GIBSON DUNN

DEI Task Force Update

December 30, 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 December 28, the Wall Street Journal published an article reporting that the Trump Administration has launched investigations into multiple major U.S. companies' use of diversity initiatives in hiring and promotion. The Wall Street Journal reports that the Justice Department has sent companies in different industries demands for documents and information about workplace DEI programs. According to the article, the government's investigations are proceeding under the False Claims Act. The article explains that "the Justice Department is embracing the theory that holding a federal contract while still considering diversity when hiring is, in effect, fraud against the government that entitles it to recoup potentially millions of dollars." The article also cites to a May 19, 2025 enforcement memorandum issued by Deputy Attorney General Todd Blanche, directing the Justice Department to "investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights law," including those that "knowingly engag[e] in racist preferences, mandates, policies, programs, and activities, including through diversity, equity, and inclusion (DEI) programs that assign benefits or burdens on race, ethnicity, or national origin."

On December 19, Reuters published an article summarizing an interview with Chair of the U.S. Equal Employment Opportunity Commission ("EEOC") Andrea Lucas, in which she described her "goal" to shift EEOC enforcement towards "a conservative view of civil rights." Lucas stated that she is focused on "attacking" all forms of race discrimination, asserting that this includes diversity, equity, and inclusion initiatives. She told Reuters that the EEOC wants to have "strategic impact" on "race-restricted programs or sex-restricted programs or other actions that involve over distinctions between people based on race." Reuters reports that the EEOC will "intensify" its inquiries into corporate DEI programs, including by using "web-archive searches to target companies that have only changed how they've talked about DEI." White House spokesperson Liz Huston said in a statement to Reuters that "Chair Lucas and the Trump Administration are ensuring all Americans are treated fairly by rigorously enforcing civil rights laws, ending illegal DEI-motivated race and sex discrimination, and upholding the Constitution." The article follows a December 18 LinkedIn post from Lucas, which contains a video in which Lucas encourages "white male[s] who ha[ve] experienced discrimination at work based on [their] race or sex" to contact the EEOC "as soon as possible," informing them that they may have a "claim to recover money under federal civil rights laws." As in the Reuters interview, Lucas emphasized in her LinkedIn video that the "EEOC is committed to identifying, attacking, and eliminating all forms of race and sex discrimination including against white male applicants and employees."

On December 18, the U.S. Department of Health and Human Services announced upcoming proposed regulatory actions to limit access to gender-affirming care for minors. According to the press release, the Centers for Medicare & Medicaid Services "will release a notice of proposed rulemaking to bar hospitals from performing sex-rejecting procedures on children under age 18 as a condition of participation in Medicare and Medicaid programs." The Centers for Medicare & Medicaid Services will also release "an additional notice of proposed rulemaking to prohibit the use of federal Medicaid funding for sex-rejecting procedures on children under age 18."

On December 15, the U.S. Food and Drug Administration ("FDA") issued a revised version of a January 2025 draft guidance, Study of Sex Differences in the Clinical Evaluation of Medical Products. The December 2025 draft guidance states that, "[h]istorically, the terms *gender* and *sex* were used interchangeably to refer to biological sex," and therefore FDA "considers the term *gender* in this regulation to mean biological *sex*." These revisions replace language in the January 2025 draft guidance stating that "FDA recognizes that sex and gender are not always concordant," and that, while "gender is currently not a required data variable" for regulatory submissions, FDA "encourages inclusion of gender data particularly if gender may influence the outcome of interest." The December 2025 guidance continues to note the importance of assessing the impact of sex in medical product development to determine if there may be differences, *e.g.,* in effectiveness and/or safety, associated with the use of the medical product. It also continues to provide recommendations for increasing enrollment of female participants in clinical trials and non-interventional studies to help ensure the generalizability of

results, analyzing and interpreting sex-specific data, and including sex-specific information in regulatory submissions of medical products.

Also on December 15, FDA issued a final guidance, Enhancing Participation in Clinical Trials—Eligibility Criteria, Enrollment Practices, and Trial Designs, that revised a November 2020 final guidance on Enhancing the Diversity of Clinical Trials. The revised version of the final guidance removes express references to "diversity" and "inclusive" practices, and no longer expressly encourages "enhancing the diversity of clinical trial populations." The guidance otherwise remains similar in substance and continues to recommend trial design and methodological approaches that facilitate "enrollment of a broader population," emphasizing that enrolling study participants "with a wide range of baseline characteristics may create a study population that more accurately reflects the patients likely to use the drug if it is approved and allow assessment of the impact of those characteristics on the safety and effectiveness of the study drug." The guidance also continues to encourage inclusion of women and "underrepresented racial and ethnic groups in clinical trials," noting that "[i]nadequate participation and/or data analyses from a representative population can lead to insufficient information pertaining to medical product safety and effectiveness for product labeling."

