GIBSON DUNN

DEI Task Force Update

February 2, 2026

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 January 23, Vice President JD Vance announced at the March for Life rally that the Trump Administration will expand the "Mexico City Policy" to include "woke ideologies." The policy, first enacted by President Ronald Reagan in 1984, bans the use of foreign aid for abortion services, including the discussion of abortion as part of family planning services. Vice President Vance stated that the new policy will extend that prohibition to include "woke ideologies," such as "gender ideology" and "discriminatory equity ideology." The Department of State is expected to release rules implementing this policy change.

On January 22, the U.S. Equal Employment Opportunity Commission ("EEOC") voted 2-1 to withdraw a 2024 guidance document establishing a comprehensive framework for analyzing claims of workplace harassment. The 2024 guidance, issued by the EEOC under former President Joe Biden, included instruction related to sexual orientation-based harassment and gender identity-based harassment, which the EEOC said at the time qualified as discrimination on the basis of sex in violation of Title VII pursuant to the Supreme Court's 2020 ruling in *Bostock v. Clayton County*.

EEOC Chair Andrea Lucas voted to rescind the guidance. She has previously taken the position that the guidance is overbroad because the expanded definition of sex articulated in *Bostock* applied only to hiring and firing decisions, not to harassment. Lucas was joined by Commissioner Brittany Bull Panuccio, who also voted to withdraw the guidance. According to reporting from Law360, Panuccio took the position that eliminating the guidance comports with President Trump's directives and noting that there are private-sector resources that can fill the gap left by the recission. Because the five-member EEOC currently has two vacancies, Lucas and Panuccio's votes were sufficient to overturn the guidance. The rescission does not by itself change applicable federal anti-harassment law, nor does it bear on state-specific laws prohibiting harassment in the workplace. Lucas stated that the EEOC would continue to aggressively enforce harassment claims under Title VII and other applicable federal laws.

Commissioner Kalpana Kotagal voted against the recission, expressing concern that employers and employees would be left without clear guidelines on what constitutes unlawful harassment. Kotagal also noted that the EEOC had already removed from the guidance language relating to sexual orientation-based harassment and gender identity-based harassment, after a U.S. District Court ordered that portions of the EEOC's guidance be vacated; Kotagal argued that the total recission of the guidance was therefore unnecessary, even under Lucas and Panuccio's reading of the law.

On January 22, the Tenth Circuit heard oral argument in an appeal brought by Joshua Young, a white former Colorado Department of Corrections officer, who alleged that the Department of Corrections' mandatory annual DEI trainings created a racially hostile work environment in violation of Title VII and Section 1981. According to Young, the trainings, which addressed the historical effects of white supremacy, racial inequality, and the discomfort white employees may experience when confronting those topics, amounted to unlawful racial harassment. A three-judge panel—Judges Robert E. Bacharach and Nancy L. Moritz, joined by U.S. District Judge Robert J. Shelby sitting by designation—considered whether the case should be revived after being dismissed twice previously. At oral argument, Young's counsel cited the Supreme Court's June 2025 decision in *Ames v. Ohio Department of Youth Services*, arguing that the judges must be "agnostic as to the race of the plaintiff." Young's counsel also claimed that using historical circumstances to assess the offensiveness of the conduct should only be considered later in the case, not at the motion to dismiss stage. Judge Moritz questioned whether Young alleged any objectively hostile conduct "beyond a single … online training." Judge Bacharach observed, however, that the case is "unlike a lot of hostile work environment cases" and questioned why the challenged policies, when liberally construed, would not "survive the very low" motion to dismiss standard.

