Liberties Union of Florida, represent the plaintiffs in this action.

    - **Latest update:** On September 25, 2025, the court granted the motion to dismiss in part. The court held that several of the plaintiffs lacked standing due to lack of actionable injury. However, the court found that one plaintiff, Sharon Austin, had standing because she alleged that she was denied funding to attend an inclusion-focused conference and planned to apply for funding to attend the same conference again. The court concluded that "the denial of funds and imminent threatened denial of funding" amounted to a concrete injury traceable to the defendants.

- ***National Education Association, et al. v. Formella, et al.*, No. 1:25-cv-00293 (D.N.H. 2025):** On August 7, 2025, the National Education Association (along with four New Hampshire school districts, DEI professionals, and a nonprofit that provides LGBTQ+ programming in schools) sued multiple New Hampshire state officials to enjoin enforcement of New Hampshire statutes RSA 21-I-:112-116 and RSA 186:71-77. These statutes, effective July 1, 2025, prohibit DEI initiatives, programs, trainings, and policies in public schools and other public entities. The statutes require schools to submit a report identifying contracts "containing DEI-related provisions" by September 30, 2025, but the New Hampshire Department of Education requested that schools submit such reports by September 5, 2025. In the complaint, the plaintiffs allege that the statutes (1) violate the Supremacy Clause because they conflict with federal anti-discrimination laws, (2) violate the First Amendment rights of students and educators, and (3) are unconstitutionally vague and ambiguous under the United States and New Hampshire Constitutions. The plaintiffs filed an emergency motion for preliminary injunction on August 11, 2025, including a request that the court issue a temporary restraining order if it cannot issue a decision on the preliminary injunction by September 5, 2025. On August 21, 2025, the defendants filed an opposition to the motion, asserting that the plaintiffs lack standing, that the challenged laws do not conflict with federal law, and that no irreparable harm has been shown. Following an evidentiary hearing on August 27, 2025, the court took the motion under advisement.

    - **Latest update**: On September 4, 2025, the court granted the plaintiffs' motion for a temporary restraining order, enjoining the defendants from enforcing the challenged statutes. The court explained that it issued the TRO due to the risk of irreparable harm to public schools, "especially in light of" "the crippling penalties" schools may face "for even 'unknowing' noncompliance with the anti-DEI laws." On September 17, 2025, the court extended the TRO until October 2, 2025, or until the court issues a decision on the preliminary injunction motion.

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 ("SARD") 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. 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. On July 15, 2025, the court ordered the parties to show cause as to why the court should not consolidate the case with *Do No Harm v. David Geffen School of Medicine at UCLA*, No. 2:25-cv-04131 (C.D. Cal. 2025), a case that may have "similar allegations" and "common questions of law." The plaintiffs and defendants filed responses to the court's order on July 30, 2025 and August 1, 2025, respectively. Both parties argued that the cases should not be consolidated because the plaintiff's theory in *Do No Harm* is limited to only the policies of UCLA's medical school, while SARD challenges policies in the University of California system more broadly. The court accepted the responses of the parties and discharged the order to show cause on August 12, 2025.

    - **Latest update**: 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. On August 15, 2025, the court set a scheduling conference for October 17, 2025. The plaintiffs have not responded to the motion to dismiss.

5. Board of Director or Stockholder Actions:

- ***State Board of Administration of Florida v. Target*, No. 2:25-cv-00135 (M.D. Fla. 2025):** On February 20, 2025 the State Board of Administration of Florida sued Target and certain Target officers on behalf of a class of Target stockholders, claiming the Target board of directors represented that it monitored social and political risk, when instead it allegedly focused only on risks associated with not achieving ESG and DEI goals. The plaintiff alleges that Target's statements violated Sections 10(b),14(a), and 20(a) of the Securities Exchange Act of 1934 and that Target's May 2023 Pride Month campaign triggered customer backlash and a boycott that depressed Target's stock price. This suit relates to, and arises out of the same operative facts as, *Craig v. Target Corp.*, No. 2:23-cv-00599-JLB-KCD (M.D. Fla. 2023). On July 24, 2025, the court consolidated the two cases.

    - **Latest update:** On August 1, 2025 the defendants filed an omnibus motion to transfer the consolidated cases to the District of Minnesota. Among other points, the defendants argued that Minnesota is a more convenient forum for key non-party witnesses, the conduct at issue occurred in Minnesota, and Minnesota has a greater interest than Florida in deciding the cases. The plaintiffs filed a response, arguing that the defendants' motion to transfer was wrong on the

merits, untimely, and that the defendants' motion should be denied because a motion to transfer had already been denied in *Craig v. Target Corp*. prior to consolidation. On September 9, 2025 the defendants reiterated their arguments in a reply and requested oral argument on the issue.

Legislative Updates

- **California SB 303**: On October 1, 2025, California Governor Gavin Newsom (D) signed Senate Bill 303 into law. The Act states that "an employee's assessment, testing, admission, or acknowledgment of their own personal bias that was made in good faith and solicited or required as part of a bias mitigation training does not, by itself, constitute unlawful discrimination." The Act provides that it is the "intent of the Legislature" to both "[e]ncourage employers to conduct bias mitigation training" and to affirm that such training does not constitute unlawful discrimination.

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