GIBSON DUNN

DEI Task Force Update

December 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 November 19, the U.S. Equal Employment Opportunity Commission ("EEOC") issued new guidance entitled "Discrimination Against American Workers Is Against the Law." The guidance states that "[n]ational origin discrimination can include preferring foreign workers, including workers with a particular visa status, over American workers," and that "anti-American national origin discrimination" can take the form of discriminatory job advertisements, disparate treatment of applicants or employees in the terms, conditions, or privileges of employment, harassment based on national origin, and retaliation because an individual has engaged in protected activity, such as opposing national origin discrimination at work. The guidance further states that employers are not entitled to hire foreign workers over equally qualified American workers on the basis of national origin, even if there is a "[c]ustomer or client preference," a "[l]ower cost of labor," or a "[b]elief[] that workers from one or more national origin groups" have a "better work ethic." The guidance relates to the Department of Labor's recently announced initiative Project Firewall, "an H-1B enforcement initiative that will safeguard the rights, wages, and job opportunities of highly skilled American workers by ensuring employers prioritize qualified Americans when hiring workers and holding employers accountable if they abuse the H-1B visa process." In a recent press release applauding the EEOC for "taking action to help prevent discrimination against

American workers," U.S. Department of Labor Secretary Lori Chavez-DeRemer and Deputy Secretary Keith Sonderling noted that, through Project Firewall, the EEOC, Labor Department, and other government agencies intend to share information and coordinate efforts to "proactively combat unlawful discrimination against American workers and properly enforce the law by leveraging the full strength of the federal government."

On November 18, President Trump nominated M. Carter Crow to serve as the next General Counsel of the EEOC. Crow is currently Global Head of Employment and Labor at the law firm Norton Rose Fulbright. In a recent interview, Crow stated that he is "strongly supportive of all of the priorities" the EEOC's current leadership has espoused and is "very interested" in religious bias cases.

On November 18, the EEOC announced that it had filed an action in federal court to enforce a subpoena to the University of Pennsylvania. The EEOC issued the subpoena in relation to its investigation into the University following a December 2023 Commissioner's charge alleging that the school subjected faculty and staff to antisemitic harassment, failed to effectively address complaints of harassment, failed to take prompt and effective measures to end harassment, and allowed harassment to escalate. The subpoena requests, among other things, the identification of and contact information for witnesses to and victims of the religious-based harassment. It also seeks the identification of and contact information for employees who have filed discrimination complaints relating to their Jewish faith, those who belong to Jewish clubs or campus groups, and anyone who works in the university's Jewish studies program. EEOC Chair Andrea Lucas stated that the University "continues to refuse to identify members of its workforce who may have been subjected to this unlawful conduct," effectively "undermin[ing] the EEOC's ability to investigate harassment." The case is *EEOC v. Trustees of the University of Pennsylvania*, Case No. 2:25-cv-06502).

On November 14, Judge Rita F. Lin of the U.S. District Court for the Northern District of California issued an order granting the American Association of University Professors a preliminary injunction. The injunction bars the Trump Administration from withholding federal funds from the University of California system without complying with all federal procedural and substantive requirements governing the termination of such funds. The plaintiffs, which include the American Association of University Professors and numerous other higher education unions, brought claims for violations of the Administrative Procedure Act, Title VI, Title IX, the First Amendment, the Tenth Amendment, the Spending Clause, and the Separation of Powers doctrine. The court found that while "[r]ooting out antisemitism is undisputedly a laudable and important goal," the Trump administration "engaged in a concerted policy to use allegations of antisemitism to justify funding cancellations," when the actual intent was to "coerce universities into purging disfavored 'left' and 'woke' viewpoints from their campuses and replace them with views that the Administration favors." The court held that the "undisputed record" showed that the administration "engaged in coercive and retaliatory conduct in violation of the First Amendment and Tenth Amendment" and "flouted the requirements of Title VI and IX and cancelled funding in an arbitrary and capricious manner." The case is *American Association of University Professors et al. v. Trump et al.*, No. 25-07864 (N.D. Cal. 2025).