On December 12, the National Institutes of Health ("NIH") issued internal staff guidance titled "Reviewing Grants for Priority Alignment," which instructs grant reviewers to "review grants for alignment with the priorities set forth in the August 15, 2025, NIH Director's Priorities Statement." The internal guidance notes that "NIH-funded research can focus on or include specific populations," including racial minorities, "if it is scientifically justified." This justification might include that "the disease/condition could be more prevalent in a certain group, or that group is not currently sufficiently represented in studies of a potential therapeutic to make conclusions about its efficacy or side effects in the group." NIH also stated that, on the other hand, "[g]rants intended to increase workforce diversity by granting preferential treatment to individuals based on protected characteristics such as race or ethnicity are not consistent with the NIH's priorities."

On December 10, the Florida Attorney General, James Uthmeier, filed a complaint against Starbucks in relation to its DEI policies and practices, alleging that the company implemented and maintained illegal race-based policies for hiring and employee advancement in violation of the Florida Civil Rights Act of 1992. The complaint specifically alleges that Starbucks: "1) hires applicants because of their race, including by establishing hiring quotas and goals based on race; 2) pays employees different wages because of their race or ethnicity; 3) ties executive compensation to those executives' participation in mentorship programs open only to persons of certain favored races and those executives' retention rates of employees who belong to certain favored races; and 4) excludes people of certain races from networking and mentorship opportunities." To support these allegations, the complaint points to various DEI policies and programs, including Starbucks' alleged maintenance of "a racial quota for its board of directors" and its supposed tying of "executive compensation to [a] numerical target based on race" in which "executives must increase the number of 'people of color' working in management positions by at least 1.5 percentage points by fiscal year 2026." The State seeks declaratory and injunctive relief as well as "civil penalties of $10,000 for each instance of racial discrimination that Starbucks is

committing or has committed against a Florida resident." Starbucks has not yet responded to the complaint.

On December 9, the U.S. Department of Justice issued a final rule, applicable to recipients of federal funding, intended to eliminate liability for disparate impact discrimination under Title VI of the Civil Rights Act of 1964. The new rule clarifies that Title VI will continue to prohibit intentional discrimination. In an announcement, Assistant Attorney General Harmeet K. Dhillon of the Justice Department's Civil Rights Division stated that "[t]he prior 'disparate impact' regulations encouraged people to file lawsuits challenging racially neutral policies, without evidence of intention discrimination," and that the new rule "will restore true equality under the law by requiring proof of actual discrimination, rather than enforcing race- or sex-based quotas or assumptions." The rule preamble notes that "eliminating disparate-impact liability does not preclude the use of data on disparate outcomes to help prove intentional discrimination" and that "[t]his use of statistical disparity to help establish, as an evidentiary matter, liability for *intentional* discrimination materially differs from using it to impose liability for an unintentional disparate impact."

On December 8, the National Science Foundation ("NSF") issued supplemental changes to its Proposal and Award Policies and Procedures Guide ("PAPPG"). The changes included striking "inclusivity" as a "hallmark of scientific integrity" and striking language that an "inclusive environment" is "conducive to excellence in research and education." The background section for the supplement states that Executive Order 14332 ("Improving Oversight of Federal Grantmaking"), which had specifically called out as problematic NSF grants to "educators that promoted Marxism, class warfare propaganda, and other anti-American ideologies in the classroom," requires the Office of Management and Budget ("OMB") to streamline and transform the OMB Uniform Guidance, and therefore NSF will defer release of a full revised PAPPG until Fiscal Year 2026 to "ensure alignment with the Uniform Guidance." NSF stated it will continue to issue policy changes via NSF supplemental Policy Notices in the interim.

On November 19, the Guardian reported on an internal memorandum obtained from the U.S. Department of State that proposes to suspend 38 universities from the Diplomacy Lab, a federal research partnership program that pairs university researchers with State Department policy offices to conduct semester-long projects on foreign policy challenges. According to the Guardian, the proposed suspension is because the 38 identified universities allegedly "openly engage" in DEI hiring practices or set DEI objectives for candidate pools. The suspension would be effective January 1, 2026. The memorandum was accompanied by a spreadsheet evaluating 75 universities on a four-point scale ranging from institutions showing "clear DEI hiring policy" to institutions with "merit-based hiring with no evidence of DEI." Along with the 38 universities recommended for suspension, ten schools were approved to join the Diplomacy Lab.