On January 19, 2026, Texas Attorney General Ken Paxton issued Opinion No. KP-0505 entitled, "Re: 'Diversity, Equity, and Inclusion' in Texas." In the Opinion, Paxton opined on the legality of two categories of DEI initiatives: public-sector programs operated by the state of Texas, and corporate DEI practices common in the private sector. While this Opinion lacks the force of law, Texas courts consider opinions of the Attorney General as persuasive authority when interpreting state law. The seven categories of private-sector DEI initiatives discussed in the Opinion include

(i) demographically based workforce representation goals, (ii) diverse slate policies, (iii) diversity fellowships or other race- or gender-based hiring programs, (iv) tying compensation to DEI-related metrics, (v) identity-based employee resource groups, mentoring, and training, (vi) supplier diversity programs, and (vii) diversity-related governance, including Chief Diversity Officers, Diversity offices, and Board committees overseeing DEI programs. The Attorney General's Opinion does not characterize these programs as categorically unlawful but states that these DEI practices may violate state and federal antidiscrimination law in certain circumstances. For more information on the Texas Attorney General's Opinion, please see our January 20 client alert.

On January 14, the U.S. Department of Justice filed a lawsuit against the State of Minnesota, challenging the State's affirmative action hiring policies for state civil service. According to the complaint, Minnesota has implemented statutes, rules, and policies that require state agencies to give "preferences to employees or prospective employees because of their race, color, national origin, and sex" in violation of Title VII of the Civil Rights Act of 1964. As an example, the complaint points to Minnesota law requiring the Commissioner of the Minnesota Management and Budget agency to "establish statewide affirmative action goals" based on "the percentage of members of each protected class in the recruiting area population who have the necessary skills" and "the availability for promotion or transfer of current employees who are members of protected classes." Under Minnesota law, protected classes include "females, persons with disabilities, and members of the following minorities: Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan native." The Justice Department seeks, among other relief, a declaratory judgment that Minnesota is engaging in a pattern of unlawful discrimination in violation of Title VII, a permanent injunction prohibiting the state and its agents from any future hiring conduct in violation of Title VII, and equitable relief to any employees and prospective employees who were discriminated against as a result of the affirmative action hiring policies. "Making hiring decisions based on immutable characteristics like race and sex is simple discrimination," said Attorney General Pamela Bondi in the official press release, "and the Trump Administration has no tolerance for such DEI policies." (Among other things, the Trump Administration previously withdrew Executive Order 11,246, which had required federal government contractors to adopt affirmative action plans.)

When the U.S. Supreme Court ended race-conscious admissions in higher education in 2023, it did not overrule precedents authorizing some form of workplace affirmative action under Title VII. But those precedents—*United Steelworkers of America v. Weber*, 443 U.S. 193 (1979) and *Johnson v. Transportation Agency, Santa Clara County*, 480 U.S. 616 (1987)—are now being challenged in the Justice Department's complaint. David Glasgow, Executive Director of the Meltzer Center for Diversity, Inclusion, and Belonging, highlighted this lawsuit as one to watch for potentially significant developments, noting that the legality of workplace DEI practices could end up in front of the Supreme Court as a result. The case is *U.S. v. State of Minnesota*, No. 26-cv-00273 (D. Minn. 2026).

On January 21, the U.S. Department of Education withdrew its appeal of a federal district court ruling that blocked implementation of the Education Department's February 14, 2025 "Dear Colleague" letter, which was pending before the United States Court of Appeals for the Fourth Circuit. The letter required higher education institutions to "(1) ensure that their policies and actions comply with existing civil rights law; (2) cease all efforts to circumvent prohibitions on the use of race by relying on proxies or other indirect means to accomplish such ends; and (3) cease all reliance on third-party contractors, clearinghouses, or aggregators that are being used by institutions in an effort to circumvent prohibited uses of race," or else lose federal funding. A group of plaintiffs, comprised of the American Federation of Teachers, the American Sociological Association, and a school district in Eugene, Oregon, challenged the letter as violating the Free Speech Clause of the First Amendment, the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act. In a joint stipulation signed by both parties, the government summarily stated that the parties have agreed to dismiss the appeal with each side bearing its own costs and fees. No reason was provided for the government's decision to drop the appeal. Prior to the dismissal of the appeal, the case had been seen as a potential vehicle for testing the legality of race-based education programs in the U.S. Supreme Court. The case is *American Federal of Teachers, et al., v. U.S. Department of Education, et al.*, No. 0:25-2228 (4th Cir. 2025).