On November 6, the Sixth Circuit issued an *en banc* decision, striking down an Olentangy Local School District policy that prohibited students from using another student's biological pronouns when they know those pronouns are "contrary to the other student's identity." The court, balancing the First Amendment rights of students against the District's interest in protecting its students from bullying and harassment, found that the "District's ban on the use of biological pronouns regulates speech on a public concern in a way that discriminates based on viewpoint." Further, the court found that the District did not meet the "heavy evidentiary burden to justify the ban" and that it was required to identify "something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." The court discussed that under Supreme Court precedent, a school official may only "silence speech" if it will cause a "substantial disruption" to school activities or infringe on the "rights of others" in the school community, but held that using a student's biological pronouns as opposed to their preferred pronouns was neither substantially disruptive, nor a violation of the rights of other students, as articulated under "the Constitution, a federal statute, or a state law." The court ultimately found that an "appropriately tailored preliminary injunction" barring the District from "punishing students for the commonplace use of biological pronouns" provided the "best balance" of the competing interests at issue. Five judges in the majority issued separate concurring opinions. The 7-judge dissent to the *en banc* decision would have held that the District had met its burden under Supreme Court precedent to reasonably forecast that the speech at issue would "materially and substantially disrupt the work and discipline of the school" (*Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513 (1969)). The case is *Defending Education v. Olentangy Local School District*, No. 23-3630 (6th Cir. 2025).

On November 7, Cornell University announced that it had reached an agreement with the Trump administration to settle several federal agency investigations into alleged violations of antidiscrimination laws by the University, including whether it unlawfully considered race in admissions decisions and adequately protected Jewish students from harassment during pro-Palestinian protests. Under the terms of the settlement, Cornell agreed to pay $30 million to the government over the next three years and to invest an additional $30 million in agricultural research programs, as agriculture was a major catalyst for Cornell's creation in 1865. Cornell agreed to provide the "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination" issued by the Attorney General on July 29, 2025, "as a training resource to faculty and staff so long as that Guidance remains operative," and to provide the government with "anonymized undergraduate admissions data" for "statistical analyses." The agreement states that nothing in its terms "shall be construed as giving the United States authority to dictate the content of academic speech or curricula."

Michael I. Kotlikoff, President of the University, released a statement regarding the settlement. Kotlikoff notes that, under the agreement, Cornell did not admit any wrongdoing. Kotlikoff explained that the "months of stop-work orders, grant terminations, and funding freezes have stalled cutting-edge research, upended lives and careers, and threatened the future of academic programs at Cornell" but that the agreement allows Cornell to revive its partnership with the

federal government "while affirming the university's commitment to the principles of academic freedom, independence, and institutional autonomy."

On November 6, President Trump named Andrea Lucas as Chair of the EEOC. She had been serving as the Acting Chair since January 2025. Lucas was first nominated as a Commissioner in 2020 during President Trump's first term and was renominated in March of this year and confirmed by the Senate to a second term on July 31. Lucas stated that under the Trump administration, "the Commission has made significant progress advancing its core mission to uphold [the] nation's civil rights laws and protect American workers through consistent, effective enforcement," and that as Chair, she will "remain committed to enforcing the law evenhandedly, advancing equal opportunity, and upholding merit-based, colorblind equality in America's workplaces." The following day, she also announced that, because Brittany Panuccio's swearing-in as a Commissioner established a quorum, the Commission is now enabled to pursue a "larger suite" of lawsuits. Lucas stated that the Commission, which filed nearly 100 lawsuits in the recent fiscal year, is "ready to hit the ground running" and "bring all types of litigation, including larger-scale litigation, like systemic cases and pattern or practice cases."