On November 21, Reuters and BBC reported the State Department issued new instructions related to the drafting of its congressionally mandated annual Human Rights Report. According to reporting, the State Department is instructing all US embassies and consulates involved in

compiling the report to note when other countries enforce DEI or affirmative action policies that "'provide preferential treatment' to workers on the basis of race, sex, or caste." The new instructions also mandate that potential human rights infringements include facilitating mass migration, subsidizing abortions or abortion drugs, allowing gender-transition surgery for children, and arresting or investigating individuals for speech. State Department deputy spokesperson, Tommy Pigott, said that "In recent years, new destructive ideologies have given safe harbor to human rights violations. The Trump Administration will not allow these human rights violations, such as the mutilation of children, laws that infringe on free speech, and racially discriminatory employment practices, to go unchecked."

Media Coverage and Commentary:

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

- **Inside Higher Ed, "Is DEI Dead—Or Just Changing?" (December 15):** Sara Weissman of Inside Higher Ed reports on a nation-wide pattern of universities "slash[ing] positions, services and programs [students] celebrated and relied on amid a deluge of federal and state challenges to anything perceived as DEI." According to Weissman, across the country universities are rebranding or shutting down programs, offices, and resource centers. Some have cancelled identity-related traditions like affinity graduations and residential communities geared toward students of certain backgrounds. Weissman reports that universities have been feeling pressure from state-level anti-DEI laws over the past several years, but the pressure increased when President Trump took office in January 2025, citing the Department of Education's February 14 Dear Colleague letter, the DOJ's guidance memo of July 30, and the billions of dollars in research grants the federal government has "slashed, frozen and stalled" often due to "perceived ties to DEI concepts." Following these developments, Weissman reports that some universities have removed hundreds of courses from their catalogues, while others have taken steps to scrub their websites of mention of the diversity offices they previously touted. According to Weissman, "Whether DEI will continue in some form is an open question currently under debate by current and former DEI officers and researchers. Some retain their

optimism; others argue it's going to take years, even decades, for campus infrastructure to recover from the full extent of this year's losses—if a comeback is even possible."

- **Law.com, "Finally With Quorum, EEOC Likely to Unleash Reverse-Discrimination, Bathroom-Policy Cases" (December 4):** Law.com's Brendan Pierson reports that the EEOC is expected to become more active following the restoration of its quorum and new leadership aligned with President Trump's priorities. This activity could include heightened scrutiny of corporate DEI initiatives, pursuit of religious accommodation disputes, and scrutiny of workplace policies affecting transgender employees. Pierson also reports that EEOC Chair Andrea Lucas has focused on pursuing "reverse discrimination" claims (discrimination claims brought by those considered to be in "majority" groups) and has indicated a commitment to "dismantling identity politics." According to Pierson, employment lawyers also anticipate increased enforcement activity, particularly related to DEI programs, with Jason Schwartz, co-chair of Gibson, Dunn & Crutcher's labor and employment group, stating, "I think they really are going to kick it into high gear." Schwartz is also quoted as saying that programs explicitly reserving positions based on protected characteristics may become EEOC targets, while broader recruiting efforts are likely permissible absent evidence of preference. Further, Schwartz cautioned that seemingly neutral criteria could draw scrutiny if internal communications suggest discriminatory intent. According to Pierson, Schwartz emphasized that employers must carefully navigate overlapping and sometimes conflicting federal, state, and local requirements, describing the environment as "basically a no-win situation" for many employers.

- **Boston Globe, "Companies Rethink DEI Amid Legal Risks and Backlash" (December 2):** Yogev Toby of the Boston Globe reports that employers are recalibrating DEI efforts in response to President Trump's challenges to DEI initiatives. Toby reports, for example, that submissions to the Boston Globe's DEI Champions list have declined (19 this year versus 36 last year), that recent polls have reflected waning public support for formal DEI initiatives, and that, according to the Conference Board, 53% of S&P 100 companies modified DEI messaging in major filings in 2025. Toby describes various experts' creative responses to these trends. For example, he quotes Harvard sociologist Frank Dobbin, who suggests that employers focus on performance management tools in lieu of formal DEI programs, and advises that employers implement programs "without forcing the DEI label on them." Similarly, Toby cites the strategist Lily Zheng, who advocates a Fairness, Accessibility, Inclusion, and Representation framework focused on systemic fixes that reduce bias without inviting claims of discrimination. Toby also reports that companies are increasingly emphasizing governance, merit-based practices, and employee development, as they seek to balance compliance obligations with efforts to support diverse and inclusive workplaces.