Media Coverage and Commentary:

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

- **The New York Times, "Should Any Programs Help Minority Groups? In Lawsuits, Conservatives Say No" (Jan. 31)**: Anemona Hartocollis of the New York Times reports on the dozens of lawsuits brought by conservative groups in the two years since the Supreme Court's decision in *Students for Fair Admission v. Harvard*. Hartocollis reports

that the aim of these conservative groups is to extend *SFFA*'s reach "beyond universities into other areas of American life, including corporations, law firms, health care, the arts and private nonprofits offering scholarships intended to help people of a certain race or ethnicity." Notably, some of these groups are harnessing laws passed in the Reconstruction Era to ensure the rights of newly-freed slaves to target DEI programs they assert violate the civil rights of white Americans. In discussing the use of Section 1981, a civil rights act intended to give formerly enslaved African Americans the same right to contract as white citizens, the article quotes Jason Schwartz of Gibson Dunn as stating, "Ironically, they're using that statute as a way to dismantle programs designed to assist racial minorities." The article specifically highlights the efforts of active litigants, including the American Alliance for Equal Rights, the Pacific Legal Foundation, and the Wisconsin Institute for Law and Liberty, which together have represented over 100 clients in recent challenges to affirmative action programs.

- **The New York Times, "Employment Commission Chair Recasts Workplace Discrimination in Trump's Image" (Jan. 27)**: Rebecca Davis O'Brien of the New York Times reports on the changing priorities of the EEOC under Chair Andrea Lucas. The author references a recent interview in which Lucas stated that the agency's current mission "is to restore a focus on equality as opposed to equity" and to return "to the concept of equal treatment as opposed to equal outcomes." She also cites to a recent LinkedIn post from Lucas, calling on "white male[s]" who have experienced discrimination at work based on their race or sex to report the discrimination to the EEOC, and informing them that they "may have a claim to recover money under federal civil rights laws." Lucas's opponents said that the video sent the message "that white Americans would receive preferential consideration under the Trump administration." O'Brien describes the ways in which Lucas's EEOC has acted to accomplish its policy priorities during the first several months of the Administration, when a lack of quorum prevented the agency from pursuing major rule changes. The article quotes Jason Schwartz of Gibson Dunn, who says, "Andrea has done an effective job of making the E.E.O.C., and the chair of the E.E.O.C., an important policymaking position."

- **The Washington Post, "Why Trump's EEOC wants to talk to White men about discrimination" (December 30)**: Taylor Telford of the Washington Post reports on shifting enforcement priorities at the EEOC following changes in leadership during President Trump's second term. According to Telford, EEOC Chair Andrea Lucas is publicly soliciting complaints from white men who believe they have experienced workplace discrimination based on race or sex. Telford further reports that Lucas has stated that the agency will prioritize enforcement against what it characterizes as illegal discrimination related to DEI, emphasize individual rights over group-based protections, and increase focus on pregnancy and religious accommodation claims, while moving away from disparate impact cases. Critics, Telford reports, argue that this shift diverts resources from addressing systemic discrimination, whereas supporters contend that it corrects overreach by prior administrations. Telford also notes a decline in race-based enforcement actions in 2025 and increased EEOC scrutiny of DEI-related workplace practices.