On October 31, Judge Barbara Jacobs Rothstein of the U.S. District Court for the Western District of Washington issued an order granting a preliminary injunction to the City of Seattle, enjoining the Trump administration from enforcing Executive Order 14173 ("Ending Illegal Discrimination and Restoring Merit-Based Opportunity") and Executive Order 14168 ("Defending Women From Gender Ideology Extremism and Restoring Biological Trust to the Federal Government") ("the EO(s)"). The City alleges that the EOs violate principles of 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. In granting the preliminary injunction, the court concluded that EO 14173 is aimed at advancing "the Trump Administration's own interpretation of 'discrimination' through the threat of the loss of federal funding and/or [False Claims Act] investigations and penalties" and rejected the government's argument that imposing the terms of EO 14168 in its grants is authorized by Congress because a "condition barring recipients from 'promoting gender ideology,' or any other politically charged policy matter, bears no resemblance to the administrative, procedural, and performance-based conditions enumerated by Congress." Thus, the court held that the City demonstrated a likelihood of success on its claims that, by imposing the terms of the EOs on cities, the Trump administration had run afoul of the separation of powers doctrine and was acting in excess of statutory authority in violation of the Administrative Procedure Act. The court also held that Seattle had shown it would suffer irreparable harm, as the loss of federal funding would threaten a wide array of public safety, law enforcement, first responder, and anti-terrorism services, as well as critical transportation and infrastructure projects and supportive housing and care services. The case is *City of Seattle v. Trump et al.*, No. 2:25-01435 (W.D. Wash. 2025).

On October 22, University of Virginia interim President Paul Mahoney announced that UVA reached an agreement with the Department of Justice ("DOJ") regarding the government's remaining federal investigations. Under the agreement, which does not require UVA to make any monetary payments, the University "affirms its commitment to complying" with federal civil rights law and agrees to apply such law consistent with DOJ's July 29, 2025 "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination" "so long as that Guidance remains in force" and "consistent with relevant judicial decisions." The University agreed to provide DOJ with quarterly reports on its efforts to comply with federal law through December 31, 2028. The government agreed to suspend its investigations and treat UVA as eligible for all grants, contracts, and awards. The agreement also states that nothing in its terms "shall be construed as giving the United States authority to dictate the content of academic speech or curricula." Mahoney stated that the "agreement represents the best available path forward" and that the University intends to "redouble" its "commitment to the principles of academic freedom, ideological diversity, [and] free expression.&rdquo

Media Coverage and Commentary:

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

- **Wall Street Journal, "Trump's DEI Slayer Is Just Getting Started" (November 19):** Lauren Weber of the Wall Street Journal reports that EEOC Chair Andrea Lucas has prioritized cracking down on faith-based discrimination and what the agency views as unlawful DEI programs. According to Weber, "Lucas has said she is attacking the identity politics she believes has permeated workplaces and the broader culture." After the recent confirmation of Commissioner Brittany Panuccio, the EEOC now has a quorum, which, according to Weber, gives Lucas "the power to do more." Weber reports that the EEOC under Lucas is carrying out an ambitious agenda, from rescinding guidance on protections for transgender and nonbinary workers and combating DEI programs that the

administration considers unlawful, to probing law firms' diversity practices, investigating universities' responses to antisemitism, and recovering funds for workers subject to Covid vaccine mandates despite religious objections. Former colleagues of Lucas describe her as "outspoken," "dedicated," and "smart." Jason Schwartz, co-chair of Gibson Dunn's labor and employment group, where Lucas worked prior to joining the EEOC, said that "[s]he has a really strong legal mind and was among the brightest associates I worked with over the years."