- **New York Times, "How Universities Are Responding to Trump" (December 1):** Alan Blinder of the New York Times reports that, in response to the Trump Administration's legal action against U.S. colleges and universities, including threats to freeze their federal funds in response to alleged antisemitism and "ideological indoctrination" relating to DEI, institutions are choosing between reaching resolution agreements with the Administration or fighting back. Blinder reports that five universities have made deals with the Administration, with the University of Virginia agreeing to follow the Administration's

interpretation of the *SFFA* decision; Columbia and Brown agreeing to policy changes around antisemitism; and Cornell and Northwestern paying $60 million and $75 million, respectively, to the Administration. The University of Pennsylvania also agreed to implement certain policies around transgender people in athletics and to apologize for a trans athlete's participation on its women's swimming team several years ago. Other schools are fighting back. As Blinder reports, when Harvard rejected Trump Administration proposals to audit allegedly antisemitic programs and departments, the Administration started cutting off billions in federal funds, and Harvard responded by suing the Administration. In September, a federal judge in Boston largely ruled in Harvard's favor, and in another case, the same judge ruled that the Administration cannot block Harvard from enrolling international students. Blinder reports that Harvard and the Administration may yet settle. Finally, Blinder reports that the White House has leveraged federal research funding and new initiatives, such as the "Compact for Academic Excellence in Higher Education," which proposes limits on international students, tuition freezes, an embrace of standardized testing and definitions of gender "according to reproductive function and biological processes." Blinder reports that most schools have rejected the Compact proposal.

- **Financial Times, "DEI-linked pay awards drop sharply" (November 26):** Alexandra White of the Financial Times reports that executive pay linked to diversity, equity, and inclusion metrics has dropped sharply. Based on an analysis by ISS-Corporate, White reports that the number of S&P 500 companies that disclosed use of DEI metrics in executive pay packages dropped 30%, from 126 in 2024 to 88 in 2025. Further, the analysis showed that companies that disclosed that they used DEI metrics but refrained from revealing details fell by 46%. According to White, the analysis showed that 23.3% of S&P 500 companies tied executive pay to DEI metrics in 2025. According to White, Jun Frank of ISS-Corporate opined that these trends were based on anti-DEI pushback by the Trump Administration, which has changed how companies talk about DEI. White also reported that Kyle Eastman, a partner at Compensation Advisory Partners, cited the political environment as the reason for the drop, but stated the drop does not necessarily reflect a change in companies' values.

- **Law.com, "ABA Considers Repeal of Diversity Standard" (November 14):** Christine Charnosky of Law.com reports that the American Bar Association's Council of the Section of Legal Education and Admissions has voted to defer consideration of whether to repeal Standard 206, which addresses diversity and inclusion in law school admissions, and referred the issue back to the Standards Committee for further review. Standard 206 has been suspended since February, with enforcement currently stayed through August 31, 2026, due to concerns that enforcement would impose significant hardship on law schools. On November 13, the Standards Committee recommended Standard 206 be repealed, citing compliance challenges for law schools due to shifting state and federal law. According to Charnosky, the Standards Committee has indicated that it is hard to maintain a uniform accreditation standard in a shifting legal environment and noted that similar standards have been withdrawn by other accrediting bodies. The council also referred proposed revisions to Standard 205, governing nondiscrimination policies, for further consideration.

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 and Do No Harm v. Buckfire & Buckfire PC,* No. 2:25-cv-13617 (E.D. Mich. 2025):** On November 13, 2025, the American Alliance for Equal Rights and Do No Harm sued Buckfire & Buckfire, P.C., a Michigan law firm, alleging that the firm discriminates against white scholarship applicants in violation of Section 1981. The plaintiff organizations allege that the firm offers two scholarships—one for law students and one for medical students—that are "automatically open to member[s] of an ethnic, racial, or other minority group" but only open to white applicants who "demonstrate a defined commitment to issues of diversity." The plaintiff organizations assert claims on behalf of their "members who are victims of Buckfire's discrimination." The plaintiff organizations seek a declaratory judgment that the scholarships violate Section 1981, a permanent injunction prohibiting defendants from "knowing applicants' race" and from "considering race as a factor when administering its scholarship programs," nominal damages, and attorneys' fees.