- **Forbes, "How Disney Navigated DEI Backlash: A Masterclass for CEOs" (December 29)**: Tima Bansal of Forbes reports on Disney's changing approach to DEI in recent years. As Bansal reports, after Florida ratified the Parental Rights in Education Act in March 2022, which prohibited classroom instruction on sexual orientation and gender identity through third grade, Disney called for the Act to be repealed, while pausing political contributions in Florida. Bansal explains that Florida Governor Ron DeSantis responded by dissolving the Reedy Creek Improvement District, a special taxing district that had granted Disney significant self-governance authority for more than five decades. Disney then unsuccessfully challenged the state's actions in federal court. In November 2024, Disney removed references to "diversity," "inclusion," and "DEI" from its annual report for the first time since 2019, but Disney shareholders overwhelmingly rejected a proposal to discontinue participation in the Human Rights Campaign's Corporate Equality Index. Bansal reports that Disney's subsequent public messaging has emphasized concepts such as "belonging" and "inclusion" rather than DEI, reflecting a broader corporate trend toward reframing public disclosures.

- **Bloomberg, "DEI Is Still a Priority Abroad. Global GCs Must Walk a Tightrope" (December 17)**: Paula Boggs, writing in Bloomberg Law, asks how US-based corporations with sizable operations outside the U.S. can implement a "real, not performative, commitment to [DEI]." Drawing on her experience as Chief Legal Officer of Starbucks and General Counsel of Dell, Boggs contrasts Canada's and the EU's approaches to DEI with the backlash surrounding DEI in the United States. She notes that while Canada and the EU do not always mandate DEI programs, their legal frameworks and public commitments support nondiscrimination and inclusion, creating expectations that differ from those in the U.S. Boggs also underscores the business stakes for multinational companies, many of which derive a large share of revenue from outside the U.S. She observes that some companies have scaled back DEI initiatives to align with U.S. trends, while others have maintained or strengthened global commitments despite scrutiny.

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:

- ***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. Seattle 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 that they are arbitrary and capricious in violation of the Administrative Procedure Act. Seattle 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." 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. 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.

    - **Latest update:** On December 29, 2025, the defendants filed a notice of appeal of the district court's order granting a preliminary injunction.

2. Employment discrimination and related claims:

- ***Brandon Cooper, et. al. v. The Office of the Commissioner of Baseball et al.*, No. 1:24-cv-03118 (S.D.N.Y. 2024):** On April 24, 2024, Brandon Cooper, an Arizona-based former minor league baseball umpire sued Major League Baseball ("MLB"), claiming that his employment was retaliatorily terminated after he accused a female umpire of harassing him and using homophobic slurs. The complaint further alleges that MLB implemented an "illegal diversity quota requiring that women be promoted regardless of merit," which Cooper contends emboldened the female umpire to believe she could "get away with anything" because she was a woman, and that "MLB ha[d] to hire females" and would not terminate her employment. Cooper later filed an amended complaint adding Alexander Lawrie, a Florida-based former minor league baseball umpire, as co-plaintiff, raising claims under state, local, and federal law for hostile work environment, wrongful termination, failure to promote, and retaliation. The defendants moved to dismiss or in the alternative, to transfer Cooper's claims to the District of Arizona and Lawrie's to the Middle District of Florida.

    - **Latest update:** On December 17, 2025, the parties submitted a joint letter informing the court that the defendants had reached a settlement in principle with Lawrie and were in the process of finalizing the settlement agreement. The parties further noted that the motions to dismiss and to transfer would remain pending only as to Cooper.

- ***Robert M. Fuzi v. Worthington Steel Company*, No. 3:24-cv-01855 (N.D. Oh. 2024):** A former employee sued Worthington Steel for religious discrimination and retaliation in violation of Title VII, claiming he was fired for opposing Worthington's DEI initiative, which required employees to use each other's preferred gender pronouns. The plaintiff claims that the pronoun policy violated his Christian beliefs, and that he was fired in retaliation for filing an EEOC charge relating to his complaints.

    - **Latest update:** On December 11, 2025, the plaintiff filed a notice of settlement notifying the court that the parties had reached an agreement and intended to file a stipulation of dismissal with prejudice. On January 14, 2026, the parties filed a stipulated notice of dismissal with prejudice, and on January 15, 2026, the Court dismissed the case.