- **The Hill, "Minority Health Researchers Walk Tightrope Amid NIH Funding Cuts" (November 8):** The Hill's Surina Venkat reports on the funding difficulties faced this year by minority health researchers, who assert that they "are facing unclear research directives, increasingly competitive grant awards and politicized peer review processes as they battle to sustain their work improving health outcomes for minority populations." Venkat states that such challenges began for the researchers earlier this year, after President Trump directed agencies to terminate DEI-related grants and programs, resulting in the cancellation of several hundred NIH grants. Venkat also reports that while the NIH will continue to fund and study minority health, NIH Director Jay Bhattacharya stated in an August directive that the agency will prioritize research focused on "solution-oriented approaches" to minority health, rather than research focused on identifying and diagnosing disparities in health care outcomes. The NIH also will institute a new funding policy, offering multiyear, upfront funding for research projects. And the article notes that recent changes to the peer-review process mean that political appointees will play an increased role in making funding decisions. Researchers interviewed for the article stated they expect the policy changes will result in fewer funds being awarded each year and will make planning projects more difficult. To overcome these challenges, researchers interviewed for the article reported they intend to apply for more grants moving forward to increase their chances of securing funding. Others will seek private donations in place of federal funding. Researchers remarked on the need to use clear and specific language in describing their work and expected implications, avoiding blanket terms that might sound in the vocabulary of DEI.

- **Law360, "ABA Changes DEI Scholarship Requirement Amid Lawsuit" (November 3):** Emily Sawicki with Law360 reports that the American Bar Association ("ABA") has revised the eligibility criteria for its Legal Opportunity Scholarship for first-year law students from being limited to "member[s] of an underrepresented racial and/or ethnic minority" to being open to applicants who "have demonstrated a strong commitment to advancing diversity, equity, and inclusion." Sawicki reports that The American Alliance for Equal Rights is currently suing the ABA in the U.S. District Court for the Northern District of Illinois, claiming that offering a scholarship exclusive to members of racial and ethnic minority groups violates Section 1981 of the Civil Rights Act by discriminating against white law students. The ABA has moved to dismiss the suit, but the court has not yet ruled on the motion.

- **Law360, "Depleted Ranks At EEOC Won't Impede Trump Policy Agenda" (October 31):** Anne Cullen of Law360 reports that, according to experts, record-low staff levels at the EEOC should not impact EEOC Chair Andrea Lucas's plans to realign EEOC policies with President Trump's priorities. With the recent appointment of former assistant U.S. attorney Brittany Panuccio to the EEOC, the Commission now has a three-member

quorum for pursuing major policy initiatives, despite being staffed by its lowest personnel count since 1980. Cullen reports that experts expect EEOC Chair Lucas to prioritize policy changes related to the EEOC's current harassment in the workplace guidance and Pregnant Workers Fairness Act regulations, both of which Lucas opposed as an EEOC Commissioner.

- **Washington Post, "As Some DEI Critics Say Victory is Near, Companies Face New Pushback Over Rollbacks" (October 28):** Taylor Telford of the Washington Post reports on the number of large employers that have reassessed their DEI programs since the Supreme Court's 2023 *SFFA v. Harvard* decision and President Trump's re-election last year. According to Telford, following President Trump's anti-DEI executive orders earlier this year, many employers have opted to drop their workforce representation goals, diversity initiatives, and identity-focused programs or otherwise rebrand away from DEI. At the same time, employers who have rolled back their DEI programs are facing internal and public pushback, highlighting reputational and workforce risks. For example, Telford's reporting describes the tension many companies are facing, including one company that faced a recent boycott led by civil rights leaders and consumers opposed to the company's DEI changes and another company losing out on a government contract with the City of London for no longer meeting its diversity criteria.

- **Associated Press, "Black Enrollment is Waning at Many Elite Colleges After Affirmative Action Ban, AP Analysis Finds" (October 23):** Collin Binkley with the Associated Press ("AP") reports that, after analyzing recent enrollment data at 20 selective colleges, the AP has found a clear decline in the percentage of Black freshmen in the two admission cycles since the Supreme Court banned race-conscious admissions. According to Binkley, and based on the AP's analysis, Hispanic enrollment also declined at many schools, while trends for white and Asian-American students were mixed. Binkley further reports that the Trump administration has ramped up its oversight of college admissions, including scrutinizing colleges' use of applicant diversity statements as unlawful "racial proxies." Binkley offers reactions from Richard Kahlenberg, a researcher at the Progressive Policy Institute, who believes colleges have lawful alternatives for promoting racial diversity, such as giving stronger preferences to low-income applicants and ending legacy admissions.