- ***Desai v. PayPal*, No. 1:25-cv-00033-AT (S.D.N.Y. 2025):** On January 2, 2025, Andav Capital and its founder Nisha Desai sued PayPal, alleging that PayPal unlawfully discriminates by administering its investment program for minority-owned businesses in a way that favors Black and Latino applicants. Desai, an Asian-American woman, alleges PayPal violated Section 1981, Title VI, the New York State Human Rights Law ("NYSHRL") and the New York City Human Rights Law ("NYCHRL"). On April 16, 2025, PayPal moved to dismiss the complaint, asserting that the plaintiffs lack standing because they never applied for funding under the challenged program. PayPal also argued that the plaintiffs' claims are untimely, and that the plaintiffs failed to state a claim on the merits. On May 7, 2025, the plaintiff filed an amended complaint, adding a claim under the Equal Credit Opportunity Act ("ECOA"), alleging that PayPal violates the ECOA by racially discriminating against businesses who are excluded from PayPal's investment program for minority-owned businesses. On May 28, 2025, PayPal moved to dismiss the amended complaint. PayPal argued that the plaintiffs' Section 1981 and state law claims are untimely, their credit discrimination claims fail on the merits because the plaintiffs do not allege they applied for or were qualified to receive credit under the challenged program, and their local law claim should be dismissed because the relevant fund investments were not public accommodations. PayPal is represented by Gibson Dunn in this matter.

    - **Latest update:** On December 19, 2025 the court granted in part PayPal's motion to dismiss, concluding that the plaintiffs failed to plead a claim under the ECOA or NYSHRL because they failed to plead that they were applicants for credit. The court rejected PayPal's arguments with respect to the statute of limitations and on the merits of the NYCHRL claim. The court sua sponte denied leave to amend and scheduled an initial pre-trial conference for January 27, 2026.

- ***State of California, et al. v. U.S. Department of Education, et al.*, No. 1:25-cv-10548 (D. Mass. 2025):** On March 6, 2025, the states of California, Massachusetts, New Jersey, Colorado, Illinois, Maryland, New York, and Wisconsin (collectively, "the Plaintiff States") sued the Department of Education, alleging that it arbitrarily terminated previously awarded grants under the Teacher Quality Partnership and Supporting Effective Educator Development programs in violation of the Administrative Procedure Act ("APA"). On June 2, 2025, the Plaintiff States filed an amended complaint. On June 30, the Department of Education moved to dismiss for lack of jurisdiction or, in the alternative, to transfer the case to the Court of Federal Claims. In its motion, the Department argued that the APA's waiver of sovereign immunity does not extend to claims sounding in contract, like the Plaintiff States' claims. In the alternative, the Department argued that "the Tucker Act grants the Court of Federal Claims jurisdiction over suits based on any express or implied contract with the United States." On July 21, 2025, the Plaintiff States filed an opposition to the Department's motion to dismiss, arguing that their claims do not belong in the Court of Federal Claims because they are not contractual but instead, are based on alleged violations of the APA and the U.S. Constitution, and further, that they seek equitable, prospective relief rather than contract-based remedies.
    - **Latest update:**: On November 13, 2025, the court granted in part and denied in part the Department's motion to dismiss, holding that it lacked jurisdiction over the Plaintiff States' claims seeking disbursement of funds under the terminated grants and that such jurisdiction lies solely with the Court of Federal Claims. The court retained jurisdiction over the Plaintiff States' constitutional and statutory claims seeking to vacate and set aside the agency directives. The court also retained jurisdiction over the constitutional and *ultra vires* claims, and stated that although the court "lacks any power to bring" the grants back, if it "finds Defendants' actions were unlawful under the APA and the Constitution, the grantees in Plaintiff States can file suit in the Court of Federal Claims to request their money damages under the contract." The court also stated that the issue of whether the Plaintiff States will be successful on the merits will be taken up later in the litigation.