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

- ***Glass, Lewis & Co., LLC v. Ken Paxton*,1:25-cv-01153 (W.D. Tex. 2025):** On July 24, 2025, Glass, Lewis & Co., LLC sued Texas Attorney General Ken Paxton to enjoin Texas Senate Bill 2337, which, starting September 1, 2025, requires proxy advisory services like Glass Lewis to "conspicuously disclose" that their advice or recommendations are "not provided solely in the financial interest of the shareholders of a company" if the advice or recommendations are based wholly or in part on ESG, DEI, social credit, or sustainability factors. Glass Lewis alleges that the law unconstitutionally discriminates based on viewpoint and infringes on its freedom of association in violation of the First Amendment. Glass Lewis also contends that the law is unconstitutionally vague under the First and Fourteenth Amendments and is preempted by ERISA. On August 29, 2025, the court granted Glass Lewis a preliminary injunction preventing the law from going into effect. The district court set trial for February 2, 2026. On September 18, 2025, the Attorney General appealed the preliminary injunction order.
    - **Latest update:** On November 24, 2025, the Texas Attorney General filed an unopposed motion to voluntarily dismiss his interlocutory appeal on the ground that it was "highly unlikely to be fully briefed, argued, and disposed of" by the Fifth Circuit before the February 2, 2026 trial date, which would render the preliminary injunction appeal moot. On December 5, 2025, the Attorney General filed an answer to the second amended complaint. The answer generally denies all of Glass Lewis's allegations and asserts affirmative defenses.
- ***Mid-America Milling Company v. U.S. Department of Transportation*, No. 3:23-cv-00072-GFVT (E.D. Ky. 2023):** On October 26, 2023, two plaintiff construction companies sued the U.S. Department of Transportation ("DOT"), asking the court to enjoin the DOT's Disadvantaged Business Enterprise Program, an affirmative action program that awards contracts to minority- and women-owned small businesses in DOT-funded construction projects, with the statutory aim of granting 10% of certain DOT-funded contracts to these businesses nationally. The plaintiffs alleged that the program constitutes unconstitutional race discrimination in violation of the Fifth Amendment. On September 23, 2024, the court granted the plaintiffs' motion for a preliminary injunction, holding that the plaintiffs were likely to succeed on the merits because the program is not sufficiently tailored to the government's purported interest and lacks a "logical end point." The court also held that the plaintiffs have standing based on their allegations that they are "able and ready" to bid on a government contract in the near future. The court denied the defendants' motion to dismiss pending the resolution of any interlocutory appeal of the injunction order. The parties filed a joint motion to stay the proceedings on February 10, 2025, due to the change in the presidential administration.
    - **Latest update:** On December 23, 2025, intervenor Disadvantaged Business Enterprise ("DBE") filed a motion to dismiss all the plaintiffs' claims for lack of subject matter jurisdiction and to vacate the existing preliminary injunction. DBE argued that the plaintiffs' claims were moot because the DOT issued an Interim Final Rule after the litigation was filed, eliminating the race- and sex-based presumptions in the Disadvantaged Business Enterprise Program. DBE also asked the court to vacate the preliminary injunction, arguing that the injunction

was based on “now-stale facts” since it was issued before DOT issued the Interim Final Rule.On January 13, 2026, the plaintiffs opposed DBE’s motion to dismiss, arguing that the case was not moot because the “voluntary cessation” exception to the mootness doctrine applied. Also on January 13, another intervenor, Central Seal Company, filed an opposition to the motion to dismiss, raising the same argument.