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. American Bar Association*, No. 1:25-cv-03980 (N.D. Ill. 2025):** On April 12, 2025, the American Alliance for Equal Rights ("AAER") sued

the ABA in relation to its Legal Opportunity Scholarship, which AAER asserts violates Section 1981. According to the complaint, the scholarship awards $15,000 to 20–25 first-year law students per year. To qualify, an applicant must be a "member of an underrepresented racial and/or ethnic minority." The complaint alleges that "White students are not eligible to apply, be selected, or equally compete for the ABA's scholarship." AAER seeks a TRO and preliminary injunction barring the ABA from selecting winners for this year's scholarship, as well as a permanent injunction barring the ABA from knowing or considering applicants' race or ethnicity when administering the scholarship. On June 16, 2025, the ABA moved to dismiss the complaint for failure to state a claim. The ABA argued that AAER failed to allege that it has any members with standing to pursue the claim on their own behalf. The ABA further argued that AAER failed to state a Section 1981 claim because AAER did not allege a contractual relationship with the ABA. The ABA also argued that the relief sought would impede the ABA's First Amendment rights to free speech and expression, and that the "ABA has a First Amendment right to distribute funds as it deems appropriate." AAER filed an amended complaint on June 25, 2025 making new allegations about the ABA's commitment to diversity and beliefs around refusing to contract with persons of certain races. On July 30, 2025, the ABA moved to dismiss the amended complaint on the same grounds it moved to dismiss the initial complaint, asserting that the new facts pled in the amended complaint failed to overcome the shortcomings of the initial complaint.

    - **Latest update:** On August 29, 2025, AAER filed its opposition to the ABA's motion to dismiss, arguing that the amended complaint plausibly alleges standing because white applicants were denied an equal opportunity to compete "regardless [of] whether a white student took the futile step of applying." AAER further argued that the complaint plausibly alleges a Section 1981 claim because the ABA's scholarship program implicates the defendants' privacy policies and terms of service, which are contracts. Finally, AAER argues that the ABA's First Amendment defense fails, including because Section 1981 regulates conduct, not speech. The ABA filed its reply on September 17, 2025. On October 31, 2025, AAER filed a notice advising the court that the ABA's scholarship no longer requires applicants to "be a member of an underrepresented racial and/or ethnic minority" and instead now requires applicants to "have demonstrated a strong commitment to advancing diversity, equity, and inclusion (DEI)." AAER accused the ABA of failing to timely bring these changes to the court's attention. On November 6, 2025, the court struck AAER's notice from the record, stating that the reason for the notice was "a mystery since no relief was requested," and that, given that the ABA had not raised any argument that the case was now moot in light of changes to its policy, the court was "unwilling to follow the parties down this rabbit hole" and would not grant further briefing on the issue.

- ***City of Seattle v. Trump et al.*, No. 2:25-cv-01435 (W.D. Wash. 2025):** On July 31, 2025, the City of Seattle sued the Trump administration, challenging Executive Orders 14173 and 14168. 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 October 31, 2025, the court granted Seattle's motion for a preliminary injunction, finding that Seattle was likely to succeed on the merits because EOs 14173 and 14168 likely violate the separation of powers doctrine, which provides that the U.S. Constitution grants power of the purse to Congress alone. Additionally, the court found that the harm to Seattle in the absence of a preliminary injunction would be irreparable and certain because Seattle would lose government grants that support a wide array of public safety, law enforcement, and other services.