2. Employment discrimination and related claims:

- ***Bobowicz v. Powell et al.*, No. 5:24-cv-00246 (W.D.N.C. 2024):** On November 18, 2024, a former employee of the Federal Reserve Board, sued the Board and several of its officials, including Jerome Powell, alleging he was discriminated against in violation of Title VII and the Age Discrimination in Employment Act when he became "a target for termination" because he was "a heterosexual, white, male who was the oldest employee in both his local and national [teams]" and retaliated against after refusing a COVID-19 vaccine for religious reasons. On January 6, 2025, the plaintiff filed an amended complaint, adding allegations that "the Federal Reserve Board's DEI policies were part of a more comprehensive federal effort to incorporate" protected characteristics into hiring and employment practices. Defendants moved to dismiss the complaint for failure to state a claim and for improper venue, arguing that venue lies in Washington, D.C. because all relevant employment decisions were made by officials in Washington, D.C.. On October 31, 2025, the parties stipulated to dismiss all claims against most of the defendants—

leaving only Powell and the Board of Governors of the Federal Reserve System as defendants in the case.

    - **Latest update:** On November 3, 2025, the plaintiff filed an opposition to the motion to dismiss and to transfer venue. He argues that venue is proper in the Western District of North Carolina because nearly all of the alleged discriminatory acts and their effects occurred while he was teleworking from his North Carolina residence. He defended his discrimination and retaliation claims on the merits. On November 26, 2025, the Board filed a reply, noting that the plaintiff has abandoned several claims by failing to oppose their dismissal, including his Section 1981 claim and any argument against striking his claim for punitive damages.

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

- ***Fell et al. v. Trump et al.*, 1:25-cv-04206 (D.D.C. 2025):** On December 3, 2025, four former federal employees who had separated from the federal government pursuant to Executive Orders 14151 and 14173 sued President Donald Trump and numerous federal agencies and officials, challenging the Executive Orders and their implementing directives as violating the First Amendment, Title VII, and the Civil Service Reform Act based on alleged failures to follow required separation and Reductions in Force procedures. The plaintiffs allege that white, male employees were largely protected from separation due to the Executive Orders. The plaintiffs bring this suit on behalf of a putative class of purportedly similarly situated federal employees. They seek declaratory and injunctive relief, including a declaration that the orders and implementing directives are unlawful, expungement of termination from their records, and reinstatement with back pay, lost benefits, and other necessary compensatory relief.

    - **Latest update:** On December 4, 2025, the case was assigned to Judge Tanya Chutkan in the U.S. District Court for the District of Columbia.

- ***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):** On April 21, 2025, the President and Fellows of Harvard College sued a number of federal agencies and their administrators in relation to 15 letters and orders freezing or terminating over $2.2 billion in federal research grants. On September 3, 2025, the district court permanently enjoined the defendants from "[i]mplementing, instituting, maintaining, or giving any force or effect" to the letters and orders, 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]." The court also permanently enjoined the defendants 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." 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, 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."

- **Latest update:** On December 18, 2025, the defendants filed a notice of appeal.

4. Actions against educational institutions:

- ***Grande v. Hartford Board of Education et al.*, 3:24-cv-00010-SFR (D. Conn. 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 required to attend mandatory DEI trainings and thereafter subjected to a retaliatory investigation and wrongful threat of termination. He claimed the school's actions constitute retaliation and compelled speech in violation of the First Amendment. On February 5, 2025, the defendants moved 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 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. However, 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, the defendants filed a motion for reconsideration, arguing that the court erred in not granting qualified immunity to the two individual defendants.

    - **Latest update:** On November 24, 2025, the plaintiff opposed the defendants' motion for reconsideration. He asserted that the defendants failed "to satisfy the strict standard for granting a motion for reconsideration" because they had not cited any overlooked, controlling decisions. He also argued that the court's decision to deny qualified immunity for the two school administrators did not result in "manifest injustice."

Legislative Updates

- **New York Assembly Bill 5471:** On November 19, 2025, the New York State Assembly amended proposed Assembly Bill 5471, which was first introduced in February 2025. The bill aims to promote diversity, equity, and inclusion within the state and New York City pension systems by mandating minimum asset allocations to BIPOC (Black, Indigenous, and People of Color) asset managers, financial institutions, and professional service firms. It also requires all public pension funds to adopt an investment manager diversity policy and provide opportunities for emerging BIPOC-owned firms. As revised, the bill dictates that 20% of a fund's total assets and 25% of its active assets would have to be invested with BIPOC managers. Funds will have six months from the bill's effective date to establish compliance mechanisms and develop a comprehensive implementation plan. The comptroller will compile and publish annual reports on progress, and funds will need to implement public outreach and educational programs to engage stakeholders. The bill also includes an "Investment Transparency Act," which requires firms to report aggregated demographic information about founding teams of businesses funded in the previous calendar year. Assembly Bill 5471 is currently in the Assembly Governmental Employees Committee.

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