- ***Strickland et al. v. United States Department of Agriculture et al.*, No. 2:24-cv-00060 (N.D. Tex. 2024):** On March 3, 2024, the plaintiff farm owners sued the U.S. Department of Agriculture over the administration of financial relief programs that allegedly allocated funds based on race or sex. The plaintiffs alleged that only a limited class of socially disadvantaged farmers, including certain races and women, qualify for funds under these programs. On June 7, 2024, the court granted in part the plaintiff’s motion for a preliminary injunction. The court enjoined the defendants from making payment decisions based directly on race or sex. However, the court allowed the defendants to continue to apply their method of appropriating money, if done without regard to the race or sex of the relief recipient. On February 11, 2025, the court stayed proceedings to determine how President Trump’s Executive Order No. 14148 would affect the disposition of the case. The court extended the stay on March 19 and March 31. On May 9, 2025, the parties submitted a joint motion for voluntary remand, which indicated that the Agriculture Department would revise the challenged programs “to cure the race and sex discrimination that the agency no longer defends.” The court granted the remand motion on May 15, 2025, retaining jurisdiction and ordering the Agriculture Department to finalize its reconsideration of the programs by September 30, 2025. The court extended the stay on October 16, 2025.
    - **Latest update:** On December 5, 2025, the court lifted the stay. On January 16, 2026, the plaintiffs filed a renewed motion for summary judgment, arguing that their claims are not moot because the Agriculture Department continues to make decisions motivated by discriminatory intent and with discriminatory effect, and because they continue to suffer harm. Also on January 16, the defendants filed a combined motion to dismiss and motion for summary judgment, arguing that their current policy is race neutral. Each party’s opposition is due on February 3.
- ***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 civilian employee for the Illinois National Guard, filed a putative class action against numerous United States officials, 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. The plaintiff alleges that she has tried to work around the policy by using single-use restrooms, but that such facilities are often inconvenient or nonexistent.
    - **Latest Update:** On November 21, 2025, the plaintiff moved to certify a class of “current or future employees of the Executive Branch of the federal government whose gender identity differs from their ‘biological classification as either male or female,’ as defined in Executive Order 14168 [], and who have been or will be prohibited from using restrooms that align with their gender identity.” On January

15, 2026, the parties moved to stay briefing on the motion for class certification pending resolution of the defendants' forthcoming dispositive motion. The parties propose that the defendants will file their dispositive motion on February 26, 2026; the plaintiff will respond on March 30, 2026, and the defendants will reply on April 23, 2026. On January 16, 2026, the court entered the parties' proposed briefing schedule and stayed briefing on class certification pending further order by the court.

4. Actions against educational institutions:

- ***Colin Wright v. Cornell University*, No. 3:26-cv-127 (N.D.N.Y. 2026):** An evolutionary biologist has sued Cornell University, raising claims of employment discrimination under state and federal law, claiming that Cornell failed to make an open position public and instead offered it only to diverse candidates. The complaint cites internal emails from the University's evolutionary biology department stating that they intended to make a "diversity hire," and would invite only candidates from a list of "underrepresented minority scholars" to apply for the position. Wright claims he was "banned" from applying, but had he been able to apply, he would have applied for, been qualified for, and accepted the role.
    - **Latest update:** The docket does not reflect that Cornell has yet been served.
- ***Do No Harm et al., v. University of California et al*., 2:25-cv-4131(C.D. Cal 2025):** On May 8, 2025, Do No Harm, Students for Fair Admissions, and a rejected applicant filed a class action complaint against the David Geffen School of Medicine at UCLA, UCLA, and the Regents of the University of California, along with numerous individual defendants including regents, university administrators, and admissions committee members. The plaintiffs allege that UCLA Medical School unlawfully uses race as a factor in admissions decisions in violation of Section 1983, Title VI, Section 1981, and California's Unruh Civil Rights Act. The complaint also alleges that the university effectively shut down an internal investigation into its admissions practices by requiring admissions committee members to sign nondisclosure agreements and refusing to assure cooperating witnesses they would not face retaliation. The plaintiffs seek declaratory and injunctive relief, compensatory and punitive damages, and disgorgement of federal financial assistance. They are seeking class certification.
    - **Latest update:** On December 23, 2025, the plaintiffs filed a second amended complaint, omitting claims under the Unruh Act and instead raising only federal claims under Title VI, Section 1981, and Section 1983.
- ***Hooley v. Regents of the University of California et al*, No. 3:25-cv-01399 (N.D. Cal. 2025):** On February 11, 2025, the mother of a minor high school student sued the Regents of the University of California ("UC"), alleging that UC San Francisco Benioff Children's Hospital Oakland discriminates against white students by offering its Community Health and Adolescent Mentoring Program for Success ("CHAMPS") internship only to "underrepresented minority students." The plaintiff alleges that her daughter applied for CHAMPS and was rejected based on her race. The plaintiff