- ***National Association of Scholars v. United States Department of Energy et al.*, No.1:25-cv-00077-DII (W.D. Tex. 2025):** On January 16, 2025, the National Association of Scholars—a group of professors, faculty, and researchers at colleges and universities across the United States—sued the United States Department of Energy, alleging that the Department's Office of Science unlawfully requires research grant applicants to show how they would "promote diversity, equity, and inclusion in research projects" through its Promoting Inclusive and Equitable Research ("PIER") plan. The Association alleges that requiring grant applicants to show how they would promote DEI in their projects violates applicants' First Amendment rights by requiring them to express ideas with which they disagree, that the Department lacked statutory authority to adopt the plan, and that the plan violates the procedural requirements of the Administrative Procedure Act. The Association seeks declaratory and injunctive relief. On March 31, 2025, the defendants filed a motion to dismiss. The defendants argue that the Association's claims are moot, as the Department of Energy has rescinded the PIER plan requirement after President Trump issued EO 14151. On April 14, 2025, the Association filed an opposition to the motion to dismiss, arguing that the recission of the PIER plan requirement does not sufficiently moot the controversy because the requirement was "suspended," and not "rescinded," making the change temporary. The Association also argues that EO 14151 is currently being challenged in multiple lawsuits, and it is likely that the PIER plan requirement, or something similar, could be reimposed.

    - **Latest update:** On October 27, 2025, the court granted the defendants' motion to dismiss without prejudice, reasoning that the case was moot in light of the recission of the PIER Plan requirement.

2. Employment discrimination and related claims:

- ***Bobowicz v. Powell et al.*, No. 5:24-cv-00246 (W.D.N.C.):** On November 18, 2024, a former employee of the Federal Reserve Board sued the Chair of the Federal Reserve, the Chief Operating Officer, and four Federal Reserve supervision officials, alleging discrimination on the basis of his religion, race, gender, and sexual orientation in violation of his rights under Title VII of the Civil Rights Act and under the Age Discrimination in Employment Act. The plaintiff also claims he was discriminated against due to his religious beliefs, which precluded him from receiving the COVID-19 vaccination. He further alleges 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]." In

addition to damages, reinstatement, and front and back pay, the plaintiff seeks a declaration that the Federal Reserve's diversity initiatives violate the Fourteenth Amendment's equal protection clause. 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. On June 6, 2025, the plaintiff filed a second amended complaint, adding the Federal Reserve Bank of New York and two of its employees as defendants. The second amended complaint alleges that the plaintiff was employed by the Federal Reserve and constructively employed by the Federal Reserve Bank of New York, and that both are liable for the alleged discrimination and retaliation.

    - **Latest update:** On July 7, 2025, defendants Jerome Powell, Chair of the U.S. Federal Reserve, and the individual board members of the U.S. Federal Reserve filed a motion to dismiss, or transfer for improper venue, the second amended complaint. They argued, among other things, that venue is improper, the plaintiff's Section 1981 claim fails because Section 1981 does not "provide a remedy against federal officials," vaccination status is not a protected class, and the plaintiff's request for a religious accommodation is not a protected activity. On November 3, 2025, the plaintiff filed an opposition challenging these points. Separately, on August 25, 2025, the other group of defendants—the Federal Reserve Bank of New York and two of its employees—filed a motion to dismiss the plaintiff's second amended complaint, arguing, among other things, that the complaint's allegations are "conclusory, vague, and speculative," including because the complaint does not define "DEI," and the plaintiff lacks standing to sue because the plaintiff's alleged injuries are not "fairly traceable to the challenged conduct." On October 31, 2025, the parties stipulated to dismiss all claims against certain U.S. Federal Reserve defendants, the Federal Reserve Bank of New York, and certain employees thereof—leaving only Powell and the Board of Governors of the Federal Reserve System as defendants in the case.

- ***Vaughn v. CBS Broadcasting, Inc., et. al.*, No. 2:24-cv-05570 (C.D. Cal. 2024):** On July 1, 2024, a suit was filed against CBS Broadcasting by former Los Angeles news anchor Jeff Vaughn, alleging that CBS-affiliated Los Angeles stations, KCBS-TV and KCAL-TV, terminated his employment because he is "an older, white, heterosexual male." Vaughn claims that CBS replaced him with a "younger minority news anchor" in violation of Section 1981, Title VII, and the Age Discrimination in Employment Act. The complaint points to public statements by CBS expressing its commitment to diversity, including statements discussing various representation goals. Vaughn, who is represented by America First Legal, is seeking over $5,000,000 in damages. On September 9, 2024, defendants CBS Broadcasting, Paramount Global, and Wendy McMahon, then-President and CEO at Paramount, filed an answer asserting seven affirmative defenses, including that the plaintiff failed to plead facts sufficient to state a claim, that CBS acted in good faith and without discriminatory motive, and that the plaintiff's claims were barred by the First Amendment. On March 10, 2025, the defendants filed an amended answer, adding an eighth affirmative defense that the plaintiff failed to mitigate damages.