challenges the CHAMPS program as violating the Fourteenth Amendment of the United States Constitution, Title VI, Section 1981, and the California Constitution.

    - **Latest update:** On November 26, 2025, the parties filed a notice of conditional settlement and joint stipulation to vacate all upcoming deadlines. On December 1, 2025, the court entered the stipulation as an order.

- ***Kleinschmit v. University of Illinois Chicago*, 1:25-cv-01400 (N.D. Ill. 2025):** On February 10, 2025, a former professor at the University of Illinois Chicago sued the university, alleging that it unlawfully discriminated against white male faculty candidates and discriminated and retaliated against the plaintiff by firing him after he objected to the school's "racial hiring programs." The plaintiff raises claims under Sections 1981 and 1983. On May 6, 2025, the university filed a motion to dismiss. The motion contends, among other things, that (1) the plaintiff lacks standing because the harms he claims to have experienced, including not having his contract renewed, are not redressable through the injunctive remedies he seeks, (2) the plaintiff cannot maintain his action because the Board of Directors of the University of Illinois enjoys sovereign immunity under the Eleventh Amendment, (3) Sections 1981 and 1983 do not apply to the university, as it is an alter ego of the state and not a "person" under the meaning of the statutes, (4) the Eleventh Amendment bars monetary damages against the individual defendants in their official capacities as employees of the university, and (5) the individual defendants lacked involvement in the alleged adverse employment actions. On May 27, 2025, the plaintiff filed an amended complaint, adding new defendants from the university's administration and adding allegations that the university, as a recipient of federal funds, violated Title VI of the Civil Rights Act of 1964 by intentionally discriminating against the plaintiff on the basis of his race, color, and ethnicity. On July 25, 2025, the defendants again moved to dismiss.

    - **Latest update:** On December 17, 2025, the court granted in part and denied in part the motion to dismiss. The court dismissed the plaintiff's request for injunctive relief, holding that the plaintiff lacks standing because he is a former university employee who does not seek reinstatement or otherwise express a desire to return to work at the university and therefore would not benefit from an injunction. The court further dismissed the plaintiff's Section 1981 and 1983 damages claims as barred by the Eleventh Amendment, which prohibits suits for damages in federal court against states and their agencies. The court, however, allowed the discrimination claim under Title VI to proceed, explaining that sovereign immunity does not bar that claim. On January 12, 2026, the defendant filed its answer, in which it denied the plaintiff's substantive allegations and asserts two affirmative defenses: (1) that the plaintiff failed to reasonably mitigate his alleged damages, and (2) that the defendant had a legitimate, non-discriminatory reason for any alleged adverse employment action.

- ***Paul Fowler v. Emory University*, No. 1:24-cv-05353 (N.D. Ga. 2024):** On November 21, 2024, a former Emory University employee sued the university alleging that the Vice Provost for Career and Professional Development discriminated against white employees in investigations, discipline, hiring, and promotions. The plaintiff asserts employment discrimination claims arising from "unlawful race, gender, and age discrimination and

retaliation" in violation of Title VII, the Age Discrimination in Employment Act, and Section 1981.

  - **Latest update:** On December 3, 2025, Emory moved for summary judgment, arguing that the plaintiff failed to adduce any evidence, direct or circumstantial, that Emory acted with discriminatory intent, that Emory presented sufficient evidence in support of its legitimate, nondiscriminatory, and nonretaliatory reason for terminating the plaintiff—specifically, that the plaintiff violated Emory policy by circumventing hiring protocols—and that the plaintiff failed to present evidence creating a genuine issue of material fact as to whether the non-discriminatory reason for his termination was pretextual. On January 21, 2026, the plaintiff filed an opposition, arguing that the record supports a prima facie case of discrimination because he was treated less well than Black colleagues and his supervisor had a stated preference for employees of color. He also asserted that the record suggests his firing was pretextual because it was not done according to policy. Emory's reply brief is due on February 11.

- ***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 August 14, 2025, the defendants moved to dismiss the complaint. The defendants argued that the plaintiffs lacked standing and that the complaint makes, at most, indiscriminate "barebones allegations" as to "every undergraduate, law, and medical school across all UC campuses." The defendants also argued that the chancellor of each UC campus is entitled to sovereign immunity under the Eleventh Amendment.

  - **Latest update:** On December 16, 2025, the court granted in part and denied in part defendants' motion to dismiss. The court dismissed all claims to the extent they challenge UC medical school admissions because the plaintiffs failed to identify a member who had taken the medical entrance exam (i.e., the MCATs) and therefore was "able and ready" to apply. The court also dismissed claims for damages under Section 1981 and the Equal Protection Clause against the chancellors in their official capacities because California has not waived its sovereign immunity. On January 7, 2026, the plaintiffs filed an amended complaint, narrowing the scope of the case and expressly challenging only undergraduate and law school admissions and disclaiming any challenge to transfer, graduate, or medical school admissions. Defendants' response is due January 30, 2026.

Legislative Updates

- **Missouri House and Senate Bills:** Republicans in the Missouri legislature pre-filed several bills this past December, seeking to prohibit and restrict DEI initiatives across a range of public institutions, including schools, public bodies, and state agencies. House Bill 1998, referred to as the "Defunding Diversity, Equity, and Inclusion in Elementary and Secondary Education Act" would prohibit educational institutions from using state funding to implement, teach, or otherwise support DEI programs or initiatives. Additionally, Senate Bill 1316 would prohibit various DEI-related requirements in public school districts and public charter schools. The bill would also allow the Attorney General, local prosecuting attorney, or any parent of a student enrolled in a school district or charter school to bring a civil action against the school district or charter school for violating the act. House Bill 2417, referred to as the "Parents' Bill of Rights Act of 2026," aims to provide parents or guardians of minor children within the school district with several rights, including the right to prevent schools from requiring their children to attend school assemblies, field trips, or other extracurricular activities that pertain to DEI initiatives without their affirmative consent. Senate Bill 1192 would prohibit higher education accrediting agencies from considering DEI practices, including procedures, initiatives, or statistics, when making accreditation decisions. House Bill 1744 seeks to establish the "Quality Control Committee for Oversight" tasked with defining and monitoring key performance indicators for educational entities and developing processes for educational entities to meet obligations. The bill would permit funds formerly designated for DEI initiatives to be redirected solely toward implementing new procedures established by the Quality Control Committee for Oversight. Furthermore, Senate Bills 1031 and 1199 seek to prohibit the use of state funds by any department, division, or other state entity for DEI initiatives. Additionally, the bills would prevent any department, division, or other state entity from mandating, requiring, or incentivizing private-sector employers to implement DEI programs or initiatives as a condition of receiving a state contract. Senate Bill 1193 includes similar prohibitions on the use of state funds by any department, division, or state entity, and further expands these restrictions to bar gifts or other expenditures for intradepartmental programs or staffing related to DEI practices.

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Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Labor and Employment practice group, or the following practice leaders and authors:

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