- **Latest update:** On October 31, 2025, the defendants moved for summary judgment, arguing that the termination was based on legitimate, nondiscriminatory grounds, the plaintiff lacked evidence of pretext or but-for causation, and the plaintiff failed to establish individual liability against defendant McMahon under Section 1981. The defendants further contended that CBS's conduct, even if found discriminatory, would still be protected by the First Amendment. According to the defendants, CBS, a private company engaged in expressive activity, has a First Amendment right to choose who channels that expression.

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

- ***American Alliance for Equal Rights v. Bennett et al.*, No. 1:25-cv-00669 (N.D. Ill. 202); Nos. 25-02461, 25-02487 (7th Cir.):** 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, holding that it failed to allege an injury in fact and thus lacked standing as intervenor. The court denied AAER's motion for preliminary injunction, reasoning that AAER proved neither likelihood of success on the merits nor irreparable harm. 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 the enforcement of SB 2930 against AAER's members for the duration of the appeal. On August 28, 2025, the district court granted the stay of enforcement and stayed all district court proceedings pending appeal.

    - **Latest update:** AAER and the United States filed their appellate briefs on October 20, 2025. In its brief, AAER argues that the district court erred in finding its allegations too speculative to confer standing, because it was predictable that at least one officer or director, when asked, would have reported at least some demographic information. In its brief, the United States argues that the district court erred in finding that it lacked standing as an intervenor because "the United States has standing wherever an action has been commenced [] seeking relief from the denial of equal protection of the laws under the fourteenth amendment."

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

    - **Latest update:** On October 30, 2025, the court denied the government's motion for a partial stay or to modify the scope of the injunction. Though the court acknowledged that the *Trump v. CASA* ruling cautioned against issuing injunctions that cover nonparties, the court nevertheless held that enjoining all enforcement of the certification provision of EO 14173—which mandates that all recipients of any contract or grant award "certify" certain matters, including that the recipient does not operate programs promoting DEI that violate any applicable federal anti-discrimination laws—was necessary "to afford CWIT complete relief," including by protecting CWIT's ability to partner and collaborate with others. The court further noted that its broad injunction was supported by "jurisdictional and remedial principles."

- ***Withrow v. United States et al.*, No. 1:25-cv-04073 (D.D.C. 2025):** On November 20, 2025, LeAnne Withrow, a transgender woman who was an Illinois Army National Guard staff sergeant and now works as a lead military and family readiness specialist and civilian employee for the Illinois National Guard, filed a putative class action against United States officials in the U.S. District Court for the District of Columbia, alleging that the Trump administration's policy of prohibiting transgender employees from using restrooms that align with their gender identity violates the Administrative Procedure Act and Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex. The plaintiff alleges that she has tried to work around the policy by using single-user restrooms, but that such facilities are often inconvenient or nonexistent.

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. 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." 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.

    - **Latest update:** On October 28, 2025, the plaintiff voluntarily withdrew all claims "related to defendants' medical-school admissions policies" without prejudice. The plaintiff also voluntarily dismissed its claims against defendant Sam Hawgood, Chancellor of the University of California at San Francisco, on the grounds that the school "has neither a law school nor an undergraduate college." The plaintiff continues to challenge the remaining defendants' undergraduate and law school admissions practices.

- ***Bridge, et al v. Oklahoma State Department of Education*, No. 5:22-cv-00787, 24-6072 (10th Cir. 2025):** Plaintiffs, three transgender students, filed a lawsuit on September 6, 2022 against a number of state and local agencies and Oklahoma government officials challenging Oklahoma SB 615, a school facilities law requiring all Pre-K through 12th grade public and public charter schools in the state to designate multiple occupancy restrooms at school for exclusive use of either male of female sex, as designated on the individual's original birth certificate. The law also requires school district boards to adopt disciplinary policies for those that do not comply with the bathroom designations. It further exposes non-compliant schools to lawsuits by parents and requires the Oklahoma School Board to identify non-complaint schools and reduce their state funding. The district court dismissed Plaintiffs' complaint. On April 19, 2024, Plaintiffs appealed to the 10th Circuit.

    - **Latest update:** On November 20, 2025, a three-judge panel heard the parties' arguments on appeal in the 10th Circuit. The arguments focused on whether recent U.S. Supreme Court cases, especially *S. v. Skrmetti* and *Trump v. Orr*,

necessitated the conclusion that the challenged statute was lawful. In *Skrmetti*, the Supreme Court upheld a ban on gender-affirming care for minors in Tennessee, and in *Orr*, the Supreme Court granted an emergency application that permitted the U.S. Department of State to stop issuing passports that reflect a gender identity that differs from an individual's sex at birth. The appellants argued that neither case is applicable, because *Skrmetti* addressed a law that turned on age, not sex or transgender status; and because *Orr* "was an emergency posture on an undeveloped record."

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 Senate Bill 253:** On October 6, 2025, California Governor Gavin Newsom (D) signed Senate Bill 253 into law, amending the State Bar Act. Under existing law, the State Bar of California can offer discounts and benefits to active and inactive attorneys through insurance and noninsurance affinity programs. The State Bar Act regulates the distribution of revenue from these programs with a certain amount reserved for the California Lawyers Association or an affiliated 501(c)(3) organization to support their

respective DEI, access to justice, and civic engagement efforts. Under Senate Bill 253, the California Lawyers Association or the affiliated 501(c)(3) organization must now submit an annual report to the California Legislature detailing its use of these funds and a statement of compliance with the State Bar Act's prohibition on creating, operating, or soliciting members for affinity or royalty programs involving similar insurance or noninsurance products or services.

- **North Carolina House Bill 171 & Senate Bill 558:** On July 3, 2025, North Carolina Governor Josh Stein (D) vetoed two bills aimed at eliminating and prohibiting DEI in state and local agencies and public higher education. House Bill 171 would eliminate DEI initiatives in state and local government and prohibit the use of any state or public funds to "promote, fund, implement, or maintain" DEI initiatives or programs. The bill would also subject any offending government officer or employee to civil penalties as well as potential removal from office or employment. Senate Bill 558 would prohibit public institutions of higher education from promoting or endorsing "divisive concepts" or requiring completion of courses related to "divisive concepts." The bill employs a list of nonexclusive factors to define "divisive concepts," including, but not limited to, the following concepts: "[a]n individual, solely by virtue of his or her race or sex, is inherently racist, sexist, or oppressive"; "[a]n individual, solely by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex"; "[t]he United States was created by members of a particular race or sex for the purpose of oppressing members of another race or sex"; and "[a] meritocracy is inherently racist or sexist." On July 29, 2025, the North Carolina Senate overrode Governor Stein's veto of Senate Bill 558. The North Carolina House of Representatives is scheduled to resume efforts to override both vetoes on December 15, 2025.

The following Gibson Dunn attorneys assisted in preparing this client update: Jason Schwartz, Mylan Denerstein, Zakiyyah Salim-Williams, Cynthia Chen McTernan, Anna McKenzie, Cate McCaffrey, Sameera Ripley, Anna Ziv, Emma Eisendrath, Benjamin Saul, Simon Moskovitz, Teddy Okechukwu, Beshoy Shokrolla, Angelle Henderson, Lauren Meyer, Kameron Mitchell, Taylor Bernstein, Jerry Blevins, Chelsea Clayton, Sonia Ghura, Samarah Jackson, Elvyz Morales, Allonna Nordhavn, and Felicia Reyes.

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